

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

<input type="checkbox"/> Affirm and adopt (no changes)	<input type="checkbox"/> Injured Workers' Benefit Fund (§4(d))
<input type="checkbox"/> Affirm with changes	<input type="checkbox"/> Rate Adjustment Fund (§8(g))
<input type="checkbox"/> Reverse	<input type="checkbox"/> Second Injury Fund (§8(e)18)
<input checked="" type="checkbox"/> Modify <u>down</u>	<input type="checkbox"/> PTD/Fatal denied
	<input checked="" type="checkbox"/> None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Frederick Williams,

Petitioner,

vs.

NO: 11WC 46390

13IWC0557

Flexible Staffing, Inc.,

Respondent,

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by the Respondent herein and notice given to all parties, the Commission, after considering the issues of nature and extent, Section 8.1(b), Section 19(e) and being advised of the facts and law, modifies the Decision of the Arbitrator as stated below and otherwise affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.

The Commission modifies the Arbitrator's Decision, decreasing Petitioner's partial disability award from 30% to 25% loss of use of the right arm pursuant to Section 8(e) of the Act. All else is affirmed and adopted.

IT IS THEREFORE ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of \$435.27 per week for a period of 23.14 weeks, that being the period of temporary total incapacity for work under §8(b) of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of \$391.75 per week for a period of 63.25 weeks, as provided in §8(e) of the Act, for the reason that the injuries sustained caused the petitioner a 25% loss of use of his right arm.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner interest under §19(n) of the Act, if any.

13IWCC0557


IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall have credit for all amounts paid, if any, to or on behalf of Petitioner on account of said accidental injury.

Bond for the removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of \$24,900.00. The probable cost of the record to be filed as return to Summons is the sum of \$35.00, payable to the Illinois Workers' Compensation Commission in the form of cash, check or money order therefor and deposited with the Office of the Secretary of the Commission.

DATED: **MAY 29 2013**

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CJD/jrc
049


Charles J. DeFrendt



Daniel R. Donohoo



Ruth White

STATE OF ILLINOIS)
)SS.
 COUNTY OF COOK)

<input type="checkbox"/>	Injured Workers' Benefit Fund (§4(d))
<input type="checkbox"/>	Rate Adjustment Fund (§8(g))
<input type="checkbox"/>	Second Injury Fund (§8(e)18)
<input checked="" type="checkbox"/>	None of the above

ILLINOIS WORKERS' COMPENSATION COMMISSION
 CORRECTED ARBITRATION DECISION
 NATURE AND EXTENT ONLY

FREDERICK WILLIAMS
 Employee/Petitioner

Case # 11 WC 46390

v.

Consolidated cases: N/A

FLEXIBLE STAFFING, Inc.
 Employer/Respondent

The only disputed issue is the nature and extent of the injury. An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Lynette Thompson-Edwards**, Arbitrator of the Commission, in the city of **Chicago**, on **June 5, 2012**. By stipulation, the parties agree:

On the date of accident, **October 7, 2011**, Respondent was operating under and subject to the provisions of the Act.

On this date, the relationship of employee and employer did exist between Petitioner and Respondent.

On this date, Petitioner sustained an accident that arose out of and in the course of employment.

Timely notice of this accident was given to Respondent.

Petitioner's current condition of ill-being is causally related to the accident.

In the year preceding the injury, Petitioner earned **\$33,951.32**, and the average weekly wage was **\$652.91**.

At the time of injury, Petitioner was **45** years of age, married with **no** dependent children.

Necessary medical services and temporary compensation benefits have been provided by Respondent.

Respondent shall be given a credit of \$10,073.36 for TTD, \$0 for TPD, \$ for maintenance, and \$0 for other benefits, for a total credit of \$10,073.36.

After reviewing all of the evidence presented, the Arbitrator hereby makes findings regarding the nature and extent of the injury, and attaches the findings to this document.

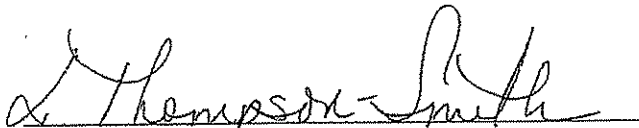
Respondent shall pay Petitioner temporary total disability from October 7, 2011 through March 7, 2012, for 23 & 1/7th weeks, in the amount of \$435.27 per week pursuant to Sections 8(b) of the Act.

Respondent shall pay Petitioner the sum of \$391.75/week for a further period of 75.9 weeks, as provided in Section 8(e) of the Act, because the injuries sustained caused the Petitioner a 30% loss of use of his right arm.

Respondent shall pay Petitioner compensation that has accrued from October 7, 2011 through June 5, 2012, and shall pay the remainder of the award, if any, in weekly payments.

RULES REGARDING APPEALS: Unless a Petition for Review is filed within 30 days after receipt of this decision, and a review is perfected in accordance with the Act and Rules, then this decision shall be entered as the decision of the Commission.

STATEMENT OF INTEREST RATE: If the Commission reviews this award, interest at the rate set forth on the *Notice of Decision of Arbitrator* shall accrue from the date listed below to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.


Signature of Arbitrator

November 20, 2012

NOV 20 2012

FREDERICK WILLIAMS
11WC 46390

FINDINGS OF FACT

The petitioner was 45 years old at the time of the work accident on October 7, 2011. He was married, and he had no dependent children. The petitioner testified that he is right-hand dominant. He testified that, before the subject work accident on October 7, 2011 he had never had any medical problems or symptoms involving his right arm. He testified that, before the work accident, he had never received any medical treatment for right arm problems. The petitioner testified that he never re-injured his right arm after October 7, 2011.

The petitioner testified that he was a member of the United States Marine Corp from 1984 through 1988, and that he received an honorable discharge from the service. The petitioner testified that, after he left the service, he spent most or all of his professional life as a welder. He testified that welding has always been his passion and that he has his own welding equipment in the garage of his home. He testified that he began working for the respondent on June 19, 2011 and that the respondent was in the business of manufacturing boilers, shredders and conveyors at the time of the work accident. The petitioner always worked as a welder/fabricator and testified that his job duties were physically demanding in nature, requiring cutting, welding and carrying both tools and metal equipment and interpreting blueprints. The petitioner testified that he worked without any physical restrictions for the respondent at all times.

The petitioner testified that he worked 40 hours per week for the Respondent. He testified that he worked from 6:00 a.m. to 2:30 p.m. The petitioner testified that the work accident on October 7, 2011 occurred at approximately 9:00 a.m. He testified that he was working on a section of a rail, similar to a railroad track. The petitioner testified that the section of rail was approximately nine feet long, two inches wide, and weighed in excess of 400 pounds. The petitioner testified that the rail was positioned on a horse while he welded it. He testified that one end of the rail slipped off the horse. The petitioner testified that his first reaction was to reach out and grab the rail, to keep it from falling on him. He testified that when the rail hit his hand, he felt a sharp pain in his right arm and he heard something snap. He testified that he immediately noticed that his arm was disfigured. The petitioner

testified that he reported the incident to his supervisor, Mr. Greg Herndon. The petitioner testified that his supervisor asked him if he needed an ambulance. The Petitioner testified that he declined the ambulance, and instead drove himself to Ingalls Occupational Health Clinic ("Ingalls") using only his left arm. The petitioner testified that his right arm was x-rayed at Ingalls, that he was given a sling, and that he was diagnosed with a distal biceps tendon rupture. The specialist at Ingalls immediately sent Petitioner home. Petitioner testified that he was off work for one (1) week, in severe pain and was never contacted by Respondent's insurance carrier. Petitioner further testified that his right arm was wrapped in an Ace bandage for approximately one month until Respondent finally approved surgery.

Medical records from Southland Orthopaedic Associates, Ltd. ("Southland") show that petitioner's first visit with Dr. Arabindi took place on October 12, 2011. The petitioner complained of right arm and right elbow pain and the doctor immediately diagnosed a probable right distal biceps tendon rupture. Dr. Arabindi discussed a surgery to repair the tendon rupture at the completion of that first visit. The Southland records confirm that Dr. Arabindi kept the petitioner off work from that first visit through March 8, 2012. The doctor wrote that he was awaiting approval of the surgery during both office visits in October of 2011. Dr. Arabindi eventually performed the surgery at the Ingalls Same Day Surgery on November 17, 2011. The doctor performed a repair of the petitioner's right elbow distal biceps tendon rupture. Under a general anesthesia, the surgeon drilled two holes into the petitioner's right radius and used K-wire and metal anchors to pull and secure the tendon into place. The petitioner began attending physical therapy ("PT") at Southland on November 28, 2011. He continued to attend PT, at Dr. Arabindi's direction, through February 8, 2012. At the time of the last office visit on March 7, 2012, the doctor declared the petitioner to be at maximum medical improvement ("MMI") but noted that he still lacked approximately five to ten (5-10) degrees of full supination in his right forearm. *See*, PX1.

On May 8, 2012, petitioner was examined by Dr. Mark Levin of Barrington Orthopedic Specialists, at Respondent's request. During that examination, the petitioner complained of right arm pain, which he had been suffering since the work accident. The petitioner

indicated that he also experienced pain when he tried to fully pronate and supinate the right forearm. The petitioner told Dr. Levin that he did not believe that he had full extension of his right elbow and that he experienced constant numbness over the ulnar aspect of that elbow. The petitioner stated that he was experiencing pain two or three times per week and that he was still taking narcotic pain medication, i.e. Norco, approximately two or three times a week because of pain in his elbow. Following his examination, Dr. Levin also noted that the petitioner lacked full extension with both pronation and supination of his right arm and then listed an AMA disability rating of 4% of a whole person or 6% loss of the right arm. *See, RX1.*

The Petitioner testified that, at the time that he was released to return to work by Dr. Arabindi, he was capable of lifting only 25 pounds. He testified that he told Dr. Arabindi, at the time of the last office visit on March 7, 2012, that his strength was diminished and that he had ongoing pain and numbness. The petitioner testified that, despite those complaints, Dr. Arabindi released him to return to work, without restrictions, as of March 8, 2012. The petitioner testified that, once he was released to return to work, he was told by the respondent that he does not have a job anymore.

Petitioner testified that he continues to experience pain in his right arm on a daily basis, and that he still lacks range of motion. The petitioner further testified that he still lacks strength in his right arm and that he still has tingling sensations in his right arm and his fingertips. And he testified that he still experiences numbness and a measurable amount of pain in his right arm. He continues to take Norco approximately three times per week. He testified that he continues to look for employment as a welder and that he has attempted to use his own welding equipment after he was released by Dr. Arabindi.

The petitioner testified that he finds welding difficult and that he experiences difficulty while playing with his three young grandchildren due to his ongoing symptoms in his right arm. He testified that he cannot perform garden work, mow his lawn, or play golf. The Petitioner testified that he experiences the numbness and tingling in his right arm and hand a few times a week and that he experiences some level of pain in his right arm on a daily basis.

CONCLUSIONS OF LAW

L. What is the nature and extent of the injury?

On October 7, 2011 the Petitioner suffered painful injuries to his right arm. All of the medical evidence conclusively established that the Petitioner suffered a right distal biceps tendon rupture while in the course of his employment for the Respondent on that date. I base my findings on the petitioner's credible testimony that his right arm was symptom-free all times prior to the work accident on October 7, 2011. All of the medical evidence supports Petitioner's testimony that he was working without any physical restrictions and that he was not under a doctor's care for any problems involving his right arm, at the time of the subject work accident.

The injuries to Petitioner's right arm and elbow lingered for more than seven months after the subject work accident. The Petitioner voiced the same complaints of pain, numbness and tingling to both his treating orthopedic surgeon and his physical therapist. The Petitioner described those same symptoms when he was examined by Dr. Mark Levin of Barrington Orthopedic Specialists on May 8, 2012. During that examination, the petitioner complained of right arm pain since the work accident. He indicated objectively, that he experienced pain when he tried to fully pronate and supinate the forearm. Petitioner told Dr. Levin that he did not believe that he had full extension of his right elbow and that he experienced constant numbness over the ulnar aspect of that elbow. The petitioner testified that he was suffering from lingering effects of the right arm injuries at the time of the hearing on June 5, 2012. The petitioner testified that he was experiencing pain two to three times a week and is taking pain medication in an attempt to ease his pain.

Pursuant to Section 8.1b of the Act, the following criteria and factors must be weighed in determining the level of permanent partial disability, for accidental injuries occurring on or after September 1, 2011:

- (a) A physician licensed to practice medicine in all of its branches preparing a permanent partial disability impairment report shall include an evaluation of medically defined and professionally appropriate measurements of impairment

that include, but are not limited to: loss of range of motion, loss of strength; measured atrophy of tissue mass consistent with the injury; and any other measurements that establish the nature and extent of the impairment.

- (b) Also, the Commission shall base its determination on the following factors:
- (i) the reported level of impairment;
 - (ii) the occupation of the injured employee;
 - (iii) the age of the employee at the time of injury;
 - (iv) the employee's future earning capacity; and
 - (v) evidence of disability corroborated by medical records.

With regards to (i) of Section 8.1(b) of the Act:

the level of impairment reported by Dr. Levin pursuant to the most current edition of the American Medical Association's Guides to the Evaluation of Permanent Impairment is 6% upper extremity impairment and "disability" rating of 4% of a whole person. The Arbitrator notes that impairment does not equate to permanent partial disability under the Workers' Compensation Act. Dr. Levin's reference to "an AMA disability rating" is misplaced; Dr. Levin is rating impairment only, not permanent partial disability. Dr. Levin does not specifically include loss of range of motion or any other measurements that establishes the nature and extent of the impairment pursuant to Section 8.1b. Dr. Levin used a physical examination grade modifier of 2 indicating a moderate problem. Dr. Levin did not consider a grade modifier for clinical studies in his impairment report, even though the surgical report could have been used in this way. Dr. Levin scored the QDASH report for functional history grade modifier as 23, however, does not include a copy of the QDASH in his impairment report so that the Arbitrator may review his findings.

With regards to (ii) of Section 8.1(b) of the Act:

the petitioner's occupation is welder/fabricator, which the Arbitrator takes judicial notice to be medium to heavy work and concludes that Petitioner's permanent partial disability will be larger than an individual who performs lighter work.

With regards to (iii) of Section 8.1(b) of the Act:

the age of the petitioner at the time of the injury was 45 years old. The Arbitrator considers the petitioner to be a somewhat younger individual and concludes that Petitioner's permanent partial disability will be more extensive than that of an older individual because he will have to live with the permanent partial disability longer.

With regards to (iv) of Section 8.1(b) of the Act:

the petitioner's future earning capacity, at the present time, appears to be undiminished as a result of his injuries, because he has medically been returned to his full-time duties. However, when he attempted to return to work, he was told that he no longer had a job. The Arbitrator concludes that this may negatively affect Petitioner's future earning capacity.

With regards to (v) of Section 8.1(b) of the Act:

the petitioner has demonstrated evidence of disability corroborated by his treating medical records. The petitioner has credibly testified that he currently experiences pain, numbness, tingling and loss of range of motion. The petitioner's complaints regarding his right arm are corroborated in the treating medical records of Dr. Arabindi, including but not limited to the diagnosis of distal biceps tendon rupture and the necessity of the subsequent surgery and course of treatment. The doctor also noted that the petitioner has disability of a permanent nature as, on Petitioner's last visit, he noted that Petitioner's condition was as good as it was going to get and that he still lacked approximately five to ten (5-10) degrees of full supination in his right forearm. The petitioner's complaints, supported by medical records, evidences a disability as indicated by Commission decisions regarded as precedents pursuant to Section 19(e).

The determination of permanent partial disability ("PPD") is not simply a calculation, but an evaluation of all five factors as stated in the Act. In making this evaluation of PPD, consideration is not given to any single enumerated factor as the sole determinant. Therefore, applying Section 8.1b of the Act, 820 ILCS 305/8.1b, the petitioner has sustained accidental injuries that caused 30% loss of use of the right arm. The Arbitrator further

FREDERICK WILLIAMS
11WC 46390

13IWCC0557

finds that the respondent shall pay the petitioner the sum of \$391.75/week for a further period of 75.9 weeks, as provided in Section 8(e) of the Act

STATE OF ILLINOIS)
)SS.
COUNTY OF COOK)

<input type="checkbox"/>	Injured Workers' Benefit Fund (§4(d))
<input type="checkbox"/>	Rate Adjustment Fund (§8(g))
<input type="checkbox"/>	Second Injury Fund (§8(e)18)
<input checked="" type="checkbox"/>	None of the above

**ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION**

Zachary Johnson
Employee/Petitioner

Case # 11 WC 041328

v.

Consolidated cases: n/a

Central Transport
Employer/Respondent

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Thompson-Smith**, Arbitrator of the Commission, in the city of **Chicago**, on **June 5, 2012**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

- A. Was Respondent operating under and subject to the Illinois Workers' Compensation or Occupational Diseases Act?
- B. Was there an employee-employer relationship?
- C. Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?
- D. What was the date of the accident?
- E. Was timely notice of the accident given to Respondent?
- F. Is Petitioner's current condition of ill-being causally related to the injury?
- G. What were Petitioner's earnings?
- H. What was Petitioner's age at the time of the accident?
- I. What was Petitioner's marital status at the time of the accident?
- J. Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?
- K. What temporary benefits are in dispute?
 TPD Maintenance TTD
- L. What is the nature and extent of the injury?
- M. Should penalties or fees be imposed upon Respondent?
- N. Is Respondent due any credit?
- O. Other _____

FINDINGS

On October 17, 2011, Respondent *was* operating under and subject to the provisions of the Act.
On this date, an employee-employer relationship *did* exist between Petitioner and Respondent.
On this date, Petitioner *did* sustain an accident that arose out of and in the course of employment.
Timely notice of this accident *was* given to Respondent.
Petitioner's current condition of ill-being *is* causally related to the accident.
In the year preceding the injury, Petitioner earned \$6,507.33; the average weekly wage was \$948.42.
On the date of accident, Petitioner was 28 years of age, *single* with 1 dependent child.
Petitioner *has* received all reasonable and necessary medical services.
Respondent *has* paid all appropriate charges for all reasonable and necessary medical services.
Respondent shall be given a credit of \$6,763.70 for TTD, \$0 for TPD, \$0 for maintenance, and \$1,163.66 for over payment of TTD benefits, for a total credit of \$7,927.36.
Respondent is entitled to a credit of \$0 under Section 8(j) of the Act.

ORDER

Temporary Total Disability

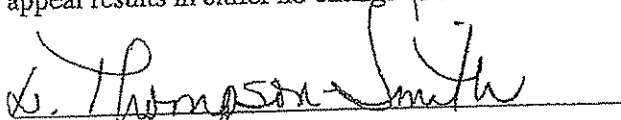
Respondent shall pay Petitioner temporary total disability benefits of \$632.28/week for 8 6/7 weeks, commencing October 18, 2011 through December 18, 2011, as provided in Section 8(b) of the Act.
Respondent shall pay Petitioner the temporary total disability benefits that have accrued from October 18, 2011 through December 18, 2011, and shall pay the remainder of the award, if any, in weekly payments.
Respondent shall be given credits of \$6,763.70 for temporary total disability ("TTD") benefits that have been paid and a TTD overpayment of \$1,163.66.

Permanent Partial Disability: Schedule injury

Respondent shall pay Petitioner permanent partial disability benefits of \$569.05/week for 20.50 weeks, because the injuries sustained caused the 10% loss of the right hand, as provided in Section 8(e) of the Act.

RULES REGARDING APPEALS: Unless a party files a *Petition for Review* within 30 days after receipt of this decision, and perfects a review in accordance with the Act and Rules, then this decision shall be entered as the decision of the Commission.

STATEMENT OF INTEREST RATE: If the Commission reviews this award, interest at the rate set forth on the *Notice of Decision of Arbitrator* shall accrue from the date listed below to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.



Signature of Arbitrator

July 24, 2012

ZACHARY JOHNSON
11WC 41328

FINDINGS OF FACT

The disputed issues are 1) casual connection; and 2) nature and extent of the injury. See, AX1.

Petitioner's Testimony at Hearing

Petitioner, Zachary Johnson, is claiming an accidental right hand injury on October 17, 2011. Temporary total disability and medical bills are not in dispute. The parties have stipulated that Respondent is entitled to a temporary total disability overpayment credit of \$1,163.60. Petitioner sustained accidental injuries on October 17, 2011 while employed by Central Transport as a local truck driver and loader. At the time of the accident, Petitioner was 28-year old and a journeyman truck driver employed by Central Transport, since August 10, 2011. Petitioner's employment duties included loading the truck trailer and driving city trucking routes. On the day of injury, he had completed loading the trailer and was conducting a pre-trip inspection when he encountered a problem with the trailer door. The trailer door operates on a bearing system by which the door rolls up/down. Petitioner testified that the bearings malfunctioned preventing the trailer door from completely closing. Petitioner attempted to close the trailer door with the assistance of a forklift but was unsuccessful. He then tried to close the trailer door manually by placing his left hand on the trailer door handle and his right hand on an attached rope. Petitioner pushed and pulled the door which eventually gave way, falling onto Petitioner's right hand. Timely notice was given to Central Transport and he proceeded to complete his shift.

Petitioner continued working regular duties as truck driver with Central Transport. These were the same duties as before the accident. In February 2012, Petitioner ceased working for Central Transport and went to a new trucking company, i.e., JF Freight; for an increase in salary. Petitioner testified that his decision to quit Central Transport had nothing to do with his right hand injury. Petitioner remains employed as an over-the-road driver with JF Freight. Petitioner's trucking routes while at Central Transport, consisted of short, urban routes. Petitioner did not travel long distances while employed with Central Transport. Petitioner testified his current routes with JF Freight have him driving from Chicago to Texas and Florida several times per week and he is driving much longer distances compared to Central Transport. Petitioner testified that he is right hand dominant and that currently, his right hand stiffens in the cold and he experiences periodic pain throughout the day, especially while driving over bumpy roads and when his hand strikes the stick-shift.

CONCLUSIONS OF LAW

F. Is Petitioner's current condition of ill-being causally related to the injury?

Petitioner's current right hand condition is a healed metacarpal fracture with angulations. This diagnosis is confirmed by his treating physicians, diagnostic studies, and examining physician Dr. Vender.

L. What is the nature and extent to Petitioner's injury?

Pursuant to Section 8.1b of the Act, the following criteria and factors must be weighed in determining the level of permanent partial disability, for accidental injuries occurring on or after September 1, 2011:

(a) A physician licensed to practice medicine in all of its branches preparing a permanent partial disability impairment report shall include an evaluation of medically defined and professionally appropriate measurements of impairment that include, but are not limited to: loss of range of motion, loss of strength; measured atrophy of tissue mass consistent with the injury; and any other measurements that establish the nature and extent of the impairment.

(b) Also, the Commission shall base its determination on the following factors:

- (i) the reported level of impairment;
- (ii) the occupation of the injured employee;
- (iii) the age of the employee at the time of injury;
- (iv) the employee's future earning capacity; and
- (v) evidence of disability corroborated by medical records.

With regards to paragraph (i) of Section 8.1(b) of the Act:

- (i) Dr. Vender's AMA report was admitted into evidence. Dr. Vender concludes that Petitioner's hand impairment is 1%. Petitioner provided no evidence or argument rebutting Dr. Vender's 1% impairment rating.

Medical Records

On October 18, 2011, the day after the accident, Petitioner sought treatment at Concentra Medical Center. X-rays of the right hand revealed a closed right small finger metacarpal fracture. Petitioner was discharged the same day with a right hand ulnar gutter splint. He was then referred to Advanced Medical Specialists and presented for examination on October 21, 2011; and was placed on restricted left-hand work. Petitioner returned to Advanced Medical Specialist for follow-up examinations on November 8th and 29th of 2011. X-rays taken on or about November 29, 2011, found Petitioner's small finger metacarpal fracture was healing.

On December 13, 2011, approximately eight (8) weeks after the date of injury, Petitioner was released to full duty work, without restrictions, starting on December 19, 2011. On January 12, 2012, Petitioner was examined by Dr. Cohen, the Director of the Hand and Elbow section at Midwest Orthopaedics at Rush, by request of Respondent. Dr. Cohen noted that Petitioner's right small finger metacarpal fracture had been treated conservatively. Dr. Cohen commented that Petitioner's susceptibility to cold weather should resolve over time and was not permanent. Petitioner's records also show that he underwent right hand surgery at the age of 5 due to a hereditary hand deformity and the arbitrator observed the disfigurement and surgical scarring at trial. Petitioner has not seen a treating physician, had any treatment, or been prescribed medication since his release in December 2011.

AMA Impairment Examination

On April 6, 2011, Dr. Michael Vender performed an AMA Impairment Examination and his report was admitted into evidence. Dr. Vender's examination found 1% impairment in Petitioner's right hand. Petitioner provided Dr. Vender with a history and filled out an evaluation which was utilized in determining an impairment rating. Dr. Vender noted that Petitioner sustained a work injury on October 17, 2011 when the rear door of his trailer fell onto his right hand causing a fracture which was treated conservatively. Upon examination, Petitioner complained of sporadic numbness in his right palm and sporadic soreness in the ulnar aspect of his right hand. Congenital deformities related to both ring fingers were noted with surgical scars on the volar aspect of the ring finger. Petitioner demonstrated normal range of motion of the right small finger. Petitioner was diagnosed with a healed right small finger metacarpal fracture with angulations. See, RX1. Petitioner did not offer an AMA impairment rating or write proposed findings that considered the AMA guides.

With regards to paragraph (ii) of Section 8.1(b) of the Act:

- (ii) Petitioner continues to be employed as a truck driver and now drives over-the-road rather than locally.

With regards to paragraph (iii) of Section 8.1(b) of the Act:

- (iii) Petitioner was 28-years old on the date of accident. The Arbitrator considers the petitioner to be a younger individual and concludes that Petitioner's permanent partial disability may not be more extensive than that of an older individual.

With regards to paragraph (iv) of Section 8.1(b) of the Act:

- (iv) There is no evidence that Petitioner's future earning capacity has diminished as a result of this right hand injury. Petitioner is currently 29 years old and continues driving a truck. He is now driving longer distances with a different employer for more pay. Petitioner's age increases the likelihood of a long career as a truck driver.

With regards to paragraph (v) of Section 8.1(b) of the Act:

- (v) Evidence of disability in Petitioner's treating medical records finds that Petitioner's metacarpal fracture with angulations was treated conservatively and has now healed. Dr. Cohen reported that Petitioner's susceptibility to cold would resolve over time, his grip strength was relatively symmetrical and functional difficulties associate with this type of mal-union of the small finger metacarpal are minimal. Dr. Vender noted complaints of sporadic numbness in Petitioner's right palm and sporadic soreness in the ulnar aspect of his right hand. Petitioner demonstrated normal range of motion of the right small finger. Petitioner returned to work full duty about eight (8) weeks after the accident.

The Arbitrator also finds persuasive Commission decisions which clearly differentiate the extent of Petitioner's disability and lend support to the conclusion that a minimal PPD award is appropriate. In *Waggaman v. Freight Car Services*, that petitioner, a freight production line supervisor, fractured the midshaft of the second metacarpal (07 I.W.C.C. 41359). Petitioner treated conservatively with therapy and returned to work three months after the accident with 50% strength loss in his hand. Petitioner was awarded 7.5% loss of use of the left hand. In the subject case, the petitioner has suffered

ZACHARY JOHNSON
11 WC 41328

no loss of strength and is driving longer, more demanding routes than before the accident.

The determination of permanent partial disability ("PPD") is not simply a calculation, but an evaluation of all five factors as stated in the Act. In making this evaluation of PPD, consideration is not given to any single enumerated factor as the sole determinant. Therefore, applying Section 8.1b of the Act, 820 ILCS 305/8.1b and considering the relevance and weight of all these factors, including Dr. Vender's AMA impairment rating, the Arbitrator concludes that Petitioner has sustained a 10% permanent loss of his right hand or 20.50 weeks of loss of use of the right hand.

STATE OF ILLINOIS)
)SS.
COUNTY OF ADAMS)

<input type="checkbox"/>	Injured Workers' Benefit Fund (§4(d))
<input type="checkbox"/>	Rate Adjustment Fund (§8(g))
<input type="checkbox"/>	Second Injury Fund (§8(e)18)
<input checked="" type="checkbox"/>	None of the above

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

Jeffrey N. Garwood
Employee/Petitioner

Case # 12 WC 4194

v.

Consolidated cases: N/A

Lake Land College
Employer/Respondent

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Nancy Lindsay**, Arbitrator of the Commission, in the city of **Quincy**, on **November 8, 2012**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

- A. Was Respondent operating under and subject to the Illinois Workers' Compensation or Occupational Diseases Act?
- B. Was there an employee-employer relationship?
- C. Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?
- D. What was the date of the accident?
- E. Was timely notice of the accident given to Respondent?
- F. Is Petitioner's current condition of ill-being causally related to the injury?
- G. What were Petitioner's earnings?
- H. What was Petitioner's age at the time of the accident?
- I. What was Petitioner's marital status at the time of the accident?
- J. Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?
- K. What temporary benefits are in dispute?
 TPD Maintenance TTD
- L. What is the nature and extent of the injury?
- M. Should penalties or fees be imposed upon Respondent?
- N. Is Respondent due any credit?
- O. Other

FINDINGS

On September 12, 2011, Respondent *was* operating under and subject to the provisions of the Act.

On this date, an employee-employer relationship *did* exist between Petitioner and Respondent.

On this date, Petitioner *did* sustain an accident that arose out of and in the course of employment.

Timely notice of this accident *was* given to Respondent.

Petitioner's current condition of ill-being *is* causally related to the accident.

In the year preceding the injury, Petitioner earned \$40,520.00; the average weekly wage was \$779.23.

On the date of accident, Petitioner was 54 years of age, *married* with no dependent children.

Petitioner *has* received all reasonable and necessary medical services.

Respondent *has not* paid all appropriate charges for all reasonable and necessary medical services.

Respondent shall be given a credit of \$1,595.33 for TTD, \$ 0 for TPD, \$ 0 for maintenance, and \$ 0 for other benefits, for a total credit of \$ 1,595.33.

Respondent is entitled to a credit of \$ 0 under Section 8(j) of the Act.

ORDER

Respondent shall pay Petitioner temporary total disability benefits of \$519.44/week for 4 4/7 weeks, commencing 12/2/11 through 1/3/12, as provided in Section 8(b) of the Act. Respondent shall be given a credit of \$1,595.33 for temporary total disability benefits that have been paid.

As stipulated, Respondent shall pay reasonable and necessary medical services of \$113.00, as provided in Section 8(a) of the Act.

Respondent shall pay Petitioner permanent partial disability benefits of \$467.54/week for 43 weeks, because the injuries sustained caused the 20% loss of the left leg, as provided in Section 8(e) of the Act.

RULES REGARDING APPEALS Unless a party files a *Petition for Review* within 30 days after receipt of this decision, and perfects a review in accordance with the Act and Rules, then this decision shall be entered as the decision of the Commission.

STATEMENT OF INTEREST RATE If the Commission reviews this award, interest at the rate set forth on the *Notice of Decision of Arbitrator* shall accrue from the date listed below to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

Nancy Anderson
Signature of Arbitrator

12/28/12
Date

JAN 3 - 2013

The Arbitrator finds:

Petitioner testified he began working for Respondent on January 30, 2006 as a vocational computer instructor. Petitioner testified that in June of 2010 all business and computer vocational classes were done away with; however, he was later brought back as an adjunct instructor (part-time instructor). Petitioner testified that as an adjunct instructor, he was paid per class. Petitioner testified he came back and taught computer-related classes, including introductions to computers and various other application, software, and keyboarding classes. Petitioner testified he was paid a different amount for each class based upon the number of credit hours for each class. Petitioner confirmed that for the wage periods shown on the wage statement beginning during November of 2010 and ending in June of 2011 he was working as an adjunct instructor (RX 3).

Petitioner further testified that beginning July 1, 2011 he became the vocational correctional occupational instructor at Western Illinois Correctional Center in Mt. Sterling, Illinois. This position was a full-time salaried position. When asked how he came to change his employment status he explained that when he was let go in June of 2010 he was on a "two-year recall," and when a previous instructor retired he was offered the job. Petitioner testified the difference in the job was that full-time employment included additional employment benefits such as healthcare and life insurance.

At arbitration, the parties stipulated that when Petitioner went to work as a full-time employee on July 1, 2011, he entered into an employment contract with Respondent and his annual salary payable under that contract is \$40,519.48.

Petitioner testified that on 9/12/11 he was still working for Respondent as a full-time vocational instructor at the Western Illinois Correctional Center in Mt. Sterling, Illinois.

Accident and causation were undisputed. Petitioner testified that on September 12, 2011, he was walking to his vehicle after work when he tripped and fell in an area where concrete was in the process of being ground down to allow wheel chair access, landing first on his left knee and then onto his left hand, elbow and side. Petitioner testified that stood up on his own but noticed pain in his left knee, left elbow, ribs and left wrist. He continued home and that evening continued to experience increasing pain and swelling in his left knee. Petitioner testified that he reported the fall the next morning to his immediate supervisor, Tom Theiss, and to Tom Kerkhoff, Respondent's Executive Dean of Corrections.

Records show that Petitioner first sought medical care from his family doctor, Dr. Jennifer Schroeder, on September 13, 2011. Petitioner reported a consistent history of the accident and complained of pain in his left knee, as well as his left rib area and left elbow. (Pet. Ex. 3, p. 94) Petitioner was walking stiff legged and reported a sensation as if his leg would give way. He acknowledged having undergone a left knee arthroscopy previously but denied any further knee problems until his recent work accident. (Pet.

Ex. 3, p. 94)

On physical examination, Dr. Schroeder noted tenderness and abnormal range of motion of the left elbow and that Petitioner was walking stiff and not bearing weight on his left knee. She noted that x-rays of the left elbow and knee did not demonstrate any bony injury. (Pet. Ex. 3, p. 95, 99-100) Dr. Schroeder recommended the use of ice and heat, NSAIDS, range of motion exercise and a left knee immobilizer for comfort. (Pet. Ex. 3, p. 96) Petitioner returned to Dr. Schroeder on September 23, 2011, reporting continued concern regarding left knee pain and requesting a referral to Dr. Ronald Wheeler, an orthopedic surgeon. Petitioner also reported pain in his left chest wall while deep breathing or rubbing the chest wall and requested that it be x-rayed. (Pet. Ex. 3, p. 91) A rib and chest x-ray was taken but did not show any fracture. (Pet. Ex. 3, pp. 93, 98) Noting that Petitioner's left knee had not improved, Dr. Schroeder referred Petitioner to Dr. Ronald Wheeler. Petitioner's left elbow was not causing any problems. (Pet. Ex. 3, p. 93)

Petitioner initially saw Dr. Wheeler on October 3, 2011, reporting an onset of left knee pain after a fall at work about three weeks earlier with persistent discomfort thereafter. (Pet. Ex. 1, p. 16) On examination, Dr. Wheeler noted some swelling in the knee and vague tenderness and diagnosed pes anserine bursitis. He recommended adjustment of activities and consideration of therapy. (Pet. Ex. 1, p. 16)

Petitioner returned to see Dr. Wheeler a week later on October 10, 2011, reporting continued discomfort. (Pet. Ex. 1, p. 15)

Petitioner underwent an MRI of his left knee on October 10, 2011 at Blessing Hospital. The report of Dr. Stanton indicated mild chondromalacia of the patellofemoral compartment and mild thinning of the articular cartilage of the medial and lateral tibiofemoral compartments. Petitioner's medial meniscus appeared normal without tear. There was an oblique tear involving the posterior horn of the lateral meniscus with truncation of the inner third zone body of the lateral meniscus. It was Dr. Stanton's impression there was mild chondromalacia and arthritis involving the patellofemoral compartment and a complete tear of the posterior horn of the lateral meniscus. (RX 2,

Dr. Wheeler recommended therapy but noted that surgery might be required if Petitioner did not improve. (Pet. Ex. 1, p. 15) Records from Quincy Medical Group show that Petitioner began therapy on October 13, 2011, reporting a consistent history of accident and worsening pain in his left knee since that time. (Pet. Ex. 3, p. 86-87) Petitioner attended 8 sessions of therapy through October 27, 2011. (Pet. Ex. 3, pp. 76 - 85) At the final session, Petitioner continued to report pain of a level of 6-8/10 in all positions most of the time. Petitioner did not feel that he had experienced any improvement with therapy and showed no objective improvement in range of motion or strength. Petitioner reported difficulty with functional tasks as well as work tasks requiring prolonged standing and walking which would increase his left knee pain. The therapist opined that further functional improvement would be limited by worsening symptoms. (Pet. Ex. 3, p. 76)

Petitioner returned to Dr. Wheeler on October 31, 2011, reporting increasing pain in his left knee that was aggravated by activity. (Pet. Ex. 1, p. 14) On examination, Dr. Wheeler noted diffuse tenderness, positive McMurray testing and tenderness both medially and laterally. Dr. Wheeler therefore recommended surgery on the knee after clearance by Dr. Schroeder. (Pet. Ex. 1, p. 14)

Petitioner proceeded with arthroscopic surgery on December 2, 2011, at Blessing Hospital. (Pet. Ex. 1, pp. 11-13, Pet. Ex. 2, pp. 17-18) In the course of arthroscopic surgery, Dr. Wheeler confirmed his pre-operative diagnosis of medial and lateral meniscus tears and debrided those tears. He also found Class II chondromalacia of the medial femoral condyle and the medial tibial plateau and chondroplasty was performed. Some chondromalacia of the lateral tibial plateau was also noted and chondroplasty was performed. Synovectomy was also performed and a synovial plica was removed. (Pet. Ex. 2, pp. 17-18) Petitioner followed up with Dr. Wheeler on December 8, 2011, when sutures were removed and therapy was ordered. (Pet. Ex. 1, p. 10)

Records show that Petitioner began post-operative therapy on December 12, 2011, and attended 30 sessions through February 6, 2012. (Pet. Ex. 3, pp. 28-59) Petitioner continued to follow up with Dr. Wheeler on December 29, 2011, January 26, 2012 and February 6, 2012. (Pet. Ex. 1, pp. 7-9) At these visits, Dr. Wheeler noted some ongoing soreness, though improved, and some improvement in strength, though he noted a continued imbalance in the quads and hamstrings. (Pet. Ex. 1, pp. 8-9) In her last physical therapy note, Petitioner's therapist noted that the focus of treatment had been on normalizing Petitioner's left knee range of motion and progressive strengthening as tolerated. Petitioner's response had been good with only minimal complaints of pain with prolonged weightbearing activities. All goals were achieved and Petitioner was discharged to an established home exercise program per Dr. Wheeler's discretion. (Pet. Ex. 3, p. 28)

Petitioner returned for a final appointment on May 7, 2012, reporting that he was doing fairly well but was continuing to experience some soreness. (Pet. Ex. 1, p. 5) Dr. Wheeler noted "improved" range of motion and good strength in Petitioner's knee. There was no tenderness, effusion, or swelling noted. There was balance between Petitioner's quads and hamstrings. Dr. Wheeler released Petitioner from care finding him to be at maximum medical improvement. Dr. Wheeler did not anticipate any permanent disability. (Pet. Ex. 1, p. 5)

Petitioner was examined by Dr. Joseph T. Monaco at Respondent's request on August 3, 2012, in Bloomington, Illinois (Resp. Ex. 1) Dr. Monaco provided an impairment rating of Petitioner's injury under the 6th Addition of the AMA Guides. Dr. Monaco reviewed Petitioner's medical records, met with Petitioner and took a history and summary of his complaints. He also performed a physical examination. At the time of the exam, Petitioner reported he liked to walk for exercise and was doing so for about thirty minutes two to three times per week. Petitioner also reported taking two Aleve tablets about three times per week for arthritic knee pain. Petitioner provided the doctor with a typed report regarding his ongoing complaints. Petitioner reported pain from six inches above the knee to six inches below the knee. He described this pain as mild to moderate most of the time but getting as bad as 5/10 on occasion. Petitioner also reported that his knee would stiffen up if he sat for more than twenty minutes at a time with his knee bent, that he felt weak when arising from a sitting position or turning to his left, and occasionally he loses his balance while walking down a hallway. Petitioner also reported increasing pain

and stiffness when driving a car, walking in a store or on any concrete surface for a long period of time. Petitioner noted that his knee would also hurt when lying in bed at the end of the day. Petitioner explained that he could help lessen the pain and stiffness by elevating his leg during the day.

In his report Dr. Monaco noted that Petitioner walked with a slight left antalgic gait. Petitioner had seven degrees of valgus in both knees when supine and standing. Petitioner had full extension with 135 degrees of flexion, equal to the right knee. There was good straight leg raise and no extensor lag. There was trace patellofemoral crepitus bilaterally. There was no patellofemoral pain with ballottement of the left knee. Petitioner's left knee was stable to varus and valgus stress and anterior and posterior drawer sign. Lachman's test and Pivot-shift test were negative. McMurray testing revealed mild discomfort. He noted that Petitioner's left knee was slightly larger than the right (44 cm vs 43.2 or 43.5 cm) and that there was some discomfort with McMurray's testing, though there was no pop or click. Deep tendon reflexes were 2+ and equal bilaterally at both the knees and ankles. Motor function was graded 5/5 in all muscles tested in the lower extremities. Homan's sign was negative. Petitioner exhibited good dorsalis pedis pulses. Dr. Monaco also reviewed Petitioner's diagnostic studies. He concurred with Dr. Wheeler's earlier diagnoses and believed petitioner had reached maximum medical improvement as a result of his work accident. Dr. Monaco only believed the tears were due to the accident; Petitioner's chondromalacia pre-dated the accident and was not related. Based upon the AMA Guides (Sixth Edition), Petitioner's impairment was rated at 3% whole person impairment or 8% loss of the lower extremity. (RX 1 and RX 2, exhibit 2)

Dr. Monaco's deposition was taken on November 1, 2012. Dr. Monaco, a board certified orthopedic surgeon, testified consistent with his report.

Dr. Monaco testified that he diagnosed Petitioner with tears of the medial and lateral meniscus of the left knee and chondromalacia of the patellofemoral joint of the left knee. He further opined that the meniscus tears were causally related to Petitioner's fall but not the chondromalacia. (Resp. Ex. 2, pp. 20-21) In reaching an impairment rating, Dr. Monaco testified that he did not consider the chondromalacia to be related to the work injury but he did consider the medial and lateral meniscus tears to be related. (Resp. Ex. 2, p. 29). Accordingly, he looked to Table 16-3 of the AMA Guides, and used the Diagnostic Criteria (Key Factor) to be "Meniscal Injury" and assigned the injury to Class 1 as a "Partial (medial and lateral)". (Resp. Ex. 2, pp. 29-30) He noted that the Class assignment is based upon a tear of the meniscus and that the rating is not affected by whether it was treated surgically or not. (Resp. Ex. 2, p. 30) He testified that under the Guides he would initially assign the injury to Class C within that class, providing a default impairment of 10% of the lower extremity subject to grade modifiers and adjustment grids. (Resp. Ex. 2, p. 31) Dr. Monaco testified that generally there are three categories of modifiers - functional history, physical examination and diagnostic studies. (Resp. Ex. 2, p. 24) In considering Functional History Adjustment, Dr. Monaco looked to Table 16-6 of the Guides which shows five levels of Grade Modifier ranging from "no problem" to "very severe problem". Under the class definition of "Gait Derangement", Dr. Monaco assigned a Grade Modifier of 1 (Mild Problem) as Petitioner did have a limp. This Adjustment table also refers to the "AAOS Lower Limb Instrument", though Dr. Monaco stated that he used the "PDQ" (pain disability questionnaire) assessment tool instead as he felt it was a more reliable tool. He acknowledged that the Guides recommend use of the AAOS Lower Limb Instrument (outcome measure). (Resp. Ex. 2, p. 32, 27, 46-48)

On cross-examination, Dr. Monaco admitted that Petitioner's score on the PDQ would be classified as a "moderate" rather than "mild" (as indicated in his report) and a Grade Modifier "2" rather than the Grade Modifier "1" that he had assigned, but testified that he would reject that higher Modifier because it seemed inconsistent with the Gait Derangement modifier and because the Guides provide that if the Functional History modifier deviates two or more grades from any other modifier it should be considered unreliable and should not be used. (Resp. Ex. 2, pp. 49-52) Dr. Monaco next considered the Physical Examination Adjustment found in Table 16-7 of the Guides and concluded that all of Petitioner's physical findings were under Grade Modifier 0. Finally, he looked to the Clinical Studies Adjustment grade modifiers in Table 16-8 of the Guides, but did not use this table as he felt that the clinical studies were used to define the diagnosis and, as he interpreted the Guides, should not then be used to make a further adjustment. (Resp. Ex. 2, p. 35) However, he testified that if he did consider the fact that the clinical studies confirmed the diagnosis, the result would not change the impairment rating. (Resp. Ex. 2, p. 35-37) Dr. Monaco then testified that under the Guides, he would then subtract each grade modifier from the class of diagnosis resulting here in a net adjustment of minus 1. (Resp. Ex. 2, pp. 38-39) He testified that this would reduce the impairment rating to Class B within Class 1 in Table 16-3 of the Guides, resulting in a final impairment rating of 8% of the lower extremity. (Resp. Ex. 2, p. 39)

On further cross-examination, Dr. Monaco acknowledged that "impairment" is not synonymous with "disability" and that other factors than "impairment" must be considered to determine "disability". (Resp. Ex. 2, pp. 42-43) Dr. Monaco also acknowledged that the Guides note a difference between "legal" causation (judged at more than 50% probable) and "medical" causation (judged at 95% probable) and testified that in concluding that the chondromalacia was not related to the injury he was applying "medical" causation. (Resp. Ex. 2, p. 52) However, he testified that even if the chondromalacia were considered related, that fact would not affect the impairment rating because the Guides allow consideration of only one diagnosis in each part of the body. (Resp. Ex. 2, p. 53) Therefore, if an injury results in more than one diagnosis in one part of the body, the impairments related to each diagnosis are not added together and only the more serious diagnosis is taken into account. (Resp. Ex. 2, p. 53)

Dr. Monaco testified that he devotes 20 percent of his practice to performing IME examinations. (Resp. Ex. 2, p. 6) Dr. Monaco testified that he had performed 10 evaluations for impairment ratings since May or June 2012. (Resp. Ex. 2, p. 62-63) He testified that he performed his examination in Bloomington, Illinois (though his office is in Tinley Park, Illinois) through a vendor who "market[s] themselves to insurance companies for these kind[s] of services." (Resp. Ex. 2, p. 63) He testified that he travels to Bloomington about once a month for this vendor and sees four to six people over the course of a day. (Resp. Ex. 2, p. 63) Dr. Monaco further testified that all of the impairment ratings that he has done have been at the request of insurance companies or defense attorneys. (Resp. Ex. 2, p. 64-65) He testified that he also performs IMEs independent of impairment ratings and performs 10 to 12 per month and 95 percent of these are for insurance companies and defense firms. (Resp. Ex. 2, p. 65) Dr. Monaco testified that he does not do an impairment rating without doing a full medical examination, and that he charges \$1,250.00 for the medical examination and an additional \$250 for the impairment rating. He testified that he charges \$650 per hour, with a minimum of two hours, for depositions and \$325 for preparation time if there is a lot of preparation time. (Resp. Ex. 2)

At arbitration Petitioner testified that he is 54 years of age and remains employed as an instructor of Construction Occupations at the prison. Petitioner denied any problems with his left knee before his undisputed accident on September 12, 2011. Petitioner acknowledged that he is able to perform his present job duties but that he sits down whenever he can. He prefers to sit, rather than to stand, when teaching. Petitioner also testified that he occasionally puts his leg up on a desk and stretches it but doesn't do so when the students are around. Petitioner takes Aleve when the pain is "real bad." Petitioner also testified that he continues to experience the problems with his knee that he described in detail to Dr. Monaco. Petitioner further testified that he and his wife used to walk and that he is diabetic and they walk for exercise. He testified they walk less now because his knee will hurt and he just doesn't feel like it. Petitioner testified he and his wife used to walk four or five times per week. Petitioner is also diabetic.

Petitioner testified he is currently being paid under the collective bargaining agreement that was entered into evidence as Respondent's Exhibit 4 and that he has no reason to believe his employment with Respondent is in jeopardy or his salary might be reduced because of the injury. He further testified neither his work hours nor the number of classes he teaches have been reduced as a result of the injury.

Petitioner testified the payment of the \$40,519.48 of his employment contract was paid out over 26 pay periods from July 1st forward.

Respondent called one witness, Mr. Ronald C. Frillmann, who is the associate dean at the Lake Land facility at Western Illinois Correctional Center.

Mr. Frillmann is Petitioner's direct supervisor. He testified he and Petitioner had been friends for some years. Mr. Frillmann identified the collective bargaining agreement that was entered into evidence as Respondent's Exhibit 4 and confirmed that it was signed 7/01/10 and involves a three-year contract expiring in June of 2014.

Mr. Frillmann testified that he has no knowledge of any complaints regarding Petitioner's performance of his job since he has been returned to work. He testified there are procedures included in the collective bargaining agreement for discipline and/or dismissal of employees. He further testified he has no reason as Petitioner's supervisor to think there is any reason that his position with Respondent might be terminated for any reason.

The Arbitrator concludes:

1. Earnings.

Section 10 of the Illinois Worker's Compensation Act defines "average weekly wage" as the earnings of the employee "in the employment in which he was working at the time of the injury." The Arbitrator concludes that at the time of his undisputed accident Petitioner was working as a full-time instructor for Respondent at the stipulated salary of \$40,520 per year, producing an average weekly wage of \$779.23. Petitioner experienced a change in his employment status when

he was hired as a full-time instructor and, therefore, only the earnings during that employment should be considered. The Arbitrator finds significant that the manner of computing his earnings changed from being paid by the class to becoming salaried, and that he became eligible for employee benefits after becoming a full-time instructor. See, Walter vs. Jacksonville Developmental Center 99 IIC 1031 and Rios vs. United Parcel Service 01 IIC 860.

2. Nature and Extent of the Injury.

Petitioner suffered tears to the lateral meniscus and medial meniscus of his left knee. He was also diagnosed with synovitis and patellofemoral chondromalacia of the left knee. Petitioner's left elbow and chest complaints appear to have resolved.

The injuries to Petitioner's left knee were addressed in a timely manner and he appears to have had a good recovery as indicated in the medical treatment notes. Petitioner underwent one arthroscopic procedure from which he had a satisfactory recovery. Petitioner was last seen for his knee by Dr. Wheeler on May 7, 2012. At that time the doctor indicated that Petitioner had improvement in his range of motion, good strength and balance between the quads and hamstrings. There was no effusion, swelling, or tenderness. At that time the doctor's plans and recommendations indicate Petitioner should increase his activities. No permanent disability was anticipated." Petitioner was told to recheck as needed. The Arbitrator further notes Petitioner was seen again on May 31, 2012 and, according to his testimony at arbitration, had seen Dr. Wheeler several other times for treatment of a thumb injury. However, there was no additional medical documentation that would indicate Petitioner had seen Dr. Wheeler or any other medical professionals for complaints of his knee after the May 7, 2012 release date.

Pursuant to Section 8.1b of the Act, the following criteria and factors must be considered in assessing permanent partial disability:

(a) A physician licensed to practice medicine in all of its branches preparing a permanent partial disability impairment report shall include an evaluation of medically defined and professionally appropriate measurements of impairment that include, but are not limited to: loss of range of motion, loss of strength; measured atrophy of tissue mass consistent with the injury; and any other measurements that establish the nature and extent of the impairment.

(b) Also, the Commission shall base its determination on the following factors:

- (i) the reported level of impairment as assessed pursuant to the current edition of the AMA "Guides to the Evaluation of Permanent Impairment";
- (ii) the occupation of the injured employee;
- (iii) the age of the employee at the time of the injury;
- (iv) the employee's future earning capacity; and
- (v) evidence of disability corroborated by the treating medical records.

The Act provides that no single enumerated factor shall be the sole determinant of disability. With respect to these factors, the Arbitrator notes:

1. The reported level of impairment under the AMA Guides. With regard to the AMA impairment rating, the Arbitrator takes into account Dr. Monaco's rating of 8% impairment of a lower extremity. In determining that rating, Dr. Monaco acknowledged that he did not use the recommended "outcome measure" for lower extremity ratings and that he did not take into account any aggravation that Petitioner suffered to his pre-existing chondromalacia because he did not believe that condition was related to petitioner's accident. While Petitioner testified that Dr. Norregaard has told him he needs surgery that recommendation is not reflected in the doctor's office records. There is no August 31, 2012 office note setting forth any proposed treatment plan by Dr. Norregaard. (PX 6). The Arbitrator also notes that there were some other discrepancies between Petitioner's testimony and the medical records themselves with regard to Petitioner's care and treatment (for ex., physical therapy) While these discrepancies are not enough to undermine causation they create some "pause" regarding treatment recommendations and prospective care. Furthermore, looking at the "outcome measure" Dr. Monaco did utilize (albeit it was not the recommended one) Dr. Monaco agreed on cross-examination that Petitioner's score on the "PDQ" would place Petitioner in a "moderate" impairment category rather than a "mild" one as he indicated in his report.

As acknowledged by Dr. Monaco, "impairment" is not synonymous with "disability" and other factors must be considered to assess "disability." In assessing the weight to be assigned to the impairment rating as compared to the other enumerated factors, the Arbitrator notes these concessions by Dr. Monaco.

2. The occupation of the injured employee. Petitioner's current occupation is that of an instructor in Construction Occupations, a position he has held for a relatively short period of time. Previously, he was employed as a part-time instructor teaching computer-related courses. Prior to that Petitioner was employed as a dispatcher and he also had work experience in construction. This testimony was not rebutted by Respondent.

3. The age of the employee at the time of the injury. At the time of his accident, Petitioner was 53 years old. No evidence was presented as to how Petitioner's age might affect his disability.

4. The employee's future earning capacity. Petitioner testified that his current employer allows him to accommodate his ongoing problems in that he can sit and stand as desired and strenuous activity is not required. However, if he were to lose his current employment and be required to seek alternative employment, there could be issues with accommodation.

Petitioner's past skills are varied, however, which would theoretically present greater employment opportunities. No evidence was presented to show a diminishment in Petitioner's future earning capacity as a result of his injury.

5. Evidence of disability corroborated by the treating medical records. Petitioner testified credibly to ongoing problems with pain and stiffness in his injured left knee that limit his ability to stand and walk. These complaints are corroborated by medical records showing that he suffered medial and lateral meniscus tears as well as an aggravation of pre-existing chondromalacia, that these conditions were serious enough to require arthroscopic surgery as described above, and by references in Dr. Wheeler's treatment notes that Petitioner has suffered from persistent soreness through his last visit and had demonstrated muscle imbalance during his recovery. Though not a treating record, Petitioner's complaints are also objectively corroborated by Dr. Monaco's findings that Petitioner walked with a limp at the time of his evaluation and had swelling in his left knee, as well as the finding of "moderate" functional impairment on his "PDQ" evaluation.

Petitioner was off work for 4 4/7 weeks. He then resumed regular duty. Petitioner was released by Dr. Wheeler on May 7, 2012. At that time Dr. Wheeler anticipated no permanent disability.

After considering all of these factors, the Arbitrator concludes that Petitioner has sustained permanent partial disability of 20% loss of use of the left leg.

3. TTD Underpayment.

The period of temporary total disability was undisputed (December 2, 2011 through January 3, 2012); however, Petitioner claims an underpayment of TTD benefits based upon the average weekly wage/earnings dispute. The parties further stipulated that Petitioner was paid \$1595.33 in TTD benefits. Based upon the Arbitrator's earnings determination there has been an underpayment of TTD benefits and Respondent shall pay same.

STATE OF ILLINOIS)
)SS.
COUNTY OF JEFFERSON)

<input type="checkbox"/>	Injured Workers' Benefit Fund (§4(d))
<input type="checkbox"/>	Rate Adjustment Fund (§8(g))
<input type="checkbox"/>	Second Injury Fund (§8(e)18)
<input checked="" type="checkbox"/>	None of the above

**ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
NATURE AND EXTENT ONLY**

SHAWN M. DORRIS
Employee/Petitioner

Case # 11 WC 46624

v.

Consolidated cases: _____

CONTINENTAL TIRE
Employer/Respondent

The only disputed issue is the nature and extent of the injury. An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Brandon J. Zanotti**, Arbitrator of the Commission, in the city of Mt. Vernon, on **October 3, 2012**. By stipulation, the parties agree:

On the date of accident, **09/18/2011**, Respondent was operating under and subject to the provisions of the Act.

On this date, the relationship of employee and employer did exist between Petitioner and Respondent.

On this date, Petitioner sustained an accident that arose out of and in the course of employment.

Timely notice of this accident was given to Respondent.

Petitioner's current condition of ill-being is causally related to the accident.

In the year preceding the injury, Petitioner earned **\$29,002.35**, and the average weekly wage was **\$736.90**.

At the time of injury, Petitioner was **38** years of age, *married* with **3** dependent children.

Necessary medical services and temporary compensation benefits have been provided by Respondent.

Respondent shall be given a credit of **\$631.62** for TTD, **\$ 0.00** for TPD, **\$ 0.00** for maintenance, and **\$4,421.40** for 10 weeks advanced PPD payments benefits covering the period of **08/24/12 -11/01/12**, for a total credit of **\$5,053.02**.

After reviewing all of the evidence presented, the Arbitrator hereby makes findings regarding the nature and extent of the injury, and attaches the findings to this document.

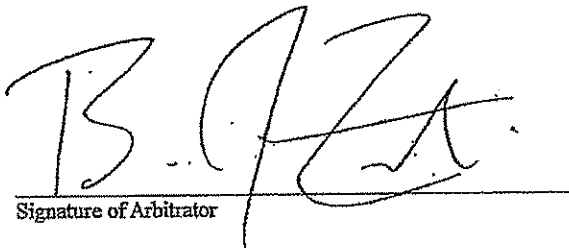
ORDER

Respondent shall pay Petitioner the sum of \$442.14/week for a further period of 26.65 weeks, as provided in Section 8(e)(9) of the Act, because the injuries sustained caused the 13% loss of use to the left hand/wrist.

Respondent shall pay Petitioner compensation that has accrued from September 18, 2011 through October 3, 2012, and shall pay the remainder of the award, if any, in weekly payments.

RULES REGARDING APPEALS Unless a Petition for Review is filed within 30 days after receipt of this decision, and a review is perfected in accordance with the Act and Rules, then this decision shall be entered as the decision of the Commission.

STATEMENT OF INTEREST RATE If the Commission reviews this award, interest at the rate set forth on the *Notice of Decision of Arbitrator* shall accrue from the date listed below to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.


Signature of Arbitrator

11/16/2012
Date

NOV 27 2012

STATE OF ILLINOIS)
)SS
COUNTY OF JEFFERSON)

**ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION**

SHAWN M. DORRIS
Employee/Petitioner

Case # 11 WC 46624

v.

CONTINENTAL TIRE
Employer/Respondent

MEMORANDUM OF DECISION OF ARBITRATOR

FINDINGS OF FACT

The parties stipulated that on September 18, 2011, Petitioner, Shawn M. Dorris, a 38-year-old passenger tire press operator, sustained injuries to his left forearm and wrist while working for Respondent, Continental Tire, at its tire manufacturing plant in Mt. Vernon, Illinois. On that date, Petitioner was pulling a stuck tire from a mold when it broke loose and hit the bottom side of a plate causing it to bounce up and strike him in his left wrist and forearm. On that same day, Petitioner saw the plant physician at Health Services, who recommended physical therapy at Work-Fit- the plant physical therapy facility. Petitioner returned to the plant physician following therapy and was referred to Dr. David Brown, a hand surgeon in St. Louis, Missouri. (Petitioner's Exhibit (PX) 1).

On November 2, 2011, Dr. Brown found diffuse tenderness over the ulnar aspect of the left wrist and ordered an MRI scan and recommended continued use of the wrist splint. (PX 3). On November 15, 2011, an MRI of the left wrist was performed at Imaging Partners of Missouri. (PX 4). Dr. Brown reviewed the diagnostic study and noted findings consistent with a peripheral TFCC tear. (PX 3).

On December 1, 2011, Dr. Brown performed a left wrist arthroscopy with repair of peripheral TFCC tear at Timberlake Surgery Center. (PX 3; PX 5).

Following surgery, Petitioner remained off from work at the recommendation of Dr. Brown and was paid his temporary total disability (TTD) benefits. When he returned to see Dr. Brown on December 12, 2011, his sutures were removed and Petitioner was released to return to work with restrictions. On January 16, 2012, Dr. Brown recommended a course of physical therapy. (PX 3).

Petitioner started physical therapy at Work-Fit on January 24, 2012. (PX 1). He returned to see Dr. Brown on March 12, 2012. Dr. Brown recommended two additional weeks of physical therapy, followed by a home exercise program. Petitioner was to continue his work restrictions until March 27, 2012. Petitioner was scheduled to follow up with Dr. Brown on May 7, 2012. (PX 3).

Petitioner last saw Dr. Brown on May 7, 2012. At that time, Dr. Brown noted that the arthroscopic portals were well healed. Petitioner estimated that he was "80% better." Active range of motion of the wrist was 82 degrees supination to 76 degrees pronation, 56 degrees dorsiflexion to 54 degrees palmarflexion, 21 degrees radial deviation to 33 degrees ulnar deviation. Dr. Brown noted good active range of motion of the digits. Grip strength testing revealed the following: three trials right 132, 118, 119; three trials left 57, 53, 57. Key pinch: three trials right 23, 21, 24; three trials left 17, 17, 20. Dr. Brown had no further treatment recommendations and released Petitioner to be seen on an as needed basis. (PX 3).

At the request of Respondent's counsel, Dr. Brown prepared a permanent partial disability impairment report dated August 27, 2012. Dr. Brown noted that he last saw Petitioner on May 7, 2012, and that Petitioner estimated he was "80% better." Dr. Brown found Petitioner to have excellent range of motion and good strength. Dr. Brown's report states, "According to the Sixth Edition AMA Guidelines, table 15-3, table 15-6, table 15-7 and table 15-9, Mr. Dorris has sustained a 6% upper extremity impairment as a result of his TFCC tear and subsequent surgery (as noted on page 390 of the AMA Guidelines 'all impairments in the wrist, elbow and shoulder regional grids are expressed as upper extremity impairment')." (RX 1).

Petitioner testified that he continues to have left wrist and forearm pain that comes and goes. He testified that he has loss of strength and has restricted motion in his hand/wrist which he demonstrated at arbitration. Petitioner testified that his wrist has improved following surgery; however, he would not describe his range of motion as "excellent" as it was described by Dr. Brown. Petitioner confirmed that on May 7, 2012, he told Dr. Brown that he was approximately "80% better." Petitioner testified to altering work activities to compensate for his left hand. Petitioner testified having concern completing a home flooring project without assistance because of his left hand and wrist. Petitioner has returned to his regular duties as a passenger tire press operator for Respondent. His job duties require that he lift tires weighing between 50 and 90 pounds throughout his 8 hour and 12 hour shifts. He continues to work his regular duties without restrictions.

CONCLUSIONS OF LAW

Pursuant to Section 8.1b of the Illinois Workers' Compensation Act, 820 ILCS 305/1 et seq. (hereafter the "Act"), for accidental injuries that occur on or after September 1, 2011, permanent partial disability shall be established using the following criteria:

- (a) A physician licensed to practice medicine in all of its branches preparing a permanent partial disability impairment report shall report the level of impairment in writing. The report shall include an evaluation of medically defined and professionally appropriate measurements of impairment that include, but are not limited to: loss of range of motion; loss of strength; measured atrophy of tissue mass consistent with the injury; and any other measurements that establish the nature and extent of the impairment. The most current edition of the American Medical Association's "Guides to the Evaluation of Permanent Impairment" shall be used by the physician in determining the level of impairment.
- (b) In determining the level of permanent partial disability, the Commission shall base its determination on the following factors:
 - (i) the reported level of impairment pursuant to subsection (a);
 - (ii) the occupation of the injured employee;
 - (iii) the age of the employee at the time of the injury;
 - (iv) the employee's future earning capacity; and

- (v) evidence of disability corroborated by the treating medical records. No single enumerated factor shall be the sole determinant of disability. In determining the level of disability, the relevance and weight of any factors used in addition to the level of impairment as reported by the physician must be explained in a written order.

820 ILCS 305/8.1b.

With regard to Section 8.1b(b)(i) of the Act, the Arbitrator notes in his report of August 27, 2012, Dr. Brown states that according to the AMA Guides Sixth Edition, Petitioner has sustained 6% upper extremity impairment as a result of his TFCC tear and subsequent surgery. In his report, Dr. Brown also states that all impairments in the wrist, elbow, and shoulder regional grids are expressed as upper extremity impairment. The Arbitrator notes that TFCC tear injury permanency awards are based on the "hand" and not the "arm," as set forth in Illinois Workers' Compensation Commission decision precedent.

With regard to Section 8.1b(b)(ii) of the Act, Petitioner's occupation is a passenger tire press operator. Based on Petitioner's testimony, this is a labor-intensive job. The Arbitrator concludes that Petitioner's permanent partial disability will be larger based on this regard than an individual who performs lighter work.

With regard to Section 8.1b(b)(iii) of the Act, Petitioner was 38 years old at the time of his injury. (Arbitrator's Exhibit 1). The Arbitrator considers Petitioner to be a somewhat younger individual and concludes that Petitioner's permanent partial disability will be more extensive than that of an older individual because he will have to live with the permanent partial disability longer.

With regard to Section 8.1b(b)(iv) of the Act, there is no alleged future earning capacity in question, and no weight is therefore given in this regard.

With regard to Section 8.1b(b)(v) of the Act, evidence of disability in Petitioner's treating medical records finds that Petitioner's TFCC tear was treated surgically and has now healed. Dr. Brown reported Petitioner's loss of grip strength and limited range of motion. Petitioner testified that he continues to have left wrist and forearm pain which comes and goes. He testified that he also has loss of strength and has restricted hand/wrist motion, both of which are corroborated in Dr. Brown's records. Petitioner has had to alter his work activities to compensate for his left hand. He testified about having concerns completing a home flooring project without assistance due to his left hand.

The determination of permanent partial disability (PPD) is not simply a calculation, but an evaluation of all five factors as stated in the Act. In making this evaluation of PPD, consideration is not given to any single enumerated factor as the sole determinant. Therefore, applying Section 8.1b of the Act, Petitioner has sustained accidental injuries that caused the 13% loss of use of the left hand/wrist. The Arbitrator accordingly finds that Respondent shall pay Petitioner the sum of \$442.14/week for a further period of 26.65 weeks, as provided in Section 8(e)(9) of the Act.

Respondent shall have a credit for 10 weeks of advanced PPD benefits, to be deducted from the final award, in the amount of \$4,421.40.

STATE OF ILLINOIS)
)SS.
COUNTY OF Jefferson)

<input type="checkbox"/>	Injured Workers' Benefit Fund (§4(d))
<input type="checkbox"/>	Rate Adjustment Fund (§8(g))
<input type="checkbox"/>	Second Injury Fund (§8(e)18)
<input checked="" type="checkbox"/>	None of the above

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
NATURE AND EXTENT ONLY

Michael Arscott
Employee/Petitioner

Case # 12 WC 3876

v.

Consolidated cases: n/a

Con-Way Freight
Employer/Respondent

The only disputed issue is the nature and extent of the injury. An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Joshua Luskin**, Arbitrator of the Commission, in the city of **Mt. Vernon**, on **December 6, 2012**. By stipulation, the parties agree:

On the date of accident, **January 10, 2012**, Respondent was operating under and subject to the provisions of the Act.

On this date, the relationship of employee and employer did exist between Petitioner and Respondent.

On this date, Petitioner sustained an accident that arose out of and in the course of employment.

Timely notice of this accident was given to Respondent.

Petitioner's current condition of ill-being is causally related to the accident.

In the year preceding the injury, Petitioner earned **\$93,641.60**, and the average weekly wage was **\$1,800.79**.

At the time of injury, Petitioner was **57** years of age, *married* with **0** dependent children.

Necessary medical services and temporary compensation benefits have been provided by Respondent.

Respondent shall be given a credit of **\$16,290.82** for TTD, **\$6,973.81** for TPD, **\$0** for maintenance, and **\$0** for other benefits, for a total credit of **\$23,264.63**. The parties stipulated that all periods of TTD and TPD benefits were paid correctly at the correct rate.

After reviewing all of the evidence presented, the Arbitrator hereby makes findings regarding the nature and extent of the injury, and attaches the findings to this document.

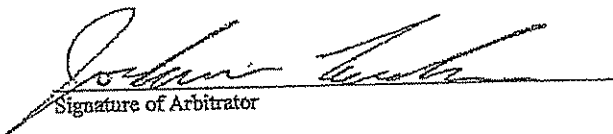
ORDER

Respondent shall pay Petitioner the sum of \$695.78/week for a further period of 86 weeks, as provided in Section 8 of the Act, because the injuries sustained caused permanent partial disability to the extent of 20% of the left leg.

Respondent shall pay Petitioner compensation that has accrued from August 7, 2012 (MMI) through the present, and shall pay the remainder of the award, if any, in weekly payments.

RULES REGARDING APPEALS Unless a Petition for Review is filed within 30 days after receipt of this decision, and a review is perfected in accordance with the Act and Rules, then this decision shall be entered as the decision of the Commission.

STATEMENT OF INTEREST RATE If the Commission reviews this award, interest at the rate set forth on the *Notice of Decision of Arbitrator* shall accrue from the date listed below to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.


Signature of Arbitrator

January 10, 2013
Date

JAN 14 2013

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

MICHAEL ARSCOTT,)
)
 Petitioner,)
)
 vs.) No. 12 WC 3876
)
 CON-WAY FREIGHT, INC.,)
)
 Respondent.)

ADDENDUM TO ARBITRATION DECISION

STATEMENT OF FACTS

The petitioner has been employed as a freight truck driver sales representative for the respondent since 1987. On January 10, 2012, he injured his left knee while exiting his tractor. Accident was not disputed. He initially was recommended physical therapy, but was shortly thereafter recommended an MRI scan. This was performed on January 28, 2012, and demonstrated a torn meniscus. See PX2.

The petitioner was thereafter recommended arthroscopic repair. He underwent the surgery to repair the meniscus on May 22, 2012. He underwent postoperative physical therapy and was released to full duty work on July 2, 2012. On August 7, 2012, he was discharged by Dr Petsche at maximum medical improvement. He had been working full duty at that point and was instructed to continue. See generally PX1.

On October 24, 2012, the respondent had Dr. Sanjay Patari, an orthopedist, perform an AMA Impairment Examination. His report noted a finding of 20% impairment to the lower extremity, or 8% disability to the person. PX3, RX3.

At trial, the petitioner testified that he had been working his regular duties as before the accident, with the same shift and hours. He continues to perform home exercise and takes over the counter medications as needed. He does not use a knee brace.

OPINION AND ORDER

Nature and Extent of the Injury

Pursuant to Section 8.1b of the Act, for accidental injuries occurring after September 1, 2011, permanent partial disability shall be established using five enumerated criteria, with no single factor being the sole determinant of disability. Per

820 ILCS 305/8.1b(b), the criteria to be considered are as follows: (i) the reported level of impairment pursuant to subsection (a) [AMA "Guides to the Evaluation of Permanent Impairment"]; (ii) the occupation of the injured employee; (iii) the age of the employee at the time of the injury; (iv) the employee's future earning capacity; and (v) evidence of disability corroborated by the treating medical records.

Applying this standard to this claim, the Arbitrator notes as follows:

(i): Dr. Patari found a PPI rating of 20% of the lower extremity, which translates to 8% person as a whole.

(ii): The claimant was employed as a driver sales representative for the respondent since 1987 and has returned to his usual employment as of the trial date.

(iii): The claimant was 57 years old as of the date of loss.

(iv): The claimant was released to his regular job by his treating physician and continues to work in that position as before the incident.

(v): The claimant described some residual symptoms in the knee, which are generally consistent with the surgery performed.

The claimant has undergone meniscal repair surgery. The evidence adduced substantiates loss to the petitioner's left leg to the extent of 20% thereof; as such, the respondent shall pay the petitioner the sum of \$695.78/week for a period of 43 weeks, as provided in Section 8(e) of the Act.

STATE OF ILLINOIS)
)SS.
COUNTY OF JEFFERSON)

<input type="checkbox"/>	Injured Workers' Benefit Fund (§4(d))
<input type="checkbox"/>	Rate Adjustment Fund (§8(g))
<input type="checkbox"/>	Second Injury Fund (§(e)18)
<input checked="" type="checkbox"/>	None of the above

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
NATURE AND EXTENT ONLY

Robert Todd Riley
Employee/Petitioner

Case # 12 WC 11083

v.

Consolidated cases: none

Con-Way Freight, Inc.
Employer/Respondent

The only disputed issue is the nature and extent of the injury. An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable Joshua Luskin, Arbitrator of the Commission, in the city of Mt. Vernon, on 12/5/12. By stipulation, the parties agree:

On the date of accident, 12-05-11, Respondent was operating under and subject to the provisions of the Act.

On this date, the relationship of employee and employer did exist between Petitioner and Respondent.

On this date, Petitioner sustained an accident that arose out of and in the course of employment.

Timely notice of this accident was given to Respondent.

Petitioner's current condition of ill-being is causally related to the accident.

In the year preceding the injury, Petitioner earned \$58,435.52, and the average weekly wage was \$1,123.76.

At the time of injury, Petitioner was 46 years of age, single, with 0 children under 18.

Necessary medical services and temporary compensation benefits have been provided by Respondent.

Respondent shall be given a credit of \$11,525.04 for TTD, \$6,470.14 for TPD, \$0.00 for maintenance, and \$0.00 for other benefits, for a total credit of \$17,995.28.

After reviewing all of the evidence presented, the Arbitrator hereby makes findings regarding the nature and extent of the injury, and attaches the findings to this document.

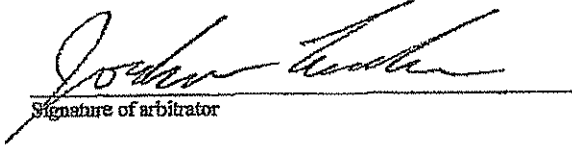
ORDER

Respondent shall pay Petitioner the sum of \$674.26/week for a further period of 59.125 weeks, as provided in Section 8(e) of the Act, because the injuries sustained caused 27.5% loss of use of the right leg.

Respondent shall pay Petitioner compensation that has accrued from 08/07/12 (MMI) through the present, and shall pay the remainder of the award, if any, in weekly payments.

RULES REGARDING APPEALS Unless a Petition for Review is filed within 30 days after receipt of this decision, and a review is perfected in accordance with the Act and Rules, then this decision shall be entered as the decision of the Commission.

STATEMENT OF INTEREST RATE If the Commission reviews this award, interest of at the rate set forth on the *Notice of Decision of Arbitrator* shall accrue from the date listed below to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.


Signature of arbitrator

January 9, 2013
Date

ICArbDecN&E p2

JAN 14 2013

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

ROBERT TODD RILEY,)
)
 Petitioner,)
)
 vs.) No. 12 WC 11083
)
 CONWAY FREIGHT, INC.,)
)
 Respondent.)

ADDENDUM TO ARBITRATION DECISION

STATEMENT OF FACTS

The petitioner has been employed as a freight truck driver sales representative for the respondent since May of 2007. His job duties include hauling and distributing freight, loading and unloading trucks, and operating forklifts and pallet jacks. On December 5, 2011, he was loading a crate into a trailer with a forklift, and in the course of doing so the crate slipped off the forklift and pinned him, injuring his right knee. He was brought to the emergency room that day. X-rays demonstrated an acute closed comminuted fracture of the proximal end of the right fibula. See PX1.

He was referred to an orthopedist, Dr. McIntosh, seeing him on December 7, 2011. See PX2. Dr. McIntosh assessed a crush injury and recommended an MRI. The MRI was performed on December 14, 2011, which revealed bone bruising and thinning of the ACL with possible tearing. Dr. McIntosh reviewed the MRI, diagnosed a proximal fibular fracture and an ACL tear, and recommended ACL reconstruction. The arthroscopic ACL repair was performed on February 27, 2012.

Dr. McIntosh saw the claimant in postoperative visits and monitored his rehabilitation process. The petitioner underwent a period of work hardening and was released to full duty by Dr. McIntosh as of July 9, 2012. On August 7, 2012, Dr. McIntosh noted full range of motion and recommended home exercise for strengthening purposes. Dr. McIntosh assessed him at MMI. PX2.

On August 31, 2012, at the request of the claimant's attorney, Dr. McIntosh prepared a PPI rating pursuant to the AMA Guidelines. Dr. McIntosh opined the petitioner had 7% impairment of the extremity, which translated to 3% impairment of the whole person. See PX2, RX2.

The petitioner has returned to his usual and customary employment since July 9, 2012. He does still use a hinged knee brace while working, but does not use it at home or

performing leisure activities. He acknowledged that his knee continues to improve and he is able to perform his pre-injury work activities. He testified that his knee aches from time to time and he does not require medication for it.

OPINION AND ORDER

Nature and Extent of the Injury

Pursuant to Section 8.1b of the Act, for accidental injuries occurring after September 1, 2011, permanent partial disability shall be established using five enumerated criteria, with no single factor being the sole determinant of disability. Per 820 ILCS 305/8.1b(b), the criteria to be considered are as follows: (i) the reported level of impairment pursuant to subsection (a) [AMA "Guides to the Evaluation of Permanent Impairment"]; (ii) the occupation of the injured employee; (iii) the age of the employee at the time of the injury; (iv) the employee's future earning capacity; and (v) evidence of disability corroborated by the treating medical records.

Applying this standard to this claim, the Arbitrator notes as follows:

(i): Dr. McIntosh found a PPI rating of 7% of the lower extremity, which translates to 3% person as a whole.

(ii): The claimant was employed as a driver sales representative for the respondent since May 2007 and has returned to his usual employment as of the trial date.

(iii): The claimant was 46 years old as of the date of loss.

(iv): The claimant has returned to his pre-injury job and continues to work in that capacity. He is at the same rate of pay as before the incident. No evidence of diminished earning capacity was apparent or introduced.

(v): The claimant described some stiffness and achiness in the right knee, with some weather sensitivity, and described difficulty with ladders. These complaints are generally consistent with the surgery reflected in the medical records of Dr. McIntosh.

Having considered the above factors and reviewed the submitted medical records, the Arbitrator notes that the claimant has undergone right knee surgery to repair the ACL, but has since returned to regular and unrestricted job duties pursuant to the release by his treating physician. The petitioner having reached maximum medical improvement, respondent shall pay the petitioner the sum of \$674.26/week for a further period of 59.125 weeks, as provided in Section 8(e) of the Act, as the injuries sustained caused permanent loss of use to the petitioner's right leg to the extent of 27.5% thereof.

STATE OF ILLINOIS)
)SS.
COUNTY OF Jefferson)

<input type="checkbox"/>	Injured Workers' Benefit Fund (§4(d))
<input type="checkbox"/>	Rate Adjustment Fund (§8(g))
<input type="checkbox"/>	Second Injury Fund (§8(e)18)
<input checked="" type="checkbox"/>	None of the above

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
NATURE AND EXTENT ONLY

CURTIS OLTMANN,
Employee/Petitioner

Case # 12 WC 11777

v.

Consolidated cases: none

CONTINENTAL TIRE THE AMERICAS, LLC,
Employer/Respondent

The only disputed issue is the nature and extent of the injury. An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable Joshua Luskin, Arbitrator of the Commission, in the city of Mt. Vernon, on 12/05/2012. By stipulation, the parties agree:

On the date of accident, 01/31/2012, Respondent was operating under and subject to the provisions of the Act.

On this date, the relationship of employee and employer did exist between Petitioner and Respondent.

On this date, Petitioner sustained an accident that arose out of and in the course of employment.

Timely notice of this accident was given to Respondent.

Petitioner's current condition of ill-being is causally related to the accident.

In the year preceding the injury, Petitioner earned \$54,741.96, and the average weekly wage was \$1,052.73.

At the time of injury, Petitioner was 49 years of age, *married* with 1 dependent child.

Necessary medical services and temporary compensation benefits have been provided by Respondent.

Respondent shall be given a credit of \$0 for TTD, \$0 for TPD, \$0 for maintenance, and \$0 for other benefits, for a total credit of \$0.

After reviewing all of the evidence presented, the Arbitrator hereby makes findings regarding the nature and extent of the injury, and attaches the findings to this document.

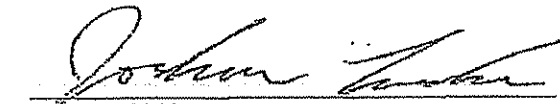
ORDER

Respondent shall pay Petitioner the sum of \$631.64/week for a further period of 10.25 weeks, as provided in Section 8(e) of the Act, because the injuries sustained caused 5% loss of use of the left hand.

Respondent shall pay Petitioner compensation that has accrued from 02/29/2012 (MMI) through the present, and shall pay the remainder of the award, if any, in weekly payments.

RULES REGARDING APPEALS Unless a Petition for Review is filed within 30 days after receipt of this decision, and a review is perfected in accordance with the Act and Rules, then this decision shall be entered as the decision of the Commission.

STATEMENT OF INTEREST RATE If the Commission reviews this award, interest at the rate set forth on the *Notice of Decision of Arbitrator* shall accrue from the date listed below to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.


Signature of Arbitrator

January 10, 2013
Date

JAN 14 2013

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

CURTIS OLTMANN,)
)
 Petitioner,)
)
 vs.) No. 12 WC 11777
)
 CONTINENTAL TIRE THE AMERICAS, LLC.,)
)
 Respondent.)

ADDENDUM TO ARBITRATION DECISION

STATEMENT OF FACTS

The petitioner, a right hand dominant labor trainer, injured his left wrist on January 31, 2012, when he tripped and fell over a guard rail landing on his left hand. He sought medical care that day and x-rays noted a nondisplaced fracture. He was splinted and referred to Dr. David Brown, an orthopedist. Dr. Brown saw him on February 1, 2012. Dr. Brown concurred with the diagnosis, applied a splint and released the petitioner to one-handed duty. The petitioner returned to work on light duty at that point.

On February 29, 2012, the petitioner returned to Dr. Brown. He reported he was "a lot better." Dr. Brown noted good range of motion, noted residual symptoms would likely resolve and discharged him to return to full duty at MMI. RX 2.

On March 15, 2012, Dr. Brown prepared an AMA rating report, in which he opined the claimant had a 0% impairment at the level of the left wrist. RX2. Dr. Brown testified in deposition in support of his findings and treatment course, as well as the bases for his impairment rating. See generally RX1.

The petitioner continues to work in his pre-injury position for the respondent. He notes some occasional discomfort in his left wrist but continues to engage in his recreational activities, including his 4-handicap golf game. He acknowledged that he plays in the plant league, and his team came in first out of sixteen after he achieved MMI.

OPINION AND ORDER

Nature and Extent of the Injury

Pursuant to Section 8.1b of the Act, for accidental injuries occurring after September 1, 2011, permanent partial disability shall be established using five

Curtis Oltmann v. Continental Tire, 12 WC 11777

enumerated criteria, with no single factor being the sole determinant of disability. Per 820 ILCS 305/8.1b(b), the criteria to be considered are as follows: (i) the reported level of impairment pursuant to subsection (a) [AMA "Guides to the Evaluation of Permanent Impairment"]; (ii) the occupation of the injured employee; (iii) the age of the employee at the time of the injury; (iv) the employee's future earning capacity; and (v) evidence of disability corroborated by the treating medical records.

The Arbitrator notes the following relevant evidence as to each factor:

- (i): Dr. Brown found a PPI rating of 0% of the left wrist.
- (ii): The claimant was employed as a labor trainer for the respondent and has continued in his usual and customary employment as of the trial date.
- (iii): The claimant was 49 years old as of the date of loss.
- (iv): The claimant was released to his regular job by his treating physician and continues to work in that position as before the incident.
- (v): The claimant described some minor residual symptoms in the wrist.

The petitioner had a fracture to the wrist, which was splinted. He worked light duty and engaged in home exercise, and had minimal treatment. He was released from care at MMI thirty days after the injury. Given the above, and considering the totality of the evidence adduced, the respondent shall pay the petitioner the sum of \$631.64/week for a further period of 10.25 weeks, as provided in Section 8(e) of the Act, as the injuries sustained caused loss of use to the petitioner's left hand to the extent of 5% thereof.

STATE OF ILLINOIS)
)SS.
COUNTY OF Jefferson)

<input type="checkbox"/>	Injured Workers' Benefit Fund (§4(d))
<input type="checkbox"/>	Rate Adjustment Fund (§8(g))
<input type="checkbox"/>	Second Injury Fund (§8(e)1B)
<input checked="" type="checkbox"/>	None of the above

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
NATURE AND EXTENT ONLY

Timothy Brown
Employee/Petitioner

Case # 12 WC 4657

v.

Consolidated cases: n/a

Con-Way Freight
Employer/Respondent

The only disputed issue is the nature and extent of the injury. An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Joshua Luskin**, Arbitrator of the Commission, in the city of **Mt. Vernon**, on **December 6, 2012**. By stipulation, the parties agree:

On the date of accident, **October 18, 2011**, Respondent was operating under and subject to the provisions of the Act.

On this date, the relationship of employee and employer did exist between Petitioner and Respondent.

On this date, Petitioner sustained an accident that arose out of and in the course of employment.

Timely notice of this accident was given to Respondent.

Petitioner's current condition of ill-being is causally related to the accident.

In the year preceding the injury, Petitioner earned **\$57,063.76**, and the average weekly wage was **\$1,097.38**.

At the time of injury, Petitioner was **51** years of age, *married* with **0** dependent children.

Necessary medical services and temporary compensation benefits have been provided by Respondent.

Respondent shall be given a credit of **\$4,755.33** for TTD, **\$4,828.88** for TPD, **\$0** for maintenance, and **\$0** for other benefits, for a total credit of **\$9,584.21**. The parties stipulated that all periods of TTD and TPD benefits were paid correctly at the correct rate.

After reviewing all of the evidence presented, the Arbitrator hereby makes findings regarding the nature and extent of the injury, and attaches the findings to this document.

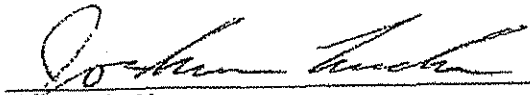
ORDER

Respondent shall pay Petitioner the sum of \$658.43/week for a further period of 50 weeks, as provided in Section 8(d)2 of the Act, because the injuries sustained caused permanent partial disability to the extent of 10% of the person as a whole.

Respondent shall pay Petitioner compensation that has accrued from April 11, 2012 (MNI) through the present, and shall pay the remainder of the award, if any, in weekly payments.

RULES REGARDING APPEALS Unless a Petition for Review is filed within 30 days after receipt of this decision, and a review is perfected in accordance with the Act and Rules, then this decision shall be entered as the decision of the Commission.

STATEMENT OF INTEREST RATE If the Commission reviews this award, interest at the rate set forth on the *Notice of Decision of Arbitrator* shall accrue from the date listed below to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.


Signature of Arbitrator


Date

JAN 14 2013

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

TIMOTHY BROWN,)
)
 Petitioner,)
)
 vs.) No. 12 WC 4657
)
 CON-WAY FREIGHT, INC.,)
)
 Respondent.)

ADDENDUM TO ARBITRATION DECISION

STATEMENT OF FACTS

The petitioner, a left-hand-dominant man, 51 years old on the date of loss, has been employed as a freight truck driver sales representative for the respondent since 2002. On October 18, 2011, he was moving freight and injured his left shoulder. Accident was not disputed. He initially presented to Lakeshore Medical Clinic; when his symptoms did not recede, he underwent an MRI scan on November 21, 2011, which demonstrated a full thickness rotator cuff tear. See PX2.

The petitioner was referred for further care to Dr. Richard Davito, an orthopedic surgeon. On December 7, 2011, Dr. Davito reviewed the MRI and recommended surgical repair. Dr. Davito performed the rotator cuff repair surgery on December 16, 2011. The petitioner was prescribed postoperative therapy. See PX1.

Dr. Davito saw the petitioner for periodic follow-ups during his rehabilitation process. On April 11, 2012, Dr. Davito noted only minor ache, excellent range of motion and strength against resistance. Dr. Davito prescribed a full-duty release as an over-the-road truck driver, and stated that "I feel he has sustained no permanent partial disability as a result of this rotator cuff tear." Dr. Davito discharged the claimant at MMI. PX1.

At the respondent's request, the claimant was examined by Dr. David Fetter, an orthopedist, on September 11, 2012. See RX2. Following the examination, Dr. Fetter prepared a report including an AMA impairment rating, which he calculated to be 6% upper extremity impairment, which converted to 4% whole person impairment.

The petitioner testified that he returned to work on April 16, 2012 and continues to work for the respondent. He asserted concerns with strength and endurance. He admitted that he ceased home exercise and acknowledged that his job has not changed in terms of hours, shifts, and pay scale from his pre-injury status.

OPINION AND ORDER

Nature and Extent of the Injury

Pursuant to Section 8.1b of the Act, for accidental injuries occurring after September 1, 2011, permanent partial disability shall be established using five enumerated criteria, with no single factor being the sole determinant of disability. Per 820 ILCS 305/8.1b(b), the criteria to be considered are as follows: (i) the reported level of impairment pursuant to subsection (a) [AMA "Guides to the Evaluation of Permanent Impairment"]; (ii) the occupation of the injured employee; (iii) the age of the employee at the time of the injury; (iv) the employee's future earning capacity; and (v) evidence of disability corroborated by the treating medical records.

Applying this standard to this claim, the Arbitrator notes as follows:

(i): Dr. Fetter found a PPI rating of 6% of the upper extremity, which translates to 4% person as a whole.

(ii): The claimant was employed as a driver sales representative for the respondent since 2002 and has returned to his usual employment as of the trial date.

(iii): The claimant was 51 years old as of the date of loss.

(iv): The claimant was released to his regular job by his treating physician and continues to work in that position at the same rate of pay as before the incident.

(v): The claimant described some weakness and fatigue in the shoulder, with occasional swelling and pain. While the weakness is not well borne out in the records, the occasional discomfort described is consistent with the undisputed surgery.

The claimant has undergone rotator cuff repair surgery. He complains of residual symptoms, though his treating orthopedist does not assess permanent disability or limitations having resulted from the surgery. The Arbitrator views any determination of permanency in this matter in light of the holding of *Will County Forest Preserve v. IWCC*, 2012 IL App.3d 110077WC, and finds permanent loss of use to the petitioner's whole person rather than to the petitioner's right arm. The evidence adduced substantiates loss to the petitioner's body to the extent of 10% thereof; as such, the respondent shall pay the petitioner the sum of \$658.43/week for a further period of 50 weeks, as provided in Section 8(d)2 of the Act.

STATE OF ILLINOIS)
)SS.
COUNTY OF Sangamon)

<input type="checkbox"/>	Injured Workers' Benefit Fund (§4(d))
<input type="checkbox"/>	Rate Adjustment Fund (§8(g))
<input type="checkbox"/>	Second Injury Fund (§8(c)18)
<input checked="" type="checkbox"/>	None of the above

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

Martha Mansfield
Employee/Petitioner

Case # 12 WC 14648

v.

Consolidated cases: _____

Ball Chatham Community School District #5
Employer/Respondent

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Douglas McCarthy**, Arbitrator of the Commission, in the city of **Springfield**, on **11/9/12**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

- A. Was Respondent operating under and subject to the Illinois Workers' Compensation or Occupational Diseases Act?
- B. Was there an employee-employer relationship?
- C. Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?
- D. What was the date of the accident?
- E. Was timely notice of the accident given to Respondent?
- F. Is Petitioner's current condition of ill-being causally related to the injury?
- G. What were Petitioner's earnings?
- H. What was Petitioner's age at the time of the accident?
- I. What was Petitioner's marital status at the time of the accident?
- J. Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?
- K. What temporary benefits are in dispute?
 TPD Maintenance TTD
- L. What is the nature and extent of the injury?
- M. Should penalties or fees be imposed upon Respondent?
- N. Is Respondent due any credit?
- O. Other _____

FINDINGS

On 11/3/11, Respondent *was* operating under and subject to the provisions of the Act.
On this date, an employee-employer relationship *did* exist between Petitioner and Respondent.
On this date, Petitioner *did* sustain an accident that arose out of and in the course of employment.
Timely notice of this accident *was* given to Respondent.
Petitioner's current condition of ill-being *is* causally related to the accident.
In the year preceding the injury, Petitioner earned \$22,390.16; the average weekly wage was \$430.58.
On the date of accident, Petitioner was 58 years of age, *single* with 0 children under 18.
Petitioner *has* received all reasonable and necessary medical services.
Respondent *has not* paid all appropriate charges for all reasonable and necessary medical services.
Respondent shall be given a credit of \$4,346.91 for TTD, \$569.10 for TPD, \$0 for maintenance, and \$0 for other benefits, for a total credit of \$4,916.01.

ORDER

Respondent shall pay Petitioner temporary total disability benefits of \$287.05 per week for 15 and 6/7 weeks commencing 11/18/11 through 11/22/11 and 3/16/12 through 6/20/12, as provided in Section 8(b) of the Act. Respondent shall be given a credit of \$4,346.91 for TTD payments already made.
Respondent shall pay Petitioner permanent partial disability benefits of \$258.35 per week for 37.625 weeks because the injuries sustained caused the 17.5% loss of use of the left leg, as provided in Section 8(e)(12) of the Act.
Respondent shall pay for outstanding medical expenses listed in Petitioner's Exhibit No. 6 directly to the providers pursuant to the Medical Fee Schedule established by the Commission for necessary medical expenses as provided in Section 8(a) of the Act and shall reimburse the Petitioner the sum of \$45.40 for out-of-pocket payments made towards medical expenses.

RULES REGARDING APPEALS Unless a party files a *Petition for Review* within 30 days after receipt of this decision, and perfects a review in accordance with the Act and Rules, then this decision shall be entered as the decision of the Commission.

STATEMENT OF INTEREST RATE If the Commission reviews this award, interest at the rate set forth on the *Notice of Decision of Arbitrator* shall accrue from the date listed below to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.



Signature of Arbitrator

Dec. 15, 2012
Date

JAN 7 - 2013

FINDINGS OF FACT

The Petitioner, Martha Mansfield, is 58 years old and currently employed for the Respondent, Ball Chatham Community School District #5 as a full-time bus driver and part-time substitute custodian. She testified that she works between 20 and 26 hours a week as a school bus driver. Her duties as a custodian include dumping trash, vacuuming, cleaning boards, cleaning restrooms, supplying recycling paper, and cleaning hard floors.

Petitioner testified that on November 3, 2011, while she was picking up recycling paper to empty it in a recycling bin, she felt her left knee pop and experienced an onset of pain. At the time of the accident, her family physician was Dr. Michael Sheedy of the Family Medical Center of Chatham, the records of which are marked as Petitioner's Exhibit No. 1.

On November 18, 2011, Petitioner presented to Dr. Sheedy's office and was seen by nurse practitioner Kathleen Sigle. She gave a history of lifting recycled paper from a garbage cart and twisting her left knee on November 3. Her symptoms included swelling and pain, which Petitioner characterized as sharp, aching and throbbing. Sigle recorded that exacerbating factors included weight bearing, walking, and direct pressure. The musculoskeletal examination demonstrated an abnormal gait and abnormal inspection/palpation of the joints, bones and muscles. Range of motion was also abnormal. Sigle prescribed Hydrocodone/Acetaminophen, a knee brace, crutches and referred Petitioner for x-rays of her left knee. Sigle also took Petitioner off of work until she was seen by an orthopedic surgeon. (Px. 1)

On November 22, 2011, Petitioner presented to Springfield Clinic where she was seen by Dr. Jeffery Schopp, an orthopedic surgeon. The Springfield Clinic records are marked as Petitioner's Exhibit No. 2. Dr. Schopp commented that x-rays showed minimal degenerative changes. He noted that Petitioner was wearing a Neoprene knee sleeve, which partially helped her discomfort but was having exquisite medial joint line pain which was made worse with activity. Dr. Schopp recommended an MRI to determine whether Petitioner had sustained a meniscal tear based upon her mechanism of injury, his physical examination findings, and her history of swelling. (Px. 2) He returned Petitioner to work on November 22, 2011 with restrictions of school bus driving only and no heavy lifting. (Px. 7)

An MRI of the left knee taken on December 19, 2011, demonstrated small knee effusion and a medial meniscal tear with an associated parameniscal cyst. (Px. 3)

Following the MRI, Petitioner returned to Dr. Schopp on December 27, 2011, and he recommended a debridement arthroscopy, noting he believed that her symptoms and most likely the origin of her tear were related to the injury at work. (Px. 2)

On March 6, 2012, Dr. Schopp performed an arthroscopic partial medial menisectomy and cyst decompression. The operative report is marked as Petitioner's Exhibit No. 4. According to the operative report, there was a complex tear of the posterior horn of the medial

meniscus on the under surface of the meniscus, which communicated with a posterior medial meniscal cyst. Dr. Schopp debrided the posterior horn of the medial meniscus under surface to debride the loose fibers and to increase the communication with the posterior cyst. Dr. Schopp observed an egress of gelatinous joint fluid. (Px. 4)

Following surgery, Dr. Schopp prescribed Norco and ordered that she be weight bearing as tolerated and use crutches as needed. (Px. 2) He also took Petitioner off of work through June 20, 2012 and referred her to physical therapy during the interim. (Px. 2; Px. 7)

Petitioner participated in physical therapy at Advance Physical Therapy and Sports Medicine between April 12, 2012 and June 11, 2012. The physical therapy records are marked as Petitioner's Exhibit No. 5. According to the progress note dated May 8, 2012, at that point, Petitioner had progressed in terms of range of motion and strength but was still very painful in the knee cap and hip flexor. At that point she had been unable to progress to steps. A June 11, 2012, progress report noted that Petitioner's perceived improvement was 90%, but she reported that she still had some issues when she would go down steps and had sharp pains in the knee off and on, which she rated as a "6" on a 10 point scale. She also reported ongoing slight stiffness of the knee. Petitioner was discharged from physical therapy in conjunction with a home exercise program. (Px. 5) Petitioner testified the physical therapy helped.

On June 12, 2012, Dr. Schopp's released Petitioner to full duty work, beginning June 2012, with no restrictions and advised her to return with any problems. (Px. 2; Px. 7)

Petitioner testified that she was underpaid TTD for at least two checks. Her TTD checks she received while off of work were bi-weekly. Her normal TTD check was \$574.12 for two weeks. (Px. 9) However, she received two checks for \$425.01 while she was off of work where taxes and union dues were withheld. (Px. 8) She further noted that following surgery she was required to use approximately ten sick days.

Respondent referred Petitioner for an independent medical evaluation with Dr. Michael Lewis. The deposition of Dr. Lewis was entered into evidence as Respondent's Exhibit No. 1. Dr. Lewis testified that he examined Petitioner on June 15, 2012, and following his examination, he prepared a report which was entered into evidence as deposition Exhibit No. 2. (Rx. 1, p. 5) Dr. Lewis reviewed Petitioner's medical records, and believed she had appropriate and good care and seemed to have an excellent result. (Rx. 1, p. 7) He noted there was no indication of synovitis, inflammation, of the joint. (Rx. 1, p. 7) He testified his physical examination did not reveal any evidence of residual problems and that Petitioner did not have any complaints of symptoms in her left knee at the time of his examination. (Rx. 1, p. 8) Dr. Lewis noted he arrived at an impairment rating by utilizing the American Medical Association's Guides to the evaluation of permanent impairment, the sixth edition. (hereinafter referred to as the "Guides") (Rx. 1, p. 9) He concluded Petitioner's impairment was a 1% of a lower extremity which converted to a 1% of the person as a whole. (Rx. 1, p. 10)

On cross-examination, Dr. Lewis opined, within a reasonable degree of medical certainty, that Petitioner had sustained a work-related injury and was status post medial meniscus injury and status post medial menisectomy of the left knee. (Rx. 1, p. 13) Dr. Lewis noted that in

issuing an impairment rating for a lower extremity, the examining physician first puts a person in a class utilizing Table 16-3. (Rx. 1, p. 13) Petitioner was placed in class one meaning for a partial menisectomy her range of impairment would be between 1 and 3%. (Rx. 1, p. 14) Table 16-3 of The Guides does not distinguish between a complex or simple tear. (Rx. 1, pp. 16-17) Dr. Lewis noted that under The Guides, once a person is placed in a particular class, there are modifiers which move the rating within the class but not to another class. (Rx. 1, p. 18)

Dr. Lewis testified on cross-examination that while Petitioner told him she did not have symptoms at the time of her examination, he did not have the intake form she completed, although it would be his practice to have an examinee complete an intake form. (Rx. 1, pp. 19-20) He does not use the lower limb questionnaire recommended by the AMA Guides to the evaluation of permanent impairment, which was marked as Deposition Exhibit No. 4. (Rx. 1, p. 20) He indicated that after the deposition, he would provide the questionnaire and the form which Petitioner completed to counsel for the Respondent. (Rx. 1, p. 21)

Dr. Lewis noted it was certainly theoretically possible that a person who had sustained a traumatic injury and subsequently underwent an arthroscopic partial medial menisectomy and cyst decompression would at times, even when he or she was at maximum medical improvement, have periods of synovitis depending on activity. (Rx. 1, pp. 22-23) He has performed a partial menisectomy several thousands of times, and he has seen situations following that surgery where a person would experience synovitis in the future which would come and go depending on activities such as walking up and down steps. (Rx. 1, pp. 23-24)

Dr. Lewis acknowledged that impairment is not the same as disability. (Rx. 1, p. 15) Dr. Lewis did not find any signs of symptom magnification, and he noted that he found Petitioner to be a very reliable, non-symptom-magnification individual. (Rx. 1, p. 16) Dr. Lewis noted that he would have spent probably about an hour with Petitioner. (Rx. 1, p. 24)

Petitioner testified that she spent no longer than fifteen minutes with Dr. Lewis. She saw him in Bloomington. She saw him during the summer, and was therefore, not driving a school bus or performing her custodial duties.

Petitioner testified that she has been working during the 2012-2013 school year since it began. She noted that her left knee is weak compared to her right. She often experiences a sharp pain when stepping sideways or walking up and down steps. Petitioner noted that she has to use about five stairs to enter and exit her house and also has to climb up and down steps when entering and exiting her school bus. She noted that her range of motion in her left knee has decreased and she occasionally experiences swelling with activity, such as walking up and down steps. Petitioner noted that weather changes also lead to a lot of pain in her left knee. Petitioner further testified with respect to her custodial duties, noting she cannot bend down and/or squat. She cannot get on her knee to clean. She performs her custodial duties about three nights a week.

Petitioner's Exhibit No. 6 includes Petitioner's medical bills. Petitioner testified that she made an out-of-pocket payment of \$45.40 towards the February 21, 2012 Clinical Radiologist

bill. There also appears to be a balance of \$34.37 owed to Memorial Medical Center for a date of service of February 21, 2012.

CONCLUSIONS OF LAW

In support of the Arbitrator's decision relating to issue (J), were the medical services that were provided to Petitioner reasonable and necessary and has the Respondent paid all appropriate charges for all reasonable and necessary medical services, the Arbitrator makes the following findings:

The Arbitrator adopts the Findings of Fact above and concludes that Petitioner's treatment was reasonable and necessary for the injuries sustained on November 3, 2011. Respondent shall pay Petitioner's unpaid medical bills listed in Petitioner's Exhibit No. 6 directly to the providers consistent with the Medical Fee Schedule established by the Commission for necessary medical services, as provided in Section 8(a) of the Act. Respondent shall reimburse the Petitioner the sum of \$45.40 for the out-of-pocket payment made towards the Clinical Pathologists bill of February 21, 2012.

In support of the Arbitrator's decision relating to issue (K), what temporary total disability benefits are in dispute, the Arbitrator makes the following findings:

The Arbitrator adopts the Findings of Fact and Conclusions of Law above. Petitioner was initially taken off work by nurse practitioner Sigle on November 18, 2011 through her orthopedic consultation with Dr. Schopp on November 22, 2011. (Px. 1) At that point, Dr. Schopp placed Petitioner on bus-driving work only through March 5, 2012, the day before her surgery. (Px. 2; Px. 7) Following surgery on March 6, 2012, Dr. Schopp took Petitioner off of work through June 20, 2012. (Px. 2; Px. 7)

The parties stipulated to the period of lost time. (Arb. X1) The period consists of 15 6/7 weeks. The stipulated average weekly wage of \$430.58 produces a TTD rate of \$287.05. The Arbitrator calculates the TTD owed to be \$4592.80. Respondent has paid \$4346.91, for which it receives a credit. There is an underpayment in the amount of \$245.89, which is the Respondent's responsibility.

In support of the Arbitrator's decision relating to issue (L), the nature and extent of the injury, the Arbitrator makes the following findings:

On November 3, 2011, Petitioner sustained injuries to her left knee as demonstrated by the MRI which showed knee effusion and a medial meniscal tear with an associated parameniscal cyst. She ultimately underwent an arthroscopic partial medial menisectomy and cyst decompression for a medial meniscus tear with perimeniscal tear. (Px. 4) According to the operative report, Dr. Schopp observed a complex tear of the posterior horn of the medial meniscus which communicated with a posterior medial meniscal cyst. In surgery, he performed a partial menisectomy, removing part of the meniscus. (Px. 4)

Section 8.1b of the Act provides:

"For accidental injuries that occur on or after September 1, 2011, permanent partial disability shall be established using the following criteria:

(a) A physician licensed to practice medicine in all of its branches preparing a permanent partial disability impairment report shall report the level of impairment in writing. The report shall include an evaluation of medically defined and professionally appropriate measurements of impairment that include, but are not limited to: loss of range of motion; loss of strength; measured atrophy of tissue mass consistent with the injury; and any other measurements that establish the nature and extent of the impairment. The most current edition of the American Medical Association's "Guides to the Evaluation of Permanent Impairment" shall be used by the physician in determining the level of impairment.

(b) In determining the level of permanent partial disability, the Commission shall base its determination on the following factors: (i) the reported level of impairment pursuant to subsection (a); (ii) the occupation of the injured employee; (iii) the age of the employee at the time of the injury; (iv) the employee's future earning capacity; and (v) evidence of disability corroborated by the treating medical records. No single enumerated factor shall be the sole determinant of disability. In determining the level of disability, the relevance and weight of any factors used in addition to the level of impairment as reported by the physician must be explained in a written order."

820 ILCS 305/8.1b

With respect to (i) of Section 8.1b(b), the reported level of impairment, pursuant to subsection (a), Dr. Lewis concluded Petitioner's impairment rating is 1% of the lower extremity. (Rx. 1, p. 10) Dr. Lewis acknowledged that impairment as defined by the Guides is not the same as disability. (Rx. 1, p. 15) Also, although he stated Petitioner told him she was asymptomatic when she presented to him on June 15, 2012, he was unable to produce the intake form Petitioner would have completed. (Rx. 1, pp. 20-21) The Arbitrator notes Dr. Lewis' evaluation under the Guides was focused on Petitioner's condition at the time of the examination. Petitioner testified that when she saw Dr. Lewis it was summertime, and she was not working nor was she released by Dr. Schopp to return to work until June 20, 2012. (Px. 2; Px. 7) It is reasonable to conclude that Dr. Lewis' examine would not demonstrate significant symptoms, given Petitioner had not been working or returned to work. She had also just completed physical therapy which she noted helped. Further, Dr. Lewis acknowledged that he has witnessed situations where an individual has underwent a partial menisectomy and cyst debridement and subsequently experienced synovitis, inflammation in the future which would come and go depending on activities such as walking up and down steps. (Rx. 1, pp. 23-24)

With respect to (ii) of Section 8.1b(b) the occupation of the injured employee, the Arbitrator notes that the Petitioner works as school bus driver and as a part-time custodian. Petitioner's custodial duties require her to empty trash, vacuum floors, clean hard floors, clean

wipe boards, clean restrooms and supply all paper goods, including emptying recycled paper. Her job as a school bus driver requires her to walk up and down steps when entering and exiting the bus. Petitioner testified that as far as her custodial duties is concerned, she is no longer able to get down on one knee when cleaning. She has difficulty bending and squatting while cleaning. The Arbitrator notes that Petitioner's permanent partial disability, given her job duties, will be larger than an individual who performs sedentary or desk work.

With respect to (iii) of Section 8.1b(b) of the Act, the age of the employee at the time of injury, the Arbitrator notes Petitioner was 58 years old at the time of the injury. (Arbitrator's Exhibit No. 1) She has performed her regular job since the beginning of the current school year in August 2012, and there was no testimony concerning how long she expected to continue to work.

With regard to (iv) of Section 8.1b(b) of the Act, Petitioner's future earning capacity, it appears that Petitioner's future earning capacity is relatively undiminished as a result of the injuries.

Finally, with regards to (v) of Section 8.1b(b) of the Act, evidence of disability corroborated by the treating medical records, the Arbitrator notes the Petitioner has sustained permanent partial disability of the left leg. Petitioner testified since returning to work in the 2012-2013 school year she has performed both her custodial and bus driver duties. Her left knee is weak compared to her right knee and she often experiences a sharp pain when stepping sideways or walking up and down steps. She has to use about five steps to enter and exit her house and also has to use steps when entering and exiting her bus. She further noted her range of motion in the left knee is decreased compared to the right and that she will occasionally experience swelling with activity, such as walking up and down steps. Further, Petitioner testified that weather changes also lead to an onset of pain in her left knee. As far as her custodial duties, she can no longer bend down and/or squat and has difficulty getting on her knee to clean. The Arbitrator finds Petitioner was credible. In fact, Dr. Lewis testified that she was a very reliable, non-symptom magnification individual. (Rx. 1, p. 16)

Petitioner's testimony is corroborated by the physical therapy records which indicated Petitioner was having difficulty with steps, particularly walking down them. According to the last physical therapy note of June 11, 2012, while Petitioner perceived her improvement at 90%, she also reported that she still had sharp pains in her knee off and on and issues with her knee when walking up and down steps. (Px. 5) Dr. Lewis acknowledged that there are times when a person who has undergone a partial medial meniscectomy and cyst decompression will experience, even after she has been found to be at maximum medical improvement, synovitis, or inflammation of the knee with activity. (Rx. 1, pp. 22-24) This corroborates Petitioner testimony that she occasionally experiences swelling in the left knee.

There is a conflict in the evidence concerning the credibility of the Petitioner and her ongoing report of symptoms. Dr. Lewis testified that he recalled her telling him on June 15 at her examination that she no longer had any symptoms regarding her left knee. On the other hand, she testified to a number of symptoms, referred to above. The Arbitrator, after reviewing all of the evidence, finds the Petitioner's testimony credible and consistent on the issue for several reasons.

First of all, the Petitioner was seen for her final physical therapy visit just three days prior to seeing Dr. Lewis. She had attended 26 such visits since April 12, 2012. Each visit was well documented. The Petitioner consistently reported symptoms of pain over the anterior and medial aspects of the knee along with stiffness. She also consistently reported some improvement of those symptoms as she completed her therapy. On June 11, she reported pain at the level "6" at worst, slight stiffness and some difficulties going down stairs. At arbitration her reported symptoms, noted above, were consistent with those reported to her therapist. There was no exaggeration of her symptoms.

Dr. Lewis performs three examinations of the type done on the Petitioner each week. He did not produce the intake form completed by the Petitioner which might have indicated her symptoms. It is hard to imagine that her consistently reported symptoms would have completely disappeared in three days time. Alternatively, she might have just been having a good day when she saw the doctor. Her consistent efforts in therapy and her consistent reports of symptoms through her arbitration convince the Arbitrator that she is credible concerning her current condition of ill being.

The determination of permanent partial is not simply a calculation but an evaluation of all five of the aforementioned factors stated in Section 8.1b(b). In making a permanent partial disability evaluation, consideration is not given to any single factor as the sole determinant. 820 ILCS 305/8.1b(b). Applying Section 8.1b of the Act, the Arbitrator finds Petitioner sustained a 17.5% loss of use of the left leg. Respondent, therefore, shall pay Petitioner permanent partial disability benefits of \$258.35 per week for 37.625 weeks because the injury sustained caused the 17.5% loss of use of the left leg, as provided in Section 8(e)(12) of the Act.

STATE OF ILLINOIS)
)
)SS.
COUNTY OF Sangamon)

<input type="checkbox"/>	Injured Workers' Benefit Fund (§4(d))
<input type="checkbox"/>	Rate Adjustment Fund (§8(g))
<input type="checkbox"/>	Second Injury Fund (§8(e)18)
<input checked="" type="checkbox"/>	None of the above

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

Robert Griffin
Employee/Petitioner

Case # 11 WC 40321

v.

Consolidated cases: N/A

Caterpillar, Inc.
Employer/Respondent

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Stephen Mathis**, Arbitrator of the Commission, in the city of **Springfield**, on **December 12, 2012**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

- A. Was Respondent operating under and subject to the Illinois Workers' Compensation or Occupational Diseases Act?
- B. Was there an employee-employer relationship?
- C. Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?
- D. What was the date of the accident?
- E. Was timely notice of the accident given to Respondent?
- F. Is Petitioner's current condition of ill-being causally related to the injury?
- G. What were Petitioner's earnings?
- H. What was Petitioner's age at the time of the accident?
- I. What was Petitioner's marital status at the time of the accident?
- J. Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?
- K. What temporary benefits are in dispute?
 TPD Maintenance TTD
- L. What is the nature and extent of the injury?
- M. Should penalties or fees be imposed upon Respondent?
- N. Is Respondent due any credit?
- O. Other _____

FINDINGS

On **September 30, 2011**, Respondent *was* operating under and subject to the provisions of the Act.

On this date, an employee-employer relationship *did* exist between Petitioner and Respondent.

On this date, Petitioner *did* sustain an accident that arose out of and in the course of employment.

Timely notice of this accident *was* given to Respondent.

Petitioner's current condition of ill-being *is* causally related to the accident.

~~In the year preceding the injury, Petitioner earned \$46,000.52; the average weekly wage was \$884.63.~~

On the date of accident, Petitioner was **62** years of age, *married* with **0** dependent children.

Petitioner *has* received all reasonable and necessary medical services.

Respondent *has* paid all appropriate charges for all reasonable and necessary medical services.

Respondent shall be given a credit of **\$2,106.36** for TTD, **\$1,257.88** for TPD, \$- for maintenance, and \$- for other benefits, for a total credit of **\$3,364.24**. The parties stipulated the correct TTD and TPD was paid.

Respondent is entitled to a credit of \$- under Section 8(j) of the Act.

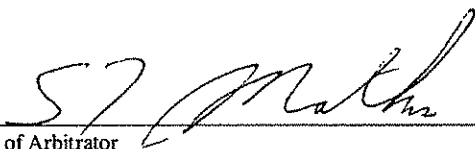
ORDER

Permanent Partial Disability: Schedule injury

Respondent shall pay Petitioner permanent partial disability benefits of **\$530.78/week** for **32.25** weeks, because the injuries sustained caused the **15 %** loss of use of the Petitioner's left leg, as provided in Section 8(e)12 of the Act. In support of the Arbitrator's determination, please refer to Appendix "A" attached. Respondent shall pay Petitioner compensation that has accrued from September 30, 2011 through December 12, 2012, and shall pay the remainder of the award, if any, in weekly payments.

RULES REGARDING APPEALS Unless a party files a *Petition for Review* within 30 days after receipt of this decision, and perfects a review in accordance with the Act and Rules, then this decision shall be entered as the decision of the Commission.

STATEMENT OF INTEREST RATE If the Commission reviews this award, interest at the rate set forth on the *Notice of Decision of Arbitrator* shall accrue from the date listed below to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.



Signature of Arbitrator

2-27-13
Date

APPENDIX "A"

In regards to "F" – "Is Petitioner's current condition of ill-being causally related to the injury?" and "L" – "What is the nature and extent of the injury?", the Arbitrator finds the following:

FINDINGS OF FACT

Petitioner was 62 years of age at the time of the accident on September 30, 2011. He was married and had no dependent children. On September 30, 2011 Petitioner testified that he was carrying a ladder, weighing approximately 50 pounds, positioning the ladder and felt a "pop" in his left knee. (T.15).

At the time of the accident, Petitioner testified he was a machinist and had worked for Respondent as a machinist since he was hired in 2004. As a machinist, Petitioner testified that he worked in a large cell on machine parts and sent them on to assembly. (T.9). In performing his job duties, he would spend eight hours a day on his feet and was required to perform kneeling, squatting and twisting at his knees periodically throughout the work day. (T.10). Petitioner also testified that he would use step ladders throughout the work day and would utilize ladders 15 to 25% of the work day while working on certain machines. (T.11, T.12). Petitioner would classify his machinist's duties as physical with reference to his knees.

After the accident, Petitioner testified he notified his supervisor and was carted to Caterpillar Medical. (T.16). According to the Caterpillar medical records, the Respondent provided Petitioner with a knee sleeve which Petitioner testified he began wearing. (T.17, T.18, Px1, Rx1).

On October 5, 2011, Petitioner testified he began treatment with Dr. Kefalas. (T.18). Dr. Kefalas noted that Petitioner presented with an "acute left knee injury which occurred on 09-30-11 at work." (Px2, Rx2). The doctor noted the Petitioner felt a "pop" in his left knee while he was positioning a ladder. (Px2, Rx2). He was prescribed restrictions, provided light duty work, and recommended for an MRI which was performed. (T.19).

On October 6, 2011, the MRI revealed a partial tear of the ACL, Grade I MCL injury as well as medial meniscal tear with meniscus extrusion, joint effusion and synovial changes. (Px2, Rx2). On October 18, 2011, Caterpillar's physician, Dr. Fabrique, indicated that Petitioner's left knee injury was "occupational" and Petitioner was prescribed restrictions. (Px1, Rx1).

As a result of his knee restrictions, he was transferred to the tool room which dropped his classification from a Class V to a Class II and decreased his hourly pay rate from \$22.40 to \$14.97. From October 24, 2011 through December 14, 2011, Petitioner received TPD from Respondent. (T.21). He also underwent physical therapy.

On December 15, 2011, Petitioner underwent left knee surgery performed by Dr. Kefalas. According to the operative report, there was a "radial tear" in the medial meniscus and a partial medial meniscectomy was performed. (Px2, Rx2). The operative report also noted Grade III chondral lesions on the weight-bearing surface of the medial femoral condyle which were smoothed with a shaver. (Px2, Rx2).

Petitioner continued to treat with Dr. Kefalas through March, 2012. (T.23).

On May 11, 2012, Respondent sent Petitioner to Dr. Ethiraj for an independent medical evaluation and impairment rating. (Rx3). Dr. Ethiraj testified for Respondent in an evidence deposition. Dr. Ethiraj agreed that the Petitioner's accident on September 30, 2011 could be the cause of the Petitioner's left knee injury based upon a reasonable degree of medical certainty. (Rx.3 @ Page 42, 43)

CONCLUSIONS OF LAW

In regards to "F" - "Is Petitioner's current condition of ill-being causally related to the injury?"

The Arbitrator finds that the Petitioner's left knee condition of ill-being is causally related to the injury and relies upon the Respondent's in-plant physician Dr. Fabrique, noting "occupational," Dr. Ethiraj's opinion, as well as the treating records from Dr. Kefalas, which document the accident.

In regards to "L" - "What is the nature and extent of the injury?"

The injuries to Petitioner's left leg include a radial tear of the medical meniscus and chondral lesions which required surgery. For accidental injuries occurring on or after September 1, 2011, Section 8.1b of the Act lists the following criteria to be weighed in determining the level of permanent partial disability:

- 1) **The reported level of impairment** - A physician licensed to practice medicine in all of its branches preparing a permanent partial disability impairment report shall include an evaluation of medically defined and professionally appropriate measurements of impairment that include, but are not limited to: loss of range of motion; loss of strength; measured atrophy of tissue mass consistent with the injury; and any other measurements that establish the nature and extent of the impairment.
- 2) **The occupation of the injured employee;**
- 3) **The age of the employee at the time of the injury;**
- 4) **The employee's future earning capacity; and**
- 5) **Evidence of disability corroborated by the treating medical records.**

No single enumerated factor shall be the sole determinant of disability.

1. In regards to the level of impairment:

Dr. Ethiraj, Respondent's physician, opined Petitioner sustained a 2% left lower extremity/leg impairment and 1% whole person impairment pursuant to the most current AMA Guides. The Arbitrator notes that the impairment does not equate to permanent partial disability under the Illinois Workers' Compensation Act. Dr. Ethiraj acknowledged in his deposition that his "impairment (rating) is not directly correlated to disability because there were many other factors that would lead to disability." (Rx3 @ Page 37). Dr. Ethiraj found no atrophy or loss of motion in the knee but noted mild tenderness to palpation around the medial joint line. (Rx3 @ Pages 26, 27, 55). The doctor admitted that he could have used the operative report as a grade modifier to increase the impairment rating, but used the MRI which revealed an MCL sprain and not the actual surgical report that revealed the medial meniscus tear. (Rx3, Pages 56, 57, 58, 59). The doctor acknowledged that the AMA Sixth Edition clearly states that the doctor should use the most significant injury in the diagnosis for the impairment rating but the doctor instead used the MRI which revealed an MCL sprain. (Rx3 @ Page 62). The doctor acknowledged that when a patient undergoes a meniscus surgery, "they are at more risks to develop arthritis". (Rx3 @ Page 48). Dr. Ethiraj also testified that Petitioner continues to perform his home exercise program. (Rx3 @ Page 51).

2. In regards to occupation:

Petitioner's occupation is machinist/factory worker. Prior to working at Caterpillar, Petitioner testified he worked in general construction as a scheduler, Mitsubishi Motor Manufacturing Company as a supervisor and although he did some office work, he basically is a "blue collar physical" worker. (T. 14, 15). The Arbitrator notes that the Petitioner's permanent partial disability is greater based on the fact that his occupation and past occupations required physical, strenuous labor, with significant leg/knee activities.

3. In regards to age:

Petitioner at the time of the injury was 62 years of age. The Arbitrator acknowledges the Petitioner's age and the limitations and residual that come with this type of injury as a result of his age.

4. In regards to future earning capacity:

Petitioner's future earning capacity has been limited as a result of the injury. After the surgery, Petitioner returned to work but testified that he chose not to transfer or bid to more physically demanding, higher paying jobs in the plant because of the knee injury. Also, after he returned to work, Petitioner testified that he did not work a lot of voluntary overtime because his left knee continued to bother him and at that time he was taking pain medication two to four times per day. (T. 24). Petitioner testified that after he returned to work for approximately four months, following his surgery, he was terminated and has been looking for work unsuccessfully since and recently began

drawing his Social Security early retirement at a reduced rate. (T. 27, 29). Petitioner testified that he has decided not to apply for employment in factories or foundries performing the kind of work he previously performed in his occupation, "because there's just too much walking and bending." (T. 28). Petitioner testified that he continues to look for part-time or full-time work and the jobs are in the range of \$10.00 to \$15.00 per hour, significantly less than how much he was making at the time of the injury. The Arbitrator concludes that this injury has negatively impacted on the Petitioner's future earning capacity.

5. In regards to evidence of disability corroborated in the treating records:

Petitioner has demonstrated evidence of disability. Petitioner credibly testified that he currently experiences pain, stiffness, swelling and locking in his left knee. Petitioner's complaints regarding his left leg are corroborated in the treating medical records of Dr. Kefalas as well as the Caterpillar Plant medical records. (Px1, Px2, Rx1, Rx2). Dr. Kefalas' treating records demonstrated a loss of motion that required surgery and improvement following surgery. (Px2, Rx2). On January 18, 2012, Dr. Kefalas noted that his knee condition had stabilized and released him from his care. (Px2, Rx2). Dr. Kefalas encouraged him to continue using the patella femoral brace whenever he was active and to return if there were any "further problems or concerns". (Px2, Rx2). Petitioner's complaints, supported by the treating medical records, evidences a disability as indicated by the Commission decisions regarded as precedent pursuant to Section 8(e).

The determination of permanent partial disability ("PPD") is an evaluation of all five factors as stated in the Act. In making this determination of PPD, no single enumerated factor is deemed the sole determinant. Rather, the Arbitrator, after weighing all five factors, notes that his advanced age, physical occupation, credible complaints, loss of earning capacity, all support a permanent partial disability award of 15% loss of use of his left leg. The Arbitrator specifically acknowledges the 2% impairment rating and included this rating in his analysis. However, Dr. Ethiraj admitted that the rating could have been computed in a different manner to obtain a higher percentage and the Arbitrator concludes that impairment does not equate to disability in this case. Therefore, applying Section 8.1b of the Act, 820 ILCS 305/8.1b, Petitioner has sustained an accidental injury that resulted in a 15% permanent partial disability/loss of use to his left leg. The Arbitrator further finds the Respondent shall pay the Petitioner the sum of \$530.78 a week for a further period of 32.25 weeks, as provided in Section 8(e) of the Act.

STATE OF ILLINOIS)
)SS.
COUNTY OF JEFFERSON)

<input type="checkbox"/>	Injured Workers' Benefit Fund (§4(d))
<input type="checkbox"/>	Rate Adjustment Fund (§8(g))
<input type="checkbox"/>	Second Injury Fund (§8(e)18)
<input checked="" type="checkbox"/>	None of the above

**ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
NATURE AND EXTENT ONLY**

Heath Gutzler
Employee/Petitioner

Case # 11 WC 46999

v.

Consolidated cases: n/a

Continental Tire North America, Inc.
Employer/Respondent

The only disputed issue is the nature and extent of the injury. An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable William R. Gallagher, Arbitrator of the Commission, in the city of Mt. Vernon, on February 8, 2013. By stipulation, the parties agree:

On the date of accident, November 1, 2011, Respondent was operating under and subject to the provisions of the Act.

On this date, the relationship of employee and employer did exist between Petitioner and Respondent.

On this date, Petitioner sustained an accident that arose out of and in the course of employment.

Timely notice of this accident was given to Respondent.

Petitioner's current condition of ill-being is causally related to the accident.

In the year preceding the injury, Petitioner earned \$48,442.16; the average weekly wage was \$931.58.

At the time of injury, Petitioner was 31 years of age, single, with 1 dependent child(ren).

Necessary medical services and temporary compensation benefits have been provided by Respondent.

Respondent shall be given a credit of \$5,057.21 for TTD, \$0.00 for TPD, \$0.00 for maintenance, and \$8,468.18 for other benefits (permanent partial disability benefits), for a total credit of \$13,525.39.

At trial, the parties stipulated that temporary total disability benefits were paid in full and that Respondent had made weekly advance payments of permanent partial disability benefits from October 23, through February 6, 2013, for a total of \$8,464.18.

After reviewing all of the evidence presented, the Arbitrator hereby makes findings regarding the nature and extent of the injury, and attaches the findings to this document.

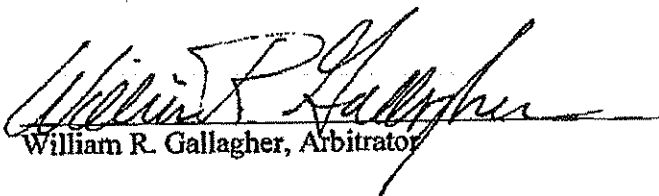
ORDER

Respondent shall pay Petitioner permanent partial disability benefits of \$558.95 per week for 100 weeks because the injuries sustained caused the 20% loss of use of the body as a whole as provided in Section 8(d)2 of the Act. Respondent shall be given a credit for weekly advance payments of permanent partial disability benefits paid from October 23, through February 6, 2013, a total of \$8,464.18, as well as any subsequent advance payments of permanent partial disability benefits.

Respondent shall pay Petitioner compensation that has accrued from March 13, 2012, through February 8, 2013, and shall pay the remainder of the award, if any, in weekly payments.

RULES REGARDING APPEALS Unless a party files a *Petition for Review* within 30 days after receipt of this decision, and perfects a review in accordance with the Act and Rules, then this decision shall be entered as the decision of the Commission.

STATEMENT OF INTEREST RATE If the Commission reviews this award, interest at the rate set forth on the *Notice of Decision of Arbitrator* shall accrue from the date listed below to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.


William R. Gallagher, Arbitrator

April 5, 2013

Date

APR 9 - 2013

Findings of Fact

Petitioner filed an Application for Adjustment of Claim which alleged he sustained an accidental injury arising out of and in the course of his employment for Respondent on November 1, 2011. According to the Application, Petitioner was pulling and twisting on a cassette and he sustained an injury to his low back and legs. There was no dispute regarding the accident and the parties stipulated at trial that medical and temporary total disability benefits had been paid in full. The only disputed issue at trial was the nature and extent of disability; however, the parties also stipulated that Respondent had commenced payment of weekly permanent partial disability benefits on October 23, 2012, and had paid those benefits through February 6, 2013, and that Respondent was entitled to a credit for those payments as well as any other additional permanent partial disability payments.

Petitioner testified that he worked for Respondent as a tire builder. Petitioner's job duties required him to change tire stock and this process involved the removal of a tire "cassette" from a machine. On November 1, 2011, Petitioner was pulling on one of these cassettes and experienced a pulling sensation in his low back.

Following the accident, Petitioner sought medical treatment from Dr. Bernard Rerri, an orthopedic surgeon, who he initially saw on November 14, 2011. At that time Petitioner complained of back and right leg pain. Dr. Rerri examined Petitioner and obtained an MRI which revealed an extruded disc at L4-L5 on the right side compressing the right L5 and S1 nerve roots. Dr. Rerri recommended surgery and, on November 16, 2011, Dr. Rerri performed surgery which consisted of a right L4-L5 hemilaminectomy, discectomy and excision of the extruded disc and decompression of the cauda equina.

Subsequent to the surgery, Petitioner remained under Dr. Rerri's care and was referred to physical therapy. Dr. Rerri authorized Petitioner to return to work on light duty on January 3, 2012, and later released Petitioner to return to work without restrictions on March 13, 2012. At that time, Petitioner still had some problems with prolonged sitting, some right leg numbness and still required some prescription medications. Petitioner has not been seen by Dr. Rerri since that time. At the request of the Respondent, on May 25, 2012, Dr. Rerri prepared a medical report in which he opined that Petitioner had an impairment rating of 12% of the whole person.

Dr. Rerri was deposed on October 11, 2012, and his deposition testimony was received into evidence at trial. Dr. Rerri's testimony regarding his diagnosis and treatment of the Petitioner was consistent with the information contained in the medical treatment records. In regard to his impairment rating, Dr. Rerri testified that it was an AMA rating in accordance with the Sixth Edition of the AMA guidelines. When questioned about this impairment rating, Dr. Rerri agreed that it was not a rating of disability, that it is one of the several factors to be considered when determining disability and that it is not intended to estimate or place work restrictions nor does it consider the person's work environment or what affect the injury might have on one's ability to work.

Dr. Rerri further testified that Petitioner's L4-L5 disc has been weakened and that it has lost its ability to function as a shock absorber. He also opined that this disc is "...almost invariably

going to gradually collapse over time," and that Petitioner's low back will be more susceptible to re-injury in the future.

Petitioner testified that his back is now stable and that he is no longer in constant pain; however, he also stated that it is not as good as it was prior to the injury. Petitioner acknowledged that he was able to return to work as a tire builder; however, he testified that he now exercises greater caution at work to avoid re-injury, he avoids performing heavier tasks by himself and now seeks assistance. Petitioner described his ability to bend as being limited, that he gets uncomfortable if he has to sit for an hour or longer and that he still experiences numbness in the right leg especially during periods of cold weather.

Petitioner testified that prior to the accident, he customarily worked four to 12 hours a week overtime. Since returning to work, Petitioner does not work any overtime hours at all unless he is scheduled to do so. Petitioner also stated that he works on a production quota and that, prior to the accident, he was usually able to meet it. Since the time he returned to work, Petitioner stated that he has had difficulties meeting his production quota because he is unable to move as quickly as he was able to do before the accident; however, Petitioner also acknowledged that he has not receive any sort of discipline from Respondent for failure to meet any quotas.

Conclusions of Law

The Arbitrator concludes that Petitioner sustained permanent partial disability to the extent of 20% loss of use of the body as a whole.

In support of this conclusion the Arbitrator notes the following:

Dr. Rerri opined that Petitioner had a 12% impairment of the whole person based on the AMA guidelines. As is noted herein, Dr. Rerri agreed that this is not a rating of disability, that it is not intended to estimate or place work restrictions nor does it consider the individual's work environment and what affect the injury might have on one's ability to work.

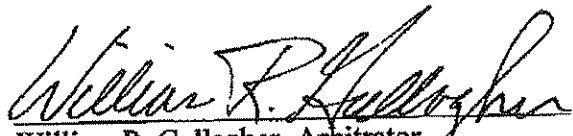
Petitioner is a tire builder and, based on Petitioner's description of his job duties, this occupation does require a significant amount of heavy manual labor with pulling and lifting. Petitioner testified that he now uses greater caution in performing his job duties and will seek assistance when he has to perform heavier tasks.

At the time of the injury, Petitioner was 31 years of age meaning that he will have to live with the effects of this disability for a substantial amount of time. Furthermore, as was noted by Dr. Rerri, Petitioner will be more susceptible to re-injury in the future.

Petitioner's future earning capacity is diminished because of this injury. Prior to this accident Petitioner worked four to 12 hours of overtime per week and now, because of the effects of the injury, only works overtime if he is scheduled to do so.

Petitioner's testimony regarding his disability is corroborated by the medical treatment records. There is no controversy or dispute that Petitioner had an extruded disc at L4-L5 that required

excision and Petitioner's complaints as to his ongoing symptoms are consistent with the injury he sustained.


William R. Gallagher, Arbitrator

STATE OF ILLINOIS)
)SS.
COUNTY OF SANGAMON)

<input type="checkbox"/>	Injured Workers' Benefit Fund (§4(d))
<input type="checkbox"/>	Rate Adjustment Fund (§8(g))
<input type="checkbox"/>	Second Injury Fund (§8(e)18)
<input checked="" type="checkbox"/>	None of the above

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

Cheryl R. Sprague
Employee/Petitioner

Case # 12 WC 30146

v.

Consolidated cases:

Dickey John Corporation
Employer/Respondent

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **D. Douglas McCarthy**, Arbitrator of the Commission, in the city of **Springfield**, on **May 8, 2013**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

- A. Was Respondent operating under and subject to the Illinois Workers' Compensation or Occupational Diseases Act?
- B. Was there an employee-employer relationship?
- C. Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?
- D. What was the date of the accident?
- E. Was timely notice of the accident given to Respondent?
- F. Is Petitioner's current condition of ill-being causally related to the injury?
- G. What were Petitioner's earnings?
- H. What was Petitioner's age at the time of the accident?
- I. What was Petitioner's marital status at the time of the accident?
- J. Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?
- K. What temporary benefits are in dispute?
 TPD Maintenance TTD
- L. What is the nature and extent of the injury?
- M. Should penalties or fees be imposed upon Respondent?
- N. Is Respondent due any credit?
- O. Other _____

FINDINGS


On **October 6, 2011**, Respondent *was* operating under and subject to the provisions of the Act.
On this date, an employee-employer relationship *did* exist between Petitioner and Respondent.
On this date, Petitioner *did* sustain an accident that arose out of and in the course of employment.
Timely notice of this accident *was* given to Respondent.
Petitioner's current condition of ill-being *is* causally related to the accident.
In the year preceding the injury, Petitioner earned **\$27,499.21**; the average weekly wage was **\$528.83**.
On the date of accident, Petitioner was **58** years of age, *married* with **0** children under 18.
Petitioner *has* received all reasonable and necessary medical services.
Respondent *has* paid all appropriate charges for all reasonable and necessary medical services.
The Parties stipulate Petitioner was underpaid TTD by the amount of **\$76.41**, and the Respondent agrees to pay that amount. All other TTD has been paid.

ORDER

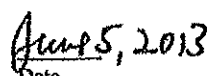
Respondent shall pay petitioner permanent partial disability benefits of **\$317.30** per week for **42.75** weeks because the injuries sustained caused **15%** loss of use of the right hand and **7.5%** loss of use of the left hand, as provided in Section 8(e)9 of the Act.

RULES REGARDING APPEALS Unless a party files a *Petition for Review* within 30 days after receipt of this decision, and perfects a review in accordance with the Act and Rules, then this decision shall be entered as the decision of the Commission.

STATEMENT OF INTEREST RATE If the Commission reviews this award, interest at the rate set forth on the *Notice of Decision of Arbitrator* shall accrue from the date listed below to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.



Signature of Arbitrator


Date

JUN 19 2013

FINDINGS ON DISPUTED ISSUES:

In support of the Arbitrator's Decision relating to (F) – Causal Relationship, the Arbitrator finds the following facts:

The petitioner testified that she worked on the production assembly line of respondent's factory from September of 1988 continuously through October of 2011. During that time, she assembled items that go on various implements. She stated that the work required her to use hand torque tools, screwdrivers, needle nose pliers, and to constantly use her hands eight hours per day. The petitioner began noticing pain in her hands, noticed her hands going to sleep, and developed cramps in her hands.

On October 5, 2011, petitioner saw her family physician, Dr. Weisgerber (P.X. 1, p. 5). Dr. Weisgerber referred petitioner to Dr. Mehra for EMG testing. The day following Dr. Weisgerber's appointment, petitioner reported the condition to the respondent. She was sent by respondent to MOHA.

The petitioner was evaluated at MOHA on October 6, 2011. There she was tentatively diagnosed with bilateral carpal tunnel syndrome (P.X. 3, p. 24).

An EMG by Dr. Mehra performed on October 19, 2011 showed severe right carpal tunnel syndrome and moderate left carpal tunnel syndrome. Dr. Weisgerber opined that petitioner's carpal tunnel syndrome was work related (P.X. 1, p. 4). There is nothing in evidence that petitioner's condition is not related to her employment activities. The arbitrator finds the petitioner's bilateral carpal tunnel syndrome was causally related to her employment activities at respondent's factory.

In support of the Arbitrator's Decision relating to (L) - Nature and Extent, the Arbitrator finds the following facts:

The Arbitrator adopts his findings with respect to (F) – Causal Connection as a part of his findings with respect to (L) – Nature and Extent.

The petitioner was referred by Dr. Weisgerber to Dr. Watson for surgery. Dr. Watson performed surgery on petitioner's right carpal tunnel on January 5, 2012. Thereafter, Dr. Watson operated the left hand carpal tunnel on January 26, 2012 (P.X. 2, p. 19, 17). Following surgery, petitioner received a course of physical therapy which was completed March 9, 2012. On that date, the petitioner reported to the therapist that she had mild soreness, a little more in the left than in the right. The therapist noted that the petitioner showed improvement with strength and flexibility during the course of her nine physical therapy visits. However, she was still found to have a slight decrease on wrist flexion bilaterally. The petitioner was discharged to a home exercise program to continue with exercises to further improve her strength in order to return to her previous level of activity (R.X. 2). The petitioner was last seen by Dr. Michael Watson on February 29, 2012. On that date, Dr. Watson noted all of the petitioner's neurologic symptoms had resolved and her incisions were well healed. Dr. Watson found the petitioner's strength was near normal and that her pain was minimal. He released her to return to work without restrictions on March 5, 2012. He released her to return p.r.n. On cross-examination, petitioner acknowledged that she has not returned to Dr. Watson since that time.

On March 2, 2012, petitioner was seen by Dr. Yociss of MOHA for clearance to return to work. The petitioner told Dr. Yociss that her symptoms had improved. She was having no current setbacks, and was slightly tender at the incisions only. The petitioner was otherwise feeling well with no issues or problems. Dr. Yociss concurred with Dr. Watson's release to return to full duty work without restrictions on March 5, 2012 (P.X. 3, p. 20). The petitioner was to call if she had any further problems. On cross-examination, the petitioner acknowledged that she has not returned to Dr. Yociss at any time since her return to work on March 5, 2012.

The petitioner testified that she now notices that her hands go to sleep. She testified that some activities are painful, depending on what she is doing. The petitioner testified that using a screwdriver was painful as was pressing down on the base of the palm. The petitioner testified she does not have as much strength to do things as she used to have, and noted that her hands go to sleep when she drives a long way. She has difficulty with opening jars, notices pain while cutting vegetables, and has given her a self-imposed limit of not lifting more than 30 pounds. The petitioner testified that she retired from Dickey John on April 26, 2013, in part because of the problems she was having with her hands and in part because of problems she was having with spinal stenosis. The petitioner was 60 years old when she retired.

On cross-examination, the petitioner acknowledged that she had no restrictions on her work activities when she retired. The petitioner acknowledged that since returning to work on March 5, 2012 she had missed no time from work due to her carpal tunnel syndrome. She further acknowledged that since returning to work on March 5, 2012 she has not returned to a doctor for further evaluation or treatment of her carpal tunnel syndrome. The petitioner acknowledged that she told all of her physicians the problems she was having at the time she was discharged to return to work, and was nevertheless given a full duty work release. She worked full duty from her return to work on March 5, 2012 through her resignation from employment on April 26, 2013.

At the request of respondent, petitioner was seen for an impairment rating by Dr. Robert Gordon on June 1, 2012. Dr. Gordon's impairment ratings reports were admitted as Respondent's Exhibit 5 and his deposition was admitted as Respondent's Exhibit 6. Dr. Gordon testified that he is Board Certified in Occupational Medicine, is certified to perform impairment ratings under the 6th Edition of the AMA Guides to the Evaluation of Permanent Impairment, and that his impairment rating was performed in accordance with the AMA Guides, 6th Edition (R.X. 6, p. 7-9). Dr. Gordon testified that petitioner had a 1% impairment of the left upper extremity (R.X. 6, p. 19) and a 4% impairment of the right upper extremity (R.X. 6, p. 17).

The petitioner testified that she had reviewed Dr. Gordon's impairment rating report, and testified that notwithstanding Dr. Gordon's statement in his report that she had no problems performing her work, she had told him she performed different tasks that hurt.

CONCLUSIONS OF LAW

Section 8.1b of the Act sets forth five factors which are to be considered when determining permanent partial disability.

The first factor is the impairment rating utilizing the AMA Guides, 6th Edition. Dr. Gordon found a 4% loss of the right hand, and 1% of the left. Objectively, he found atrophy of the right thenar eminence, the same finding seen by Dr. Mehra when he performed the initial nerve conduction studies. Subjectively, the Guides require utilization of a grade modifier, provided by the evaluator, and a functional assessment, provided by the Petitioner filling out a questionnaire. Dr. Gordon's grade modifier does not match up with the Petitioner's testimony and physical findings of decreased grip and motion seen when she completed her physical therapy. The questionnaire, which is called a quickDash form, does not accurately reflect the function of each hand. The Arbitrator believes a rating higher than 23 would result if the right hand were tested separately.

The Petitioner worked on an assembly line, requiring her to work at a consistent fast pace. On the date she was injured, she was 58 years old, and she is currently 60. The Arbitrator believes that her age and the type of job she performed leads to the conclusion that her future earning capacity would be limited, even if she had not decided to retire. She said that she did her regular job following her surgeries for about 14 months before retiring. While she said that her normal production was slowed because of her hands, she produced no evidence that her earnings were reduced or that she lost any time from work because of her condition. She also testified that her decision to retire was based on both her hand symptoms and spinal stenosis. The Arbitrator has no way of knowing whether one of those factors outweighed the other.

The objective medical evidence supports permanent partial disability in each hand. She had severe right carpal tunnel syndrome, which has resulted in atrophy. Her functional abilities have been diminished. Her left hand, which is her dominant hand, was not damaged to the same extent. In fact, her nerve tests were borderline for the condition. She does however, have symptoms which are consistent with a nerve entrapment.

The Arbitrator believes that the Petitioner has suffered a loss of 15% of the right hand. She has demonstrated the maximum level of disability, but her functional loss does not amount to clear and convincing evidence required for a higher award. The Arbitrator further awards 7.5% loss of the left hand, for the reasons referred to above.

STATE OF ILLINOIS)
)SS.
COUNTY OF PEORIA)

<input type="checkbox"/>	Injured Workers' Benefit Fund (§4(d))
<input type="checkbox"/>	Rate Adjustment Fund (§8(g))
<input type="checkbox"/>	Second Injury Fund (§8(e)18)
<input checked="" type="checkbox"/>	None of the above

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

ANTHONY RUMMANS _____
Employee/Petitioner
v.
CITY OF PEORIA _____
Employer/Respondent

Case # **12 WC 00663**

Consolidated cases: NONE.

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Joann M. Fratianni**, Arbitrator of the Commission, in the city of **Peoria**, on **November 19, 2012**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

- A. Was Respondent operating under and subject to the Illinois Workers' Compensation or Occupational Diseases Act?
- B. Was there an employee-employer relationship?
- C. Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?
- D. What was the date of the accident?
- E. Was timely notice of the accident given to Respondent?
- F. Is Petitioner's current condition of ill-being causally related to the injury?
- G. What were Petitioner's earnings?
- H. What was Petitioner's age at the time of the accident?
- I. What was Petitioner's marital status at the time of the accident?
- J. Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?
- K. What temporary benefits are in dispute?
 TPD Maintenance TTD
- L. What is the nature and extent of the injury?
- M. Should penalties or fees be imposed upon Respondent?
- N. Is Respondent due any credit?
- O. Other: _____

FINDINGS

On **October 22, 2011**, Respondent *was* operating under and subject to the provisions of the Act.
On this date, an employee-employer relationship *did* exist between Petitioner and Respondent.
On this date, Petitioner *did* sustain an accident that arose out of and in the course of employment.
Timely notice of this alleged accident *was* given to Respondent.
Petitioner's current condition of ill-being *is* causally related to the alleged accident.
In the year preceding the injury, Petitioner earned \$66,492.87; the average weekly wage was \$1,212.34.
On the date of accident, Petitioner was 27 years of age, *married* with three dependent children under 18.
Petitioner *has* received all reasonable and necessary medical services.
Respondent *has* paid all appropriate charges for all reasonable and necessary medical services.
Respondent shall be given a credit of \$ 3,833.12 for TTD, \$ 0.00 for TPD, \$ 0.00 for maintenance, and \$ 0.00 for other benefits, for a total credit of \$ 3,833.12.
Respondent is entitled to a credit of \$ 0.00 under Section 8(j) of the Act.

ORDER

Respondent shall pay Petitioner temporary total disability benefits of \$808.23/week for 9-5/7 weeks, commencing **January 25, 2012** through **April 2, 2012**, as provided in Section 8(b) of the Act.
Respondent shall *not* pay Petitioner temporary partial disability benefits, as provided in Section 8(b) of the Act, as he has failed to prove entitlement to same.
Respondent shall pay Petitioner permanent partial disability benefits of \$695.78/week for 33.4 weeks, because the injuries sustained caused the 20% loss of use of his left foot, as provided in Section 8(e) of the Act.
Petitioner is now entitled to receive from Respondent compensation that has accrued from **October 22, 2011** through **November 19, 2012**, and the remainder, if any, of the award is to be paid to Petitioner by Respondent in weekly payments.

RULES REGARDING APPEALS Unless a party files a *Petition for Review* within 30 days after receipt of this decision, and perfects a review in accordance with the Act and Rules, then this decision shall be entered as the decision of the Commission.

STATEMENT OF INTEREST RATE If the Commission reviews this award, interest at the rate set forth on the *Notice of Decision of Arbitrator* shall accrue from the date listed below to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.


Signature of Arbitrator **JOANN M. FRATIANNI**

June 3, 2013
Date

JUN - 5 2013

L. What is the nature and extent of the injury?

On October 22, 2011, Petitioner was employed as a policeman. On that date he was involved in an altercation with a suspect. During that altercation he injured his left foot.

Following this accident, Petitioner sought treatment at the emergency room of OSF Hospital. On October 24, 2011, he began treatment with Occupational Health for his foot pain. Petitioner was treated conservatively with medication, modified duty, the use of a walking boot and physical therapy.

Following this, Petitioner was referred by the clinic to see Dr. D'Souza, an orthopedic specialist. Dr. D'Souza diagnosed accessory navicular syndrome and prescribed surgery to remove the accessory navicular bone and transpose the tibial tendon.

On January 25, 2012, Petitioner underwent surgery with Dr. D'Souza for removal of the left accessory navicular bone and transposition of the posterior tibialis tendon. Dr. D'Souza explained that the posterior tibialis tendon inserts into the accessory navicular bone so when the bone was removed, the tendon had to be removed and reattached to other bones in Petitioner's foot.

Petitioner testified that he has experienced a good recovery from surgery and has returned to full duty work. Petitioner testified that he experiences pain any time he runs and has to limit running to no more than 2-2.5 miles before stopping due to pain. Petitioner further testified that he experiences foot pain after prolonged standing, which he rates at 5 out of 10. Petitioner testified that he experiences stiffness in his foot when awakening and that he uses ice, elevation, rest and Ibuprofen for his symptoms.

On August 7, 2012, Dr. Lawrence Nord performed an AMA impairment rating examination. This was performed on behalf of Respondent. Dr. Nord authored a report and testified by evidence deposition. Dr. Nord concluded that Petitioner had an impairment rating of 1% disability to his whole person. Dr. Nord relied on certain medical records, the history of the injury and his examination. Dr. Nord testified that Petitioner experiences residual foot pain with prolonged standing and running and when awakening. Dr. Nord felt that Petitioner was at maximum medical improvement and had reached a state of permanency.

Dr. Nord testified that he was familiar with Petitioner's job as a police officer. Dr. Nord testified this was heavy work requiring him to run, climb and stand for prolonged periods. Dr. Nord felt this occupation could potentially aggravate this injury in the future. Dr. Nord testified that it is important to strictly abide by the guidelines of the AMA so that impairment ratings amongst all evaluators are consistent. The AMA Guidelines, 6th Edition mandate that evaluators review medical records before performing the impairment rating. This is so the evaluator can clarify and question the person regarding any inconsistencies in histories or medical records. Dr. Nord admitted that he did not review the medical records prior to his examination, but during the exam. Dr. Nord testified he went through every record with the patient in the examination room and that the examination lasted a half hour.

Petitioner disputed Dr. Nord's testimony. Petitioner testified Dr. Nord did not review any medical records with him and the examination took only 5 minutes.

The AMA guidelines further require appropriate measurements of loss of range of motion, strength, atrophy of tissue mass consistent with injury and other measurements that establish the nature and extent of the impairment. The evaluator also should take measurements of both lower extremities. Dr. Nord testified that Petitioner had normal range of motion and motor function in his foot joints with no discomfort. There is no indication or recordation of measurements bilaterally. Petitioner testified that Dr. Nord only examined his left foot.

Dr. Nord further did not use the Lower Limb Questionnaire, or Appendix 16(a) to the 6th Edition. Rather than using that form, Dr. Nord chose to use his own intake questionnaire or inventory. There is no indication that the form Dr. Nord used is widely accepted by his peers or by the AMA 6th Edition publication.

Dr. Nord testified that disability or impairment is a significant deviation, loss or loss of use of any body structure or body function in an individual with a health condition, disorder or disease. Dr. Nord admitted the 6th Edition defines disability as an activity limitation and/or participation restriction in an individual with a health condition, disorder or disease. Dr. Nord acknowledged that an activity limitation is only one of several determinants of disablement and the relationship remains both complex and difficult, if not impossible to predict.

Dr. Nord also testified that disability is different than impairment.

In considering permanent disability under the new amendments to the Act, this Arbitrator must also consider Petitioner's age, occupation, future earning capacity and evidence of disability as corroborated by treating medical records. This Arbitrator is also required to follow past decisions of the Commission in determining disability, along with the law.

Petitioner at the time of injury was 27 years of age and works as a police officer, which is a heavy occupation. His occupation requires him to meet and achieve a certain level of fitness standards, including strength, endurance and ability to run. There is no evidence this injury will affect future earnings potential, but Petitioner did testify that he hoped to qualify for promotion to the SWAT team, which would require him to pass certain physical fitness testing including running with full gear.

Based upon the above, the Arbitrator finds that the condition of ill-being is now permanent in nature and represents a 20% loss of use to the left foot.

The Arbitrator bases this conclusion on Petitioner's age, employment, the heavy occupation and the requirement to meet certain fitness standards. This conclusion is also corroborated by the treating medical records in evidence. This conclusion discounts the opinions of Dr. Nord as he did not perform the evaluation in accordance with the AMA Impairment Guidelines as carefully spelled out in their 6th Edition. The Arbitrator also bases this conclusion on the requirement that foot injuries are awarded as a disablement to the foot, and not a disablement to a person as a whole under Illinois law.

K. What temporary benefits are in dispute?

See findings of this Arbitrator in "L" above.

At the time of the injury with Respondent, Petitioner was concurrently working as a security guard at the Hy-Vee grocery store in Peoria. Post surgery, Petitioner was off work from his job with Respondent from January 25, 2012 through April 2, 2012, and worked light duty from April 2, 2012 to May 2, 2012. Due to his work status, Petitioner also was unable to continue working with Hy-Vee.

Petitioner testified that he received full salary from Respondent while off of work. This was in accordance with the Public Employees Disability Act. This Act states that in order to receive benefits during a period of disability, the injured person shall not be employed in any other manner, with or without monetary compensation. See 5 ILCS 345/1(d).

There is also evidence that Petitioner was scheduled to work at Hy-Vee from April 12, 2012 through May 2, 2012.

Petitioner claims entitlement to temporary partial disability under these circumstances. Based upon the above, he is not entitled to same and his claim for such benefits is hereby denied.

STATE OF ILLINOIS)
)SS.
COUNTY OF SANGAMON)

<input type="checkbox"/>	Injured Workers' Benefit Fund (§4(d))
<input type="checkbox"/>	Rate Adjustment Fund (§8(g))
<input type="checkbox"/>	Second Injury Fund (§8(e)18)
<input checked="" type="checkbox"/>	None of the above

**ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION**

SCOTT BUXTON
Employee/Petitioner

Case # **11 WC 41682**

v.

CATERPILLAR, INC.
Employer/Respondent

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Brandon J. Zanotti**, Arbitrator of the Commission, in the city of **Springfield**, on **June 14, 2013**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

- A. Was Respondent operating under and subject to the Illinois Workers' Compensation or Occupational Diseases Act?
- B. Was there an employee-employer relationship?
- C. Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?
- D. What was the date of the accident?
- E. Was timely notice of the accident given to Respondent?
- F. Is Petitioner's current condition of ill-being causally related to the injury?
- G. What were Petitioner's earnings?
- H. What was Petitioner's age at the time of the accident?
- I. What was Petitioner's marital status at the time of the accident?
- J. Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?
- K. What temporary benefits are in dispute?
 TPD Maintenance TTD
- L. What is the nature and extent of the injury?
- M. Should penalties or fees be imposed upon Respondent?
- N. Is Respondent due any credit?
- O. Other

FINDINGS

On **October 19, 2011**, Respondent *was* operating under and subject to the provisions of the Act.

On this date, an employee-employer relationship *did* exist between Petitioner and Respondent.

On this date, Petitioner *did* sustain an accident that arose out of and in the course of employment.

Timely notice of this accident *was* given to Respondent.

Petitioner's current condition of ill-being *is* causally related to the accident.

In the year preceding the injury, Petitioner earned **\$35,994.00**; the average weekly wage was **\$782.48**.

On the date of accident, Petitioner was **45** years of age, *married* with **3** dependent children.

Petitioner *has* received all reasonable and necessary medical services.

Respondent *has* paid all appropriate charges for all reasonable and necessary medical services.

Respondent shall be given a credit of **\$2,608.33** for TTD, **\$327.29** for TPD, **\$0** for maintenance, and **\$288.04** for other benefits, for a total credit of **\$3,223.66**.

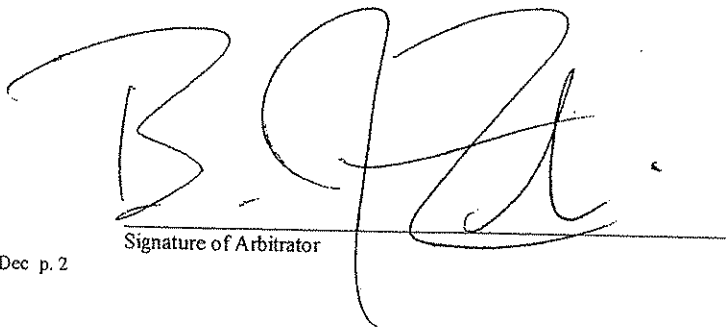
Respondent is entitled to a credit of **\$0** under Section 8(j) of the Act.

ORDER

Respondent shall pay Petitioner the sum of **\$469.49/week** for a further period of **19** weeks, as provided in Section 8(e) of the Act, because the injuries sustained caused the **25%** loss of use of the left thumb.

RULES REGARDING APPEALS Unless a party files a *Petition for Review* within 30 days after receipt of this decision, and perfects a review in accordance with the Act and Rules, then this decision shall be entered as the decision of the Commission.

STATEMENT OF INTEREST RATE If the Commission reviews this award, interest at the rate set forth on the *Notice of Decision of Arbitrator* shall accrue from the date listed below to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.



Signature of Arbitrator

07/26/2013
Date

AUG 7 - 2013

STATE OF ILLINOIS)
) SS
COUNTY OF SANGAMON)

**ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION**

SCOTT BUXTON
Employee/Petitioner

v.

Case # 11 WC 41682

CATERPILLAR, INC.
Employer/Respondent

MEMORANDUM OF DECISION OF ARBITRATOR

FINDINGS OF FACT

The parties stipulated to an accident of October 19, 2011, when Petitioner, Scott Buxton, a 45-year old welder, sustained injuries to his left thumb when it was caught between a lifting device and a case while working for Respondent, Caterpillar, Inc. (Arbitrator's Exhibit (AX) 1). Petitioner testified that as a welder with Respondent, he uses welding guns, grinders and chippers. He must use both hands for the welding gun and the grinder, using his right hand for triggering and the left hand for steadying the devices. Petitioner testified he spends approximately 50% of his workday with a torch in hand welding, and between 15-20% of the day performing grinding duties.

On October 20, 2011, Petitioner presented to Dr. Jeffery Smith. He noted Petitioner injured his left thumb when it was smashed between a lifting device and a case. Dr. Smith noted a very unstable fracture and planned to perform surgery later that day. Dr. Jeffery Smith also completed paperwork noting that the injury was related to Petitioner's employment with Respondent and that the left thumb fracture was due to the crush injury. (Petitioner's Exhibit (PX) 2).

On October 20, 2011, Petitioner underwent surgery with Dr. Smith. The procedure performed consisted of a repair of the proximal phalanx with 3 millimeter mini screw fixation. Dr. Smith gave a post-operative diagnosis of a highly unstable proximal phalanx fracture. Dr. Smith's operative report notes, "I attempted to place a microscrew in this across the fracture, but it was not nearly stable enough, so this was removed and a 3 mm mini screw was then placed across the fracture site. This provided excellent stability and reduced the fracture anatomically in both AP and lateral views..." (PX 2).

On November 8, 2011, Petitioner returned Dr. Smith. Dr. Smith reviewed radiographs and noted, "complete dorsal displacement of the fracture in relationship to the shaft. In AP view, it seems pretty well aligned, but in a lateral view it is definitely shifted dorsally." Dr. Smith noted that Petitioner would need to undergo deep hardware removal that would likely be followed by a repeat internal fixation to get the fracture united in anatomic position. (PX 2).

On November 11, 2011, Petitioner underwent a second thumb surgery. Dr. Smith's operative diagnosis was that of failed hardware, left thumb proximal phalanx fracture. Dr. Smith performed a revision intramedullary fixation of the left thumb proximal phalanx fracture. (PX 2).

On November 29, 2011, Petitioner returned to Dr. Smith. Dr. Smith noted that Petitioner was 5 ½ weeks out from his original open reduction internal fixation and 2 to 2 ½ weeks out from the secondary surgery. Dr. Smith noted recommended a bone stimulator to accelerate healing of the fracture. (PX 2).

On January 19, 2012, Petitioner was again evaluated by Dr. Smith. The doctor noted that Petitioner was 13 weeks out from open reduction internal fixation. Dr. Smith noted stiffness in the IP joint and recommended therapy. (PX 2). On February 21, 2012, Petitioner returned to Dr. Smith. Dr. Smith noted, "Our plan will be to see him in 4 weeks for repeat radiographic and clinical examination with the anticipation of deep hardware removal shortly thereafter if radiographs show significant bone callus formation at the fracture site." (PX 2).

On May 4, 2012, Petitioner underwent a third surgery with Dr. Smith. Dr. Smith gave a post-operative diagnosis of left thumb, proximal phalanx - retained deep hardware. Dr. Smith performed a deep hardware removal with two incisions and two K wires. (PX 2).

On May 17, 2012, Petitioner again presented to Dr. Smith. The doctor noted, "On physical examination today, he is doing really well. The alignment of the thumb is good. He has no pain. His motion is a little better, but still not 100%. He might not ever have 100%, but I think he will continue to improve." (PX 2). On September 11, 2012, Petitioner last saw Dr. Smith. Dr. Smith noted, "On examination today, he has pretty good motion. He lacks about 40%-50% of flexion of the IP joint of the thumb. He has good MP motion." He released Petitioner from his care on this date. (PX 2).

Petitioner returned to work as a welder with Respondent following his three thumb surgeries and resulting medical treatment. When performing his welding duties upon his initial return to work, Petitioner would wear a splint over his thumb. He could weld with this splint on, but performing his grinding work would become difficult while wearing it. Petitioner would therefore trade grinding duties for welding duties with other employees, whereby Petitioner would perform both his and others' welding duties, while those workers would perform his grinding duties. Petitioner also clarified that a note in Dr. Smith's records indicating that Petitioner could weld with one hand was inaccurate, as welding without his left hand to steady the gun would not produce a very accurate weld.

At Respondent's request, Dr. Rajesh Ethiraj prepared an AMA Impairment Rating Assessment. Dr. Ethiraj gave Petitioner an impairment rating of 6% of a digit (2% of a hand or 2% of upper extremity). (RX 3, Dep. Exh. 4). Petitioner's "QuickDASH" report (disabilities of the arm, shoulder and hand) score was 40, with severe difficulty opening a tight or new jar and with recreational activities which take some force through the arm, shoulder, or hand. (RX 3, Dep. Exh. 5).

Petitioner testified that he has stiffness and loss of range of motion in his thumb, noting that it does not bend as it did prior to the surgery. He further noted pain and aches in addition to sensitivity to cold. Petitioner described altering his job technique. With regard to welding, Petitioner is not as fast and must take several breaks each day to rest his thumb. He must also take breaks with grinding because his left hand will tire with the weight of the grinding gun. With regard to grinding, Petitioner testified it is harder to hold the grinder and that his thumb tires more easily than before the accident. Petitioner also testified about his hobby of pheasant and rabbit hunting, and noted that since the accident, he could not hold his shotgun properly and therefore had to change his technique in holding the firearm.

CONCLUSIONS OF LAW

Issue (F): Is Petitioner's current condition of ill-being causally related to the injury?

The Arbitrator concludes that Petitioner's current condition of ill-being is causally related to the incident and injury of October 19, 2011. The Arbitrator notes that Petitioner described catching his left thumb between a lifting device and the case. A consistent description is noted throughout the medical records. The Arbitrator relies on the opinion of the treating surgeon, Dr. Jeffery Smith, who found a causal connection between the incident and Petitioner's left thumb injury and surgeries. No opinion was offered to rebut causation. The Arbitrator further notes that Petitioner was a credible witness at trial, and gave open, direct and forthcoming testimony during both direct and cross-examination. Great weight is placed on Petitioner's credibility when assessing his testimony concerning his work duties and related symptoms.

Issue (L): What is the nature and extent of the injury?

Pursuant to Section 8.1b of the Illinois Workers' Compensation Act, 820 ILCS 305/1 *et seq.* (hereafter the "Act"), for accidental injuries that occur on or after September 1, 2011, permanent partial disability shall be established using the following criteria:

- (a) A physician licensed to practice medicine in all of its branches preparing a permanent partial disability impairment report shall report the level of impairment in writing. The report shall include an evaluation of medically defined and professionally appropriate measurements of impairment that include, but are not limited to: loss of range of motion; loss of strength; measured atrophy of tissue mass consistent with the injury; and any other measurements that establish the nature and extent of the impairment. The most current edition of the American Medical Association's "Guides to the Evaluation of Permanent Impairment" shall be used by the physician in determining the level of impairment.
- (b) In determining the level of permanent partial disability, the Commission shall base its determination on the following factors:
 - (i) the reported level of impairment pursuant to subsection (a);
 - (ii) the occupation of the injured employee;
 - (iii) the age of the employee at the time of the injury;
 - (iv) the employee's future earning capacity; and
 - (v) evidence of disability corroborated by the treating medical records. No single enumerated factor shall be the sole determinant of disability. In determining the level of disability, the relevance and weight of any factors used in addition to the level of impairment as reported by the physician must be explained in a written order.

820 ILCS 305/8.1b.

With regard to Section 8.1b(b)(i) of the Act (reported level of impairment per the AMA Guides), the Arbitrator notes that Dr. Ethiraj found AMA Guides Sixth Edition impairment at 6% impairment of a digit. (RX 3, Dep. Exh. 4). The Arbitrator notes that Dr. Ethiraj made his impairment rating using the methodology of "diagnosis based impairment," as opposed to "range of motion impairment." (RX 3, p.

21). Range of motion impairment was measured as an alternative method, however this lent a lower impairment figure per Dr. Ethiraj. (RX 3, pp. 22-24). In reviewing Dr. Ethiraj's impairment report, the Arbitrator notes no reference to the loss of range of motion under the "Physical Examination Grade Modifier." (RX 3, Dep. Exh. 4). The treating surgeon, Dr. Jeffery Smith, noted that Petitioner lacks about 40% to 50% of flexion of the IP joint of the thumb. (PX 2). At his deposition, Dr. Ethiraj testified to 30% to 35% loss of range of motion. (RX 3, p. 33). However, in the report section titled "Physical Examination," there is no reference to either 40-50% or 30-35% loss of range of motion, but simply "mild Range of Motion decrease." When asked if there was anywhere in the AMA Guides that defined Petitioner's loss of range of motion range as "mild" or whether said assessment was his own interpretation, Dr. Ethiraj replied that it was his interpretation. (RX 3, p. 57). While Petitioner's treating physician did not testify as to what level Petitioner's loss of range of motion would be as a result of the accident (e.g., mild, moderate, or significant), the Arbitrator questions how such a loss of range of motion that Petitioner has experienced would constitute only "mild" loss, given the evidence in the record. Impairment and permanent partial disability (PPD) as defined by the AMA Guides Sixth Edition are not the same, and this was in fact noted by Dr. Ethiraj during his deposition. (RX 3, pp. 28, 63-64). The Arbitrator makes note of this distinction when assessing the weight given to the AMA impairment rating at issue and in determining the permanency award. Taking into account all the aforementioned facts, the Arbitrator gives some weight to Dr. Ethiraj's AMA impairment rating when determining the permanency award.

With regard to Section 8.1b(b)(ii) of the Act (Petitioner's occupation), Petitioner's occupation is that of a welder, a fairly labor-intensive job. *See Williams v. Flexible Staffing, Inc.*, 13 IWCC 557 (May 29, 2013).¹ Petitioner testified he spends 50% of his workday with a torch in hand welding, and 15-20% grinding. The Arbitrator notes that Petitioner must use his left hand, and therefore his left thumb, when performing both the welding and grinding duties. The Arbitrator concludes that Petitioner's permanent partial disability will be larger based on this regard than an individual who performs lighter work, and great weight is placed on this factor when determining the permanency award.

With regard to Section 8.1b(b)(iii) of the Act (Petitioner's age at the time of injury), Petitioner was 45 years old at the time of his injury. (See AX 1; AX 2, noting a birth date of February 2, 1966). The Arbitrator considers Petitioner to be a somewhat younger individual and concludes that Petitioner's PPD will be more extensive than that of an older individual because he will have to live and work with the permanent partial disability longer. *See Williams*, cited *supra*. Ample weight is placed on this factor when determining the permanency award.

With regard to Section 8.1b(b)(iv) of the Act (Petitioner's future earning capacity), the Arbitrator notes that Petitioner returned to his same position as before the accident. While Petitioner testified as to some difficulty with his position and needing to take longer breaks while performing his duties as a result of the injury at issue, there is no evidence that Petitioner's future earning capacity is diminished. The Arbitrator places some weight on this factor when determining the permanency award.

With regard to Section 8.1b(b)(v) of the Act (evidence of disability corroborated by Petitioner's treating medical records), the Arbitrator notes the objective, measured evidence of loss of range of motion of the left thumb as a result of the proximal phalanx fracture suffered by Petitioner on the date of accident.

¹ In *Williams v. Flexible Staffing, Inc.*, the Commission took judicial notice when discussing Section 8.1b(b)(ii) of the Act in that the occupation of a welder was considered medium-to-heavy work, and concluded that the petitioner's permanent partial disability in this regard would be higher than an individual who performed lighter-duty work.

Petitioner's first surgery involved phalanx repair with screw fixation. Due to failed hardware, Petitioner underwent a second surgery consisting of hardware revision. The third surgery Petitioner underwent involved deep hardware removal with two incisions and two K wires. Dr. Smith, the treating surgeon who performed all three of Petitioner's surgical operations, found that Petitioner lacks about 40%-50% of flexion of the IP joint of the thumb. Dr. Smith also noted that Petitioner might not ever have 100% range of motion in his left thumb, but that he should continue to improve. (PX 2). At trial, Petitioner credibly testified he has stiffness and loss of range of motion and that his thumb is sensitive to cold temperatures. Petitioner described having difficulty using a shotgun while participating in his hunting activities, in particular while applying pressure to the stock of the gun. The Arbitrator notes these complaints are credible and consistent with Petitioner's injury and three surgeries, as well as the 40%-50% loss of range of motion noted by Dr. Smith. It is also noted that Dr. Ethiraj did not note any inconsistencies or unreliable responses to the QuickDASH report. (RX 3, Dep. Exh. 4). Great weight is afforded this factor when determining the permanency award.

The Arbitrator notes that the determination of PPD is not simply a calculation, but an evaluation of all five factors as stated in the Act. In making this evaluation of PPD, consideration is not given to any single enumerated factor as the sole determinant, as noted above. Therefore, applying Section 8.1b of the Act, Petitioner has sustained accidental injuries that caused the 25% loss of use of the left thumb. The Arbitrator finds that Respondent shall pay Petitioner the sum of \$469.49 per week for a further period of 19 weeks, as provided under Section 8(e) of the Act.

STATE OF ILLINOIS)
)SS.
COUNTY OF SANGAMON)

<input type="checkbox"/>	Injured Workers' Benefit Fund (§4(d))
<input type="checkbox"/>	Rate Adjustment Fund (§8(g))
<input type="checkbox"/>	Second Injury Fund (§8(e)18)
<input checked="" type="checkbox"/>	None of the above

**ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION**

BRANDON SANER
Employee/Petitioner

Case # 12 WC 4413

v.

Consolidated case: 12 WC 4414

CATERPILLAR, INC.
Employer/Respondent

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Brandon J. Zanotti**, Arbitrator of the Commission, in the city of **Springfield**, on **June 17, 2013**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

- A. Was Respondent operating under and subject to the Illinois Workers' Compensation or Occupational Diseases Act?
- B. Was there an employee-employer relationship?
- C. Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?
- D. What was the date of the accident?
- E. Was timely notice of the accident given to Respondent?
- F. Is Petitioner's current condition of ill-being causally related to the injury?
- G. What were Petitioner's earnings?
- H. What was Petitioner's age at the time of the accident?
- I. What was Petitioner's marital status at the time of the accident?
- J. Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?
- K. What temporary benefits are in dispute?
 TPD Maintenance TTD
- L. What is the nature and extent of the injury?
- M. Should penalties or fees be imposed upon Respondent?
- N. Is Respondent due any credit?
- O. Other

FINDINGS

On **September 14, 2011**, Respondent *was* operating under and subject to the provisions of the Act.

On this date, an employee-employer relationship *did* exist between Petitioner and Respondent.

On this date, Petitioner *did* sustain an accident that arose out of and in the course of employment.

Timely notice of this accident *was* given to Respondent.

Petitioner's current condition of ill-being *is* causally related to the accident.

In the year preceding the injury, Petitioner earned **\$35,849.60**; the average weekly wage was **\$689.42**.

On the date of accident, Petitioner was **35** years of age, *single* with **1** dependent child.

Petitioner *has* received all reasonable and necessary medical services.

Respondent *has* paid all appropriate charges for all reasonable and necessary medical services.

Respondent shall be given a credit of **\$1,181.91** for TTD, **\$0** for TPD, **\$0** for maintenance, and **\$0** for other benefits, for a total credit of **\$1,181.91**.

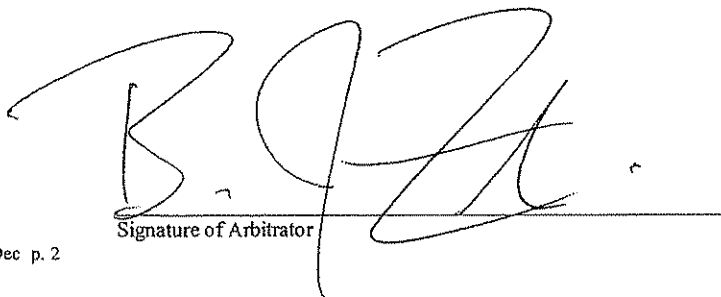
Respondent is entitled to a credit of **\$0** under Section 8(j) of the Act.

ORDER

Respondent shall pay Petitioner the sum of \$413.65/week for a further period of 50 weeks, as provided in Section 8(d)2 of the Act, because the injuries sustained caused the 10% loss of use to the person as a whole.

RULES REGARDING APPEALS Unless a party files a *Petition for Review* within 30 days after receipt of this decision, and perfects a review in accordance with the Act and Rules, then this decision shall be entered as the decision of the Commission.

STATEMENT OF INTEREST RATE If the Commission reviews this award, interest at the rate set forth on the *Notice of Decision of Arbitrator* shall accrue from the date listed below to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.


Signature of Arbitrator

07/29/2013
Date

AUG 7 - 2013

STATE OF ILLINOIS)
) SS
COUNTY OF SANGAMON)

**ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION**

BRANDON SANER
Employee/Petitioner

v.

Case # 12 WC 4413
Consolidated Case: 12 WC 4414

CATERPILLAR, INC.
Employer/Respondent

MEMORANDUM OF DECISION OF ARBITRATOR

FINDINGS OF FACT

The parties stipulated to an of accident of September 14, 2011, when Petitioner, Brandon Saner, a 35-year old assembly worker, sustained injuries to his left shoulder while pushing a drawer into a seal press while working for Respondent, Caterpillar, Inc. The Employee Incident Report of September 14, 2011 corroborates Petitioner's account. (Petitioner's Exhibit (PX) 1). The parties also noted at trial that two Applications for Adjustment of Claim were filed in this matter, but in fact the injury at issue is not a repetitive trauma but rather an acute trauma. Therefore, only one injury is at issue despite there being two case filing numbers in this matter.

On September 14, 2011, Petitioner presented to Respondent's medical facility, complaining after feeling a "pop" when shoving a heavy drawer. Petitioner continued to treat at Respondent's medical facility complaining of left shoulder pain from September 2011 through January 2012, when MRI testing was recommended. (RX 1). On January 17, 2012, Petitioner underwent a MRI arthrogram, which revealed evidence of a labral injury and some signal at the acromioclavicular (AC) joint, with no full thickness rotator cuff tear noted. (PX 2).

On January 30, 2012, Petitioner presented to Dr. John Kefalas. Dr. Kefalas noted that Petitioner "apparently was pushing a final drive machine press drawer with his left arm and injured his left arm and shoulder. He has continued pain in the anterior aspect of the shoulder. He did feel a pop when this occurred at the time of injury." Dr. Kefalas' impression was of a left shoulder strain, possible occult rotator cuff tear, and "labral injury or impingement syndrome." Dr. Kefalas injected Petitioner's left shoulder with a local anesthetic and steroid and recommend he use his left arm as tolerated. Petitioner returned to Dr. Kefalas in February 2012, noting the injection only provided transient relief. Dr. Kefalas recommended a left shoulder arthroscopy. (PX 2).

On March 1, 2012, Petitioner underwent shoulder surgery. Dr. Kefalas noted pre- and post-operative diagnoses of: (1) Left shoulder impingement syndrome; (2) Left shoulder long head biceps and superior labral tear; (3) Left shoulder glenohumeral arthritis; and (4) Left shoulder AC joint synovitis and arthritis. Dr. Kefalas' surgery on Petitioner consisted of the following procedures: (1) Left shoulder

arthroscopy with arthroscopic subacromial decompression; (2) Left shoulder arthroscopic AC resection; and (3) Left shoulder arthroscopic shaving of the superior labrum and biceps tenotomy of the long head. Dr. Kefalas noted the following in his operative report: "There was noted to be tearing of the superior labrum and biceps tendon right at the biceps anchor. It was greater than 50% of the overall thickness of the biceps tendon, as well as the superior labrum. I then excised the biceps tendon, as well as the superior labrum, performing a biceps tenotomy." (PX 2).

On March 9, 2012, Petitioner returned to Dr. Kefalas following surgery. Dr. Kefalas recommended a self-directed rehabilitation program and lifting restrictions of five pounds with no overhead work. Petitioner presented to Dr. Kefalas on April 13, 2012, and the surgeon noted Petitioner was "very pleased." On that date, Dr. Kefalas also noted that Petitioner was working regular duty, and was able to sleep at night, but was using ibuprofen for the pain. Petitioner was released to full duty work and instructed to return in six weeks for a final visit, when he would be placed at maximum medical improvement (MMI). (PX 2).

Petitioner was last evaluated by Dr. Kefalas on May 25, 2012. The doctor noted at that time that Petitioner was doing well, had returned back to work and was off all pain medication. Petitioner's range of motion had improved. Dr. Kefalas noted some crepitus of Petitioner's AC joint with shoulder flexion, but noted that Petitioner was non-tender in that area. Petitioner's impingement sign was noted as "negative" and his rotator cuff strength was intact in all four planes tested. Dr. Kefalas indicated that Petitioner could continue to use his left shoulder as tolerated, and released him to return on an "as-needed" basis. (RX 2).

The parties stipulated that Petitioner was temporarily and totally disabled from work from March 1, 2012 through March 18, 2012, and further that Respondent paid Petitioner temporary total disability benefits during this time. (See Arbitrator's Exhibits (AX) 1 and 2).

Respondent obtained an AMA Impairment Rating Assessment from Dr. Rajesh Ethiraj. The rating was 5% of an upper extremity. (RX 3, Dep. Exh. 9; RX 3, p. 32). Dr. Ethiraj had reviewed both Dr. Kefalas' records and the MRI report. (RX 3, p. 9). Dr. Ethiraj went forward to rate the impairment using "diagnosis based impairment" under the Sixth Edition of the AMA Guides. (RX 3, p. 12). Where there are two or more significant diagnoses under the Guides, Dr. Ethiraj testified that the examiner is to use the most clinically accurate and specific diagnosis. (RX 3, p. 14). Dr. Ethiraj chose impingement syndrome, which he testified would account for both the biceps pathology and labral pathology with respect to functional limitations as well as symptoms. (RX 3, p. 14). Dr. Ethiraj testified that the diagnosis of impingement syndrome lends an impairment range of 1-5% of the upper extremity. (RX 3, p. 15).

Having identified the range of impairments available under the AMA Guides, Dr. Ethiraj went forward to apply the modifying factors. (RX 3, p. 16). He applied the functional history modifier using questionnaires including the "QuickDASH" and the Activities of Daily Living (ADL) functional assessment tools. (RX 3, p. 16). He graded functional history at a +2 upward modification in the impairment rating given a functional score on the QuickDASH of 50. (RX 3, p. 18). On physical examination, the doctor found tenderness to palpation; pain over 90 degrees of shoulder abduction; normal range of motion; and some minimal or mild pain with Neer's impingement test. (RX 3, p. 20). This lent an upward modification of +1 for a "mild problem." (RX 3, p. 21). The clinical studies modifier was based on the MRI arthrogram, which showed other diagnoses of biceps and labral pathology. (RX 3, pp. 22-23). Given the presence of other diagnoses, Dr. Ethiraj applied a Grade 4 modifier based on a "very severe problem." (RX 3, pp. 22-23).

Dr. Ethiraj applied the net adjustment formula under the AMA Guides and entered an impairment rating of 5% of the upper extremity (as noted *supra*), which is the maximum available value under diagnosis based impairment for that diagnosis. (RX 2, p. 24). This is converted pursuant to Table 15-11 of the AMA Guides to an impairment rating of 3% of the whole person. (RX 3, p. 26). Dr. Ethiraj testified that the AMA Guides do not allow a "jump" to a Class 2 or 3 severity, and in fact do not provide any impairment ratings for impingement syndrome under diagnosis based impairment greater than 5% of the upper extremity. (RX 3, p. 40; see also RX 3, Dep. Exh. 4, p. 2). Dr. Ethiraj clarified that the AMA Guides would not provide a 6% impairment rating or better in this matter. (RX 3, pp. 40-41).

Dr. Ethiraj testified that he had Petitioner fill out a QuickDASH and an ADL form along with some other forms in applying the functional history modifier. (RX 3, pp. 43-54). The doctor wrote "not logical" for Petitioner's claimed limitation in brushing teeth and combing hair. (RX 3, p. 51). The QuickDASH itself reflects one set of answers where Petitioner wrote in "P/W." (RX 3, Dep. Exh. 5, pp. 4-5). Petitioner testified that he was instructed to write in the "P/W" at Dr. Ethiraj's request for "pain and weakness." There is a second set of QuickDASH answers, not signed by Petitioner, which are somewhat different, lending a net adjustment factor of 50. (RX 3, Dep. Exh. 5, pp. 7-8; PX 3). Petitioner indicated he did not fill out these pages. Petitioner testified that Dr. Ethiraj discussed the original answers with Petitioner and that those answers were "not right" and needed to be corrected, but Petitioner told the doctor that he was not going to change his answers because the responses were Petitioner's honest opinions.

Petitioner testified that prior to the AMA Impairment examination of October 23, 2012, he had already been evaluated for a full duty release by Dr. Ethiraj at Respondent's medical facility. This is consistent with a handwritten "return to work" note of April 16, 2012. (See PX 1).

Petitioner testified that he had no prior left shoulder problems before the September 14, 2011 work accident. At the present time, Petitioner must sleep on his right side due to his left shoulder symptoms. His left shoulder "pops" when he rotates it. This is especially the case when he wakes up in the morning. He notes that there is still pain in his left shoulder area. He takes ibuprofen (400 mg) every six-to-eight hours for the pain. At work, Petitioner tries to use his right arm more, limiting the use of his left arm as much as possible. He uses tools with his left arm less frequently than before the accident. Petitioner testified that interacting with his six year old daughter is harder after the work accident, in that it is more difficult to pick her up, push her on a swing, or play ball with her.

Since returning to work with Respondent, Petitioner is now in the position of a brake assembler. Physically, he sets an entire brake up for the building of a brake pod. When fully assembled, the brake must be lifted by crane, as it weights approximately 150 pounds. The parts he must lift are large, and are approximately two-to-three feet around. Lifting is performed with a hoist, but he must remove plate elements first and rotate these by hand to get pins out. He performs this function at least twelve times on an average work day. He uses tools with his job, such as wrenches, hammers, and three separate impact guns. He uses these tools about six-to-seven hours per day on a standard eight hour shift. Petitioner works a full, 40 hour work week, in addition to overtime.

Arbitrator's Exhibits 1 and 2 indicate that unpaid medical bills are at issue. However, the parties stipulated at trial that all medical bills have been paid by Respondent, and the issue of any unpaid medical bills is therefore not in dispute and not discussed in this Decision.

CONCLUSIONS OF LAW

Issue (F): Is Petitioner's current condition of ill-being causally related to the injury?

The Arbitrator concludes that Petitioner's current condition of ill-being is causally related to the incident and injury of September 14, 2011. The Arbitrator relies on the clear description and the opinion of the treating surgeon, Dr. Kefalas, who found a causal connection between Petitioner's work activities and his left shoulder injury.

Issue (L): What is the nature and extent of the injury?

Pursuant to Section 8.1b of the Illinois Workers' Compensation Act, 820 ILCS 305/1 *et seq.* (hereafter the "Act"), for accidental injuries that occur on or after September 1, 2011, permanent partial disability shall be established using the following criteria:

- (a) A physician licensed to practice medicine in all of its branches preparing a permanent partial disability impairment report shall report the level of impairment in writing. The report shall include an evaluation of medically defined and professionally appropriate measurements of impairment that include, but are not limited to: loss of range of motion; loss of strength; measured atrophy of tissue mass consistent with the injury; and any other measurements that establish the nature and extent of the impairment. The most current edition of the American Medical Association's "Guides to the Evaluation of Permanent Impairment" shall be used by the physician in determining the level of impairment.
- (b) In determining the level of permanent partial disability, the Commission shall base its determination on the following factors:
 - (i) the reported level of impairment pursuant to subsection (a);
 - (ii) the occupation of the injured employee;
 - (iii) the age of the employee at the time of the injury;
 - (iv) the employee's future earning capacity; and
 - (v) evidence of disability corroborated by the treating medical records. No single enumerated factor shall be the sole determinant of disability. In determining the level of disability, the relevance and weight of any factors used in addition to the level of impairment as reported by the physician must be explained in a written order.

820 ILCS 305/8.1b.

With regard to Section 8.1b(b)(i) of the Act (reported level of impairment per the AMA Guides), the Arbitrator notes that Dr. Ethiraj's AMA report of October 23, 2012 followed Table 15-5 and applied one significant diagnosis: left shoulder impingement syndrome. (RX 3, Dep. Exh. 5). In addition to impingement syndrome for which Petitioner underwent a subacromial decompression, Petitioner also suffered both a tear of the labrum and of the biceps tendon. Dr. Ethiraj provided Petitioner with an impairment rating of 5% of an upper extremity. (RX 3, pp. 40-41). Petitioner testified that he only completed one QuickDASH questionnaire – the form with his signature. The Arbitrator notes that the answers on the QuickDASH without Petitioner's signature offer different answers with lower scores. (RX 3, Dep. Exh. 5). Review of the AMA Impairment Report reveals that Dr. Ethiraj relied on the

QuickDASH without Petitioner's signature and with the lower scores. (RX 3, Dep. Exh. 5). Petitioner described a dispute with the doctor when completing the forms, which is credible in light of the two QuickDASH questionnaires. However, as noted above, Dr. Ethiraj provided Petitioner with an impairment rating of 5% of an upper extremity – the highest rating allowed for the diagnosis of shoulder impingement. Impairment and permanent partial disability (PPD) as defined by the AMA Guides Sixth Edition are not the same, and the Arbitrator makes note of this distinction when assessing the weight given to the AMA impairment rating at issue and in determining the permanency award. Based on the foregoing discussion concerning the AMA impairment rating, the Arbitrator places some weight on this factor when determining the permanency award.

With regard to Section 8.1b(b)(ii) of the Act (Petitioner's occupation), the Arbitrator notes that Petitioner's current occupation is that of a brake assembler at Respondent's plant. Based on Petitioner's testimony, this is a labor-intensive job. The Arbitrator concludes that Petitioner's PPD will be larger based on this regard than an individual who performs lighter work. Great weight is placed on this factor when determining the permanency award.

With regard to Section 8.1b(b)(iii) of the Act (Petitioner's age at the time of injury), Petitioner was 35 years old on September 14, 2011. (See AX 1 and 2; AX 3 and 4, noting a birth date of February 10, 1976). The Arbitrator considers Petitioner to be a younger individual and concludes that his PPD will be more extensive than that of an older individual because he will have to live and work with the permanent partial disability longer. Great weight is accorded this factor when determining the permanency award.

With regard to Section 8.1b(b)(iv) of the Act (Petitioner's future earning capacity), the Arbitrator notes that Petitioner returned to work full duty with Respondent following his surgery. He works a full 40 hour work week, in addition to working overtime. While Petitioner testified as to using his right arm more than his left arm due to pain, there is no evidence that Petitioner's future earning capacity is diminished. The Arbitrator places some weight on this factor when determining the permanency award.

With regard to Section 8.1b(b)(v) of the Act (evidence of disability corroborated by Petitioner's treating medical records), the Arbitrator notes Petitioner underwent a subacromial decompression for impingement syndrome; a tenotomy (excision of the biceps tendon) for the greater than 50% tear in the biceps tendon; and excision of the superior labrum for the greater than 50% tear of the labrum. (PX 2). The post-operative diagnosis reported was: (1) Left shoulder impingement syndrome; (2) Left shoulder long head biceps and superior labral tear; (3) Left shoulder glenohumeral arthritis; and (4) Left shoulder AC joint synovitis and arthritis. Petitioner had a good outcome from his surgery, and was working full duty shortly following the operation. Petitioner credibly testified to pain complaints he currently experiences in his left shoulder as a result of the work accident, as well as limitations with his shoulder that he did not experience before the accident. Petitioner's credible complaints are reasonable in light of the injury he suffered and resulting surgery he underwent. The Arbitrator places great weight on this factor when determining the permanency award.

The determination of PPD is not simply a calculation, but an evaluation of all five factors as stated in the Act. In making this evaluation of PPD, consideration is not given to any single enumerated factor as the sole determinant (see *supra*). Therefore, applying Section 8.1b of the Act, Petitioner has sustained accidental injuries that caused the 10% loss of use to the person as whole. The Arbitrator finds that Respondent shall pay Petitioner the sum of \$413.65 per week for a further period of 50 weeks, as provided under Section 8(d)2 of the Act.

STATE OF ILLINOIS)
)SS.
COUNTY OF SANGAMON)

<input type="checkbox"/>	Injured Workers' Benefit Fund (§4(d))
<input type="checkbox"/>	Rate Adjustment Fund (§8(g))
<input type="checkbox"/>	Second Injury Fund (§8(e)18)
<input checked="" type="checkbox"/>	None of the above

**ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION**

LENA TERRY
Employee/Petitioner

Case # 12 WC 16355

v.

CATERPILLAR, INC.
Employer/Respondent

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Brandon J. Zanotti**, Arbitrator of the Commission, in the city of **Springfield**, on **June 14, 2013**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

- A. Was Respondent operating under and subject to the Illinois Workers' Compensation or Occupational Diseases Act?
- B. Was there an employee-employer relationship?
- C. Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?
- D. What was the date of the accident?
- E. Was timely notice of the accident given to Respondent?
- F. Is Petitioner's current condition of ill-being causally related to the injury?
- G. What were Petitioner's earnings?
- H. What was Petitioner's age at the time of the accident?
- I. What was Petitioner's marital status at the time of the accident?
- J. Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?
- K. What temporary benefits are in dispute?
 TPD Maintenance TTD
- L. What is the nature and extent of the injury?
- M. Should penalties or fees be imposed upon Respondent?
- N. Is Respondent due any credit?
- O. Other

FINDINGS

On **November 2, 2011**, Respondent *was* operating under and subject to the provisions of the Act.
On this date, an employee-employer relationship *did* exist between Petitioner and Respondent.
On this date, Petitioner *did* sustain an accident that arose out of and in the course of employment.
Timely notice of this accident *was* given to Respondent.
Petitioner's current condition of ill-being *is* causally related to the accident.
In the year preceding the injury, Petitioner earned **\$35,931.20**; the average weekly wage was **\$690.98**.
On the date of accident, Petitioner was **55** years of age, *married* with **0** dependent children.
Petitioner *has* received all reasonable and necessary medical services.
Respondent *has* paid all appropriate charges for all reasonable and necessary medical services.
Respondent shall be given a credit of **\$7,705.62** for TTD, **\$0** for TPD, **\$0** for maintenance, and **\$0** for other benefits, for a total credit of **\$7,705.62**.
Respondent is entitled to a credit of **\$129,940.38** under Section 8(j) of the Act.

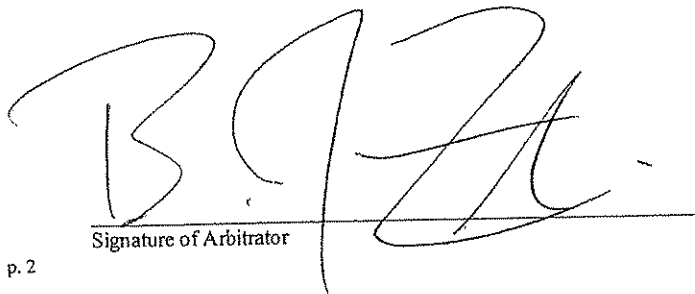
ORDER

Petitioner has failed to prove that medical expenses totaling **\$859.20** are causally related to the accident at bar, and accordingly said expenses are not awarded.

Respondent shall pay Petitioner the sum of **\$414.59/week** for a further period of **50 weeks**, as provided in Section 8(d)2 of the Act, because the injuries sustained caused the **10%** loss of use to the person as a whole.

RULES REGARDING APPEALS Unless a party files a *Petition for Review* within **30 days** after receipt of this decision, and perfects a review in accordance with the Act and Rules, then this decision shall be entered as the decision of the Commission.

STATEMENT OF INTEREST RATE If the Commission reviews this award, interest at the rate set forth on the *Notice of Decision of Arbitrator* shall accrue from the date listed below to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.



Signature of Arbitrator

07/30/2013
Date

AUG 7 - 2013

STATE OF ILLINOIS)
) SS
COUNTY OF SANGAMON)

**ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION**

LENA TERRY
Employee/Petitioner

Case # 12 WC 16355

v.

CATERPILLAR, INC.
Employer/Respondent

MEMORANDUM OF DECISION OF ARBITRATOR

FINDINGS OF FACT

The parties stipulated to a work accident that occurred on November 2, 2011, when Petitioner, Lena Terry, a 55-year old reclamation worker for Respondent, Caterpillar, Inc., sustained injuries to her right arm while stacking barrels. (Arbitrator's Exhibit (AX) 1). Petitioner testified she was lifting a barrel above her head, which she believed was empty but in fact was not, when she felt a "pop" in her right shoulder.

On November 2, 2011, Petitioner was evaluated by Dr. Keith Fabrique at Occupational Health and Wellness at Respondent's plant. Dr. Fabrique noted that Petitioner injured herself while lifting a barrel, and noted that the barrels in question weigh 53 pounds empty and are lifted at least to shoulder level. He also noted that some barrels have paint in them and could weigh up to 75 pounds. Petitioner was assessed with right arm/shoulder pain. (Petitioner's Exhibit (PX) 1).

On March 22, 2012, Petitioner presented to Dr. M. Stephen Huss, who noted she described the "injury at work in November of 2011 when she picked up a barrel that she thought was empty and it was full and she had a strain of the right shoulder." (PX 2). Dr. Huss noted the MR arthrogram suggested some changes in the biceps tendon and superior surface of the rotator cuff tendon, but no frank tear. Dr. Huss injected the subacromial space with Depomedrol and indicated that if Petitioner did not improve he would recommend arthroscopic surgery. (PX 2).

On April 16, 2012, Petitioner was evaluated by Dr. Rajesh Ethiraj at Occupational Health and Wellness at Respondent's plant. Dr. Ethiraj noted that Petitioner injured her right shoulder in November 2011. He also noted that Petitioner worked in the reclamation department, and was performing her regular work duties and had right shoulder pain with radiation to the right arm. (PX 1; RX 3, pp. 46-47).

On April 26, 2012, Petitioner underwent shoulder surgery. Dr. Huss gave a pre-operative diagnosis of impingement syndrome of the right shoulder and tear of the biceps longus tendon of the right shoulder. Dr. Huss performed an arthroscopic debridement of the biceps tendon, and release of the biceps tendon/tenotomy with a subacromial arthroplasty and bursectomy of the right shoulder. (PX 2). Review of Dr. Huss' operative note reveals the following: "the biceps tendon was torn severely with flaps of biceps

tendon intra-articularly. The tendon was at risk of failing at any time, so I debrided it, but there was no substantial biceps longus tendon left, and so I did a release and resected the stump back to the origin. The subacromial inspection revealed a lot of bursitis. It showed quite a bit of fraying of the underside of the acromion... There was no frank tear of the rotator cuff visualized. I did a subacromial arthroplasty... and a bursectomy.” (PX 2).

On May 3, 2012, Dr. Huss completed the “Physician’s Section” form, noting that in his opinion Petitioner’s disability was related to her work with Respondent. Dr. Huss noted objective findings of pain, limited range of motion and that the plan of care was surgery. (PX 2).

Dr. Huss’ handwritten office note of June 11, 2012 reflects that Petitioner returned with complaints that her right shoulder was in a lot of pain, and that she was unable to get comfortable to sleep. Dr. Huss noted a “very tight” right shoulder and recommended a shoulder manipulation if range of motion did not improve. (PX 2).

On August 20, 2012, Petitioner underwent a second shoulder surgery. Dr. Huss provided pre- and post-operative diagnoses of adhesive capsulitis of the right shoulder and performed a closed manipulation of frozen right shoulder. (PX 2).

Dr. Huss’ handwritten office note of September 7, 2012 reflects Petitioner described she was doing well and was working a regular duty desk job. Dr. Huss wrote that range of motion was “at least 85% of left which is excellent – excellent recovery.” (PX 2). Dr. Huss further wrote: “Ready for full duty no restrictions. She had bid on a new job with less physical requirements as her job before surgery had and she has since gotten the new job and has been performing the new job since 7/16/12.” (PX 2). Petitioner confirmed at trial that she returned to work with Respondent following her surgeries. She initially worked in a data entry position, and then began a job as an inventory clerk with Respondent on June 1, 2013. She testified she bid on these positions. As an inventory clerk, Petitioner searches for ordered items needed on the assembly lines, and pulls the needed parts from their respective locations. She rides on a battery operated cart around the plant to perform these duties. The remainder of her job duties involves data entry.

Petitioner testified that she has moderate difficulty at work with her duties. She has had to learn to perform certain tasks differently due to some remaining difficulty with her right shoulder. For example, when a needed part is too heavy for Petitioner to lift herself, she will flag down other younger workers on the assembly line or in a truck to assist her. She testified that she can lift five to ten pounds of material before needing to ask for lifting assistance from co-workers. Petitioner also has difficulty in lifting personal items following the surgeries, such as her purse and shopping purchases. She now uses her left arm more to assist with these tasks. Petitioner has adapted the way she sleeps due to the pain in her right shoulder. She has difficulty performing household tasks now, such as sweeping, folding laundry, and gardening work. She also needs assistance in dressing herself, as it is very difficult for her to reach around her body with her arms. Petitioner still has some pain and tingling in her right arm. If she overuses it or overextends it, she notices that her arm will bruise. Petitioner regularly takes over-the-counter medication for her arm pain. Petitioner testified that, overall, she tries her best to adapt to her newfound shoulder difficulties, and is not going to let any of these difficulties stop her from moving forward with her life.

Dr. Ethiraj prepared an AMA Impairment Rating Assessment. The final rating was 5% of an upper extremity. (RX 3, Dep. Exh. 9; RX 3, pp. 31-32). For Grade Modifier Functional History, Dr. Ethiraj relied on the QuickDASH report completed by Petitioner, which indicated a score of 50. (RX 3, Dep.

Exh. 5). This was consistent with a Grade Modifier 2 – Moderate Problem. (RX 3, Dep. Exh. 6). The QuickDASH demonstrated that Petitioner was unable to open a tight or new jar and had severe difficulty washing her back and sleeping because of the pain. On the form, Petitioner also complained of moderate difficulty performing heavy household chores, carrying a shopping bag or briefcase, using a knife to cut food, and with recreational activities. (RX 3, Dep. Exh. 5). The primary diagnosis used by Dr. Ethiraj to rate impairment was right shoulder impingement. (RX 3, p. 14). It is noted that in addition to impingement, Petitioner also had a diagnosis of a tear of the biceps longus tendon of the right shoulder, as noted above. On Dr. Ethiraj's examination, Petitioner displayed mild tenderness, no atrophy or deformity, but she did have impairment of her internal rotation. (RX 3, p. 19). Dr. Ethiraj assigned adjustments of +2 based on functional history, physical examination and clinical studies. (RX 3, p. 21). Based upon the diagnosis and the adjustment factors, Dr. Ethiraj concluded that Petitioner's impairment rating under the AMA Guides was a maximum 5% of the upper extremity. (RX 3, p. 22). Dr. Ethiraj testified that this rating converts to a 3% impairment of the whole person under the AMA Guides. (RX 3, p. 23).

Dr. Ethiraj testified that the AMA Guides Sixth Edition instructs the rating physician to dismiss or find not credible any inconsistent findings in the QuickDASH form completed by the injured worker. Dr. Ethiraj testified that he did not find any of Petitioner's answers inconsistent or not reliable in his report. (RX 3, pp. 37-38). Dr. Ethiraj also testified that he made no mention of the second operative note of August 20, 2012 in his report. (RX 3, pp. 48-49).

Petitioner introduced a series of medical bills she is claiming are unpaid in the amount of \$859.20. (PX 6, p. 1). One amount claimed was a \$277.57 figure from "KMB Services Corporation/Pro Com Services." (PX 6, p. 1). It appears that Pro Com Services is, in fact, a collection agency and no medical bill has been introduced. (PX 6, pp. 3-10). Also claimed is a \$581.63 balance from St. Mary's Hospital. (PX 6, p. 1). This charge apparently pertains to a hospital admission on September 18, 2012, relating to services rendered involving a balloon catheter. (PX 6, pp. 27-29). Petitioner indicated at trial that this admission was for treatment of her leg, and unrelated to her work injury.

CONCLUSIONS OF LAW

Issue (F): Is Petitioner's current condition of ill-being causally related to the injury?

The Arbitrator concludes that Petitioner's current condition of ill-being is causally related to the incident and injury of November 2, 2011. The Arbitrator notes that Petitioner described a "pop" in her right shoulder while lifting a barrel, which she anticipated was empty, above her head. Further, the Arbitrator relies on the opinion of the treating surgeon, Dr. Huss, who found a causal connection between Petitioner's work activities and her right shoulder injury.

Issue (J): Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?

The Arbitrator finds that the balance from St. Mary's Hospital of \$581.63 is related to services rendered for an unrelated leg condition. With respect to the claimed balance of \$277.57, no actual medical bill was introduced by Petitioner at trial. The Arbitrator finds that no causal connection is established regarding these two outstanding invoiced amounts, and accordingly denies any award of said amounts claimed. All other applicable medical invoices at issue have been paid by Respondent. (See AX 1).

Issue (L): What is the nature and extent of the injury?

Pursuant to Section 8.1b of the Illinois Workers' Compensation Act, 820 ILCS 305/1 *et seq.* (hereafter the "Act"), for accidental injuries that occur on or after September 1, 2011, permanent partial disability shall be established using the following criteria:

- (a) A physician licensed to practice medicine in all of its branches preparing a permanent partial disability impairment report shall report the level of impairment in writing. The report shall include an evaluation of medically defined and professionally appropriate measurements of impairment that include, but are not limited to: loss of range of motion; loss of strength; measured atrophy of tissue mass consistent with the injury; and any other measurements that establish the nature and extent of the impairment. The most current edition of the American Medical Association's "Guides to the Evaluation of Permanent Impairment" shall be used by the physician in determining the level of impairment.
- (b) In determining the level of permanent partial disability, the Commission shall base its determination on the following factors:
 - (i) the reported level of impairment pursuant to subsection (a);
 - (ii) the occupation of the injured employee;
 - (iii) the age of the employee at the time of the injury;
 - (iv) the employee's future earning capacity; and
 - (v) evidence of disability corroborated by the treating medical records. No single enumerated factor shall be the sole determinant of disability. In determining the level of disability, the relevance and weight of any factors used in addition to the level of impairment as reported by the physician must be explained in a written order.

820 ILCS 305/8.1b.

With regard to Section 8.1b(b)(i) of the Act (reported level of impairment per the AMA Guides), the Arbitrator notes that Dr. Ethiraj provided Petitioner with an impairment rating of 5% of an upper extremity, the highest rating allowed for the diagnosis of shoulder impingement. The Arbitrator also notes the injury is to Petitioner's right-dominant arm. (RX 3, Dep. Exh. 5; RX 3, p. 32). The Arbitrator notes that the rating applies only one significant diagnosis: shoulder impingement syndrome. (RX 3, Dep. Exh. 5; RX 3, p. 14). In addition to impingement syndrome for which Petitioner underwent a subacromial arthroplasty and bursectomy, Petitioner also suffered a tear of the biceps longus tendon of the right shoulder, for which she underwent arthroscopic debridement of the biceps tendon, and release of the biceps tendon/tenotomy. Petitioner also underwent a second surgery in the form of a closed manipulation of frozen right shoulder, and this is not noted by Dr. Ethiraj. The Arbitrator also notes that Petitioner's QuickDASH report answers are corroborated by her credible testimony at trial. Impairment and permanent partial disability (PPD) as defined by the AMA Guides Sixth Edition are not the same, and the Arbitrator makes note of this distinction when assessing the weight given to the AMA impairment rating at issue and in determining the permanency award. Based on all of the foregoing discussion concerning the AMA rating at issue, the Arbitrator gives some weight to the AMA impairment rating when determining the permanency award.

With regard to Section 8.1b(b)(ii) of the Act (Petitioner's occupation), Petitioner currently works in a lighter position as an inventory clerk, where her responsibilities include finding and ordering parts, in addition to data entry duties. Petitioner has difficulty lifting some of the parts (anything greater than five-to-ten pounds), and requests help from co-workers as needed. Dr. Huss specifically referenced Petitioner's job change in his last note of September 7, 2012, when he released her to full duty, stating, "She had bid on a new job with less physical requirements as her job before surgery had and she has since gotten the new job and has been performing the new job since 7/16/12." (PX 2). The Arbitrator also notes that Petitioner bid on the new job herself, and has not been given work restrictions from her treating physician. The Arbitrator places some weight on this factor when determining the permanency award.

With regard to Section 8.1b(b)(iii) of the Act (Petitioner's age at the time of injury), Petitioner was 55 years of age on November 2, 2011. (See AX 1; AX 2, noting a birth date of June 12, 1956). The Arbitrator notes that Petitioner is a "middle-aged" individual. In terms of future working years, Petitioner is a somewhat older individual with fewer working years ahead of her than that of a younger worker, and thus will not have to work and live with the permanency of her condition as long. The Arbitrator places some weight on this factor when determining the permanency award.

With regard to Section 8.1b(b)(iv) of the Act (Petitioner's future earning capacity), the Arbitrator notes that Petitioner returned to work full duty with Respondent following her surgery. However, she bid on a less-physically demanding position following her release. Her bid was successful, and her current position is not as physically demanding as her pre-injury job. She works a full 40 hour work week. While Petitioner credibly testified to some difficulty with lifting in her new position, there is no evidence that Petitioner's future earning capacity is diminished. The Arbitrator places some weight on this factor when determining the permanency award.

With regard to Section 8.1b(b)(v) of the Act (evidence of disability corroborated by Petitioner's treating medical records), the Arbitrator notes Petitioner underwent an arthroscopic debridement of the biceps tendon and a release of the biceps tendon/tenotomy with a subacromial arthroplasty and bursectomy. Due to difficulty with recovery and a post-surgery diagnosis of adhesive capsulitis of the right shoulder, she then underwent a second surgery consisting of a closed manipulation of frozen right shoulder. (PX 2). Petitioner was released to return to work with no restrictions less than a month following the second surgery. Dr. Huss noted on the date he released Petitioner that her right shoulder range of motion was "at least 85% of left which is excellent." The doctor also noted an excellent recovery. The Arbitrator found Petitioner a very credible witness at trial. She answered questions posed to her in a direct, open and forthcoming manner, including on cross-examination. Petitioner credibly testified to residual symptoms following her work injury to her right shoulder that necessitated two surgeries. She still experiences pain and tingling in her right arm, and has some difficulty with lifting and household tasks. She has had to adapt the manner in which she uses her arms due to her injury. She also takes over-the-counter pain medication daily due to her arm pain. Petitioner's credible complaints are reasonable in light of the injury she suffered and resulting surgeries she underwent. The Arbitrator places great weight on this factor when determining the permanency award.

The determination of PPD is not simply a calculation, but an evaluation of all five factors as stated in the Act. In making this evaluation of PPD, consideration is not given to any single enumerated factor as the sole determinant, as stated above. Therefore, applying Section 8.1b of the Act, Petitioner has sustained accidental injuries that caused the 10% loss of use to the person as whole. The Arbitrator finds that Respondent shall pay Petitioner the sum of \$414.59 a week for a further period of 50 weeks, as provided under Section 8(d)(2) of the Act.

STATE OF ILLINOIS)
)SS.
COUNTY OF COOK)

<input type="checkbox"/>	Injured Workers' Benefit Fund (§4(d))
<input type="checkbox"/>	Rate Adjustment Fund (§8(g))
<input type="checkbox"/>	Second Injury Fund (§8(e)18)
<input checked="" type="checkbox"/>	None of the above

**ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
NATURE AND EXTENT ONLY**

MICHAEL A. HARRISON
Employee/Petitioner

Case # 11 WC 048412

v.

Consolidated cases: NONE

VILLAGE OF FOREST PARK
Employer/Respondent

The only disputed issue is the nature and extent of the injury. An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **DAVID KANE**, Arbitrator of the Commission, in the city of **CHICAGO**, on **MAY 31, 2013**. By stipulation, the parties agree:

On the date of accident, **OCTOBER 22, 2011**, Respondent was operating under and subject to the provisions of the Act.

On this date, the relationship of employee and employer did exist between Petitioner and Respondent.

On this date, Petitioner sustained an accident that arose out of and in the course of employment.

Timely notice of this accident was given to Respondent.

Petitioner's current condition of ill-being is causally related to the accident.

In the year preceding the injury, Petitioner earned **\$84,446.96**, and the average weekly wage was **\$1,623.98**.

At the time of injury, Petitioner was **41** years of age, *married* with **1** dependent children.

Necessary medical services and temporary compensation benefits have been provided by Respondent.

Respondent shall be given a credit of **\$15,157.10** for TTD, **\$-0-** for TPD, **\$-0-** for maintenance, and **\$-0-** for other benefits, for a total credit of **\$15,157.10**.

After reviewing all of the evidence presented, the Arbitrator hereby makes findings regarding the nature and extent of the injury, and attaches the findings to this document.

ORDER

Respondent shall pay Petitioner the sum of **\$695.78/week** for a further period of **20.875 weeks**, as provided in Section **8(e)** of the Act, because the injuries sustained caused the **complete and permanent loss of use of the right foot to the extent of 12.5% thereof.**

Respondent shall pay Petitioner compensation that has accrued from **October 22, 2011** through **May 31, 2013**, and shall pay the remainder of the award, if any, in weekly payments. - - - - -

RULES REGARDING APPEALS Unless a Petition for Review is filed within 30 days after receipt of this decision, and a review is perfected in accordance with the Act and Rules, then this decision shall be entered as the decision of the Commission.

STATEMENT OF INTEREST RATE If the Commission reviews this award, interest at the rate set forth on the *Notice of Decision of Arbitrator* shall accrue from the date listed below to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

David G. Kane
Signature of Arbitrator

June 11, 2013
Date

JUN 11 2013

**Re: Michael A. Harrison v. Village of Forest Park
I.W.C.C. # 11 WC 048412**

FINDINGS OF FACT

The petitioner in this case is a 41 year old police officer for the respondent's police department. In this capacity, he enforces all state and municipal laws, performs traffic enforcement, responds to all types of calls for service including assisting fire department personnel on occasion and makes arrests when required. The petitioner specifically testified that he has to push cars off the roadways when necessary, he may be required to stand and walk frequently when checking various business establishments, when directing traffic at accident scenes and when performing crowd control duties at festivals and other events. He is required to climb flights of stairs in apartment buildings when responding to calls for service or when investigating crimes. He also may have to run after individuals who commit crimes like retail theft or when making an arrest for other crimes they may have committed. He may also be required to lift heavy weights such as large individuals on stretchers when assisting fire personnel.

The petitioner next testified that his regular work day is 8 hours per day and 40 hours per week. However, he is required to work overtime hours when he makes an arrest at the end of his shift and has to complete the paperwork. He also works overtime hours when staffing issues warrant this such as when another officer calls in sick and the next work shift is short handed. He may also be required to

make court appearances during hours he is not working or on his day off. The petitioner also worked other details or jobs that are available through his department such as with the park district or when there are special events in his municipality. He is paid a set hourly rate which is established in a collective bargaining agreement and when working overtime, he is paid at an overtime rate which is one and one-half times his regular hourly rate.

The petitioner then testified that he was able to perform all the job duties required of a police officer for the respondent since he was hired in 1998 without difficulty. He also stated that he had no problems with his right foot or ankle except for a brief period in late 2008 and early 2009. At that time he had some aching and swelling in his right ankle and saw a physician; Dr. Timothy Payne on two occasions and participated in a brief course of physical therapy. He lost no time from work during this course of treatment and upon completion of the treatment he experienced no further symptoms or problems with his right ankle until he sustained his injury on October 22, 2011.

On October 22, 2011, the petitioner was working the midnight shift and was patrolling in an unmarked squad car. When he was patrolling on Madison Street he observed a large crowd in front of a bar and observed a person urinating in public. As he was walking through the crowd toward this person, another police officer called for assistance because a fight had broken out as well. The petitioner began running toward that fight to assist the other police officer and

as he was running, he felt a "pop" in his right ankle and then extreme pain in that ankle.

The petitioner was taken by ambulance from that location to Loyola University Medical Center's emergency room for treatment. His foot and ankle were x-rayed, he was given medication and his right foot was placed in a splint. He was also advised to follow up with his physician for further treatment. (Petitioner's Exhibit #1) The petitioner then saw his family physician; Dr. Jonathan Meeks on October 24, 2011 and he recommended that the petitioner see an orthopedic specialist; Dr. Timothy Payne. Dr. Meeks diagnosis was that the petitioner had sustained an Achilles tendon rupture. (Petitioner's Exhibit #2)

The petitioner was then evaluated by Dr. Payne on October 27, 2011 and he recommended that the petitioner undergo an MRI to his right foot and ankle. This MRI was performed on November 2, 2011 and documented that the petitioner had sustained a full thickness Achilles tendon rupture from the calcaneal insertion. After reviewing this MRI study, Dr. Payne referred the petitioner to another orthopedic specialist at his practice group; Dr. Bryan Lapinski. Dr. Lapinski evaluated the petitioner on November 7, 2011 and recommended a surgical procedure to repair this Achilles tendon rupture. (Petitioner's Exhibit #3)

The petitioner subsequently underwent the surgical procedure recommended by Dr. Lapinski at Good Samaritan Hospital on November 11, 2011. In that surgical procedure it was noted that the

Achilles tendon had detached from the calcaneus and there was avulsed bone attached to the retracted tendon. Dr. Lapinski debrided the bone fragment from the detached tendon, performed a lengthening procedure on the remaining tendon and then reattached the tendon to the insertion point using screws and tacks. (Petitioner's Exhibit #4)

After recovering from this surgical procedure, the petitioner continued under the care of Dr. Lapinski. He then completed a course of physical therapy at ATI Physical Therapy and was released by Dr. Lapinski for light duty work beginning January 30, 2012 and then to full duty work beginning February 24, 2012. The petitioner was last seen by Dr. Lapinski on April 5, 2012 at which time he was released from his care. (Petitioner's Exhibits #3 & #5) The petitioner then testified that he has not returned to Dr. Lapinski since being released on April 5, 2012, and he has not sought any further treatment for his right foot and ankle since that date.

The petitioner further testified that at the request of his employer, he was evaluated by Dr. Simon Lee on August 8, 2012. At that evaluation he completed a "New Patient Information" questionnaire wherein he related to the doctor all of the continued symptoms he was experiencing with respect to his right foot and ankle. He noted that he continued to experience intermittent throbbing, swelling and stiffness in his right ankle which increased with various activities such as walking, running, standing and when using stairs. He also reported to Dr. Lee that he experiences fatigue at the end of the day

and shifts his weight to the opposite foot to attempt to relieve the symptoms in his right ankle. Upon his examination of petitioner, Dr. Lee noted that there was mild atrophy and decreased definition of the right calf when compared to the left. He further noted that petitioner had a 5 degree loss of plantar flexion, had mild tenderness along the distal aspect of the Achilles tendon upon direct palpation and some mild thickening of the tendon at the surgical site. (Petitioner's Exhibit #6, Respondent's Exhibit #1)

The petitioner then testified that after returning to full duty work as a police officer for the respondent beginning in late February, 2012, and continuing up to the present, he experiences stiffness in his right ankle especially in the morning and when he drives his police patrol vehicle for long periods. He has to stretch his right ankle in the morning and frequently throughout the day. He also experiences soreness in his right ankle on a daily basis which increases when he stands or walks for long periods throughout his work day. These continued symptoms have affected his ability to work overtime hours since his injury. Prior to the injury, he worked from 12 to 22 hours of overtime each 2 week pay period. Since returning to work post injury, he only works approximately 6 hours per pay period because he turns down the overtime that is offered when there are manpower shortages and only goes to court when required. He also turns down additional jobs or details that are offered through the department because it aggravates his right ankle and foot condition.

In addition to the symptoms he experiences while performing his job duties as a police officer, the petitioner testified that he experiences the same symptoms of increased pain, soreness and stiffness when performing family related activities such as walking their dog, taking his daughter to the mall to shop and completing gardening activities around his home. He especially experiences symptoms of tightness in his right ankle when crouching or bending down and has to frequently stretch his ankle. To help reduce these symptoms, he takes Advil occasionally, he places ice on his ankle and performs stretching exercises every day and sometimes frequently throughout the day. He also places more weight on his unaffected left leg when his symptoms increase.

Lastly, the petitioner testified that he has suffered no additional injuries or accidents to his right foot and ankle since October 22, 2011. This testimony stands unrebutted.

CONCLUSIONS OF LAW

1. What is the nature and extent of the injury?

The Arbitrator finds that the petitioner has sustained a significant loss of use of his right foot as a result of the October 22, 2011 work accident. It is undisputed that the petitioner sustained an Achilles tendon rupture in his right ankle. This necessitated a surgical repair performed by Dr. Bryan Lapinski at Good Samaritan Hospital on November 11, 2011. The severity of this injury is clearly noted in the operative report by Dr. Lapinski. He recorded that he observed a

complex tear of the Achilles tendon with a piece of avulsed bone detached from the calcaneus insertion point. To repair this injury he was required to debride the piece of bone from the end of the tendon, perform a lengthening procedure to the tendon and then reattach the tendon to the calcaneus using screws and surgical tacks. (Petitioner's Exhibit #4)

After recovering from this surgical procedure and participating in a course of physical therapy, the petitioner was released to return to work in a full duty capacity as a police officer and although he has continued to perform the duties required of a police officer up to the present date, he continues to experience various symptoms in his right ankle and foot. These symptoms include, pain, stiffness and swelling which increase with activities such as standing, walking, climbing stairs, driving a vehicle and squatting. To alleviate these continued symptoms the petitioner stated he takes over the counter medications, he ices his foot and ankle and performs various stretching exercises regularly. He also limits performing the activities that cause an increase in his symptoms.

Pursuant to Section 8.1b of the Act, the following criteria and factors must be weighed in determining the level of permanent partial disability, for accidental injuries occurring on or after September 1, 2011:

- (a) A physician licensed to practice medicine in all of its branches preparing a permanent partial disability impairment report shall include an evaluation of medically defined and

professionally appropriate measurements of impairment that include, but are not limited to: loss of range of motion, loss of strength; measured atrophy of tissue mass consistent with the injury; and any other measurements that establish the nature and extent of the impairment.

(b) Also, the Commission shall base its determination on the following factor:

- (i) the reported level of impairment;
- (ii) the occupation of the injured employee;
- (iii) the age of the employee at the time of injury;
- (iv) the employee's future earning capacity; and
- (v) evidence of disability corroborated by medical records.

With regards to (i) of Section 8.1(b) of the Act;

The level of impairment reported by Dr. Simon Lee pursuant to the 6th Edition of the Guides to the Evaluation of Permanent Impairment is 1% of the lower extremity. The Arbitrator finds however, that this rating is not accurate and cannot be given any consideration for a number of reasons. First, Dr. Lee admitted in his evidence deposition that he is not certified to perform AMA impairment ratings through the American Academy of Disability Evaluators and has not attended their 16 hour course, nor has he taken their examination to become certified to perform these impairment evaluations. (Respondent's Exhibit #1; page 30) Next, Dr. Lee did not follow the proper sequential steps outlined by the 6th Edition to correctly formulate an impairment rating. Dr. Lee refused to utilize multiple diagnostic test

results performed on the petitioner's right foot and ankle to confirm the diagnosis of an Achilles tendon rupture when determining the clinical studies grade modifier. Dr. Lee takes the position that only clinical studies completed after the injured worker has reached MMI are to be considered but he does not point to any reference in the 6th edition that supports his position. Conversely, the 6th edition states that any diagnostic test can be used when determining the clinical studies grade modifier. In this case, Dr. Lee admitted that if this were the correct way to perform the impairment rating, if you utilized the surgical report for the initial diagnosis and then utilized both the initial x-ray studies done in the emergency room at Loyola University Medical Center and the MRI study performed on 11/2/11 that both confirmed the diagnosis, the clinical studies grade modifier would increase the impairment rating by 100% to a 2% lower extremity impairment rating. (Respondent's Exhibit #1; pages 59-68)

Additionally, Dr. Lee chose not to utilize the American Academy of Orthopedic Surgeon's Lower Limb Questionnaire found on page 555; Appendix 16-A to determine an accurate functional history grade modifier. Had he given that questionnaire to the petitioner, it may have resulted in a higher impairment rating above the 1% rating he found. (Respondent's Exhibit #1; pages 57-59) Finally, Dr. Lee refused to consider a diagnosis of avulsion fracture of the calcaneus to determine an appropriate impairment rating in this case. This diagnosis was clearly identified in all of the diagnostic tests performed and was observed during the surgical procedure. Under the Lower Extremity Impairment Grid, page 503 of the 6th edition, a calcaneus fracture; Class 1, could have a finding of up to 13% loss of the lower

extremity if a correct impairment rating were performed.

(Respondent's Exhibit #1; pages 68-69) Given these reasons, the Arbitrator assigns little weight to this impairment rating.

With regard to (ii) of Section 8.1(b) of the Act;

The petitioner's occupation is police officer which requires him to perform strenuous activities on a daily basis such as standing and walking for extended periods, running after suspects to make arrests, climbing flights of stairs to respond to calls for service and to lift heavy weights such as individuals on stretchers when assisting paramedics on emergency calls. The petitioner also may be involved in situations wherein he has to react quickly to protect himself and the public. Therefore, petitioner's limitations resulting from his work injury will have a greater impact upon him and his ability to perform these activities than an individual in a more sedentary position.

With regard to (iii) of Section 8.1(b) of the Act;

The age of the petitioner at the time of his work injury was 41 years old. The Arbitrator considers the petitioner to be a younger individual with a significant work life expectancy ahead of him. Thus, the petitioner's permanent partial disability resulting from this work injury will have a greater impact upon him in the future than that of an older individual.

With regards to (iv) of Section 8.1(b) of the Act;

The petitioner's future earning capacity has been significantly affected by this work injury. The petitioner testified that prior to his

injury he worked 12 to 22 hours of overtime each two week pay period. These overtime hours came from making arrests late in his shift, attending court, working extra shifts when manpower shortages occurred and taking extra details that were offered through the police department when special events such as festivals were scheduled. He was paid \$57.00 per hour for each overtime hour worked. Since returning to work after his surgery, the petitioner stated he only works approximately 6 hours of overtime each pay period and this comes from attending court dates. He does not volunteer for extra shift work when there are manpower shortages and he does not sign up for extra details because of the continued symptoms he experiences in his right foot and ankle. This extra work causes him to experience increased pain, swelling and stiffness in his right foot and ankle. Based upon his hourly rate, the petitioner has suffered lost earnings in the range of \$600.00 to \$1,800.00 per month and he will continue to experience this diminution of earning capacity into the future. The Arbitrator notes that petitioner's testimony with respect to these lost earnings stands unrebutted.

With regards to (v) of Section 8.1(b) of the Act;

The petitioner has demonstrated evidence of his disability which is corroborated by the medical records. The records from Loyola University Medical Center emergency room, the chart notes from Dr. Lapinski and the surgical report from Good Samaritan Hospital all document the severe Achilles tendon rupture with an avulsion injury to the calcaneus in petitioner's right foot. The petitioner credibly testified that he has continued to experience on-going symptoms of

pain, stiffness and swelling that increase with activities such as standing, walking, climbing stairs and driving a vehicle. The petitioner's complaints with respect to his right foot and ankle are corroborated by the medical records from his treating orthopedic specialist; Dr. Lapinski. In the last office note of April 5, 2012, Dr. Lapinski recorded that the petitioner complained of soreness after chasing criminals while at work. The doctor also noted that the petitioner exhibited tenderness over the Achilles tendon on examination. (Petitioner's Exhibit #3) Additionally, the petitioner was evaluated by Dr. Simon Lee on August 8, 2012 at the request of his employer. At that evaluation he completed a "New Patient Information" questionnaire wherein he related to the doctor all of the continued symptoms he was experiencing with respect to his right foot and ankle. He noted that he continued to experience intermittent throbbing, swelling and stiffness in his right ankle which increased with various activities such as walking, running, standing and when using stairs. He also reported to Dr. Lee that he experiences fatigue at the end of the day and shifts his weight to the opposite foot to attempt to relieve the symptoms in his right ankle. Upon his examination of petitioner, Dr. Lee noted that there was mild atrophy and decreased definition of the right calf when compared to the left. He further noted that petitioner had a 5 degree loss of plantar flexion, had mild tenderness along the distal aspect of the Achilles tendon upon direct palpation and some mild thickening of the tendon at the surgical site. (Petitioner's Exhibit #6, Respondent's Exhibit #1)

The determination of an appropriate award of permanent partial disability under the Act utilizes all five factors as stated above and no single factor is the sole determinant in this analysis. Moreover, under Section 19(e) of the Act, prior Commission decisions may be used as precedent in determining awards for permanent partial disability.

Based upon the above, the Arbitrator finds that the petitioner has sustained a permanent partial loss of use of his right foot to the extent of 12.5% under Section 8(e) of the Act.