1 of 100 DOCUMENTS

TERRY WATKINS, PETITIONER, v. PINCKNEYVILLE CORRECTIONAL CENTER, RESPONDENT.

NO. 12WC 02866

ILLINOIS WORKERS' COMPENSATION COMMISSION

STATE OF ILLINOIS, COUNTY OF WILLIAMSON

13 IWCC 107; 2013 Ill. Wrk. Comp. LEXIS 68

January 31, 2013

JUDGES: Mario Basurto; David L. Gore; Michael P. Latz

OPINION: [*1]

DECISION AND OPINION ON REVIEW

Timely Petition for Reviews having been filed by the Respondent and Petitioner herein and notice given to all parties, the Commission, after considering the issues of the nature and extent of Petitioner's permanent partial disability and being advised of the facts and law, affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.

The Commission corrects a clerical error in the Order of the Arbitrator's decision, Respondent shall pay Petitioner permanent partial disability benefits of $ 695.78 for 10 weeks, because the injuries sustained caused Petitioner 2% loss of the person as a whole, as provided in Section 8(d)(2) of the Act.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed July 3, 2012 is hereby affirmed and adopted.

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

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

ATTACHMENT:

ARBITRATION DECISION

Terry Wadkins [*2]
Employee/Petitioner

v.

Pinckneyville Correctional Center
Employer/Respondent

Case # **12** WC **002866**

Consolidated cases: **N/A**

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 **Herrin**, on **June 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
F. [X] Is Petitioner's current condition of ill-being causally related to the injury?
J. [X] 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?
L. [X] What is the nature and extent of the injury?

FINDINGS

On **12/17/2011**, 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 [*3] 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 of his right shoulder ***is*** causally related to the accident. Petitioner's current condition of ill-being of his cervical spine ***is also*** causally related to the accident.

In the year preceding the injury, Petitioner earned $ **66,782.50**; the average weekly wage was $ **1,284.28**.

On the date of accident, Petitioner was **54** 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 $ **all** for TTD, $ for TPD, $ for maintenance, and $ for other benefits, for a total credit of $ **all**.

Respondent is entitled to a credit of all benefits paid under Section 8(j) of the Act.

ORDER

Respondent shall pay Petitioner permanent partial disability benefits of $ 695.78/week for 7.59 weeks, because the injuries sustained caused the 2% loss of the person as a whole, as [*4] provided in Section 8(d) (2) of the Act.

Petitioner's cervical spine aggravation is causally related to his accident.

Respondent shall pay reasonable and necessary medical services as outlined in Petitioner's Exhibit # 1, as provided in

Sections 8(a) and 8.2 of the Act. Respondent shall be given a credit for all medical benefits that have been paid, and Respondent shall hold petitioner harmless from any claims by any providers of the services for which Respondent is receiving this credit, as provided in Section 8(j) 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.

6/26/2012

Date

Section 8.1(b) of the Act states that five factors must [*5] be considered in determining the extent of permanent partial disability, for accidents occurring on or after September 1, 2011.

The factors include a permanent partial disability report prepared by a physician using the **AMA guides** rating the level of impairment, the occupation of the injured employee, his or her age on the date of accident, the employee's future earning capacity and evidence of disability corroborated by the medical records of the treating physicians. No single factor shall be the sole determinant of disability and the Arbitrator's decision should explain each factor and its weight.

Here there was no physicians report using the **AMA guides** offered into evidence. There were, however, treatment records from Dr Azam, showing treatment from December 16, 2011 through January 18, 2012 and Dr. Choi, with treatment January 17, 2012 through March 16, 2012. Relevant findings are contained in the March 16, 2012 examination notes of Dr. Choi, who had done his initial examination on January 17, 2012, included a normal range of motion of the right shoulder with no rotator cuff weakness, the latter being in improvement over the previous exam. He found tenderness over the right trapezius [*6] muscles and a moderately positive impingement sign with respect to the right shoulder. An MRI performed March 9, 2012, was interpreted by the radiologist as showing supraspinatus and infraspinatus tendinopathy and mild to moderate osteoarthritis of the right AC joint. With those findings and the Petitioner's subjective complaints of shoulder pain, Dr. Choi diagnosed rotator cuff tendinosis with underlying moderate AC joint osteoarthritis.

The Petitioner also sustained an injury to his cervical spine in the accident. Dr. Choi, in his initial office visit, said that the fall which the Petitioner experienced could have resulted in a cervical spine injury. He ordered an MRI to rule out any herniated discs as contributing to his complaints of numbness, which was certainly a reasonable treatment request. The MRI did not show any pathology which would correspond to the Petitioner's complaints, however, and the Petitioner's attorney stipulated at Arbitration that he was claiming disability only for the shoulder injuries sustained by the Petitioner.

On the date of accident, Petitioner was a 54-year-old correctional officer with a rank of Lieutenant. He testified that he had recently retired [*7] from his position. He was released to full duty by Dr. Choi as of March 16, 2012. He further testified that he had the various right shoulder symptoms including pain with a variety of home activities and that he took Tylenol for the pain along with performing exercises prescribed by his physician. He further testified that an injection performed by Dr. Choi on March 16 provided only temporary relief of his right shoulder symptoms. He had not returned for any medical treatment to any doctor since that date.

In looking at the factors set forth in the Act, the Arbitrator believes the positive findings reported by Dr. Choi, including the MRI findings, provide a basis for an award. The Petitioner's age and the fact that he is retired, along with

the fact that there are no work restrictions mitigate his degree of disability. With all of that said the Arbitrator awards permanent partial disability to the extent of 2% person as a whole. In awarding Section 8(d) (2) benefits for a shoulder injury, the Arbitrator adopts the reasoning of the Appellate Court in its recent decision in *Will County Forest Preserve v. IWCC, 2012 IL App (3d) 110077WC.*

Dated and Entered [*8] June 26, 2012

D. Douglas McCarthy, Arbitrator

Legal Topics:

For related research and practice materials, see the following legal topics:
Labor & Employment LawDisability & Unemployment InsuranceDisability BenefitsGeneral OverviewWorkers' Compensation & SSDICompensabilityCourse of EmploymentGeneral OverviewWorkers' Compensation & SSDICompensabilityInjuriesGeneral Overview

STATE OF ILLINOIS)
)SS.
COUNTY OF COOK)

☐ Injured Workers' Benefit Fund (§4(d))
☐ Rate Adjustment Fund (§8(g))
☐ Second Injury Fund (§8(e)18)
☒ None of the above

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
NATURE AND EXTENT ONLY

FREDERICK WILLIAMS
Employee/Petitioner

v.

FLEXIBLE STAFFING, Inc.
Employer/Respondent

Case # 11 WC 46390

Consolidated cases: N/A

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.

A. Thompson-Smith

Signature of Arbitrator

July 24, 2012

JUL 24 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 rail road 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 of 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 of 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 7, 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 5% 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.

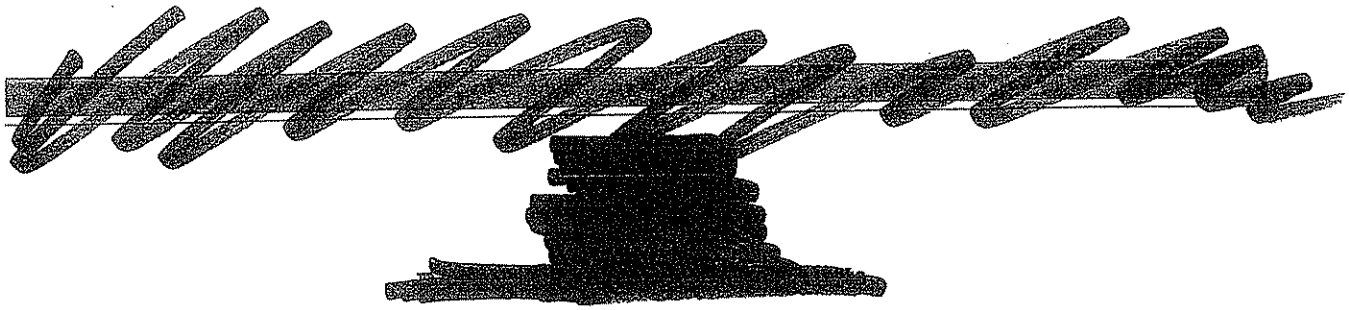
With regards to (iii) of Section 8.1(b) of the Act:
the age of the petitioner at the time of the injury was 44 years old. The Arbitrator considers the petitioner to be a somewhat younger individual and concludes that Petitioner's permanent partial disability will be more extensive than that of an older 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

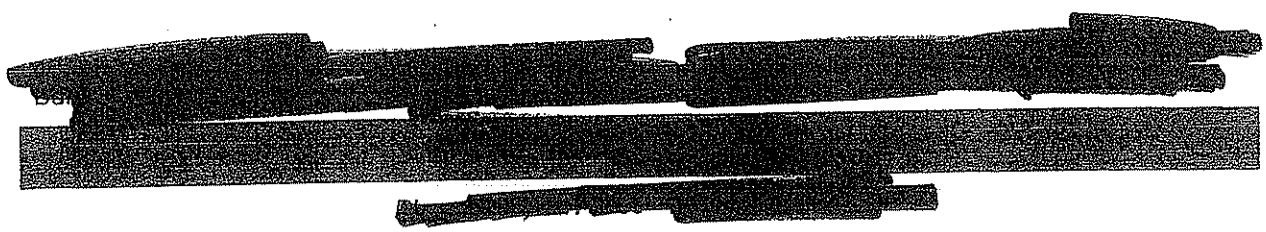
finds that the respondent shall pay the petitioner the sum of $391.75/week for a further period of 75.9 weeks, as provided in Section 8(e) of the Act



RE: [redacted]
DOB: [redacted]
Patient ID: [redacted]

I had the pleasure of seeing Mr. [redacted] in my [redacted] office on May 08, 2012, for the purpose of Independent Medical Exam. Mr. Williams did fill out a Quick DASH questionnaire and did confirm that he filled it out.

[redacted] is a 45-year-old, right-hand dominant [redacted] male who reports that he worked through the flexible staffing temporary agency since June 2011 at the [redacted] Company as a welder/fabricator. This company makes balers, shredders and other machinery. He relates that, initially, he went to [redacted], to apply for his full-time duties back in June 2011 and they had him work through this flexible staff agency. He was working full duty, when on October 07, 2011, there was a nine foot railroad track that was up on a horse. He states it weighed between 300-400 pounds. It slipped off the end of the horse and, as he was welding, he tried to catch it with his right hand. As he tried to catch the end of the track, he felt a snap in his upper arm area and let go and the track fell to the ground. He had immediate severe pain over his biceps area and reported the episode. He went to [redacted] who did x-rays, gave him a sling and diagnosed him with a distal biceps rupture. He



Respondent's Exhibit # 1

had several followups and no MRI was done because he has a [redacted] in place. He eventually was referred to an orthopedic surgeon, [redacted] and underwent surgery on November [redacted] at [redacted] Surgery Center for a distal biceps tendon repair. Postoperatively, he was placed in a posterior mold and a sling and then began physical therapy through Dr. [redacted] office, two times a week for two months. He states that he never totally got full extension of his elbow and has had problems with what he calls wrist mobility, but upon questioning him, it is actually pronation and supination of the forearm. He subsequently was last seen by Dr. [redacted] on March 08, 2012, where he was released and told he was at the best he was going to be and to go back to work full duty. He relates that when he tried to go back to full duty, he was fired. At this point in time, he would like to return back to a welding job and feels he can do it. He, though, does have some discomfort since the injury. Specifically, he gets pain when he tries to fully pronate and supinate the forearm and feels he does not have full extension of the elbow. He has had some numbness over the ulnar aspect of the right elbow, which is constant. He does note he is able to lift to at least 35 pounds in therapy. His pain that he gets around the elbow varies in intensity and occurs about 2-3 times a week and could be as much as a 5/10. Most of the time, there is no pain. He is having no pain directly over his hand, wrist or shoulder. The only problem that he has is when he describes pronation and supination.

He denies any previous right elbow injury or upper extremity injuries. He denies seeing doctors for right elbow or upper extremity problems in the past.

His current medications are occasional Norco on a p.r.n. basis approximately 2-3 times a week if he has elbow pain. He is also on [redacted] Allergies are none. Social history reveals he is married and has one child. Review of systems is positive for hypertension and a history of diabetes. There is no lung, liver, kidney or stomach disease. [redacted] He is a nonsmoker. [redacted] Family history reveals mother is alive and well. [redacted] He denies any previous work injuries.

Orthopedic physical exam demonstrates a cooperative, [redacted] male who weighs [redacted] pounds and is [redacted] tall. His cervical spine exam showed there is no cervical spasm or tenderness. He has full range of motion of his cervical spine with the ability to touch his chin to his chest and extend back fully. He has normal right and left lateral deviation with no pain. He is noted to have tattoos over his cervicothoracic area as well as over the scapula. He has tattoos over [redacted] He has no pain over the trapezius or medial borders of the scapula.

His shoulder exam shows no pain over the AC or SC joints. He has full range of motion of his shoulders with forward flexion to 170 degrees bilaterally. Abduction is to 170 degrees bilaterally. Internal rotation is to T12 bilaterally. External rotation is 90 degrees bilaterally.

Rotator cuff strength is 5/5 bilaterally. His elbow exam shows he does have a scar over the antebrachial cutaneous fossa on the right elbow measuring 3 cm. He also has a proximal radius scar of the forearm measuring 3 cm. His elbow range of motion shows, on the right side, he lacks 3 degrees of full extension. He can flex to 125 degrees. His pronation lacks 15 degrees of full pronation on the right and 15 degrees of full supination on the right. The left elbow has full extension and he flexes to 125 degrees. The left elbow has full pronation and full supination. His wrist exams show that he has flexion of the wrist that is 75 degrees on the right compared to 80 degrees on the left. Extension is 85 degrees on the right and 90 degrees on the left. He has radial deviation of 40 degrees bilaterally and ulnar deviation on the right is 30 degrees and the left is 45 degrees. He has normal motion of all the digits of his hands bilaterally. His mid-arm circumference measures 34.5 cm bilaterally. His mid-forearm circumference measures 26 cm on the right compared to 26.5 on the left. Wrist circumference is symmetrical at 17 cm. His motor strength shows he has 5/5 motor strength to all groups of the upper extremities to individualized testing, including the biceps with normal biceps reflex bilaterally.

Pinprick sensation, he reports, is decreased over the ulnar aspect of the right elbow, but otherwise normal on the right upper extremity.

X-rays of the right elbow, AP, lateral and oblique views, show the postoperative changes consistent with a fixation of the distal biceps tendon into the proximal radius. The elbow joint is otherwise normal.

I have subsequently reviewed medical records that have been supplied to us, which include records from [redacted] Program at [redacted] with a visit from [redacted] The diagnosis was a right elbow strain.

There is a followup on [redacted]. Again, diagnosis was a right elbow strain.

There is a consultation on October 12, 2011, by [redacted] where the patient was diagnosed with a right elbow distal biceps tendon rupture.

There is a record from [redacted] on October 26, 2011.

There is an operative report on November 17, 2011, where he underwent a right elbow distal biceps tendon repair by [redacted]

There are then [redacted] therapy records from January and February 2012. There is a followup by [redacted] on February 08, 2012, with additional therapy records after that followup.

There is then a followup by [redacted] on March 08, 2012. He was returned to full duty work as of March 08, 2012. No additional medical records are available for our review.

Based upon this patient's history, physical exam, radiographic studies and medical records, Mr. [redacted] did sustain a right distal biceps tendon rupture from his work injury in [redacted] He has had appropriate surgical and postoperative treatment. At this point in time, he has obtained maximum medical improvement. Functionally, from his clinical exam and from the records, he would appear to be capable of returning back to work as a welder, full duty.

At this point, I have reviewed your fax correspondence dated May 03, 2012. To specifically answer the questions:

This patient's diagnosis was status post right distal biceps tendon rupture and had appropriate surgical intervention. The patient has reached maximum medical improvement and, per your request, an AMA rating will be given below. The patient has no history of any comorbid condition.

As per request for an AMA rating, using the AMA Guides to Evaluation of Permanent Impairment, 6th edition, this gentleman's class of impairment, based on diagnosis (CDX), would be that of a distal biceps tendon rupture, which according to table 15-4, would place this patient at a CDX class 1. Using the adjustment grid, the grade modification for functional history (GMFH), based on the Quick DASH, would give him a Quick DASH score of 23, where based on table 15-7, would give a grade modifier of 1 (GMFH=1). The grade modifier for physical exam (GMPE), based on table 15-8, would be a grade modifier 2, based on range of motion of his pronation/supination of the forearm. In regards to the grade modification for clinical studies (GMCS), this is not applicable since the patient's diagnosis was biceps tendon rupture.

Therefore, the calculation for net adjustment, based on grade modification, would show that the patient's CDX=1, GMFH=1, GMPE=2. The (GMFH-CDX) would equal 1-1=0. (GMPE-CDX) would equal 2-1=1. The (GMCS-CDX) is not applicable. Therefore, adding up the three net adjustments would be 0+1+ not applicable would give a net adjustment of 1. Therefore, this patient's final AMA rating, based on table 15-4, would place him in a class 1 grade D, which would be equal to a 6% upper extremity impairment.

Therefore, using table 15-11, a 6% upper extremity impairment would place this gentleman in an AMA disability rating of 4% of a whole person.

[redacted]

This completes the report on Mr. [redacted] and I am a Certified Evaluator for Disability and Impairment Rating (CEDIR).

If you have any questions regarding Mr. [redacted], please feel free to contact my office.

Sincerely yours,

[redacted]

TABLE 15-4 Elbow Regional Grid: Upper Extremity Impairments

IMPAIRMENT CLASS	CLASS 0	CLASS 1	CLASS 2	CLASS 3	CLASS 4
IMPAIRMENT RANGES (upper extremity %)	0	1%–13% UE	14%–25% UE	26%–49% UE	50%–100% UE
GRADE		A B C D E	A B C D E	A B C D E	A B C D E
MUSCLE/TENDON*					
Epicondylitis: Lateral or medial*	0 No significant objective abnormal findings at MMI	0 1 1 2 2 History of painful injury, residual symptoms without consistent objective findings (this impairment can only be given once in an individual's lifetime) 3 4 5 6 7 s/p surgical release of flexor or extensor origins with residual symptoms			
Distal biceps tendon rupture*	0 No residual findings: +/− surgical treatment	3 4 5 6 7 Residual loss of strength, functional with normal motion			
LIGAMENT/BONE/JOINT*					
Collateral ligament injury: medial, ulnar or lateral*	0 No residual findings: +/− surgical treatment	3 4 5 6 7 Recurrent instability: occasional 8 9 10 11 12 Recurrent instability: frequent; resulting in functional limitation			
Persistent elbow subluxation or dislocation*	0 No residual findings: +/− surgical treatment	8 9 10 11 12 Mild: can be completely reduced manually	16 18 20 22 24 Moderate: cannot be completely reduced manually	34 37 40 43 46 Severe: cannot be reduced	
Fracture*	0 No residual findings: +/− surgical treatment	1 2 3 4 5 Residual symptoms, consistent objective findings and/or functional loss, with normal motion			
Loose bodies or osteochondral lesions*	0 No residual findings: +/− surgical treatment	3 4 5 6 7 Residual loss, functional with normal motion			

(continued)

Note: UE indicates upper extremity; MMI, Maximum Medical Improvement.
* If motion loss is present, this impairment may alternatively be assessed using Section 15.7, Range of Motion Impairment. A range of motion impairment stands alone and is not combined with diagnosis impairment.

STATE OF ILLINOIS)
)SS.
COUNTY OF COOK)

☐ Injured Workers' Benefit Fund (§4(d))
☐ Rate Adjustment Fund (§8(g))
☐ Second Injury Fund (§8(e)18)
☒ None of the above

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

Zachary Johnson
Employee/Petitioner

v.

Central Transport
Employer/Respondent

Case # 11 WC 041328

Consolidated cases: n/a

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.

L. Thompson-Smith

Signature of Arbitrator

July 24, 2012

JUL 24 2012

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 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

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.

April 9, 2012

ATTORNEYS AT LAW

CHICAGO

RE:

DOI:
DOE:
IWCC #:

Dear

On April 6, 2012 I evaluated Mr. for an Independent Medical Evaluation. Mr. Johnson is a 28-year-old male who reports an injury to his right hand in October, 2011. He describes the rear door of a trailer falling onto his right hand. was subsequently evaluated and found to have a fracture of the hand. He was treated conservatively with a splint. He continues to note some degree of residual symptoms.

tates at times there is numbness in his right palm. At times, there is soreness in the dorsal ulnar aspect of his hand.

PHYSICAL EXAMINATION: There are congenital deformities related to both ring fingers, more prominent on the right than the left. There are surgical scars on the volar aspect of the right ring finger. Range of motion of the right small finger is normal. MP range of motion is approximately 0/90, PIP is 0/110 and DIP is 0/60. There is a decreased prominence of the small finger metacarpal head dorsally. There is no significant A1 pulley tenderness. Light touch of the fingers is normal.

X-RAY EXAMINATION: X-rays of the right hand are obtained. These demonstrate a healed right small finger metacarpal neck fracture. There is apex dorsal angulation of approximately 35 degrees.

DIAGNOSIS AND IMPRESSION: Status post right small finger metacarpal neck fracture with angulation.

EXHIBIT
Rx #1

COMMENTS AND RECOMMENDATIONS: Mr. presents with residual complaints and findings after his reported injury. In addition to his history provided today, he also filled out a Quick Dash evaluation. This was information utilized in determining his impairment rating. Mr was rated utilizing sixth edition AMA guidelines. Enclosed please see documentation of his rating.

If you have any further questions regarding Mr. , please feel free to contact me.

Sincerely,

Impairment Rating:

Patient:

Date of Evaluation : 4/6/2012

Diagnosis: Healed Right Small Finger Metacarpal Fracture

Diagnosis Class = Class 1: Metacarpal fracture with consistent objective findings. Digit Regional Grid (Table 15-2 P.391 "Guides to the Evaluation of Permanent Impairment" 6th ed.)

Grade Modifier Functional History (GMFH):

QuickDASH score = 50

Grade Modifier = 2 (Table 15-7 P.406)

Grade Modifier Physical Examination (GMPE):

Moderate alignment deformity present - 35 degree apex dorsal angulation.

Grade modifier = 2 (Table 15-9 p.408)

Clinical Studies Adjustment (CDX):

No evidence of arthritis present on x-ray

Grade modifier = 0 (P 40 table 15-9)

Summary

Class of Diagnosis = CDX = 1

Grade Modifier of functional history = GMFH = 2

Grade Modifier of Physical Exam = GMPE = 2

Grade Modifier Clinical Studies = GMCS = 0

Net adjustment Formula= (GMFE – CDX) + (GMPE – CDX) + (GMCS –CDX)

Net adjustment = (2-1) + (2-1) + (0-1) = 1

Impairment Rating Grade Assignment = D = 7% of Index Finger = 1% of hand = 1% Upper Extremity = 0% whole person (Table 15-12 page 421)

TABLE 15-2 Digit Regional Grid: Digit Impairments

IMPAIRMENT CLASS	CLASS 0	CLASS 1	CLASS 2	CLASS 3	CLASS 4
IMPAIRMENT RANGES (digit)	0	1%–13% Digit	14%–25% Digit	26%–49% Digit	50%–100% Digit
GRADE		A B C D E	A B C D E	A B C D E	A B C D E
*Joint dislocation or sprain**					
Thumb CMC*	0 No residual findings		14 14 15 16 17 <10° Instability 21 23 25 25 25 10°–20° Instability	29 32 35 38 41 >20° Instability	
Finger DIP*	0 No residual findings	3 4 5 6 7 <10° Instability 8 9 10 11 12 10°–20° Instability	14 14 15 16 17 >20° Instability		
Finger PIP*	0 No residual findings	8 9 10 11 12 <10° Instability	14 14 15 16 17 10°–20° Instability 21 23 25 25 25 >20° Instability		
Finger MCP*	0 No residual findings		14 14 15 16 17 <10° Instability 16 18 20 22 24 10°–20° Instability 21 23 25 25 25 >20° Instability		
*Fractures**					
Thumb metacarpal, intra-articular*	0 No residual findings	8 9 10 11 12 Residual symptoms, consistent objective findings and/or functional loss, with normal motion			
Distal phalanx*	0 No residual findings	2 3 4 5 6 Residual symptoms, consistent objective findings and/or functional loss, with normal motion			
Proximal phalanx, middle phalanx, metacarpal*	0 No residual findings	4 5 6 7 8 Residual symptoms, consistent objective findings and/or functional loss, with normal motion			
Metacarpal head*	0 No residual findings	6 7 8 9 10 Residual symptoms, consistent objective findings and/or functional loss, with normal motion			

(continued)

Note: indicates Maximum Medical Improvement; IP, interphalangeal; MCP, metacarpophalangeal; CMC, carpometacarpal; DIP, distal interphalangeal; PIP, proximal interphalangeal

* If motion loss is present, this impairment may alternatively be assessed using Section 15.7, Range of Motion Impairment. A range of motion impairment stands alone and is not combined with diagnosis impairment.

STATE OF ILLINOIS)
)SS.
COUNTY OF ADAMS)

☐ Injured Workers' Benefit Fund (§4(d))
☐ Rate Adjustment Fund (§8(g))
☐ Second Injury Fund (§8(e)18)
☒ None of the above

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

Jeffrey N. Garwood
Employee/Petitioner

v.

Lake Land College
Employer/Respondent

Case # 12 WC 4194

Consolidated cases: N/A

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 Lindsay
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, the 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.

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Diplomate: American Board of Orthopaedic Surgery

August

Ms.

RE:
Employer:
Claim #:
Date/Loss:

Dear Ms.

Pursuant to your request, Mr. was seen for an Independent medical examination on Friday, August 3, 2012. in Bloomington, Illinois. The IME process was explained to Mr. and he understood that no patient/treating physician relationship would proceed from this evaluation. Furthermore, Mr. was aware that my report will be sent directly to the requesting agency. Mr. identity was confirmed with a photo ID, specifically, his Illinois driver's license.

REVIEW OF RECORDS: Prior to being seen today for evaluation, I was in receipt of medical records for review as follows:

1. Illinois Form 45: Employer's First Report of Injury.
2. Records of , M.D., Mr. primary care physician, with initial visit of September 13, 2011.
3. Report of a chest x-ray done on September 23, 2011 authored by at
4. Records of care provided by , M.D. at Hospital, with initial visit of October 3, 2011.
5. Report of an MRI of the left knee performed at on October 10, 2011, prepared by
6. Records of physical therapy provided by and P.T., with initial evaluation of October 21, 2011.
7. Report of an operation performed on December 2, 2011 by Dr. at Iospital.

An Illinois Form 45: Employer's First Report of Injury indicates that Mr. fell on his left knee, left wrist, left elbow and left side of rib cage while walking out

EXHIBIT
FOR I.D.

of a parking lot to go home from work. He stated that he stepped on something and fell on his left knee and then down onto the left wrist, elbow and left side.

On September 13, 2011, the next day, Mr. was seen by his primary care physician, M.D., with a chief complaint of pain in the left leg, left rib area and left elbow. He reported that he had an accidental fall on prison property. He stated that he was distracted and his foot slipped on a curb. He was not sure how he landed on the left knee but it was painful and tender. He reported that he had left knee scoping previously, but no problems to date. He noted that he was walking stiff-legged and feeling like the left knee might give way. He was also concerned about his left elbow where he had previous surgery. The past history indicates previous surgery on the left knee in 1978. He also had surgery on the shoulder in June of 1997. He had amputation of the middle fingertip of the left hand in 1990.

X-ray of the chest and ribs performed on was reported by M.D., to be a limited exam with no acute findings.

On September 23, 2011, Mr. was seen in follow-up by Dr. He stated at that time his left elbow was not an issue, but he wanted to see Dr. in Illinois for his left knee.

On October 3, 2011, Mr. was seen by Dr. , complaining of an acute onset of pain in his left knee of three weeks' duration. The physical exam revealed full extension with 130 degrees of flexion. The knee was stable. There was some tenderness across the pes anserine bursa area. X-rays were reviewed and showed no fracture. It was Dr. impression that there was a pes anserine bursitis. He recommended conservative treatment.

On October 10, 2011 Mr. had an MRI of the left knee performed at in , Illinois. The report of , M.D., is available for my review. The history indicated a fall one month previously with persistent left knee pain. The findings indicated there was mild chondromalacia of the patellofemoral compartment and mild thinning of the articular cartilage of the medial and lateral tibiofemoral compartments. The 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. impression there was mild chondromalacia and arthritis involving the patellofemoral compartment and a complete tear of the posterior horn of the lateral meniscus.

Mr. was seen in follow-up that same day, October 10, 2011, by Dr. , who reviewed the findings of the MRI scan and recommended therapy for strengthening of the leg and consideration of surgery if he did not improve with conservative care.

Mr. was seen for physical therapy by on October 2011. He was complaining of left knee pain.

On October 31, 2011, Mr. was seen in follow-up by Dr. with evidence of diffuse tenderness on examination with positive McMurray's test, tenderness in both joint lines, but more laterally than medially. Dr. recommended proceeding with left knee arthroscopic surgery.

He was seen preoperatively for medical evaluation on November 11, 2011 by his primary care physician, Dr. , who noted a past history of Medications indicated were aspirin, in,

On December 2, 201 Mr underwent left knee arthroscopic surgery at Illinois performed by Dr. under general anesthesia. The postoperative diagnosis was tear of the medial and lateral meniscus of the left knee, chondromalacia of the patella of the left knee, chondromalacia of the medial femoral condyle and medial and lateral tibial plateaus of the left knee, synovitis - tricompartmental left knee.

At the time of arthroscopy, Dr. noted there was class II chondromalacia of the medial femoral condyle. Also noted was a tear of the medial meniscus posteriorly that was debrided and recontoured. The anterior cruciate ligament was found to be intact. There was a thickened synovial plica in the suprapatellar area which extended across the entire medial femoral condyle. Beneath it was grade II chondromalacia and similar findings were also noted in the medial tibial plateau. The chondroplasty was performed with motorized equipment with good result. The lateral compartment noted that there was class I chondromalacia. There was a tear of the lateral meniscus extending from the posterior corner to the posterior horn. This was debrided with hand-held equipment. Also, a partial synovial plica was excised.

Postoperatively, Mr. was again seen for physical therapy by Mr. on December .

He was seen in follow-up by Dr n February 6, 2012, who advised him he could return to work at regular duty.

He was last seen by Dr. on May 7, 2012 and he was released from his care and advised to continue his regular duty work status.

HISTORY: When seen today for evaluation, a history was obtained from Mr. It should be noted that during the course of my evaluation Mr. wife was also present.

This is a 53-year-old right-handed male who has worked as an instructor at the prison in Mt. Sterling, Illinois for the past couple of years. Mr. Garwood states that since 2006 he has worked for in vocational education. Until 2010, he was teaching a course involving computers. This was apparently discontinued and since that time he has been instructing in construction at the prison. Prior to that, he worked as a dispatcher for the City He worked off and on for about a year while he was going through cancer of the kidney.

While leaving work at the prison in on September 12, 2011, he was walking to his car and he fell and went straight down, landing on his left knee and rolling onto his left side and onto his left wrist, elbow, and ribs. He went home that day and the next day he came into work and waited. He wanted to call his family doctor who was not going to be in the office until 8:30 that morning. He did call. He also reported the injury. This had been witnessed by at least one other person.

The next day, September 13, 2011, he was seen by his primary physician, Dr. who did some x-rays and advised him nothing was broken. She subsequently referred him to Dr , an orthopedic surgeon, who had done previous surgery on his In 2011. Mr. was not quite sure what surgery was performed. He was seen by Dr. who recommended an MRI of the knee. He also recommended a course of conservative care with physical therapy three times a week for three weeks, which was done at the

Because of persistent symptoms and the finding on the MRI that noted evidence of a tear of the lateral meniscus, Dr. recommended surgical intervention. This was done on December 2, 2011. Mr. states that he was off work for about a month and went back to work on January 3, 2012. He states following the surgery he was on crutches for about three weeks and then a cane. Prior to the surgery, he was having pain all over the knee and episodes of giving away but no locking. Following the surgery and subsequent rehabilitation, he went back to work and was last seen by Dr. n May of 2012, at which time he was released for his left knee.

Mr. states he likes to walk for exercise. He tries to do this for about half an hour 2-3 times a week He takes Aleve two tablets at a time for relief of arthritic pain in his knee. He does this maybe three times a week.

PRESENT COMPLAINTS: At the time of my evaluation, Mr. did present me with a typed list of the problems he is having with the left knee. He states he has pain from six inches above the knee. He states that from six inches above the knee to six inches below the knee, it does not feel like it did before the fall. There is some mild to moderate pain most of the time which he grades at a level of 1-2/10, getting as bad as 5/10. He says the knee stiffens up

if he sits for more than 20 minutes at a time with the knee bent and then he gets stiff. He feels weak when he is arising from a sitting position or turning to his left. He occasionally loses balance while walking down a hallway. The pain is worsened and stiffness occurs while driving a car. Also, walking in stores or on any concrete surface for any long period will irritate soreness. Elevating the leg during the day helps decrease the pain and stiffness. He states that the knee still hurts even when lying in bed at the end of the day.

PAST HISTORY: Mr. oes have a history of and and . He is taking medications as noted above in the review of medical records. He has had previous surgery. In 1965, he had a He had surgery by in for his He had and had He had a and had surgery on the right knee by 2004 and surgery on the left knee by Dr. He also had surgery on the by Dr.

REVIEW OF SYSTEMS: Unremarkable.

FAMILY HISTORY: Noncontributory.

SOCIAL HISTORY: Mr. married with children. He exercises rarely and when he does it is walking. He denies any history of substance abuse. He does not smoke. He does not drink alcohol.

PHYSICAL EXAMINATION: Mr. tall and weighs pounds. He is alert and oriented times three and in no acute distress. He walks with a slight left antalgic gait.

When examined supine and standing, there are 7 degrees of valgus in both knees. Examination of the left knee revealed 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. Circumferential measurement of the thighs 10 cm above the superior pole of the patellae was 52 cm on the left and 52.5 cm on the right. Circumferential measurement of the calves was 44 cm on the left and 43.2 cm on the right. There was no effusion. The left knee was stable to varus and valgus stress and anterior and posterior drawer sign. Lachman's test was negative. Pivot-shift test was negative. There was mild discomfort with McMurray testing.

The deep tendon reflexes were 2+ and equal bilaterally at the knees and ankles. Motor function was graded 5/5 in all muscles tested in both lower extremities. Sensation was grossly normal in both lower extremities. There was no calf tenderness. Homan's sign was negative. There was good dorsalis pedis pulse. Mr. able to walk on his toes and heels.

DIAGNOSTIC DATA: When seen today for evaluation, Mr. provided me with x-rays of the left knee and left elbow done on September 13, 2011, and MRI of the left knee done on October 10, 2011.

Available for review were three views of the left knee performed on September 13, 2011. There is no evidence of any fracture or dislocation and the joint spaces are well maintained. There are no other osseous or articular abnormalities. No subchondral sclerosis or osteophyte formation is noted. On the lateral view, there is a minimal osteophyte formation with mild subchondral sclerosis on the patella with the joint space appearing normal.

An MRI of the left knee was available for review. It shows no evidence of fracture or dislocation. The lateral and cruciate ligaments are intact. There are some mild chondromalacia and degenerative changes in the patellofemoral joint and evidence of tear of the lateral meniscus extending from the posterior horn anteriorly toward the middle third. The left medial meniscus shows signs of degeneration without definite tear.

IMPRESSION:

1. Tear of the medial and lateral meniscus, left knee.
2. Chondromalacia of the patellofemoral joint, left knee.

DISCUSSION: Pursuant to your request, the following issues will be addressed:

1. *If MMI (maximum medical improvement) has been reached, please offer an impairment rating according to the* AMA Guides to the Evaluation of Permanent Impairment, 6th Edition. *Please follow the requirements for clinical evaluation, analysis, findings, and discussion of how the impairment rating was calculated as listed on page 28 of the Guides. Do not provide a rating if MMI has not been reached.*

It is my opinion to a reasonable degree of medical certainty that Mr. has reached maximum medical improvement as a result of the incident of September 12, 2011 and, therefore, is appropriate for consideration for evaluation of permanent impairment.

It is my opinion to reasonable medical certainty that Mr. had a tear of the medial and lateral meniscus as a result of the work-related fall of September 12, 2011. At the time of arthroscopic surgery, there was noted to be a tear of both the medial and lateral meniscus. Furthermore, there was evidence of synovial plica with associated chondromalacia of the patellofemoral joint. The synovial plica and associated chondromalacia pre-existed the incident of September 12, 2011 and are unrelated to the incident of September 12, 2011.

Referring to page 509 in the *AMA Guides to the Evaluation of Permanent Impairment, Sixth Edition*, reference is made to Table 16-3, the knee regional grid, lower extremity impairment. Under diagnostic criteria (key factor) at the bottom of the page, under ligament/bone/joint, is meniscal injury. Reference is made to Class I under partial medial and lateral meniscectomy. The default grade would be Grade C, indicating a 10% impairment of the lower extremity.

Now turning to page 516 for functional history adjustment – lower extremities, Table 16-6. Mr. Garwood has a mild antalgic limp. The history indicated he required the use of crutches and a cane for the first four weeks following surgery, but no longer uses an assistive device. Therefore, the functional history would indicate a mild problem with a Grade modifier 1.

Shifting attention to Table 16-7, physical examination adjustment - lower extremities, on page 517, the physical exam indicated that there was evidence of .5 cm atrophy of the left thigh compared to the normal right thigh. This is consistent with grade modifier 0 under muscle atrophy of less than one centimeter. Range of motion was normal with full extension with 135 degrees of flexion, equal to the normal right knee. Furthermore, the knee was stable and had normal alignment with a valgus angle of 7 degrees equal to the normal right knee. There was no swelling or effusion. This is consistent with a Grade modifier 0 on the physical examination adjustment grid.

Now referring to page 519, Table 16-8, the clinical studies adjustment - lower extremities, the *AMA Guides to the Evaluation of Permanent Impairment, Sixth Edition*, suggests that the clinical studies adjustment is not appropriate if, in fact, the clinical diagnosis used for an impairment rating was made by the diagnostic study. In this case, the MRI of the left knee showed evidence of a tear of the lateral meniscus and, therefore, no adjustment was appropriate for clinical studies.

The net adjustment formula to determine the final physical impairment is as follows: Grade modifier for functional history is determined to be grade modifier 1 minus a class of diagnosis which was 1. 1-1 is 0. Added to this is the grade modifier for physical exam minus the class of diagnosis. As noted above, the grade modifier for physical exam is 0. 0-1 is -1. Also as noted above, because the diagnostic clinical studies, specifically the MRI of the left knee, were used to make the diagnosis, a modifier for clinical studies is not indicated. The net adjustment would be 0-1 equaling -1. The net adjustment from a default position of grade C is -1, leading to grade B. Again referring to Table 16-3, page 509, grade B would indicate an 8% physical impairment of the lower extremity. This converts to 3% whole person impairment.

It is my opinion to reasonable medical certainty as a result of the September 12, 2011 work-related injury Mr. [redacted] has 3% whole person impairment. As

noted above, this is based on the *AMA Guides to the Evaluation of Permanent Impairment, Sixth Edition.*

Please note that the opinions rendered in this case are mine. This evaluation was conducted on the basis of the representation of Mr. and medical examination with the assumption that Mr. representations are true and correct. If more information becomes available at a later date, an additional reconsideration may be requested. Such information may or may not change the opinions rendered in this evaluation.

Further, the opinions in this report are based upon a reasonable medical probability. Medicine is both an art and a science and although a claimant may appear to be fit for return to duty, there is no guarantee the claimant will not be re-injured or suffer additional injury once he returns. This opinion does not constitute per se a recommendation for specific claims or administrative functions to be made or enforced.

I declare that the information contained within this document was prepared by and is the work product of the undersigned, and is true to the best of my knowledge and information.

Sincerely,

M.D.
Orthopedic Surgeon
IL License

PAIN DISABILITY QUESTIONNAIRE

Patient Name _____ Date _____

Instructions: These questions ask your views about how your pain now affects how you function in everyday activities. Please answer every question and mark the ONE number on EACH scale that best describes how you feel.

1. Does your pain interfere with your normal work inside and outside the home?
Work normally
0 ..... 1 ..... 2 ..... 3 ..... 4 ..... 5 ..... 6 ..... 7 ..... 8 ..... 9 ..... Unable to work at all

2. Does your pain interfere with personal care (such as washing, dressing, etc.)?
Take care of myself completely
0 ..... 1 ..... 2 ..... 3 ..... 4 ..... 5 ..... 6 ..... 7 ..... 8 ..... 9 ..... Need help with all my personal care

3. Does your pain interfere with your travelling?
Travel anywhere I like
0 ..... 1 ..... 2 ..... 3 ..... 4 ..... 5 ..... 6 ..... 7 ..... 8 ..... 9 ..... Only travel to see doctors

4. Does your pain affect your ability to sit or stand?
No problems
0 ..... 1 ..... 2 ..... 3 ..... 4 ..... 5 ..... 6 ..... 7 ..... 8 ..... 9 ..... Can not sit/stand at all

5. Does your pain affect your ability to lift overhead, grasp objects, or reach for things?
No problems
0 ..... 1 ..... 2 ..... 3 ..... 4 ..... 5 ..... 6 ..... 7 ..... 8 ..... 9 ..... Can not do at all

6. Does your pain affect your ability to lift objects off the floor, bend, stoop, or squat?
No problems
0 ..... 1 ..... 2 ..... 3 ..... 4 ..... 5 ..... 6 ..... 7 ..... 8 ..... 9 ..... Can not do at all

7. Does your pain affect your ability to walk or run?
No problems
0 ..... 1 ..... 2 ..... 3 ..... 4 ..... 5 ..... 6 ..... 7 ..... 8 ..... 9 ..... Can not walk/run at all

8. Has your income declined since your pain began?
No decline
0 ..... 1 ..... 2 ..... 3 ..... 4 ..... 5 ..... 6 ..... 7 ..... 8 ..... 9 ..... Lost all income

9. Do you have to take pain medication every day to control your pain?
No medication needed
0 ..... 1 ..... 2 ..... 3 ..... 4 ..... 5 ..... 6 ..... 7 ..... 8 ..... 9 ..... On pain medication throughout the day

10. Does your pain force you to see doctors much more often than before your pain began?
Never see doctors
0 ..... 1 ..... 2 ..... 3 ..... 4 ..... 5 ..... 6 ..... 7 ..... 8 ..... 9 ..... See doctors weekly

11. Does your pain interfere with your ability to see the people who are important to you as much as you would like?
No problem
0 ..... 1 ..... 2 ..... 3 ..... 4 ..... 5 ..... 6 ..... 7 ..... 8 ..... 9 ..... Never see them

12. Does your pain interfere with recreational activities and hobbies that are important to you?
No interference
0 ..... 1 ..... 2 ..... 3 ..... 4 ..... 5 ..... 6 ..... 7 ..... 8 ..... 9 ..... Total interference

13. Do you need the help of your family and friends to complete everyday tasks (including both work outside the home and housework) because of your pain?
Never need help
0 ..... 1 ..... 2 ..... 3 ..... 4 ..... 5 ..... 6 ..... 7 ..... 8 ..... 9 ..... Need help all the time

14. Do you now feel more depressed, tense, or anxious than before your pain began?
No depression/tension
0 ..... 1 ..... 2 ..... 3 ..... 4 ..... 5 ..... 6 ..... 7 ..... 8 ..... 9 ..... Severe depression/tension

15. Are there emotional problems caused by your pain that interfere with your family, social and or work activities?
No problems
0 ..... 1 ..... 2 ..... 3 ..... 4 ..... 5 ..... 6 ..... 7 ..... 8 ..... 9 ..... Severe problems

_____ Examiner

OTHER COMMENTS:

With Permission from: Anagnostis C et al: The Pain Disability Questionnaire: A New Psychometrically Sound Measure for Chronic Musculoskeletal Disorders. *Spine* 2004; 29 (20): 2290-2302.

TABLE 16-3 Knee Regional Grid – Lower Extremity Impairments

Knee Regional Grid (LEI)

DIAGNOSTIC CRITERIA (KEY FACTOR)	CLASS 0	CLASS 1	CLASS 2	CLASS 3	CLASS 4
CLASS DEFINITIONS	No problem	Mild problem	Moderate problem	Severe problem	Very severe problem
IMPAIRMENT RANGES	0% LE	1%–13% LE	14%–25% LE	26%–49% LE	50%–100% LE
GRADE		A B C D E	A B C D E	A B C D E	A B C D E
SOFT TISSUE					
Bursitis, plica, h/o contusion, or other soft tissue lesion	0 No significant objective abnormal findings on examination or radiographic studies at MMI	0 1 1 2 2 Significant consistent palpatory findings and/or radiographic findings 1 2 2 2 3 Consistent motion deficits			
MUSCLE / TENDON		**Do not use with PE range of motion**			
Strain; tendonitis; or ruptured tendon	0 No significant objective abnormal findings of muscle or tendon injury at MMI	1 2 2 2 3 Palpatory findings and/or radiographic findings 5 6 7 8 9 Mild motion deficits 7 8 10 12 13 Moderate motion deficits and/or significant weakness			
Myositis ossificans (hypertrophic ossification)		0 1 1 2 2 Small 3 4 5 6 7 Large, palpable mass with decreased knee motion			
LIGAMENT / BONE / JOINT		**Do not use with PE stability**	**Do not use with PE stability**		
Meniscal injury		1 2 2 2 3 Partial (medial or lateral) meniscectomy, meniscal tear, or meniscal repair 5 6 7. 8 9 Total meniscectomy (medial or lateral) or meniscal transplant (allograft) 7 8 10 12 13 Partial (medial and lateral)	19 20 22 24 25 Total (medial and lateral)		

(continued)

STATE OF ILLINOIS)
)SS.
COUNTY OF JEFFERSON)

☐ Injured Workers' Benefit Fund (§4(d))
☐ Rate Adjustment Fund (§8(g))
☐ Second Injury Fund (§8(e)18)
☒ None of the above

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
NATURE AND EXTENT ONLY

SHAWN M. DORRIS
Employee/Petitioner

v.

CONTINENTAL TIRE
Employer/Respondent

Case # 11 WC 46624

Consolidated cases: _____

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.

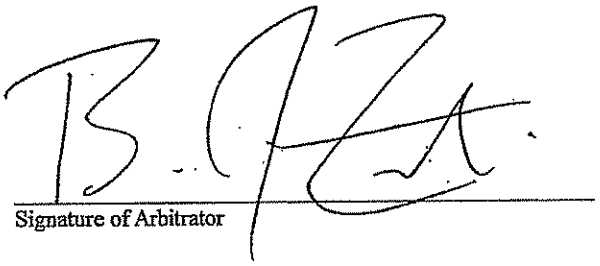
ORDER

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

v. Case # 11 WC 46624

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.

August

RE:
EMP:
D/I:
SS#:
CLAIM #: N/A

Dear Mr.

You have requested a disability rating on Mr. under the AMA Guidelines Sixth Edition.

As you know, I last saw Mr. on 5-7-12. He was status post a left wrist arthroscopy and repair of a peripheral TFCC tear. At that point he was doing very well. He estimated he was "80% better". On examination he had excellent range of motion and good strength. It was my assessment he had done very well and I had no further recommendations.

According to the Sixth Edition AMA Guidelines, table 15-3, table 15-6, table 15-7 and table 15-9, Mr. 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").

If you have any questions or require any additional information, please do not hesitate to contact me.

Sincerely,

Enclosure

TABLE 15-3 (CONTINUED) Wrist Regional Grid: Upper Extremity Impairments

IMPAIRMENT CLASS	CLASS 0	CLASS 1	CLASS 2	CLASS 3	CLASS 4
IMPAIRMENT RANGES (upper extremity %)	0	1%–13% UE	14%–25% UE	26%–49% UE	50%–100% UE
GRADE		A B C D E	A B C D E	A B C D E	A B C D E
LIGAMENT/BONE/JOINT*					
Wrist sprain/h/o dislocation* including carpal instability	0 No residual findings: +/– surgical treatment	6 7 8 9 10 Mild instability (grade modifier 1 per radiographic studies and criteria in Table 15-9) *(clinical studies excluded from adjustment process)*	14 15 16 17 18 Moderate instability (grade modifier 2 per radiographic studies and criteria in Table 15-9) 20 22 24 25 25 Severe instability (grade modifier 3 per radiographic studies and criteria in Table 15-9) *(clinical studies excluded from adjustment process)*		
Triangular fibrocartilage complex (TFCC) tear*	0 No residual findings: +/– surgical treatment	6 7 8 9 10 Documented TFCC injury +/– surgery with residual findings			
Fracture*	0 No residual findings: +/– surgical treatment	1 2 3 4 5 Residual symptoms, consistent objective findings and/or functional loss, with normal motion			
Avascular necrosis (AVN) of lunate Kienbock's disease*		1 2 2 3 4 Stage 1 normal bone architecture on plain X rays, MRI may be normal or show early stages 3 4 5 6 7 Stage 2 abnormal bone architecture on plain X rays or MRI but no carpal lunate collapse	14 15 16 17 18 Stage 3 abnormal bone architecture on plain X rays or MRI with lunate collapse or fragmentation 17 19 22 23 25 Stage 4 abnormal bone architecture on plain X rays or MRI with lunate collapse or fragmentation and adjoining bones affected. If treated surgically, wait until MMI and rate by type of surgical treatment		

Note: UE indicates upper extremity; MMI, Maximum Medical Improvement; and MRI, magnetic resonance image.
* If motion loss is present, this impairment may alternatively be assessed using Section 15.7, Range of Motion Impairment. A range of motion impairment stands alone and is not combined with diagnosis impairment.

STATE OF ILLINOIS)
)SS.
COUNTY OF Jefferson)

☐ Injured Workers' Benefit Fund (§4(d))
☐ Rate Adjustment Fund (§8(g))
☐ Second Injury Fund (§8(e)18)
☒ None of the above

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
NATURE AND EXTENT ONLY

Michael Arscott
Employee/Petitioner

v.

Con-Way Freight
Employer/Respondent

Case # 12 WC 3876

Consolidated cases: n/a

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.

October 2012

Claim Representative
Workers' Compensation Unit

Re:
Employer:
File Number:
Date of Injury:
MCN Number:

Dear Mr.

Thank you for allowing to schedule an independent medical examination on The following is a report of the examination performed on October , 2012. MD, prepared and dictated this report.

The opinions expressed in this report are those of the physician, and do not reflect the opinions of The examinee was informed that this examination was at the request of insurance, that a written report would be sent to that agency, and that the examination was for evaluative purposes only. Furthermore, the examinee was informed that the purpose of the examination was to address specific injuries or conditions, as outlined by the requesting party, was not meant to constitute a general medical examination, and is not a substitute for his personal physician(s) or health care. The examinee was informed at the time of the examination not to engage in any physical maneuvers beyond what he could tolerate, or which he felt were beyond his limits, or could cause physical harm or injury.

The dictated report is as follows:

INTRODUCTION:

At this time, a physician/patient relationship was not established. The findings of the report were not discussed with the claimant.

I have been asked specifically to conduct an independent medical evaluation, and the specific question to answer is to provide a permanent partial impairment rating under the AMA *Guides to the Evaluation of Permanent Impairment, Sixth Edition.*

All calculations, ratings, and evaluations are determined and calculated based on the AMA *Guides to the Evaluation of Permanent Impairment, Sixth Edition.*

HISTORY OBTAINED FROM THE CLAIMANT:

A 58-year-old male, tractor trailer driver. He drives a double semi, and he also loads and unloads the semis as well with a forklift. He works 14-hour days for the past 25 years.

On January 10, 2012, he was getting out of the cab of the truck where he twisted the left knee and felt a pop in his left knee.

He was placed off of work and on light duty, but still had persistent pain.

He ended up undergoing surgery on , for a left knee arthroscopy, partial medial meniscectomy, and chondroplasty.

He was out of work for two weeks, and then returned back to light duty work two weeks after, which mainly consisted of office work, and he was returned to full duty on July 2, 2012. He has been able to work full duty since then.

CURRENT SYMPTOMS:

The current symptoms, he complains of pain on the left leg and knee with walking.

He takes Aleve once a week.

He has some complaints of pain on stairs, but he supports himself by shifting his body weight to his right knee. He has pain with squatting and pain with kneeling, but he is able to perform all these activities.

CHART REVIEW:

Records from dated January 2012, and February 7, 2012; operative report from dated May performed by and postoperative notes dated and August 7, 2012, all of which are reviewed in detail. They are not pertinent to the disability calculation at this time.

PAST MEDICAL HISTORY:

The patient takes medicines that include , and

No known drug allergies.

He has had surgeries in the past for

REVIEW OF SYSTEMS:

Review of systems is negative.

SOCIAL HISTORY:

PHYSICAL EXAMINATION:

A well-developed, well-nourished male, in no acute distress.

Examination of the left knee:

Range of motion is 5 to 110 degrees.

Positive medial joint line tenderness, mild lateral joint line tenderness, no patellofemoral tenderness, negative Apley test, positive McMurray sign to the medial side, a normal anterior drawer, and a negative Lachman.

Examination of the right knee:

Range of motion is 0 to 120 degrees.

No joint line tenderness, normal ligamentous stability, and negative McMurray.

DIAGNOSTIC IMAGING STUDIES:

Arthroscopic pictures were brought in by the claimant and reviewed in detail, demonstrating what appeared to be grade 2 chondromalacia of the patella, a complex flap tear of the medial meniscus; post-meniscectomy pictures showing grade 1 chondromalacia of the medial tibial plateau, intact anterior cruciate ligament, grade 0 chondromalacia of the lateral tibial plateau, small SLAP tear of the lateral meniscus at the posterior horn, and grade 0 chondromalacia of the lateral femoral condyle.

DIAGNOSIS:

Left knee medial meniscus tear, chondromalacia, status post arthroscopy with partial medial meniscectomy and chondroplasty.

DISCUSSION:

At this time I will answer the following question:

1) *Provide a PPI rating under the AMA Guides to the Evaluation of Permanent Impairment, Sixth Edition.*

The claimant has a Class 1 diagnosis for a knee meniscal injury, as noted on Page 509, Class 1 diagnosis for primary knee joint degenerative joint disease from Page 511, Class 1 diagnosis patellofemoral degenerative joint disease from Page 511, and a mild range of motion deficit from Table 16-23, on Page 549. The functional history grade modifier equals 1, the physical examination grade modifier equals 1, clinical studies grade modifier equals 0.

The lower extremity impairment for the Class 1 meniscal injury diagnosis equals 2% lower extremity impairment, a 6% lower extremity impairment for primary knee joint degenerative joint disease, 2% lower extremity impairment for patellofemoral degenerative joint disease, and 10% lower extremity impairment for range of motion deficit.

The total lower extremity impairment is 20%, which equals an 8% whole person impairment rating.

The above calculation was based on the AMA *Guides to the Evaluation of Permanent Impairment*, Sixth Edition.

Sincerely,

Board Certified Orthopedic Surgeon

Report reviewer: I . Please call if questions:
You may comment on your examination experience online at

TABLE 16-3 Knee Regional Grid – Lower Extremity Impairments

Knee Regional Grid (LEI)

DIAGNOSTIC CRITERIA (KEY FACTOR)	CLASS 0	CLASS 1	CLASS 2	CLASS 3	CLASS 4
CLASS DEFINITIONS	No problem	Mild problem	Moderate problem	Severe problem	Very severe problem
IMPAIRMENT RANGES	0% LE	1%–13% LE	14%–25% LE	26%–49% LE	50%–100% LE
GRADE		A B C D E	A B C D E	A B C D E	A B C D E
SOFT TISSUE					
Bursitis, plica, h/o contusion, or other soft tissue lesion	0 No significant objective abnormal findings on examination or radiographic studies at MMI	0 1 1 2 2 Significant consistent palpatory findings and/or radiographic findings 1 2 2 2 3 Consistent motion deficits			
MUSCLE / TENDON		**Do not use with PE range of motion**			
Strain; tendonitis; or ruptured tendon	0 No significant objective abnormal findings of muscle or tendon injury at MMI	1 2 2 2 3 Palpatory findings and/or radiographic findings 5 6 7 8 9 Mild motion deficits 7 8 10 12 13 Moderate motion deficits and/or significant weakness			
Myositis ossificans (hypertrophic ossification)		0 1 1 2 2 Small 3 4 5 6 7 Large, palpable mass with decreased knee motion			
LIGAMENT / BONE / JOINT		**Do not use with PE stability**	**Do not use with PE stability**		
Meniscal injury		1 2 (2) 2 3 Partial (medial or lateral) meniscectomy, meniscal tear, or meniscal repair 5 6 7 8 9 Total meniscectomy (medial or lateral) or meniscal transplant (allograft) 7 8 10 12 13 Partial (medial and lateral)	19 20 22 24 25 Total (medial and lateral)		

(continued)

TABLE 16-3 (CONTINUED) Knee Regional Grid – Lower Extremity Impairments

DIAGNOSTIC CRITERIA (KEY FACTOR)	CLASS 0	CLASS 1	CLASS 2	CLASS 3	CLASS 4
CLASS DEFINITIONS	No problem	Mild problem	Moderate problem	Severe problem	Very severe problem
IMPAIRMENT RANGES	0% LE	1%–13% LE	14%–25% LE	26%–49% LE	50%–100% LE
GRADE		A B C D E	A B C D E	A B C D E	A B C D E
Fracture		**Do not use with CS x ray alignment**	**Do not use with CS x ray alignment**	**Do not use with CS x ray alignment**	
Proximal tibial shaft fracture	0 Non-displaced, with no significant objective abnormal findings at MMI	3 4 5 6 7 Non-displaced with abnormal examination findings 7 8 10 12 13 <10° angulation	14 17 19 21 24 10°–19° angulation	26 28 30 32 34 20°+ angulation	50 52 54 56 58 Non-union and/or infected
Arthritis		**Do not use with CS x ray arthritis**			
Primary knee joint arthritis		5 6 7 8 9 3 mm cartilage interval, full-thickness articular cartilage defect, or ununited osteochondral fracture	16 18 20 22 24 2 mm cartilage interval	26 28 30 32 34 1 mm cartilage interval	50 50 50 54 58 No cartilage interval
Patellofemoral arthritis		1 2 3 4 5 Full-thickness articular cartilage defect or ununited osteochondral fracture 7 8 10 12 13 2 mm cartilage interval	14 14 15 16 17 1 mm cartilage interval 16 18 20 22 24 No cartilage interval		
Arthrodesis					
Arthrodesis (joint ankylosis, Fusion)					59 63 67 71 75 10°–15° flexion contracture and good alignment 67 71 75 79 83 >15° flexion or poor alignment
Osteotomy / Knee Replacement					
s/p tibial osteotomy			21 23 25 25 25 Fair or good result	31 34 37 40 43 Poor result (effusion, limited motion, instability)	
Total knee replacement			21 23 25 25 25 Good result (good position, stable, functional)	31 34 37 40 43 Fair result (fair position, mild instability and/or mild motion deficit)	59 63 67 71 75 Poor result (poor position, moderate to severe instability, and/or moderate to severe motion deficit) 67 71 75 79 83 Poor result with chronic infection

TABLE 16-18

Lesser Toe Impairments

Note: The maximum LEI of 2 or more lesser toes is 6% LEI.

Severity	Mild	Moderate	Severe
Impairment	2% LEI		
Motion			
Metatarsophalangeal, extension	0°–10°		

TABLE 16-19

Greater Toe Impairments

Severity	Mild	Moderate	Severe
Impairment	2% LEI	5% LEI	
Motion			
Metatarsophalangeal, extension	15°–30°	0°–9°	
Interphalangeal, flexion	< 20°		

TABLE 16-20

Hindfoot Motion Impairments

Severity	Mild	Moderate	Severe
Impairment	2% LEI	5% LEI	
Motion			
Inversion	10°–20°	0°–9°	
Eversion	0°–10°		

TABLE 16-21

Ankle or Hindfoot Deformity Impairments

Severity	Mild	Moderate	Severe
Impairment	12% LEI	25% LEI	50% LEI
Motion			
Varus	10°–14°	15°–24°	> 24°
Valgus	10°–20°		

TABLE 16-22

Ankle Motion Impairments

Severity	Mild	Moderate	Severe
Impairment	7% LEI	15% LEI	30% LEI
Motion			
Plantar flexion capability	11°–20°	1°–10°	None
Flexion Contracture (Equinus deformity)		10°–19°	> 19°
Extension (Dorsiflexion)	10°–0° (neutral)		

TABLE 16-23

Knee Motion Impairments

Note: If multiple deficits of motion the values are added. Varus/valgus Deformity measured by femoral-tibial angle; 3° to 10° valgus is considered normal.

Severity	Mild	Moderate	Severe
Impairment	10% LEI	20% LEI	35% LEI
Motion			
Flexion	80°–109°	60°–79°	< 60°
Flexion Contracture	5°–9°	10°–19°	> 19°

TABLE 16-24

Hip Motion Impairments – Lower Extremity Impairment

Severity	Mild	Moderate	Severe
Impairment	5% LEI	10% LEI	20% LEI
Motion			
Flexion	80°–100°	50°–79°	< 50°
Extension	10°–19° flexion contracture	20–19° flexion contracture	≥ 30° flexion contracture
Internal rotation	10°–20°	0°–9°	
External rotation	20°–30°	0°–19°	
Abduction	15°–25°	5°–14°	< 5°
Adduction	0°–15°		
Abduction Contracture	0°–5°	6°–10°	11°–20°

STATE OF ILLINOIS)
)SS.
COUNTY OF JEFFERSON)

☐ Injured Workers' Benefit Fund (§4(d))
☐ Rate Adjustment Fund (§8(g))
☐ Second Injury Fund (§(e)18)
☒ 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 p.2

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.

TABLE 16-3 (CONTINUED) Knee Regional Grid – Lower Extremity Impairments

DIAGNOSTIC CRITERIA (KEY FACTOR)	CLASS 0	CLASS 1	CLASS 2	CLASS 3	CLASS 4
CLASS DEFINITIONS	No problem	Mild problem	Moderate problem	Severe problem	Very severe problem
IMPAIRMENT RANGES	0% LE	1%–13% LE	14%–25% LE	26%–49% LE	50%–100% LE
GRADE		A B C D E	A B C D E	A B C D E	A B C D E
LIGAMENT / BONE / JOINT		**Do not use with PE stability**	**Do not use with PE stability**		
Cruciate or collateral ligament injury; Surgery not rating factor	0 No instability	7 8 10 12 13 Mild laxity	14 15 16 17 18 Moderate laxity		
Cruciate and collateral ligament injury; Surgery not rating factor	0 No instability	7 8 10 12 13 Mild laxity	19 20 22 24 25 Moderate laxity	31 34 37 40 43 Severe laxity	
Patellar Lesion		**Do not use with PE stability**	**Do not use with PE stability**		
Patellar subluxation or dislocation	0 No instability	5 6 7 8 9 Mild instability	14 15 16 17 18 Moderate instability 19 20 22 24 25 Severe instability		
Patellectomy		5 6 7 8 9 Partial	19 20 22 24 25 Total		
Fracture		**Do not use with CS x ray alignment**	**Do not use with CS x ray alignment**	**Do not use with CS x ray alignment**	
Femoral shaft fracture	0 Non-displaced, with no significant objective abnormal findings at MMI	5 6 7 8 9 Abnormal examination findings and <10° angulation	14 15 16 17 18 10°–19° angulation	31 34 37 40 43 20°+ angulation	52 56 60 64 68 Non-union and/or infected
Supracondylar or intercondylar fracture	0 Non-displaced, with no significant objective abnormal findings at MMI	3 4 5 6 7 Non-displaced with abnormal examination findings 7 8 10 12 13 5°–9° angulation	19 20 22 24 25 10°–19° angulation	31 34 37 40 43 20°+ angulation or > 2 mm articular surface step off	52 56 60 64 68 Non-union and/or infected
Patellar fracture	0 Non-displaced, with no significant objective abnormal findings at MMI	5 6 7 8 9 Non-displaced with abnormal examination findings 7 8 10 12 13 Articular surface displaced 3 mm or less	14 15 16 17 18 Displaced with nonunion		
Tibial plateau fracture	0 Non-displaced, with no significant objective abnormal findings at MMI	3 4 5 6 7 Non-displaced with abnormal examination findings 7 8 10 12 13 < 9° angulation	19 20 22 24 25 10°–19° angulation or ≤2 mm articular surface step off	31 34 37 40 43 20°+ angulation or > 2 mm articular surface step off	52 56 60 64 68 Non-union and/or infected, or severe comminuted, displaced

STATE OF ILLINOIS)
)SS.
COUNTY OF **Jefferson**)

☐ Injured Workers' Benefit Fund (§4(d))
☐ Rate Adjustment Fund (§8(g))
☐ Second Injury Fund (§8(e)18)
☒ None of the above

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
NATURE AND EXTENT ONLY

CURTIS OLTMANN,
Employee/Petitioner

v.

CONTINENTAL TIRE THE AMERICAS, LLC,
Employer/Respondent

Case # **12** WC **11777**

Consolidated cases: **none**

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

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.

TABLE 15-3 (CONTINUED) Wrist Regional Grid: Upper Extremity Impairments

IMPAIRMENT CLASS	CLASS 0	CLASS 1	CLASS 2	CLASS 3	CLASS 4
IMPAIRMENT RANGES (upper extremity %)	0	1%–13% UE	14%–25% UE	26%–49% UE	50%–100% UE
GRADE		A B C D E	A B C D E	A B C D E	A B C D E
LIGAMENT/BONE/JOINT*					
Wrist sprain/h/o dislocation* including carpal instability	0 No residual findings: +/– surgical treatment	6 7 8 9 10 Mild instability (grade modifier 1 per radiographic studies and criteria in Table 15-9) *(clinical studies excluded from adjustment process)*	14 15 16 17 18 Moderate instability (grade modifier 2 per radiographic studies and criteria in Table 15-9) 20 22 24 25 25 Severe instability (grade modifier 3 per radiographic studies and criteria in Table 15-9) *(clinical studies excluded from adjustment process)*		
Triangular fibrocartilage complex (TFCC) tear*	0 No residual findings: +/– surgical treatment	6 7 8 9 10 Documented TFCC injury +/– surgery with residual findings			
Fracture*	0 No residual findings: +/– surgical treatment	1 2 3 4 5 Residual symptoms, consistent objective findings and/or functional loss, with normal motion			
Avascular necrosis (AVN) of lunate Kienbock's disease*		1 2 2 3 4 Stage 1 normal bone architecture on plain X rays, MRI may be normal or show early stages 3 4 5 6 7 Stage 2 abnormal bone architecture on plain X rays or MRI but no carpal lunate collapse	14 15 16 17 18 Stage 3 abnormal bone architecture on plain X rays or MRI with lunate collapse or fragmentation 17 19 22 23 25 Stage 4 abnormal bone architecture on plain X rays or MRI with lunate collapse or fragmentation and adjoining bones affected. If treated surgically, wait until MMI and rate by type of surgical treatment		

Note: UE indicates upper extremity; MMI, Maximum Medical Improvement; and MRI, magnetic resonance image.
* If motion loss is present, this impairment may alternatively be assessed using Section 15.7, Range of Motion Impairment. A range of motion impairment stands alone and is not combined with diagnosis impairment.

STATE OF ILLINOIS)
)SS.
COUNTY OF **Jefferson**)

☐ Injured Workers' Benefit Fund (§4(d))
☐ Rate Adjustment Fund (§8(g))
☐ Second Injury Fund (§8(e)18)
☒ None of the above

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
NATURE AND EXTENT ONLY

Timothy Brown
Employee/Petitioner

v.

Con-Way Freight
Employer/Respondent

Case # **12** WC **4657**

Consolidated cases: **n/a**

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 (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

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.

TABLE 15-5 Shoulder Regional Grid: Upper Extremity Impairments

IMPAIRMENT CLASS	CLASS 0	CLASS 1	CLASS 2	CLASS 3	CLASS 4
IMPAIRMENT RANGES (upper extremity %)	0	1%–13% UE	14%–25% UE	26%–49% UE	50%–100% UE
GRADE	—	A B C D E	A B C D E	A B C D E	A B C D E
LIGAMENT/BONE/JOINT*					
Rotator cuff injury, full-thickness tear*	0 No significant objective abnormal findings at MMI	1 2 3 4 5 History of painful injury, residual symptoms without consistent objective findings (this impairment can only be given once in an individual's lifetime) 3 4 5 6 7 Residual loss, functional with normal motion			
Acromioclavicular (AC) joint injury or disease*	0 No significant objective abnormal findings at MMI	1 2 3 4 5 History of painful injury, residual symptoms without consistent objective findings (this impairment can only be given once in an individual's lifetime) 1 2 3 4 5 Residual loss, functional with normal motion 8 9 10 11 12 s/p Distal clavicle resection or AC separation type III (complete disruption AC joint capsule and coracoclavicular ligaments)	16 18 20 22 24 AC separation type IV (complete disruption AC joint capsule and coracoclavicular ligaments and avulsion of coracoclavicular ligament from clavicle) or higher severity		

(continued)

Note: UE indicates upper extremity; MMI, Maximum Medical Improvement; s/p, status post; and SLAP, superior labrum from anterior to posterior.

* If motion loss is present, this impairment may alternatively be assessed using Section 15.7, Range of Motion Impairment. A range of motion impairment stands alone and is not combined with diagnosis impairment.

STATE OF ILLINOIS)
)SS.
COUNTY OF Sangamon)

☐ Injured Workers' Benefit Fund (§4(d))
☐ Rate Adjustment Fund (§8(g))
☐ Second Injury Fund (§8(e)18)
☒ None of the above

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

Martha Mansfield
Employee/Petitioner

v.

Ball Chatham Community School District #5
Employer/Respondent

Case # 12 WC 14648

Consolidated cases: _____

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

Martha Mansfield v. Ball Chatham Community School District #5
12 WC 14648

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 gate and abnormal inspection/palpation of the joints, bones and muscles. Range of motion was also abnormal. Sigle prescribed Hydrochodone/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. He 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 underwent a partial medial menisectomy 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.

TABLE 16-3 Knee Regional Grid – Lower Extremity Impairments

Knee Regional Grid (LEI)

DIAGNOSTIC CRITERIA (KEY FACTOR)	CLASS 0	CLASS 1	CLASS 2	CLASS 3	CLASS 4
CLASS DEFINITIONS	No problem	Mild problem	Moderate problem	Severe problem	Very severe problem
IMPAIRMENT RANGES	0% LE	1%–13% LE	14%–25% LE	26%–49% LE	50%–100% LE
GRADE		A B C D E	A B C D E	A B C D E	A B C D E
SOFT TISSUE					
Bursitis, plica, h/o contusion, or other soft tissue lesion	0 No significant objective abnormal findings on examination or radiographic studies at MMI	0 1 1 2 2 Significant consistent palpatory findings and/or radiographic findings 1 2 2 2 3 Consistent motion deficits			
MUSCLE / TENDON		**Do not use with PE range of motion**			
Strain; tendonitis; or ruptured tendon	0 No significant objective abnormal findings of muscle or tendon injury at MMI	1 2 2 2 3 Palpatory findings and/or radiographic findings 5 6 7 8 9 Mild motion deficits 7 8 10 12 13 Moderate motion deficits and/or significant weakness			
Myositis ossificans (hypertrophic ossification)		0 1 1 2 2 Small 3 4 5 6 7 Large, palpable mass with decreased knee motion			
LIGAMENT / BONE / JOINT		**Do not use with PE stability**	**Do not use with PE stability**		
Meniscal injury		1 2 2 2 3 Partial (medial or lateral) meniscectomy, meniscal tear, or meniscal repair 5 6 7 8 9 Total meniscectomy (medial or lateral) or meniscal transplant (allograft) 7 8 10 12 13 Partial (medial and lateral)	19 20 22 24 25 Total (medial and lateral)		

(continued)