1 of 100 DOCUMENTS

FREDERICK WILLIAMS, PETITIONER, v. FLEXIBLE STAFFING, INC., RESPONDENT,

NO. 11WC 46390

ILLINOIS WORKERS' COMPENSATION COMMISSION

STATE OF ILLINOIS, COUNTY OF COOK

13 IWCC 557; 2013 Ill. Wrk. Comp. LEXIS 516

May 29, 2013

JUDGES: Charles J. DeVriendt; Daniel R. Donohoo; Ruth White

OPINION: [*1]

DECISION AND OPINION ON REVIEW

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

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

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

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

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent [*2] pay to Petitioner interest under § 19(n) of the Act, if any.

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

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

ATTACHMENT:

CORRECTED ARBITRATION DECISION

NATURE AND EXTENT ONLY

FREDERICK WILLIAMS

Employee/Petitioner

v.

FLEXIBLE STAFFING, Inc.
Employer/Respondent

Case # 11 WC46390

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 [*3] 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 [*4] 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.

November 20, 2012

FINDINGS OF FACT

The petitioner was 45 years old at the time of the work accident [*5] 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, [*6] requiring cutting, welding and carrying both tools and metal equipment and interpreting blueprints. The petitioner testified that he worked without any physical restrictions for the respondent at all times.

The petitioner testified that he worked 40 hours per week for the Respondent. He testified that he worked from 6:00 a.m. to 2:30 p.m. The petitioner testified that the work accident on October 7, 2011 occurred at approximately 9:00 a.m. He testified that he was working on a section of a rail, similar to a railroad track. The petitioner testified that the section of rail was approximately nine feet long, two inches wide, and weighed in excess of 400 pounds. The petitioner testified that the rail was positioned on a horse while he welded it. He testified that one end of the rail slipped off the horse. The petitioner testified that his first reaction was to reach out and grab the rail, to keep it from falling on him. He testified that when the rail hit his hand, he felt a sharp pain in his right arm and he heard something snap. He testified that he immediately noticed that his arm was disfigured. The petitioner testified that he reported the incident to his supervisor, Mr. Greg Herndon. [*7] The petitioner testified that his supervisor asked him if he needed an ambulance. The Petitioner testified that he declined the ambulance, and instead drove himself to Ingalls Occupational Health Clinic ("Ingalls") using only his left arm. The petitioner testified that his right arm was x-rayed at Ingalls, that he was given a sling, and that he was diagnosed with a distal biceps tendon rupture. The specialist at Ingalls immediately sent Petitioner home. Petitioner testified that he was off work for one (1) week, in severe pain and was never contacted by Respondent's insurance carrier. Petitioner further testified that his right arm was wrapped in an Ace bandage for approximately one month until Respondent finally approved surgery.

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

On May 8, 2012, petitioner was examined by Dr. Mark Levin of Barrington Orthopedic Specialists, at Respondent's request. During that examination, the petitioner complained of right arm pain, which he had been suffering since the [*9] work accident. The petitioner indicated that he also experienced pain when he tried to fully pronate and supinate the right forearm. The petitioner told Dr. Levin that he did not believe that he had full extension of his right elbow and that he experienced constant numbness over the ulnar aspect of that elbow. The petitioner stated that he was experiencing pain two or three times per week and that he was still taking narcotic pain medication, i.e. Norco, approximately two or three times a week because of pain in his elbow. Following his examination, Dr. Levin also noted that the petitioner

lacked full extension with both pronation and supination of his right arm and then listed an AMA disability rating of 4% of a whole person or 6% loss of the right arm. *See,* RX1.

The Petitioner testified that, at the time that he was released to return to work by Dr. Arabindi, he was capable of lifting only 25 pounds. He testified that he told Dr. Arabindi, at the time of the last office visit on March 7, 2012, that his strength was diminished and that he had ongoing pain and numbness. The petitioner testified that, despite those complaints, Dr. Arabindi released him to return to work, without [*10] 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 [*11] 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 [*12] 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 [*13] 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. [*14] Levin used a physical examination grade modifier of 2 indicating a moderate problem. Dr. Levin did not consider a grade modifier for clinical studies in his impairment report, even though the surgical report could have been used in this way. Dr. Levin scored the QDASH report for functional history grade modifier as 23, however, does not include a copy of the QDASH in his impairment report so that the Arbitrator may review his findings.

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

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

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

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

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

the petitioner's [*15] 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, [*16] 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 acci-

dental 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

Legal Topics:

For related research and practice materials, see the following legal topics:
Administrative LawAgency AdjudicationDecisionsStare DecisisWorkers' Compensation & SSDIAdministrative ProceedingsClaimsTime LimitationsNotice PeriodsWorkers' Compensation & SSDICompensabilityInjuriesGeneral Overview

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DAVID CHRIS YOUNG, PETITIONER, v. CONTINENTAL TIRE NORTH AMERICA, INC., RESPONDENT.

NO. 11WC 39821

ILLINOIS WORKERS' COMPENSATION COMMISSION

STATE OF ILLINOIS, COUNTY OF JEFFERSON

13 IWCC 1086; 2013 Ill. Wrk. Comp. LEXIS 1158

December 19, 2013

JUDGES: David L. Gore; Daniel R. Donohoo; Mario Basurto

OPINION: [*1]

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by the Petitioner herein and notice given to all parties, the Commission, after considering the issues of Accident, causal connection, temporary total disability, and permanent partial disability and being advised of the facts and law, reverses the Decision of the Arbitrator as stated below

FINDINGS OF FACTS AND CONCLUSIONS OF LAW

. Petitioner was a 52 year old employee of Respondent, who described his job as a forklift driver. Petitioner described the forklift he was required to operate as being of a medium size. Petitioner testified that to get onto the forklift you have to grab the bar to help you pull yourself up and then you put your left foot up on the foot step and then kind of hop pull and twist and kind of just flop yourself in there. On the date of accident, September 16, 2011, Petitioner testified of how he was injured climbing onto the forklift. Petitioner stated in the process of getting on the forklift he pulled himself up, grabbing with his left hand on the bar. He stated that you kind of hop with one foot and swing your leg in. Petitioner stated that in that motion, before his rear [*2] end even got to the seat, something popped and it felt like someone stabbed him with a knife right in his lower back. Petitioner indicated that he had to put his left foot on a kind of step; the step being about 24 inches up. Petitioner stated you kind of hop with the right foot as you push with the left leg and pull with the left arm all at the same time. Petitioner stated once you get the motion going you have to swing in between the steering wheel and the seat. Petitioner again noted that when he did that he felt sort of a stabbing pain in his lower back. After he felt that sensation, he stated that he got off of the forklift and tried to walk around a little bit. Petitioner stated that and at that time the supervisor saw him and he told the supervisor what had happened.

. Petitioner testified that Respondent has an onsite medical unit which he went to. Petitioner stated that first he walked around a bit to see if it would ease up, but it did not. Petitioner indicated that he went to the medical unit after about an hour. The accident occurred on a Friday. Petitioner went to the medical unit (Work Fit) where he stated they tried to do hip flexes, like it was going to pop something [*3] back in, and leg stretches and different things like that. Petitioner stated none of those things helped his pain. Petitioner testified that over that weekend he continued to have pain and problems with his back. Petitioner testified that as he was getting off the table at the Work Fit treatment (on that Friday) he had the same stabbing pain. Petitioner testified he did return to Work Fit on the following Monday. Petitioner next saw Mandy McKee, a PA, at the orthopedic surgeon's office. Petitioner followed up with his family

doctor and eventually went back and saw the surgeon, Dr. Kovalsky. Petitioner testified that over the next 2-3 weeks his symptoms did not get any better and the doctor eventually ordered an MRI. Petitioner testified that he learned that based on the MRI, Dr. Kovalsky thought that he needed surgery again which he had around November (a couple months later). Petitioner testified that he was off work from the time he saw the PA, September 19, 2011, until he was released by Dr. Kovalsky in May 2012.

. Petitioner testified that he did have five back surgeries going back about ten years. Petitioner's most recent back surgery prior to this incident was following an [*4] incident of injury at Respondent. Petitioner stated that he had still been under doctor's care for that prior injury. Petitioner indicated that at the time of this injury he had one more visit scheduled before he was to be fully released from that prior treatment. Petitioner stated that he had been under lifting restrictions from the prior injury at the time, but he was working as a forklift operator then. Regarding the prior three (3) surgeries Petitioner stated that he had worked for a period of years at Respondent with permanent restrictions.

. Petitioner testified that currently he can walk for a little while. He can sit for a little while but he has to change positions. Petitioner stated his left leg and back get really tired and starts throbbing and he has to lie down for 15-20 minutes to alleviate that. He stated stooping is not good. Petitioner indicated the difficulties presented if he had to return to operating a forklift; he stated he did not think he could climb on it without hurting. Petitioner indicated that he resigned from Respondent following a favorable decision for social security disability on June 1, 2012.

. The parties noted agreement that Respondent's § 12 [*5] examining doctor examined Petitioner and had indicated Petitioner could perform some sedentary work with restrictions and that Respondent indicated they would have honored Dr. Lange's restrictions.

The Commission finds that on the date of accident, September 16, 2011, Petitioner testified of how he was injured climbing onto the forklift. Petitioner stated in the process of getting on the forklift he pulled himself up; grabbing the bar with his left hand. He stated that you kind of hop with one foot and swing your leg in. Petitioner stated that in that motion, before his rear end even got to the seat, something popped and it felt like someone stabbed him with a knife right in his lower back. Petitioner indicated that he had to put his left foot on a kind of step; the step being about 24 inches up. Petitioner stated you kind of hop with the right foot as you push with the left leg and pull with the left arm all at the same time. Petitioner stated once you get the motion going you have to swing in between the steering wheel and the seat. Petitioner again noted that when he did that he felt sort of a stabbing pain in his lower back. After he felt that sensation, he stated that he got [*6] off of the forklift and tried to walk around a little bit. Petitioner stated that and at that time the supervisor saw him and he told the supervisor what had happened. Petitioner's testimony is unrebutted.

Dr. Kovalsky's records from September 19, 2011 note that PA McKee was to recheck lumbar spine. The records of that date further note that on September 16, 2011 at Respondent, patient was getting up to sit down on forklift and in the motion he noticed immediate pain left SI joint. Petitioner denied radiating pain. The records also note chronic numbness and tingling from prior surgery and that the patient had some minimal back pain from prior. An MRI was under consideration.

On September 28, 2011, Dr. Kovalsky noted the prior history as above. He noted Petitioner was at work and twisted on the forklift about two weeks ago and had significant recurrent pain in his left buttock and leg. Noted Petitioner saw nurse practitioner as doctor was out of town and they felt it was a recurrent herniated disc. Prescription at that time was medication and off work. Dr. Kovalsky noted that the patient did try to return to work but pain too severe.

Dr. Kovalsky's October 24, 2011 records [*7] indicated that the MRI noted post surgical changes at L4-5, L5-S1. The records further noted a left L4-5 paracentral disc extrusion present; indents anterior lateral aspect of thecal sac displacing left L5 nerve.

Work Fit's records from September 19, 2011, note that on September 16, 2011 patient was getting onto forklift and before he was seated experienced sharp pain. The records further noted that the symptoms increased some since the prior surgery. On September 20, 2011, the Work Fit records noted sharp pain with therapy today and a history of a September 16, 2011 injury.

On September 20, 2011, Chris Proctor's witness statement (RX 2) noted that he finished treating the patient for current prescription. The patient sat up from table and complained of 'sharp' pain to left SI. The statement further goes on to state that Mr. Proctor saw the patient sit up from treatment and complain of 'sharp' pain. The statement indicates that Mr. Proctor told him to take his time getting up. When he got up he left with similar gait pattern to when he arrived. Patient was instructed to return for modalities any time he needed them between the time of incident and next appointment.

The Commission [*8] finds the evidence and testimony clearly shows that Petitioner has had a long history of problems with his back with multiple surgeries at different levels. Petitioner clearly had the most recent surgery (2010) before this event and was in fact still in treatment for that at the time of this event and had more restrictions from his much earlier surgeries. Petitioner had been recovering from that prior surgery and had in fact been working at the time of this event. Although Petitioner was on restrictions, there is no indication of him having to go to Work Fit prior to this event. Unlike Petitioner's February 2010 case where there was no causal connection found as there were no indications of recurrent disc pathology until months later, the MRI about a month and a half after this event clearly evidenced a recurrent disc. Petitioner, with his back history, is clearly at a higher risk of recurrence from a trauma or no trauma at all per the deposition testimony. The evidence and testimony presented here do evidence a mechanism of injury while Petitioner was getting onto the forklift. While it was not initially noted he twisted while mounting the forklift, there is still the history of [*9] the fluid motion of getting up and Petitioner having the sharp pain during that process. Contrary to the Arbitrator's statement in the decision here, Petitioner did not describe merely sliding into the seat and feeling the pain. Getting onto a forklift to sit is not an everyday non-unique action as would be merely sitting onto a seat at a desk. Petitioner testified that in the process of getting on the forklift he pulled himself up; grabbing the bar his left hand. Petitioner stated that you kind of hop with one foot and swing your leg in. Petitioner stated that in that motion, before his rear end even got to the seat, something popped and it felt like someone stabbed him with a knife right in his lower back. Petitioner indicated that he had to put his left foot on a kind of step; the step being about 24 inches up. Petitioner stated you kind of hop with the right foot as you push with the left leg and pull with the left arm all at the same time. Petitioner stated once you get the motion going you have to swing in between the steering wheel and the seat.

Clearly Petitioner's description of the mechanism of injury is unique to his performing his job duties. Dr. Kovalsky testified that [*10] type of twisting motion can, even in a virgin disc, cause a herniation. The action, at the very least, can clearly be evidence of an aggravation of his preexisting condition for which he then went to Work Fit and returned to Dr. Kovalsky. Petitioner was then in therapy and Chris Proctor, per Respondent's witness statement of September 20, 2011 noted that he finished treating patient for current prescription. The patient sat up from table and complained of 'sharp' pain to left SI. The doctor noted that the patient sat up from treatment and complained of 'sharp' pain. 'I told him to take his time getting up.' If the recurrent disc herniation was not present with the forklift event, it may well have then occurred while in his treatment so it would therefore still be related to the original accident. Regardless, while Petitioner was still recovering from his prior surgery, he was working on restrictions and apparently able to continue until this event and the recurrent disc herniation is then evidenced. Dr. Kovalsky noted his suspicion of the recurrent disc less than two weeks after the forklift event and about a week after the noted therapy event. The October 2011 MRI clearly evidenced [*11] the recurrent disc herniation at L4-5 and there were indications of radicular symptoms shortly after the event. Dr. Kovalsky noted SI dysfunction can mimic the radicular symptoms and a doctor has to determine the diagnosis given the similarity. Dr. Kovalsky further indicated there can be somewhat of a gradual progression of the radicular symptoms. Petitioner's testimony and the evidence supports that idea with no immediate clear cut radicular symptoms but rather an increase of symptoms over that short period until Dr. Kovalsky examined Petitioner on September 28, 2011. The evidence and testimony finds that Petitioner's testimony of the described mechanism of injury is supported in the medical records. Petitioner's mechanism is clearly a unique action, a risk directly associated with the employment, contrary to the Arbitrator's impression. Respondent's Dr. Lange did not find a causal connection because Petitioner did not express there was a twisting motion but he did not ask either, per his testimony. As previously noted, the motion described, as such, clearly visualizes more than just a sitting down, non unique motion. The evidence and testimony finds that Petitioner did meet his [*12] burden of proving accident that arose out of and in the course of employment and that Petitioner's condition of ill-being is causally related to that accident. The Commission finds the decision of the Arbitrator as contrary to the weight of the evidence and herein reverses the Arbitrator's finding and to find Petitioner met the burden of proving he sustained an accident that arose out of and in the course of his employment, and further, reverses the Arbitrator's finding to find that Petitioner met the burden of proving a causal connection to Petitioner's current condition of ill-being.

The Commission, with the above findings that Petitioner met the burden of proving accident and causal connection, further finds evidence of Petitioner being off work under medical authorization and still treating from September 20, 2011 through May 31, 2012 (36-3/7 weeks-at $ 630.06=$ 22,952.19). With an above finding for Petitioner, the evidence and testimony finds Petitioner met the burden of proving entitlement to the claimed temporary total disability (TTD) period. Respondent shall be entitled to § 8(j) credit. The Commission finds the decision of the Arbitrator as contrary to the weight of the evidence [*13] and herein, reverses the Arbitrator's finding and awards the total temporary disability as indicated.

The Commission, with the above findings that Petitioner met the burden of proving accident and causal connection, further finds evidence of Petitioner's medical treatment that was indicated as reasonable and necessary even by Respondent's Dr. Lange. With an above finding for Petitioner, the evidence and testimony demonstrates that Petitioner met the burden of proving entitlement to the claimed medical expenses. The total balance of bills due is $ 5,030.04 of $ 32,396.91; Respondent being entitled to the applicable § 8(j) credit and holding Petitioner harmless for medical expenses paid. The Commission finds the decision of the Arbitrator as contrary to the weight of the evidence and herein reverses the Arbitrator's finding and awards the medical expenses as indicated.

The Commission, with the above findings that Petitioner met the burden of proving accident and causal connection, further finds evidence of Petitioner's ongoing condition of ill-being. Petitioner was off a substantial period of time before he opted to take early retirement and apply for Social security disability (SSDI). [*14] Petitioner did undergo surgery here but he did not return to his pre-injury state. An award of 27.5% loss of Petitioner's person as a whole for permanent partial disability (PPD) is appropriate in light of Dr. Lange's July 26, 2012 permanent partial impairment estimate of 11% and consistent with prior Commission decisions. With the above finding for Petitioner, the evidence and testimony demonstrates that Petitioner met the burden of proving entitlement to a PPD award as indicated here. The Commission finds the decision of the Arbitrator as contrary to the weight of the evidence and, herein, reverses the Arbitrator's decision and awards a loss of 27.5% loss of Petitioner's person as a whole under § 8(d)(2).

IT IS THEREFORE ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $ 630.06 per week for a period of 36-3/7 weeks, that being the period of temporary total incapacity for work under § 8(b) of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $ 567.05 per week for a period of 137.5 weeks ($ 77,969.38 total PPD), as provided in § 8(d)(2) of the Act, for the reason that the injuries sustained caused the loss of 27.5% [*15] use of Petitioner's person as a whole.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $ 5,030.04 for medical expenses due under § 8(a) of the Act and hold Petitioner harmless for medical expenses paid.

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

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

Bond for the removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of $ 75,000.00. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

ATTACHMENT:

ARBITRATION DECISION

David Chris Young
Employee/Petitioner

v.

Continental Tire North America
Employer/Respondent

Case # **11** WC **39821**

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 **Joshua Luskin**, Arbitrator [*16] of the Commission, in the city of **Mt. Vernon** , on **9/5/12**. 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
C. [X] Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?
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?
K. [X] What temporary benefits are in dispute?
[X]TTD
L. [X] What is the nature and extent of the injury?

FINDINGS

On **9/16/11**, 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 not*** 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 not*** causally [*17] related to the accident.

In the year preceding the injury, Petitioner earned $ **20,791.87**; the average weekly wage was $ **945.09**.

On the date of accident, Petitioner was **52** years of age, ***married*** with **0** dependent children.

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

Respondent ***is not liable for*** appropriate charges for all reasonable and necessary medical services.

Respondent would be eligible for disability credit to the extent of $ **20,024.83**, if the disability was related to an accidental injury; however, this is moot given the findings as to accident and causal connection.

Respondent would be entitled to a credit of $ **27,308.57** under Section 8(j) of the Act for medical benefits paid via group insurance, but this is a moot issue given the findings as to accident and causal connection.

ORDER

For reasons set forth in the attached decision, benefits under the Act are denied.

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 [*18] 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.

November 5, 2012

Date

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

DAVID CHRIS YOUNG,

Petitioner,

vs.

CONTINENTAL TIRE,

Respondent.

ADDENDUM TO ARBITRATION DECISION

STATEMENT OF FACTS

The petitioner asserts injury to his low back on September 16, 2011 while entering his forklift truck. He testified that the process of entering the fork truck involves placing his left foot onto a 24" high step and then pulling himself up to that level, and then turning to sit in the driver's seat. The petitioner testified that while sliding into the seat, he felt pain in his lower back.

The claimant had a serious pre-existing lumbar spine condition. He acknowledged three low back surgeries in calendar year 2000, and then another lumbar spine surgery in December 2010. The petitioner was [*19] still under orthopedic care from Dr. Kovalsky surrounding the December 2010 surgery at the time of this incident. As of September 16, 2011, he was working with a 30 pound lifting restriction; prior to the December 2010 surgery, he was working at a permanent 50 pound lifting restriction, which the respondent had accommodated.

The petitioner presented at the on-site medical clinic the same day. See RX1. He described a sensation of sharp low back pain without radiation into the legs. He was given medication and advised on physical therapy. On September 19, 2011, he returned to the health services for a physical therapy session. He again complained of low back pain without radiation, but described tightness in the hamstrings. On September 20, he presented for another physical therapy session, and then asserted that after the session, he went to roll off the table and felt a sharp stabbing pain in his lower back. See RX1.

The petitioner presented to his primary care physician, Dr. Neal, on September 20, 2011. The handwritten note appears to state "got off forklift wrong way" and then rolled to get off a table in P.T. See PX1. Dr. Neal took the petitioner off work and instructed him to [*20] see his orthopedist.

On September 28, 2011, Dr. Kovalsky saw the petitioner and noted recurrent pain in his back and left buttock and leg. PX1, PX2. Dr. Kovalsky recommended an MRI, which was performed on October 24, 2011. It demonstrated a recurrent L4-5 disc herniation. PX1. Dr. Kovalsky recommended surgery. PX1, PX2. In deposition, Dr. Kovalsky opined the September 16, 2011 event caused the need for surgery based upon the twisting mechanism and onset of symptoms.

On November 21, 2011, the petitioner saw Dr. David Lange for a Section 12 examination. See generally RX4. The petitioner gave a history of injuring his low back on September 16, 2011 when climbing into a forklift; Dr. Lange testified at his deposition that the report does not mention the petitioner describing a twisting motion, and that if the petitioner had done so it would have been noted. Dr. Lange agreed with diagnosis and surgical recommendation but opined that there was no causal connection between the petitioner's work and the recurrent disc herniation.

On November 22, 2011, Dr. Kovalsky performed a revision hemilaminotomy and discectomy at L4-5. PX1, PX2.

The petitioner underwent postoperative rehabilitation, but [*21] never returned to work. He had applied for Social Security Disability and was granted same on June 1, 2012, which was deemed retroactive to November 16, 2010 by the SSA. The petitioner took early retirement as of June 1, 2012.

On June 25, 2012, Dr. Lange reexamined the petitioner and determined that he could work sedentary duty at that point. See RX6. The parties stipulated that this was a good faith offer. Dr. Lange gave a rating of 11% permanent partial impairment of body as a whole using the AMA Guidelines based upon the June 25, 2012 exam. (RX6).

The petitioner testified he continues to experience low back and left leg symptoms, and alternates sitting and standing to alleviate these.

OPINION AND ORDER

Accidental Injuries and Causal Connection to His Employment

A claimant must prove by the preponderance of credible evidence that an injury both arose out of and was in the course of employment in order to receive compensation under the. Act. See, e.g., *Orsini v. Industrial Commission, 117 Ill.2d 38, 44-45 (1987), Parro v. Industrial Commission, 260 Ill.App.3d 551, 553 (1993).* "In the course of refers to [*22] the time, place and circumstance under which the accident occurred, while "arising out of refers to the origin or cause of the accident that gave rise to the injury. *Illinois Bell Telephone Co. v. Industrial Commission, 131 Ill.2d 478, 483 (1989).* The fact that a claimant's duties took him to the place of injury and but for the employment he would not have been there is not sufficient to support a finding that injuries arose out of employment. *Illinois Bell Telephone Co. v. Industrial Commission, 131 Ill.2d at 485-86; Caterpillar Tractor Co. v. Industrial Commission, 129 Ill.2d 52, 58 (1989).*

The facts of the claim clearly demonstrate that while he was healing, the petitioner's medical condition to that point was still fragile, as he was not at Maximum Medical Improvement for his prior injury (see RX3, the decision in case *12 IWCC 585).* While aggravations of pre-existing conditions are compensable, there must still be a showing that the aggravation was somehow connected to his employment rather than the medical condition simply arising or occurring while at work. [*23] For an accidental injury to arise out of employment, its origin must be in some risk connected with or incidental to the employment, rather than simply location or a positional risk, in order to establish a causal connection. *Caterpillar Tractor Co., 129 Ill.2d at 63.* There are three categories of risks to which an employee may be exposed: (1) risks distinctly associated with the employment; (2) risks personal to the employee; and (3) neutral risks, which have no particular employment or personal characteristics. *Illinois Institute of Technology v. Industrial Commission, 314 Ill.App.3d 149, 162 (2000).*

Here, the petitioner allegedly suffered a recurrent disk herniation while sitting down. There was no initial description of twisting or any awkward positioning. Moreover, he testified that he felt pain while sliding into the seat; in and of itself, this action is not uniquely associated with the petitioner's employment. In the alternative, the argument could be made that he actually herniated the disk when he rolled off the table on September 19. In that case, there would still be a failure of proof regarding an actual accident [*24] on Septmber 16, regardless of the causation question because of the intervening incident. Taken as a whole, the record is insufficient to deem this matter compensable, as an award of benefits cannot rest upon speculation or conjecture. *County of Cook v. Industrial Commission, 68 Ill.2d 24 (1977).*

Medical Services, Temporary Disability, and Nature and Extent

These issues are moot given the above findings.

Legal Topics:

For related research and practice materials, see the following legal topics:
Workers' Compensation & SSDIAdministrative ProceedingsAlternative Dispute ResolutionWorkers' Compensation & SSDICompensabilityCourse of EmploymentCausationWorkers' Compensation & SSDICompensabilityInjuriesGeneral Overview

1 of 1 DOCUMENT

JEFFREY N. GARWOOD, PETITIONER, v. LAKE LAND COLLEGE, RESPONDENT,

NO. 12WC 04194

ILLINOIS WORKERS' COMPENSATION COMMISSION

STATE OF ILLINOIS, COUNTY OF ADAMS

14 IWCC 68; 2014 Ill. Wrk. Comp. LEXIS 78

February 3, 2014

JUDGES: Charles J. DeVriendt; Michael J. Brennan; Ruth W. White

OPINION: [*1]

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by the Respondent herein and notice given to all parties, the Commission, after considering the issues of average weekly rate, 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.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed January 3, 2013, 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.

The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

ATTACHMENT:

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 [*2] 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
G. [X] What were Petitioner's earnings?
K. [X] What temporary benefits are in dispute?
[X] TTD
L. [X] What is the nature and extent of the injury?

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** [*3] 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 [*4] **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.

12/28/12

Date

Jeffrey N. Garwood v. Lake Land College, 12 WC 4194

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, [*5] 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 [*6] 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 [*7] 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 [*8] 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 [*9] 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, [*10] 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. [*11] 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 [*12] 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 [*13] 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 [*14] 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 [*15] 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 [*16] 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 [*17] 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) [*18] 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 [*19] 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 [*20] 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 [*21] 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 [*22] 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 in-

structor 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 [*23] 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 [*24] 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. [*25] 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" [*26] 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, [*27] 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 [*28] 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.

Legal Topics:

For related research and practice materials, see the following legal topics:
Labor & Employment LawCollective Bargaining & Labor RelationsDiscipline, Layoff & TerminationWorkers' Compensation & SSDIAdministrative ProceedingsClaimsTime LimitationsNotice PeriodsWorkers' Compensation & SSDICompensabilityInjuriesGeneral Overview

1 of 1 DOCUMENT

MICHAEL ARSCOTT, PETITIONER, v. CONWAY FREIGHT, INC., RESPONDENT,

NO. 12WC 03876

ILLINOIS WORKERS' COMPENSATION COMMISSION

STATE OF ILLINOIS, COUNTY OF JEFFERSON

14 IWCC 18; 2014 Ill. Wrk. Comp. LEXIS 8

January 16, 2014

JUDGES: Mario Basurto; David L. Gore; Michael J. Brennan

OPINION: [*1]

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by the Petitioner herein and notice given to all parties, the Commission, after considering the issue of permanency and being advised of the facts and law, modifies the Decision of the Arbitrator as stated below and otherwise affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.

The Commission viewed the evidence differently than the Arbitrator and finds Petitioner lost 25% of the use of his left leg under Section 8(e) of the Act.

IT IS THEREFORE ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $ 695.78 per week for a period of 53.75 weeks, as provided in § 8(e) of the Act, for the reason that the injuries sustained caused the 25% loss of a leg.

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

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall have credit for $ 23,364.63 paid to or on behalf of Petitioner on account of said accidental injury.

Bond for the removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of $ 37,500.00. The [*2] party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court

ATTACHMENT:

AMENDED ARBITRATION DECISION PURSUANT TO SECTION 19(F)

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 [*3] 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 **43** 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 [*4] 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.

1-23-2013

Date

MICHAEL ARSCOTT,

Petitioner,

vs.

CON-WAY FREIGHT, INC.,

Respondent.

No. 12 WC 3876

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. [*5] 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 [*6] *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 [*7] 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.

Legal Topics:

For related research and practice materials, see the following legal topics:
Workers' Compensation & SSDIAdministrative ProceedingsClaimsTime LimitationsNotice PeriodsWorkers' Compensation & SSDICompensabilityCourse of EmploymentGeneral OverviewWorkers' Compensation & SSDICompensabilityInjuriesGeneral Overview

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ROBERT TODD RILEY, PETITIONER, v. CON-WAY FREIGHT, INC. RESPONDENT.

NO. 12WC 11083

ILLINOIS WORKERS' COMPENSATION COMMISSION

STATE OF ILLINOIS, COUNTY OF JEFFERSON

13 IWCC 759; 2013 Ill. Wrk. Comp. LEXIS 760

August 27, 2013

JUDGES: Michael P. Latz; Charles J. DeVriendt; Ruth W. White

OPINION: [*1]

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by the Respondent herein and notice given to all parties, the Commission, after considering the issues of nature and extent 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.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed January 14, 2013 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.

Bond for removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of $ 40,000.00.

The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

ATTACHMENT:

ARBITRATION DECISION

NATURE AND EXTENT ONLY

Robert Todd Riley
Employee/Petitioner

v.

Con-Way Freight, Inc.
Employer/Respondent

Case [*2] # 12 WC 11083

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 12/5/12. 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 [*3] 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 [*4] 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

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 [*5] 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 [*6] 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 [*7] 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.

Legal Topics:

For related research and practice materials, see the following legal topics:

Workers' Compensation & SSDIBenefit DeterminationsMedical BenefitsGeneral OverviewWorkers' Compensation & SSDICompensabilityCourse of EmploymentGeneral OverviewWorkers' Compensation & SSDICompensabilityInjuriesGeneral Overview

1 of 2 DOCUMENTS

CURTIS OLTMANN, PETITIONER, v. CONTINENTAL TIRE THE AMERICAS, LLC., RESPONDENT,

NO. 12WC 11777

ILLINOIS WORKERS' COMPENSATION COMMISSION

STATE OF ILLINOIS, COUNTY OF JEFFERSON

13 IWCC 744; 2013 Ill. Wrk. Comp. LEXIS 746

August 21, 2013

JUDGES: Charles J. DeVriendt; Ruth White; Michael P. Latz

OPINION: [*1]

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by the Respondent herein and notice given to all parties, the Commission, after considering the issues of nature and extent 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.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed January 14, 2013 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.

Bond for removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of $ 6,500.00. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

ATTACHMENT:

ARBITRATION DECISION

NATURE AND EXTENT ONLY

CURTIS OLTMANN,
Employee/Petitioner

v.

CONTINENTAL TIRE THE AMERICAS, LLC,
[*2] 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 [*3] 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 [*4] 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

CURTIS OLTMANN,

Petitioner,

vs.

CONTINENTAL TIRE THE AMERICAS, LLC.,

RESPONDENT.

No. 12 WC 11777

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 [*5] 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) [*6] 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.

Legal Topics:

For related research and practice materials, see the following legal topics:
Workers' Compensation & SSDIBenefit DeterminationsMedical BenefitsGeneral OverviewWorkers' Compensation & SSDICompensabilityCourse of EmploymentGeneral OverviewWorkers' Compensation & SSDICompensabilityInjuriesGeneral Overview

10 of 100 DOCUMENTS

ROBERT GRIFFIN, PETITIONER, v. CATERPILLAR, INC., RESPONDENT.

NO. 11WC 40321

ILLINOIS WORKERS' COMPENSATION COMMISSION

STATE OF ILLINOIS, COUNTY OF SANGAMON

14 IWCC 62; 2014 Ill. Wrk. Comp. LEXIS 32

January 31, 2014

JUDGES: David L. Gore; Mario Basurto; Daniel R. Donohoo

OPINION: [*1]

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by the Respondent herein and notice given to all parties, the Commission, after considering the issues of causal connection, the nature and extent of Petitioner's disability, statutory interpretation (section 8.1(b)), 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.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed March 1, 2013 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.

Bond for removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of $ 13,900.00. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

ATTACHMENT:

ARBITRATION DECISION

Robert Griffin
Employee/Petitioner

[*2] v.

Caterpillar, Inc.
Employer/Respondent

Case # **11** WC **40321**

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 **Stephen Mathis,** Arbitrator of the Commission, in the city of **Springfield,** on **December 12, 2012.** After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES
F. [X] Is Petitioner's current condition of ill-being causally related to the injury?
L. [X] What is the nature and extent of the injury?

FINDINGS

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

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

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

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

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

[*3] In the year preceding the injury, Petitioner earned **$ 46,000.52;** the average weekly wage was **$ 884.63.**

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

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

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

Respondent shall be given a credit of **$ 2,106.36** for TTD, **$ 1,257.88** for TPD, $- for maintenance, and $-4 for other benefits, for a total credit of **$ 3,364.24.** The parties stipulated the correct TTD and TPD was paid.

Respondent is entitled to a credit of $- under Section 80) of the Act.

ORDER

Permanent Partial Disability: Schedule injury

Respondent shall pay Petitioner permanent partial disability benefits of $ 530.78/week for 32.25 weeks, because the injuries sustained caused the 15 % loss of use of the Petitioner's left leg, as provided in Section 8(e)12 of the Act. In support of the Arbitrator's determination, please refer to Appendix "A" attached. Respondent shall pay Petitioner compensation that has accrued from September 30, 2011 through December [*4] 12, 2012, and shall pay the remainder of the award, if any, in weekly payments.

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

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

2-27-13

Date

APPENDIX "A"

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

FINDINGS OF FACT

Petitioner was 62 years of age at the time of the accident on September 30, 2011. He was married and had no dependent children. On September 30, 2011 Petitioner testified that he was carrying a ladder, weighing approximately 50 pounds, positioning the ladder and felt [*5] a "pop" in his left knee. (T.15).

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

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

On October 5, 2011, Petitioner testified he began treatment with Dr. Kefalas. (T.18). Dr. Kefalas noted that Petitioner presented with an "acute left knee [*6] injury which occurred on 09-30-11 at work." (Px2, Rx2). The doctor noted the Petitioner felt a "pop" in his left knee while he was positioning a ladder. (Px2, Rx2). He was prescribed restrictions, provided light duty work, and recommended for an MRI which was performed. (T.19).

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

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

On December 15, 2011, Petitioner underwent left knee surgery performed by Dr. Kefalas. According to the operative report, there was a "radial tear" in the medial meniscus and a partial medial meniscectomy was performed. (Px2, [*7] Rx2). The operative report also noted Grade III chondral lesions on the weight-bearing surface of the medial femoral condyle which were smoothed with a shaver. (Px2, Rx2).

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

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

CONCLUSIONS OF LAW

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

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

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

The injuries to Petitioner's left leg include a radial [*8] tear of the medical meniscus and chondral lesions which required surgery. For accidental injuries occurring on or after September . 1, 2011, Section 8.1b of the Act lists the following criteria to be weighed in determining the level of permanent partial disability:

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

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

1. In regards to the level of impairment:

Dr. Ethiraj, Respondent's physician, opined Petitioner sustained a 2% left lower [*9] extremity/leg impairment and 1% whole person impairment pursuant to the most current AMA Guides. The Arbitrator notes that the impairment does not equate to permanent partial disability under the Illinois Workers' Compensation Act. Dr. Ethiraj acknowledged in his deposition that his "impairment (rating) is not directly correlated to disability because there were many other factors that would lead to disability." (Rx3 @ Page 37). Dr. Ethiraj found no atrophy or loss of motion in the knee but noted mild tenderness to palpation around the medial joint line. (Rx3 @ Pages 26, 27, 55). The doctor admitted that he could have used the operative report as a grade modifier to increase the impairment rating, but used the MRI which revealed an MCL sprain and not the actual surgical report that revealed the medial meniscus tear. (Rx3, Pages 56, 57, 58, 59). The doctor acknowledged that the AMA Sixth Edition clearly states that the doctor should use the most significant injury in the diagnosis for the impairment rating but the doctor instead used the MRI which revealed an MCL sprain. (Rx3 @ Page 62). The doctor acknowledged that when a patient undergoes a meniscus surgery, "they are at more risks [*10] to develop arthritis". (Rx3 @ Page 48). Dr. Ethiraj also testified that Petitioner continues to perform his home exercise program. (Rx3 @ Page 51).

2. In regards to occupation:

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

3. In regards to age:

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

4. In regards to future earning capacity:

Petitioner's future earning capacity has been limited as a result of the injury. After the surgery, Petitioner returned to work but testified that he chose not to transfer or bid to more physically demanding, higher [*11] paying jobs in the plant because of the knee injury. Also, after he returned to work, Petitioner testified that he did not work a lot of voluntary overtime because his left knee continued to bother him and at that time he was taking pain medication two to four times per day. (T. 24). Petitioner testified that after he returned to work for approximately four months, following his surgery, he was terminated and has been looking for work unsuccessfully since and recently began drawing his Social Security early retirement at a reduced rate. (T. 27, 29). Petitioner testified that he has decided not to apply for employment in factories or foundries performing the kind of work he previously performed in his occupation, "because there's just too much walking and bending." (T. 28). Petitioner testified that he continues to look for part-time or full-time work and the jobs are in the range of $ 10.00 to $ 15.00 per hour, significantly less than how much he was making at the time of the injury. The Arbitrator concludes that this injury has negatively impacted on the Petitioner's future earning capacity.

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

Petitioner [*12] has demonstrated evidence of disability. Petitioner credibly testified that he currently experiences pain, stiffness, swelling and locking in his left knee. Petitioner's complaints regarding his left leg are corroborated in the treating medical records of Dr. Kefalas as well as the Caterpillar Plant medical records. (Pxl, Px2, Rxl, Rx2). Dr. Kefalas' treating records demonstrated a loss of motion that required surgery and improvement following surgery. (Px2, Rx2). On January 18, 2012, Dr. Kefalas noted that his knee condition had stabilized and released him from his care. (Px2, Rx2). Dr. Kefalas encouraged him to continue using the patella femoral brace whenever he was active and to return if there were any "further problems or concerns". (Px2, Rx2). Petitioner's complaints, supported by the treating medical records, evidences a disability as indicated by the Commission decisions regarded as precedent pursuant to Section 8(e).

The determination of permanent partial disability ("PPD") is an evaluation of all five factors as stated in the Act. In making this determination of PPD, no single enumerated factor is deemed the sole determinant. Rather, the Arbitrator, after weighing all [*13] five factors, notes that his advanced age, physical occupation, credible complaints, loss of earning capacity, all support a permanent partial disability award of 15% loss of use of his left leg. The Arbitrator specifically acknowledges the 2% impairment rating and included this rating in his analysis. However, Dr. Ethiraj admitted that the rating could have been computed in a different manner to obtain a higher percentage and the Arbitrator concludes that impairment does not equate to disability in this case. Therefore, applying Section 8.1b of the Act, *820 ILCS 305/8.*lb, Petitioner has sustained an accidental injury that resulted in a 15% permanent partial disability/loss of use to his left leg. The Arbitrator further finds the Respondent shall pay the Petitioner the sum of $ 530.78 a week for a further period of 32.25 weeks, as provided in Section 8(e) of the Act.

Legal Topics:

For related research and practice materials, see the following legal topics:
Workers' Compensation & SSDIAdministrative ProceedingsClaimsTime LimitationsNotice PeriodsWorkers' Compensation & SSDICompensabilityCourse of EmploymentGeneral OverviewWorkers' Compensation & SSDICompensabilityInjuriesGeneral Overview

2 of 100 DOCUMENTS

ROBERT W. LIAZUK, PETITIONER, v. BOLINGBROOK POLICE DEPARTMENT, RESPONDENT.

NO. 12WC 11804

ILLINOIS WORKERS' COMPENSATION COMMISSION

STATE OF ILLINOIS, COUNTY OF WILL

13 IWCC 934; 2013 Ill. Wrk. Comp. LEXIS 1026

November 4, 2013

JUDGES: Daniel R. Donohoo; Kevin W. Lamborn; Thomas J. Tyrrell

OPINION: [*1]

[EDITOR'S NOTE: THE ORIGINAL SOURCE CONTAINED ILLEGIBLE WORDS AND/OR MISSING TEXT. THE LEXIS SERVICE WILL PLACE THE CORRECTED VERSION ON-LINE UPON RECEIPT.]

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by the Petitioner and Respondent herein and notice given to all parties, the Commission, after considering the issues of the nature and extent of Petitioner's 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.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed April 8, 2013 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.

The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

ATTACHMENT:

CORRECTED ARBITRATION DECISION

Robert W. Liazuk
Employee/Petitioner

v.

Bolingbrook Police Department
Employer/Respondent

Case # **12** WC **11804**

Consolidated cases:

An *Application for Adjustment* [*2] *of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Robert Falcioni**, Arbitrator of the Commission, in the city of **New Le-**

nox, IL, on **February 15, 2013**. After reviewing all of the evidence presented, the Arbitrator hereb[ILLEGIBLE TEXT] 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?
L. [X] What is the nature and extent of the injury?

FINDINGS

On **September 6, 2011**, Respondent ***was*** operating under and subject to the provisions of the Act.

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

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

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

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

In the year preceding the injury, Petitioner earned $ **95,626.96**; the average weekly wage was $ **1,838.98**.

On the date of [*3] accident, Petitioner was **40** years of age, ***single*** with **3** children under 18.

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

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

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

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

ORDER

> *Respondent shall pay Petitioner permanent partial disability benefits of $ 695.78/week for 25 weeks, because the injuries sustained caused the 5% loss of use of the person as a whole, as provided in Section 8(d)2 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 th[ILLEGIBLE TEXT] decision of the Commission.

STATEMENT OF INTEREST RATE If the Commission reviews this award, interest at the rate set forth on the *Noti[ILLEGIBLE TEXT] of Decision of Arbitrator* shall accrue [*4] from the date listed below to the day before the date of payment; howe[ILLEGIBLE TEXT] if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

3/28/13

Date

STATEMENT OF FACTS

On September 6, 2011, Petitioner was a 40 year old police officer assigned to the canine unit. Such work often involved lifting the dog over fences or onto trucks during drug and suspect searches. Petitioner also attended monthly training sessions with his dog.

Petitioner testified that he saw a chiropractor for his low back but mostly for his neck in the three years preceding the accident. These visits were for pain after his workouts with free weights in a weight room provided by the Respondent. Such workouts were encouraged to promote the safety of the officers.

Petitioner testified that he injured his low back in September 2009 while shoveling stone. He sought care on September 25, 2009 from Dr. Michael R. Zindrick at Hinsdale Orthopedics (PX3). Petitioner complained to Dr. Zindrick of pain that was 10-20% in his low back and 80% in his left buttock and leg. Treatment consisted of medication and physical therapy. A lumbar MRI on September 29, 2009 [*5] showed a mild diffuse disk bulge at L3-4 and a small central disk protrusion. At L4-5, there was a moderate to large focal disk protrusion and an asymmetric protrusion causing narrowing left of mildline. Dr. Zindrick interpreted the MRI on October 1, 2009 as showing a disk herniation at the L4-5 level on the left which was consistent with his symptoms. Dr. Steven G. Bardfield, an anesthesiologist, administered a transforaminal epidural steroid injection at the left L4 and L5 nerve roots on October 8, 2009. Petitioner reported to Dr. Zindrick on October 21, 2009 that his back pain and left sided radiculopathy had resolved completely following the injection. Petitioner testified that he had no symptoms of back pain or radiculopathy between October 21, 2009 and the accident of September 6, 2011. He performed all of his police duties and training without symptoms.

On September 6, 2011, Petitioner was wearing a "bite suit" while training police dogs. He was acting as a decoy when a dog running 25 to 30 miles per hour grabbed his left forearm and pulled him to the ground. He felt his low back go into spasm. An ambulance took him to Elmhurst Hospital (PX1). The emergency room physician noted [*6] low back pain with spasms but no radiculopathy. Medication was prescribed and Petitioner followed up with Physicians Immediate Care as directed by Respondent (PX2). On September 9, 2011, Dr. Gregus noted a history of sharp left sided low back pain with spasms. The physical examination was normal and Dr. Gregus discharged Petitioner to return to work without restrictions.

Petitioner returned to Dr. Zindrick on September 12, 2011 complaining of low back pain. Petitioner had a painful and restricted range of lumbar motion. Dr. Zindrick's impression was that Petitioner had "no radiculopathy at this time". He prescribed medication, physical therapy and added that a lumbar MRI would be ordered should his symptoms worsen.

A lumbar MRI performed on September 30, 2011 showed that Petitioner had a central disk protrusion at L3-4 which now extended to the right of midline associated with deformity of the anterior surface of the thecal sac and spinal stenosis. At L4-5, there was a minimal central protrusion which abutted but did not deform the thecal sac.

Petitioner complained to Dr. Zindrick on October 11, 2011 of pain 90% in his low back and 10% into his right buttock. Dr. Zindrick prescribed [*7] Relafen and physical therapy and he advised Petitioner to return to see Dr. Bandfield for epidural steroid injections at L3-L4. Dr. Bandfield administered transforaminal epidural injections bilaterally at the L3 and L4 nerve roots on October 24, 2011 and November 21, 2011.

Petitioner complained to Kelly Burgess, PA of right leg pain with occasional tingling on December 6, 2011. On January 31, 2012, Petitioner advised Dr. Zindrick that he was feeling better after being off work in December. On April 16, 2012, Petitioner rated his pain as 0-2/10 and reported that 90% of the pain was in his low back and 10% in his right leg. Dr. Zindrick noted that Petitioner had not yet returned to wearing the bite suit.

Dr. Klaud Miller examined Petitioner at the request of Respondent on May 9, 2012. The physical examination of the low back revealed no abnormal findings. Dr. Miller reviewed the MRI films of September 30, 2011. He agreed with the radiologist that Petitioner had a "mild bulging disc at L3-4 and a minimal disc bulge at L4-5". Dr. Miller stated that there was no evidence of the herniated disc at L4-5 seen on the earlier MRI of September 29, 2009. Dr. Miller diagnosed a lumbar sprain which [*8] he opined was a work related condition. Dr. Miller noted that the September 30, 2011 MRI did not show a disc herniation at L4-5. He opined that Petitioner had an AMA impairment rating of zero percent.

Petitioner saw Dr. Zindrick for the last time on July 16, 2012. Petitioner complained of 0-3/10 pain and morning stiffness. Petitioner demonstrated a full range of motion without significant pain.

At arbitration, Petitioner testified that he has morning stiffness and low back pain which occasionally radiates in his right buttock. He continues to work as a canine officer. He plays less frequently in a no contact hockey league and he has cut down on his weight lifting. He has not worn the bite suit since the accident for fear of reinjury and he was unable to complete a recent department defensive training course due to the onset of low back pain.

F. Causal Connection

The Arbitrator finds that there is a causal connection between the accident and the current condition of ill-being of Petitioner.

Petitioner did not have any right sided complaints prior to the accident of September 6, 2011. The MRI of September 30, 2011 shows that the previous central disc protrusion at L3-4 now extended [*9] to the right of the midline and was associated with a deformity of the thecal sac. Dr. Miller opined that his diagnosis of a lumbar strain was related to the accident. The Arbitrator notes that Petitioner was asymptomatic when seen by Dr. Zindrick on October 21, 2009 and the Petitioner testified credibly that he had no low back symptoms until the accident of September 6, 2011.

L. Nature and Extent of the Injury.

The Respondent submitted into evidence the impairment rating of Dr. Miller according to the AMA Guides Sixth Edition. (RX1). Dr. Miller opined that the AMA Guides state that Petitioner had a zero percent impairment rating because the left sided herniation at L4-5 seen on the pre-accident MRI of September 29, 2009 was not seen on the post-accident MRI of September 30, 2011.

The AMA impairment rating given by Dr. Miller does not address the disk at L3-4. Dr. Miller stated that he "agreed" with the radiologist that Petitioner had "a mild bulging disc at L3-4" (p. 5 of report). Dr. Miller apparently confused the two MRI reports which were taken exactly two years apart. The "mild bulging disc at L3-4" appears on the earlier pre-accident MRI of September 29, 2009. The post-accident [*10] MRI of September 30, 2011 does not describe the bulge as "mild" but rather as a "protrusion at L3-4 centrally extending to the right of midline associated with deformity of the thecal sac. The bulging disc seen on the earlier MRI did not contact or deform the thecal sac. The Arbitrator does not find the AMA guidelines helpful in this matter as Dr. Miller did not properly address the new findings at the disc at L3-4.

Petitioner has a right sided disc protrusion which deforms the thecal sac. Such finding is consistent with his complaints of a right sided low back pain with occasional radiation into his right buttock. Petitioner underwent physical therapy and two epidural steroid injections at L3-4. Petitioner has been able to work through the pain without losing time from work. However he has not worn the "bite suit" since the accident and he was unable to complete defensive skills training due to an onset of stiffness in his low back. Petitioner has also curtailed his personal recreational activities.

Based on the above the Arbitrator finds that Petitioner has sustained a 5% loss of use of the man as a whole.

Legal Topics:

For related research and practice materials, see the following legal topics:
Labor & Employment LawDisability & Unemployment InsuranceDisability BenefitsGeneral OverviewWorkers' Compensation & SSDIAdministrative ProceedingsClaimsTime LimitationsNotice PeriodsWorkers' Compensation & SSDICompensabilityInjuriesGeneral Overview

1 of 21 DOCUMENTS

JEFF WESSEL, PETITIONER, v. VILLAGE OF MILLSTADT, MILLSTADT PUBLIC WORKS, RESPONDENT.

No. 12WC 30259

ILLINOIS WORKERS' COMPENSATION COMMISSION

STATE OF ILLINOIS, COUNTY OF MADISON

13 IWCC 1029; 2013 Ill. Wrk. Comp. LEXIS 1168

December 6, 2013

JUDGES: Michael J. Brennan; Charles J. DeVriendt; Ruth W. White

OPINION: [*1]

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by Respondent herein and notice given to all parties, the Commission, after considering the issue of the nature and extent of Petitioner's disability and being advised of the facts and law, affirms the decision of the Arbitrator as stated below.

FACTS

On August 31, 2012, Petitioner filed an Application for Adjustment of Claim, alleging that on November 29, 2011, he injured his left knee when he fell at work. At the January 30, 2013, arbitration hearing, the sole issue before the Arbitrator was the nature and extent of Petitioner's disability as the parties stipulated to all the other issues.

Petitioner testified that he has worked for Respondent as a laborer and heavy equipment operator for approximately 14 years. On the day of the undisputed accident, Petitioner's left knee twisted and buckled as he climbed from a dump truck, causing him to fall to the ground. Immediately after the accident, Petitioner went to the emergency room where they performed x-rays and referred him to the occupational medicine department. At the recommendation of the occupational medicine physician, Petitioner underwent an MRI [*2] that showed an anterior cruciate ligament (ACL) tear. After the MRI, the physician referred him to Dr. George Paletta, an orthopedic specialist.

Medical records show that on December 28, 2011, Dr. Paletta examined Petitioner who reported having left knee pain after a work-related injury. Dr. Paletta noted that Petitioner underwent a left knee MRI on December 12, 2011, and the report stated that Petitioner had a complete ACL tear with an associated longitudinal tear of the lateral meniscus. Dr. Paletta diagnosed Petitioner with left knee ACL insufficiency and a lateral meniscus tear, and recommended that Petitioner undergo a left knee arthroscopy with ACL reconstruction and lateral meniscus repair. Dr. Paletta released Petitioner to work with restrictions of no squatting, kneeling, climbing and running; and no lifting, pushing, pulling or carrying more than 25 pounds.

On January 31, 2012, Dr. Paletta performed a left knee diagnostic arthroscopy, debridement and chondroplasty, partial lateral meniscectomy, and ACL reconstruction using autologous semitendinous hamstring tendons.

On February 13, 2012, Petitioner returned to Dr. Paletta and reported that he was progressing nicely with [*3] physical therapy. Dr. Paletta removed Petitioner's sutures and recommended that he continue physical therapy, wear a knee brace and remain off work. On May 2, 2012, Dr. Paletta reexamined Petitioner who complained of occasional left knee discomfort when climbing down stairs. Dr. Paletta noted that Petitioner was doing well, recommended that he re-

duce his physical therapy sessions to once a week, and released him to work with restrictions of no lifting more than 50 pounds, and no squatting, kneeling, or climbing.

On June 20, 2012, Petitioner returned to Dr. Paletta and reported that he had "significant improvement" in the peripatellar pain that he had when climbing down stairs. He had undergone more aggressive strengthening at physical therapy and felt that his left knee had improved. Dr. Paletta noted that Petitioner's job involved operating heavy equipment, climbing up and down equipment, and some squatting. On examination, Petitioner's left knee had full range of motion with full extension and virtually full flexion, minimal quadriceps atrophy, outstanding stability, and no swelling, effusion or joint line tenderness. Dr. Paletta noted that Petitioner had reached maximum medical [*4] improvement, released Petitioner to full duty work as of the next day, and recommended that he return to full impact activities such as running and jogging in approximately one month. Petitioner testified that he has worked full duty and has not sought medical treatment since that time.

On October 16, 2012, Dr. Richard Rende performed a Section 12 examination and impairment rating analysis at Respondent's request. Dr. Rende did not state whether he relied on the AMA's Guides to the Evaluation of Permanent Impairment, but cited to various tables and charts throughout his report. Dr. Rende opined:

> "The first diagnosis is a partial lateral meniscectomy. Referring to Table 16.3 on page 509 and taking into consideration the fact that the patient is suffering from mild problems with pain, this would place him in a Class 1. Class 1 for lateral meniscectomy places him in a range of one to three percent (1 to 3%). I would default to Grade C since he is not having any other significant factors suggesting that this must be higher or lower. His impairment rating for his lateral meniscectomy thus is two percent (2%) of his lower extremity.
>
> As far as the ACL tear and reconstruction please refer [*5] to Table 16.3 page 510. As noted previously the patient reports mild problems with occasional pain but no episodes of giving way. This would once again place him in a Class 1. The range would be seven to thirteen percent (7 to 13%) impairment of his lower extremity. Since the patient is having no laxity and no instability his grade becomes an A which translates to seven percent (7%) impairment of the lower extremity.
>
> Referring to the combined values chart on page 604 please note that comb[ining] seven percent (7%) and two percent (2%) results in an eight (8%) percent lower extremity impairment as a result of his partial lateral meniscectomy and ACL reconstruction."

Currently, Petitioner continues to experience tenderness and discomfort in the medial area of his left knee and notices less flexibility in his left leg. Petitioner also has left knee popping approximately once a day, residual weakness, and tenderness in the front of the left knee when climbing in and out of work equipment. Petitioner takes Ibuprofen for his symptoms. On cross examination, Petitioner acknowledged that he had begun riding his bicycle again.

DISCUSSION

The Arbitrator found that the injuries Petitioner [*6] sustained caused a 30 percent loss of use of the left leg. The Commission agrees with the Arbitrator's finding.

In consideration of the five factors listed in section 8.1(b) of the Act, the Commission finds: (1) Dr. Rende gave Petitioner a total impairment rating of eight percent; (2) Petitioner works as a laborer and heavy equipment operator; (3) the parties stipulated that Petitioner was 51 years old at the time of the undisputed accident although the evidence shows that he was 50 years old; (4) Petitioner has worked full duty for Respondent since June 21, 2012; and (5) the medical records show Petitioner continued to have residual left leg symptoms after being released from Dr. Paletta's care.

The Commission finds that factors two, three and five should be given more weight than factors one and four. The record shows that the undisputed work accident caused Petitioner to sustain a complete ACL tear and an associated longitudinal lateral meniscus tear. As a result, Petitioner underwent a left knee diagnostic arthroscopy, arthroscopy with debridement and chondroplasty, partial lateral meniscectomy and ACL reconstruction. While Petitioner returned to full duty work, Dr. Rende's report [*7] and Petitioner's credible testimony show that he continued to experience left knee pain and tenderness after undergoing extensive left knee surgery and five months of physical therapy. In addition, Petitioner's job requires significant use of the left knee to perform heavy physical labor and activities such as squatting and climbing in and out of equipment. Petitioner testified that climbing in and out of the equipment at work causes increased left knee tenderness, and he continues to experience popping and residual weakness in the left knee.

IT IS THEREFORE ORDERED BY THE COMMISSION that the decision of the Arbitrator filed on April 2, 2013, is hereby affirmed as stated herein.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall pay to Petitioner the sum of $ 525.12 per week for a period of 64.5 weeks, as provided in § 8(e) of the Act, for the reason that the injuries sustained caused permanent partial disability equivalent to 30 percent loss of the use of the left leg.

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

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall have credit for all [*8] amounts paid, if any, to or on behalf of Petitioner on account of said accidental injury.

No bond is required for removal of this cause to the Circuit Court by Respondent. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

ATTACHMENT:

ARBITRATION DECISION

NATURE AND EXTENT ONLY

Jeff Wessel
Employee/Petitioner

v.

Millstadt Public Works
Employer/Respondent

Case # 12 WC 30259

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 William R. Gallagher, Arbitrator of the Commission, in the city of Collinsville, on January 30, 2013. By stipulation, the parties agree:

On the date of accident, November 29, 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 [*9] 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 $ 45,510.40, and the average weekly wage was $ 875.20.

At the time of injury, Petitioner was 51 years of age, married with 0 dependent child(ren).

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

The parties stipulated at trial that all temporary total disability benefits had been paid.

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

ORDER

Respondent shall pay Petitioner permanent partial disability benefits of $ 525.12 per week for 64.5 weeks, because the injury sustained caused the 30% loss of use of the left leg, as provided in Section 8(e) of the Act.

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.

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

William R. Gallagher, Arbitrator

March 29, 2013

Date

Findings of Fact

Petitioner filed an Application for Adjustment of Claim which alleged he sustained an accidental injury arising out of and in the course of his employment for Respondent on November 29, 2011. According to the Application, Petitioner sustained an injury to his left knee as a result of a fall during the course of his employment. There was no dispute regarding the compensability of this accident and Respondent paid both medical and temporary total disability benefits. At trial, the sole disputed issue was the nature and extent of permanent partial disability.

Petitioner testified that he worked for Respondent's Public Works Department and that his work duties consisted primarily of the operation of heavy equipment and that he also performed other heavy manual labor type tasks. [*11] Petitioner testified that he had been employed by Respondent for approximately 14 years and that on November 29, 2011, he was in the process of climbing down from his truck when he sustained a twisting injury to his left knee when it buckled and locked. Following the accident Petitioner was seen at the ER of Memorial Hospital. Petitioner was given a knee brace and referred to the Occupational Medicine Department of Memorial Hospital. An MRI was ordered which apparently revealed tears of both the ACL and lateral meniscus. The Petitioner was then referred to Dr. George Paletta, an orthopedic surgeon, for further treatment.

Dr. Paletta initially saw Petitioner on December 28, 2011, obtained a history from him, examined him and reviewed the MRI scan. Petitioner informed Dr. Paletta of the work-related accident and also advised that he previously had knee surgery in 1994 by Dr. Mirly. Petitioner was not certain of the precise nature of that prior surgery; however, he fully recovered and had no further knee symptoms until the time of this injury. When Dr. Paletta reviewed the MRI, he opined that it revealed a complete tear of the ACL and a tear of the lateral meniscus. Dr. Paletta's findings [*12] on clinical examination were consistent with what he noted in his review of the MRI. Dr. Paletta recommended surgery consisting of an ACL reconstruction and lateral meniscus repair.

Dr. Paletta performed arthroscopic surgery on January 31, 2012, the surgical procedure consisting of an ACL reconstruction using hamstring tendon grafts, a partial lateral meniscectomy and a debridement and chondroplasty of the medial fermoral condyle. Following the surgery, Dr. Paletta authorized Petitioner to remain off work and prescribed physical therapy. Dr. Paletta authorized Petitioner to return to work on restricted duty on March 26, 2012. When Dr. Paletta saw Petitioner on June 20, 2012, he authorized Petitioner to return to work without restrictions.

At Respondent's direction, Petitioner was examined by Dr. Richard Rende on October 16, 2012. Dr. Rende examined Petitioner and reviewed various medical records that were provided to him. Dr. Rende opined as to an impairment rating of eight percent (8%) impairment to the left lower extremity. Dr. Rende's medical report does not specifically state that the impairment rating is, in fact, based on the current edition of the AMA's "Guides to the Evaluation [*13] of Permanent Impairment,"; however, various page references contained in Dr. Rende's report do correspond with the pages in the AMA "Guides to the Evaluation of Permanent Impairment" -- Sixth Edition.

At trial, Petitioner testified that he still has tenderness and discomfort in the left knee, less flexibility in the knee joint, that he experiences popping of the knee at least once a day, that he has weakness/lack of strength in the knee, stiffness in the knee and that he does experience some difficulties when he has to take big steps on the heavy equipment that he operates at work. Petitioner did agree that he was able to return to work to his regular job and is able to perform all of his job duties.

Conclusions of Law

The Arbitrator concludes that as a result of the accident of November 29, 2011, Petitioner has sustained 30% loss of use of the left leg.

In support of this conclusion the Arbitrator notes the following:

Dr. Rende opined that there was an impairment rating of 8% to the left lower extremity which does appear to be based on the AMA "Guides to the Evaluation of Permanent Impairment."

Petitioner is a heavy equipment operator and was 51 years of age at the time of the [*14] accident. While Petitioner was able to return to work to his normal occupation, he does continue to experience knee symptoms on a daily basis. Given Petitioner's age, his knee symptoms may increase as he grows older. Further, Petitioner will have to live with these symptoms for the remainder of both his working and natural lives. There was no evidence that the injury will have any effect on Petitioner's future earning capacity.

The medical treatment records clearly indicate that Petitioner sustained a serious injury to his left knee which required surgery including an ACL reconstruction using tendon grafts, a partial lateral meniscectomy and a debridement and chondroplasty of the medial femoral condyle.

William R. Gallagher Arbitrator

Legal Topics:

For related research and practice materials, see the following legal topics:
Workers' Compensation & SSDIAdministrative ProceedingsClaimsTime LimitationsNotice PeriodsWorkers' Compensation & SSDICompensabilityCourse of EmploymentGeneral OverviewWorkers' Compensation & SSDICompensabilityInjuriesAccidental Injuries

17 of 100 DOCUMENTS

RICK FASSERO, PETITIONER, v. UPS, RESPONDENT.

NO. 12WC 17291

ILLINOIS WORKERS' COMPENSATION COMMISSION

STATE OF ILLINOIS, COUNTY OF SANGAMON

13 IWCC 858; 2013 Ill. Wrk. Comp. LEXIS 968

October 7, 2013

JUDGES: Michael J. Brennan; David L. Gore; Mario Basurto

OPINION: [*1]

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by the Respondent herein and notice given to all parties, the Commission, after considering the issues of the nature and extent of Petitioner's permanent 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.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed May 9, 2013 is hereby affirmed and adopted.

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

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

Bond for removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of $ 15,600.00. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

ATTACHMENT:

ARBITRATION DECISION

NATURE AND EXTENT ONLY

RICK FASSERO
Employee/Petitioner

v.

UPS
Employer/Respondent [*2]

Case # **12** WC **17291**

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 **Springfield** on **March 12, 2013**. By stipulation, the parties agree:

On the date of accident, **March 13, 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 $ **77,480.52**, and the average weekly wage was $ **1,490.01**.

At the time of injury, Petitioner was **44** years of age, ***single*** with **0** dependent children.

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

Respondent shall [*3] be given a credit of $ **6,953.38** for TTD, $ - **0** - for TPD, $ - **0** - for maintenance, and $ - **0** - for other benefits, for a total credit of $ **6,953.38**.

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

ORDER

Respondent shall pay Petitioner permanent partial disability benefits of $ 695.78/week for 32.25 weeks, because the injuries sustained caused the 15% loss of use of the right leg, as provided in Section 8(e) of the Act.

Respondent shall pay Petitioner compensation that has accrued from 07/09/2012 through 03/12/2013, and shall pay the remainder of the award, if any, in weekly payments.

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

STATEMENT OF INTEREST RATE If the Commission reviews this award, interest at the rate set forth on the *Notice of Decision of Arbitrator* shall accrue from the date listed below to the day before the [*4] date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

05/05/2013

Date

ARBITRATION DECISION

NATURE AND EXTENT ONLY

RICK FASSERO
Employee/Petitioner

v.

UPS
Employer/Respondent

Case # 12 WC 17291

MEMORANDUM OF DECISION OF ARBITRATOR

FINDINGS OF FACT

At the time of trial on March 12, 2013, Petitioner, Rick Fassero, had been employed with Respondent, UPS, for 26 years. On March 13, 2012, Petitioner was making a delivery to an apartment with steep stairs. When walking on these stairs, he felt a "pop" in his right knee. Petitioner noticed immediate swelling in his right knee following this episode.

Petitioner underwent surgery to his right knee with Dr. Ronald Romanelli on May 24, 2012. That operation consisted of a right knee arthroscopy with posterior horn medial meniscectomy and arthroscopic debridement of the patellofemoral joint. The post-operative diagnosis was internal derangement of the right knee with a posterior horn medial meniscus tear, with chondromalacia of the medial facet of the patellofemoral joint. (Petitioner's Exhibit (PX) 2).

Petitioner underwent [*5] a course of physical therapy following his right knee surgery. (PX 2). Petitioner was off work from May 21, 2012 through July 8, 2012 as a result of his work injury. (See Arbitrator's Exhibit 1; PX 3). Dr. Romanelli released Petitioner to return to work, regular duty, effective July 9, 2012. (PX 3). Petitioner testified that he has had no problems performing his job duties since his release. Petitioner also testified that he last saw Dr. Romanelli on June 27, 2012, and has not returned for further knee treatment since that date.

Respondent sent Petitioner for an examination pursuant to Section 12 of the Illinois Workers' Compensation Act, *820 ILCS 305/1 et seq.* (hereafter the "Act") on October 4, 2012 with Dr. Lawrence Li. Dr. Li noted that Petitioner reported doing well following the surgery, with no problems. Dr. Li's diagnosis was a right knee medial meniscus tear "treated appropriately with an excellent result." (RX 1).

Dr. Li performed a permanent impairment rating based on the AMA Guides to Evaluation of Permanent Impairment, Sixth Edition. Dr. Li's finding was a "lower extremity impairment of 1%, which translates to a whole personal [*6] impairment of 1%." Dr. Li noted that Petitioner walked without a limp, and that his right knee range of motion was 0-120 degrees. (RX 1).

Petitioner testified that his right knee currently feels like there is "bone-on-bone" with everyday activities. Petitioner testified that he currently wears a knee brace, but that said brace was not prescribed by a physician.

CONCLUSIONS OF LAW

Pursuant to Section 8.1b of 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" [*7] 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, Respondent provided an impairment rating given by Dr. Lawrence Li. Dr. Li's finding was a "lower extremity impairment of 1%, which translates to a whole personal impairment of 1%." This impairment rating was un-rebutted by Petitioner. Accordingly, the Arbitrator gives weight to the foregoing factor.

With regard to Section 8.1b(b)(ii) [*8] of the Act, very little evidence was presented regarding Petitioner's occupation, other than he makes deliveries for Respondent. Given the mechanism of injury, it is apparent that Petitioner must walk to make his required deliveries. However, no evidence was presented as to Petitioner's detailed job requirements or whether his job is a "light," "medium" or "heavy" physical demand level position. In light of the foregoing, the Arbitrator gives only some weight to this factor.

With regard to Section 8.1b(b)(iii) of the Act, Petitioner was 44 years old at the time of his injury. (See Arbitrator's Exhibit 1). The Arbitrator considers Petitioner to be a somewhat younger individual and concludes that Petitioner's permanent partial disability (PPD) will be moderately greater than that of an older individual because Petitioner will have to live with the consequences of the injury for a longer period of time. The Arbitrator places some weight on this factor.

Concerning Section 8.1b(b)(iv) of the Act, no evidence of future earning capacity was presented, and therefore no weight is given in this regard.

With regard to Section 8.1b(b)(v) of the Act, evidence of disability in Petitioner's treating [*9] medical records indicates that Petitioner's right knee injury was treated surgically on May 24, 2012, with positive results. That surgery consisted of a right knee arthroscopy with posterior horn medial meniscectomy and arthroscopic debridement of the patellofemoral joint. The post-operative diagnosis was internal derangement of the right knee with a posterior horn medial meniscus tear, with chondromalacia of the medial facet of the patellofemoral joint. Petitioner underwent a course of physical therapy, and was released to return to work with no restrictions effective July 9, 2012. Petitioner has not returned to a physician concerning his right knee injury since his last visit with Dr. Romanelli on June 27, 2012. The Arbitrator notes that Section 8.1b(b)(v) of the Act requires determination of evidence of disability corroborated by the ***treating*** medical records. *820 ILCS 305/8.1b(b)(v).* (Emphasis added). Very little treating medical records exist besides Petitioner's March 24, 2012 surgical report. Petitioner testified that his right knee currently feels like there is "bone-on-bone" with everyday activities. He currently wears a [*10] knee brace, although it was not prescribed by a physician. Petitioner further testified that he currently has no problems performing his job duties, which involves making deliveries.

Regarding Section 8.1b(b)(v) of the Act, the Arbitrator finds that Petitioner's testimony regarding his current condition of disability, *i.e.*, his feeling of "bone-on-bone" in the knee that does not negatively affect his employment duties, is reasonably corroborated by the medical records given that Petitioner suffered an internal derangement of the right knee with a posterior horn medial meniscus tear with chondromalacia of the medial facet of the patellofemoral joint that necessitated arthroscopic surgery involving a meniscectomy and debridement. The Arbitrator finds that Petitioner was a credible witness at trial, and said credibility was evidenced by Petitioner testifying in an open and forthcoming manner. The Arbitrator places great weight on the foregoing factor (Section 8.1b(b)(v)) when making the permanency determination.

The determination of PPD is not simply a calculation, but an evaluation of all five factors as stated in Section 8.1b of the Act. In making this evaluation of PPD, consideration [*11] 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 15% loss of use of the right leg/knee. The Arbitrator accordingly finds that Respondent shall pay Petitioner the sum of $ 695.78 per week for a further period of 32.25 weeks, as provided in Section 8(e)(12) of the Act.

Legal Topics:

For related research and practice materials, see the following legal topics:
Labor & Employment LawDisability & Unemployment InsuranceDisability BenefitsGeneral OverviewWorkers' Compensation & SSDIAdministrative ProceedingsClaimsTime LimitationsNotice PeriodsWorkers' Compensation & SSDICompensabilityInjuriesGeneral Overview

3 of 100 DOCUMENTS

STEVEN THOMAS, PETITIONER, v. PEOPLES GAS, LIGHT & COKE, RESPONDENT.

NO. 12WC 18268

ILLINOIS WORKERS' COMPENSATION COMMISSION

STATE OF ILLINOIS, COUNTY OF DUPAGE

13 IWCC 1001; 2013 Ill. Wrk. Comp. LEXIS 985

November 22, 2013

JUDGES: David L. Gore; Mario Basurto; Michael J. Brennan

OPINION: [*1]

DECISION AND OPINION ON REVIEW

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

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Commission finds:

1. At the time of accident, Petitioner had worked for Respondent for 25 years, the last 11 of which were served as Crew Leader. He worked on the emergency crew from 3:30p.m. to midnight, including any emergencies dealing with broken gas mains and poor gas supply to customers, as well as non-emergencies, shut-offs and light-ups. He used wrenches, shovels and jackhammers among other tools.

2. Petitioner travels with gas lines made of plastic piping, which come to the shop in 300 foot rolls. They are stacked 8 high, which is about 7 feet high on a pallet. They are strapped down during transportation.

3. On October 26, 2011, Petitioner reached his destination site, broke a strap, and attempted to pull one [*2] roll of plastic piping down onto his shoulder. However, he was unaware that there was another strap still engaged, and when he pulled the top roll, the other 7 rolls came with it, and Petitioner felt a pop in his dominant right shoulder.

4. Petitioner reported the incident, but did not seek medical care, thinking he could work through the injury. He worked full duty up until the last week of December 2011, when he finally sought medical treatment. He underwent an MRI and eventually right shoulder arthroscopy surgery on March 5, 2012. The surgery also included a subacromial decompression, bicep tenodesis and an open rotator cuff repair. Surgery was followed by physical therapy, work hardening and work conditioning.

5. On July 20, 2012 a Dr. Goldberg released Petitioner from medical care and returned him to full duty. Petitioner has sought no medical treatment and has been working full duty ever since. However, his right shoulder continues to give him trouble The vibration of jack hammering affects him, which forced him to receive assistance from co-workers. He jackhammers at least 3 times per week, between 30 minutes and 2 hours. He performs overhead work for 15 minutes 2-3 times [*3] weekly and wrenches daily. He also has graphic pain when wrenching above shoulder level.

6. Petitioner also has difficulty playing baseball with his nephew (who is on a baseball team) and performing chores such as gardening and lawn maintenance. He used to golf 3 days a week, but has not golfed since his July 2011 release. He takes 3-4 Advil weekly.

The Commission views the evidence in a slightly different light than does the Arbitrator, and thus modifies the Arbitrator's ruling regarding nature and extent. The Commission awards Petitioner 12.65% loss of use of his person as a whole.

IT IS THEREFORE ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $ 695.78 per seek for a period of 63.25 weeks, for the reason that Petitioner suffered a 12.65% loss of use of his person as a whole as provided in § 8(d)(2) of the Act. The total permanent partial disability amount equals $ 44,008.09.

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

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall have credit. for all amounts paid, if any, to or on behalf of Petitioner on account of said accidental [*4] injury.

Bond for the removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of $ 26,200.00. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

ATTACHMENT:

ARBITRATION DECISION

NATURE AND EXTENT ONLY

Steven Thomas
Employee/Petitioner

v.

People's Gas Light & Coke
Employer/Respondent

Case # **12** WC **18268**

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 **Barbara N. Flores**, Arbitrator of the Commission, in the city of **Chicago**, on **May 8, 2013**. By stipulation, the parties agree:

On the date of accident, **October 26, 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 [*5] 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 $ **78,421.20**, and the average weekly wage was $ **1,508.10**.

At the time of injury, Petitioner was **43** 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 $ **6,319.66** for TTD, $ **0** for TPD, $ **0** for maintenance, and $ **0** for other benefits, for a total credit of $ **6,319.66**.

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 **37.5** weeks, as provided in Section **8(d)(2)** of the Act, because the injuries sustained caused **7.5% loss of use of the person as a whole**.

Respondent shall pay Petitioner compensation that has accrued from **October 26, 2011** through **May 8, 2013**, and shall pay the remainder of the [*6] 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

May 22, 2013

Date

ARBITRATION DECISION *ADDENDUM*

NATURE AND EXTENT ONLY

Steven Thomas
Employee/Petitioner

v.

People's Gas Light & Coke
Employer/Respondent

Case # **12** WC **18268**

Consolidated cases: **N/A**

FINDINGS OF FACT

Petitioner testified that on the date of accident he was employed by Respondent as a foreman and crew leader supervising several employees. Petitioner was in this full time position for approximately 11 years and has been employed by Respondent for approximately 25 years. [*7] He testified that he typically worked the 3:30 p.m. to midnight "emergency" shift. This shift handled emergencies and non-emergencies including repairing broken gas mains, restoring supplies to customer services, and handling "light ups" and "shut offs." Petitioner testified that his job required him to

wrench pipes and fittings, digs holes with a hand shovel, break open streets with a jackhammer, and perform other related construction-type duties.

Petitioner is right arm dominant and testified that prior to this work accident he had no injuries to or medical treatment for the right arm. He also testified that he has not subsequently sustained any other injury to his right shoulder.

On the date of accident, Petitioner injured himself when he attempted to pull a 300 ft. roll of plastic piping onto his right shoulder from the top of a pallet stacked 7-8 rolls high which was still strapped at the back to other rolls unbeknownst to him. Petitioner felt a pop in his right shoulder. Petitioner reported the injury and sought medical treatment a couple of months thereafter during the week between Christmas and New Year's Eve. He testified that he worked in a full duty capacity until that [*8] time expecting that his right shoulder symptoms would resolve.

The medical records reflect that Petitioner underwent a right shoulder MRI without contrast on January 26, 2012. Petitioner's Exhibit ("PX") 1. The interpreting radiologist noted that the MRI showed a partial thickness undersurface tear at the junction of the supraspinatus and infraspinitis and a partial thickness undersurface tear up the subscapularis. *Id.* The long head biceps tendon appeared perched over the greater tuberosity, but was not subluxated. *Id.*

On February 6, 2012, Petitioner saw Dr. Goldberg. *Id.* He reported that while his strength increased somewhat after seven weeks of physical therapy, he continued to experience persistent pain, weakness, nighttime pain, and increased pain with activity. *Id.* Petitioner also reported some numbness in the C5-C6 distribution from the lower lateral aspect of the neck radiating down through his fingertips. *Id.* On examination, Dr. Goldberg noted Petitioner was profoundly weak on testing of the subscapularis. *Id.* He recommended right subscapularis tendon repair and biceps tenodesis surgery. *Id.*

On March 5, 2012, Petitioner underwent surgery with [*9] Dr. Goldberg. *Id.* Pre- and postoperatively, Dr. Goldberg diagnosed Petitioner with a right subscapularis tear, subluxated biceps tendon. *Id.* He performed a right shoulder arthroscopy, subacromial decompression, biceps tenodesis, and open subscapularis repair. *Id.* Intraoperatively, Dr. Goldberg noted a partial tear of the subscapularis and subluxation of the biceps tendon. *Id.* There were no labral defects, no articular defects, and no other rotator cuff deficiencies. *Id.*

Petitioner saw Dr. Goldberg postoperatively from March 9, 2012 through July 20, 2012. *Id.* During this period of time, he prescribed physical therapy, placed Petitioner off work or on light duty, and prescribed pain medication. *Id.* Petitioner reported continued improvement with physical therapy. *Id.* On July 20, 2012, Petitioner reported that he was without any new complaints and indicated his desire to return to work. *Id.* On examination, Dr. Goldberg noted approximately 180 degrees of forward flexion, which was the same on the left side, 80 degrees of external rotation with his shoulder abducted, and 5/5 subscapularis strength. *Id.* Dr. Goldberg released Petitioner to full duty [*10] work and indicated that he should return as needed. *Id.* Petitioner testified that he has not returned to see Dr. Goldberg thereafter.

On December 19, 2012, Petitioner saw Dr. Mash at Respondent's request for the purpose of rendering an AMA impairment rating utilizing the AMA Guides, Sixth Edition. Respondent's Exhibit ("RX") 1. Dr. Mash's report summarizes a history given by Petitioner that is consistent with the medical records and Petitioner's testimony. *Id.* Dr. Mash examined Petitioner and noted essentially normal results that were bilaterally equivalent with the exception of internal rotation to L1 on the right versus to T8 on the left. *Id.*

Dr. Mash utilized Table 15.5 at page 403 identifying a full thickness rotator cuff tear as the impairment descriptor. *Id.* He noted that this resulted in a Class 1 impairment and that Petitioner was "considered to have a rotator cuff injury, full-thickness tear with residual loss, being functional with normal motion." *Id.* Dr. Mash calculated Petitioner's QuickDASH score to total 31.82 utilizing Table 15.7 at page 406, which identified Petitioner as having a "Grade Modifier 1 for a functional history." *Id.* Based on Petitioner's [*11] physical examination, Dr. Mash utilized Table 15.7 and 15.8 at page 406, which identified Petitioner as having a "less than 12% upper extremity loss in range of motion, which translated to a Grade Modifier 1." *Id.* Dr. Mash noted that a clinical studies modifier was not applicable as the MRI study was used to place Petitioner in an impairment class. *Id.* He further utilized Table 15.5 at page 403 to determine that Petitioner was a Class 1 Grade C impairment translating to a 5% upper extremity impairment, which turning to page 420 of the AMA Guides, equaled a 3% impairment of the whole person. *Id.*

Regarding his current condition at work, Petitioner testified that his right arm and shoulder still give him problems while performing his job duties. He noted that he experiences pain, soreness, and difficulty with wrenching (particularly overhead) and operating a jackhammer (which vibrates) for very long. Petitioner testified that he now requests help from his coworkers with such activities where he did not do so before his injury at work. With regard to his personal activities, Petitioner testified that he no longer golfs or plays baseball or catch with his nephew, and that [*12] he experiences pain while starting his lawnmower. He also experiences pain while sleeping, and takes over-the-counter pain medications and applies cold/heat to his right shoulder to alleviate pain and swelling.

CONCLUSIONS OF LAW

The Arbitrator hereby incorporates by reference the Arbitrator's and parties' exhibits, which are made a part of the Commission's file. After reviewing the evidence and in consideration of the record as a whole, the Arbitrator finds as follows:

Section 8.1b of the Illinois Workers' Compensation Act ("Act") addresses the factors that must be considered in determining the extent of permanent partial disability for accidents occurring on or after September 1, 2011. *820 ILCS 305/8.1b* (LEXIS 2011). Specifically, Section 8.1b states that 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 [*13] 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.*

Id., (*emphasis added*).

In considering the factors set forth in the Act, [*14] the Arbitrator finds the following facts to be relevant and assigns weight to these facts First, only one 8.1b subsection (a) report was submitted into evidence; that of Dr. Mash at Respondent's request. Dr. Mash utilized the AMA Guides Sixth Edition and specifically delineated his evaluation process in determining Petitioner's impairment rating at a level of 5% upper extremity impairment, which is equivalent to a 3% impairment of the whole person. This evidence is uncontroverted and, thus, the Arbitrator assigns it significant weight.

Second, the evidence established that Petitioner was a foreman/crew leader performing construction laborer duties and supervising other employees. Petitioner's testimony regarding his position at work on the date of accident and his duties is uncontroverted and corroborated in treating medical records and Dr. Mash's report. Thus, the Arbitrator assigns it significant weight.

Third, the parties stipulated that Petitioner was 42 years old on the date of accident. This evidence is uncontroverted and, thus, the Arbitrator assigns it significant weight.

Fourth, no evidence was introduced by either party regarding Petitioner's future earning capacity. However, [*15] Petitioner testified that he returned to his prior position after being released to full duty work by Dr. Goldberg. Thus, no weight is assigned to this factor as there is no evidence of any impact whatsoever on Petitioner's future earning capacity.

Finally, the treating medical records reflect that Petitioner underwent conservative medical treatment prior to right shoulder arthroscopic surgery including a subacromial decompression, biceps tenodesis, and open subscapularis repair. Thereafter, Petitioner's right shoulder condition gradually improved through July 20, 2012 when he was released to full duty work by Dr. Goldberg. At that last visit, Dr. Goldberg noted approximately 180 degrees of forward flexion, which was the same on the left side, 80 degrees of external rotation with his shoulder abducted, and 5/5 subscapularis strength. Petitioner has worked his full duty position since his release and has had no further medical care.

Notwithstanding, Petitioner testified that he experiences some pain, soreness, and difficulty using the right shoulder in performing certain activities at work that sometimes requires assistance from co-workers and that he is now unable to engage in golfing [*16] or playing baseball/catch with his nephew. Petitioner's testimony at trial is uncontroverted and the Arbitrator finds Petitioner to be credible given the consistency of his testimony with his contemporaneous reports of symptomatology made to both his treating physician, Dr. Goldberg, and Respondent's Section 8.1b physician, Dr. Mash. Thus, the Arbitrator finds that there is credible evidence of some ongoing disability which is corroborated by the treating medical records and assigns it significant weight.

Based on the record as a whole and in consideration of the factors enumerated in Section 8.1b--which does not simply require a calculation, but rather a measured evaluation of all five factors of which no single factor is conclusive on the issue of permanency--the Arbitrator finds that Petitioner sustained permanent partial disability to the extent of 7.5% loss of use of the person as a whole pursuant to Section 8(d)(2) n1 of the Act.

Legal Topics:

For related research and practice materials, see the following legal topics:
Workers' Compensation & SSDIAdministrative ProceedingsClaimsTime LimitationsNotice PeriodsWorkers' Compensation & SSDICompensabilityCourse of EmploymentPersonal ComfortWorkers' Compensation & SSDICompensabilityInjuriesGeneral Overview

n1 The Arbitrator awards permanent partial disability benefits in this case involving an injury to Petitioner's shoulder in light of the Appellate Court's holding in that permanency awards in such cases should be made pursuant to Section 8(d)(2) of the Act rather than Section 8(e). *Will County Forest Preserve District v. Illinois Workers' Compensation Commission*, 2012 Ill.App. LEXIS 109 (February 17, 2012).

[*17]

1 of 2 DOCUMENTS

HOSAM SALAMA, PETITIONER, v. UNITED PARCEL POST, RESPONDENT.

NO. 12WC 19435

ILLINOIS WORKERS' COMPENSATION COMMISSION

STATE OF ILLINOIS, COUNTY OF COOK

13 IWCC 1058; 2013 Ill. Wrk. Comp. LEXIS 1116

December 11, 2013

JUDGES: Michael J. Brennan; Mario Basurto; David L. Gore

OPINION: [*1]

DECISION AND OPINION ON REVIEW

Timely Petition for Review 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 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.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed June 7, 2013 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.

Bond for removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of $ 6,300.00. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

ATTACHMENT:

ARBITRATION DECISION

NATURE AND EXTENT ONLY

Hosam Salama
Employee/Petitioner

v.

[*2] **United Parcel Service**
Employer/Respondent

Case # **12** WC **19435**

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 **Lynette Thompson-Smith**, Arbitrator of the Commission, in the city of **Chicago**, on **April 30, 2013**. By stipulation, the parties agree:

On the date of accident, **5/14/2012**, 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 $ 9,323.08, and the average weekly wage was $ **179.29**.

At the time of injury, Petitioner was **44** years of age, ***married*** with **2** dependent children.

Necessary medical services and temporary compensation benefits [*3] have been provided by Respondent.

Respondent shall be given a credit of $ **0.00** for TTD, $ 0.00 for TPD, $ 0.00 for maintenance, and $ **0.00** for other benefits, for a total credit of $ **0.00.**

ORDER

Respondent shall pay Petitioner the sum of $ **179.29**/week for a further period of 34.85 weeks, as provided in Section **8e(9)** of the Act, because the injuries sustained caused 17% loss of use of the right hand.

Respondent shall pay Petitioner compensation that has accrued from **December 5, 2012** through **April 30, 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 [*4] accrue.

June 7, 2013

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.

The sole issue in dispute is the nature and extent of the injuries. As of the hearing date, Petitioner was a 44-year-old part time package handler for Respondent. His job duties included loading package as they came down a conveyor belt. These packages varied in weight from two (2) to one hundred (100) pounds.

On the accident date Petitioner was carrying a heavy package; lost his balance and the package struck him in the right hand fracturing his fifth metacarpal. Initial radiographs depicted a transverse fracture of the fifth metacarpal angulated at 60 degrees. Instability of the fracture was noted and a recommendation to follow up with Dr. Lewis was provided. *See*, PX1.

Petitioner came under the care of Dr. John Fernandez, who diagnosed a displaced fracture of the fifth metacarpal shaft with 35 degrees of angulation. Petitioner underwent surgery to address the fracture. Inta-operative radiographs revealed

a comminuted fracture of the fifth metacarpal with displacement at the midshaft. [*5] Four K-wires were inserted and a bone clamp utilized to assist in the reduction of the fracture. Dr. Fernandez also utilized four pins to reduce the fracture into a stable alignment. *See*, PX3.

Petitioner was prescribed a sling, a plaster splint, an orthopedic referral; and instructed to begin modified activity. Petitioner followed up with Dr. Fernandez post-operatively. Petitioner began a course of post-operative therapy and was provided a volar splint.

The July 9, 2012 office visit was notable for subjective pain dorsally along the hand, tenting of the skin dorsally; and second proximal screw migration. Modified work was continued as was use of the sling. Dr. Fernandez removed the pins and K-wires under sedation on August 6, 2012. Dr. Fernandez noted during surgery, Petitioner had abundant callus formation and a delayed union of the fracture. In follow up with Dr. Fernandez, a bone stimulator was prescribed as well as continued light duty was. Healing of the fracture progressed and was completed as of October 25, 2012. Petitioner's final visit with Dr. Fernandez was December 4, 2012, wherein complete healing was noted and Petitioner was placed at maximum medical improvement [*6] regarding his work injuries. *See,* PX3.

Petitioner presented to Dr. Michael Lewis at the behest of Respondent for an impairment rating. Dr. Lewis opined Petitioner had sustained zero impairment for his right hand as a result of his industrial accident.

Petitioner's un-rebutted testimony was that Dr. Lewis' examination of the Petitioner lasted approximately two minutes. Petitioner remembers Dr. Lewis coming into the room, shaking both of his hands, then leaving. Petitioner testified that Dr. Lewis did not utilize any medical or other devices during his examination.

After the medical visit with Dr. Lewis, which took place on February 14, 2013, Petitioner returned to work in a full duty capacity. As of December 4, 2012, the date of Petitioner's discharge from Dr. Fernandez, Petitioner had been off work; as Respondent did not offer light duty. During this time, Petitioner was collecting temporary total disability (TTD) benefits.

Subjectively, Petitioner informed Dr. Lewis that he experienced occasional pain in the right hand, two times per week; with decreased grip strength. Decreased grip strength is relevant in light of the fact Petitioner testified he is required to move 300 [*7] pieces per hour. This testimony was un-rebutted and credible.

Dr. Lewis opined Petitioner sustained 0% impairment. The Arbitrator notes that impairment and permanent partial disability (PPD) are not the same. Impairment is only one factor dispositive on the issue of PPD.

Petitioner testified he is right hand dominant and uses his right hand to lift and carry every package. The Arbitrator notes that 300 pieces per hour results Petitioner handling is a package every five seconds.

Petitioner testified that currently, he notices right hand pain and tingling into the fifth and fourth digits while working full duty. These symptoms were not present prior to the industrial accident. Further, Petitioner testified he experiences pain when waking up from sleeping and decreased grip strength compared to the contra-lateral hand and that these symptoms were not present prior to the industrial accident. Petitioner takes over the counter medication as needed a few times a week. With regards to his hobbies, Petitioner can no longer engage in playing tennis or golf because of the injury to his right hand. Since his discharge from Dr. Fernandez Petitioner, has attempted to play both sports and he [*8] testified that the pain he experiences is too great to continue.

Legal Topics:

For related research and practice materials, see the following legal topics:
Workers' Compensation & SSDICompensabilityCourse of EmploymentPersonal ComfortWorkers' Compensation & SSDICompensabilityCourse of EmploymentRecreational ActivitiesWorkers' Compensation & SSDICompensabilityInjuriesGeneral Overview

6 of 52 DOCUMENTS

BILL ZETTLER, PETITIONER, v. THE AMERICAN COAL COMPANY, RESPONDENT.

NO. 12WC 20486

ILLINOIS WORKERS' COMPENSATION COMMISSION

STATE OF ILLINOIS, COUNTY OF WILLIAMSON

13 IWCC 1124; 2013 Ill. Wrk. Comp. LEXIS 1132

December 30, 2013

JUDGES: Michael J. Brennan; Mario Basurto; David L. Gore

OPINION: [*1]

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by the Respondent herein and notice given to all parties, the Commission, after considering the issue of the nature and extent of the permanent 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.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed July 3, 2013 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.

Bond for removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of $ 5,200.00. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

ATTACHMENT:

ARBITRATION DECISION

NATURE AND EXTENT ONLY

BILL ZETTLER
Employee/Petitioner

v.

THE AMERICAN COAL [*2] **COMPANY**
Employer/Respondent

Case # 12 WC 20486

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 Gerald Granada, Arbitrator of the Commission, in the city of Herrin, on May 16, 2013. By stipulation, the parties agree:

On the date of accident, 4/18/12, 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 $ 41,398.64, and the average weekly wage was $ 1,061.50.

At the time of injury, Petitioner was 55 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 $ [*3] 3,805.91 for TTD and $ 3,202.75 for net non-occupational disability benefits for which credit may be allowed pursuant to Section 8(j) of the Act, for a total credit of $ 7,008.66.

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 $ 636.90/week for a further period of 19 weeks, as provided in Section 8(e)9 of the Act, because the injuries involved carpal tunnel syndrome due to repetitive trauma which caused permanent partial disability to the extent of 10% loss of use of the right hand and occurred after the effective date of the amendatory Act of the 97th General Assembly.

Respondent shall pay reasonable and necessary medical services of $ 10,015.00, as provided in Sections 8(a) and 8.2 of the Act. Respondent shall be given a credit for 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.

Respondent shall pay Petitioner compensation that [*4] has accrued from 10/3/12 through 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.

7/1/13

Date

Findings of Fact

Petitioner is employed by Respondent as a Mechanic. In that capacity he utilizes various hand tools and come-alongs. Because Petitioner was experiencing numbness in his dominant right hand and fingers Dr. Harrison, his

primary care physician, ordered electrodiagnostic testing. On April 18, 2012, electrodiagnostic testing revealed evidence of moderate right median neuropathy at the wrist. No median neuropathy was noted with regard to the left hand.

Petitioner [*5] came under the care of orthopedic surgeon Steven Young on July 6, 2012. Dr. Young diagnosed right carpal tunnel syndrome. On July 25, 2012, Dr. Young performed a right carpal tunnel release. Petitioner thereafter underwent physical therapy.

Petitioner's final visit with Dr. Young occurred on October 3, 2012. Petitioner advised Dr. Young that he was pleased with the outcome of the surgery. Dr. Young noted that Petitioner's strength had returned, his numbness and tingling had decreased and that he had good use of his right upper extremity.

Petitioner testified that he continues to experience weakness in his right hand and difficulty firmly gripping objects such as a screwdrivers, wrenches and softballs. He also has difficulty drawing his crossbow. He experiences occasional nocturnal tingling. He periodically takes Ultram or Aleve to relieve his symptoms.

On January 28, 2013, Petitioner was examined by board certified orthopedic surgeon Mitchell Rotman pursuant to Section 8.1b of the Act. In conjunction with the encounter, Dr. Rotman reviewed Petitioner's medical records from Dr. Young and other sources. Dr. Rotman testified that he examined Petitioner's left and right hands. The right [*6] hand had a carpal tunnel release incision. Tinel's and Phalen's tests were negative. Right hand grip strength was 85 pounds. On the left, grip strength was 135 pounds. Petitioner was able to make a full fist with both hands. No arthritis was found in either hand. Range of motion in both hands was normal and no atrophy was found bilaterally. Two point discrimination testing on the right was between 5 and 7 in the median nerve distribution. On the left it was also between 5 and 7. Dr. Rotman diagnosed postoperative carpal tunnel release and found Petitioner to have reached maximum medical improvement.

Dr. Rotman opined that, according to the American Medical Association's *Guides to the Evaluation of Permanent Impairment* (6th Edition) that Petitioner sustained permanent partial disability impairment to the extent of 5% of the right hand.

Petitioner testified that Dr. Rotman's nurse performed the grip strength test. Petitioner could not recall whether Dr. Rotman performed any of the physical examination testing. He estimated that Dr. Rotman and his nurse spent approximately ten minutes with him during the examination.

Conclusions of Law

Pursuant to Section 8.1b of the Act, for [*7] 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 first notes that Respondent provided a report of impairmant from Dr. Rotman in which he opines the Petitioner sustained a 5% impairment of the right hand. Conversely, Petitioner did not offer a permanent partial disability impairment report or any medical opinion which controverted Dr. Rotman's findings. In addition to Dr. Rotman's opinion, the Arbitrator has also considered the factors set forth in Section 8.1b(b) of the Act. The evidence does not indicate that Petitioner would [*8] be unable, either at present or in the future, to return to work as a coal miner due to the carpal tunnel syndrome. Although Petitioner was 55 years old at the time of his injury, there was no evidence that Petitioner's age in conjunction with the residual disability from the carpal tunnel syndrome would affect Petitioner's ability to work as a coal miner. No evidence was submitted regarding the effect of the carpal tunnel syndrome on Petitioner's future earning capacity. Petitioner testified consistently with Dr. Young's final office note of October 3, 2012 regarding his symptoms. The Arbitrator notes, however, that despite Petitioner's testimony as to his diminished grip strength and other symptoms, he has not received any medical treatment subsequent to October 3, 2012 nor did he offer any evidence that he was contemplating same. Based on these factors, the Arbitrator finds that as a result of his work related carpal tunnel syndrome, Petitioner sustained permanent partial disability to the extent of 10% of the right hand.

Legal Topics:

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

3 of 100 DOCUMENTS

NANCY WATKINS, PETITIONER, v. MASTERBRAND CABINETS, RESPONDENT.

NO. 12WC 17286

ILLINOIS WORKERS' COMPENSATION COMMISSION

STATE OF ILLINOIS, COUNTY OF CHAMPAIGN

14 IWCC 35; 2014 Ill. Wrk. Comp. LEXIS 18

January 23, 2014

JUDGES: Thomas J. Tyrrell; Daniel R. Donohoo

OPINION: [*1]

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by the Petitioner herein and notice given to all parties, the Commission, after considering the issue of permanent partial disability, and being advised of the facts and law, modifies the Decision of the Arbitrator as stated below and otherwise affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.

The Arbitrator awarded Petitioner 7.5% loss of use of each hand. We modify the Arbitrator's decision to award Petitioner 12% loss of use of each hand.

After considering the five factors as required by the Act, the Commission increases the Petitioner's permanent partial disability award to 12% loss of use of the right hand and 12% loss of use of the left hand. The five factors we considered are: (1) the reported level of impairment as assessed pursuant to the current edition of the AMA "Guides to the Evaluation of Permanent Impairment"; (2) the occupation of the injured employee; (3) the age of the employee at the time of the injury; (4) the employee's future earning capacity; and (5) evidence of disability corroborated by the treating medical records.

The first factor [*2] is the AMA impairment rating. Respondent sent Petitioner to be evaluated by Dr. Benson for an impairment rating. Overall, Dr. Benson found Petitioner's impairment to be only 1% of the arm and person as a whole, after rounding up. Dr. Benson considered that Petitioner had to slightly modify her usual work technique because of the injury to her hands. He also noted Petitioner only has minor or mild issues with daily living activities, such as opening a tight jar or cutting food with a knife. Based on Petitioner's minor ongoing issues and the impairment rating, Dr. Benson found Petitioner's impairment to be 1% of the arm and the person as a whole.

The second factor is the employee's occupation. Petitioner works as an auditor for a cabinet manufacturer. She is required to use her hands to lift cabinets and make any necessary repairs to the cabinets, which involves using tools. Petitioner has returned to work full time and full duty for Respondent and appears to no longer be working a second job at a convenience store, per her testimony. Petitioner's occupation requires her to use her hands for fine manipulation on a regular basis throughout the work day. Petitioner also testified she [*3] notices some soreness in her palms after work.

The third factor is the employee's age at the time of the injury. Petitioner was 46 years old and no evidence was presented about how her age might affect her disability.

The fourth factor is the employee's future earning capacity. Petitioner returned to her employment full time and full duty at Respondent. She makes the same rate of pay or more as she did before the injury. She did not present evidence as to how her injury may affect her future earning capacity and it does not appear it will have an impact.

The final factor is the evidence of disability corroborated by treating medical records. Petitioner's records are clear that she developed bilateral carpal tunnel syndrome through repetitive use of her hands at work. Petitioner sought appropriate treatment for her symptoms, including an EMG which showed evidence of carpal tunnel syndrome. She eventually underwent bilateral carpal tunnel release, followed by a course of therapy. Petitioner's treatment appears appropriate and the medical records support her complaints.

We further note that Petitioner voices minor continuing complaints from her repetitive trauma injury. She testified [*4] that she has good and bad days depending on how often she has to use her hands and on a bad day she will experience tenderness and tingling in her hands. Petitioner does not continue to treat for her carpal tunnel syndrome and does not take any medications for it.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Arbitrator's decision is modified as stated herein.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $ 451.45 per week for a period of 9-5/7 weeks, that being the period of temporary total incapacity for work under § 8(b) of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $ 406.31 per week for a period of 49.2 weeks, as provided in § 8(e) of the Act, for the reason that the injuries sustained caused the 12% loss of use of the right hand and 12% loss of use of the left hand.

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

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

Bond for the removal of this cause [*5] to the Circuit Court by Respondent is hereby fixed at the sum of $ 21,400.00. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

ATTACHMENT:

ARBITRATION DECISION

Nancy Watkins
Employee/Petitioner

v.

Masterbrand Cabinets
Employer/Respondent

Case # **12** WC **17286**

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 **Urbana**, on **May 15, 2013**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES
K. [X] What temporary benefits are in dispute?
[X] TTD
L. [X] What is the nature and extent of the injury?

FINDINGS

On **11/18/2011**, 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.

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

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

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

In the year preceding the injury, Petitioner earned $ **35,213.79**; the average weekly wage was $ **677.18.**

On the date of accident, Petitioner was **46** 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 $ **3,074.19** for TTD, $ **0** for TPD, $ **0** for maintenance, and $ **0** in non-occupational disability benefits, and $ **0** for other benefits for which credit may be allowed under Section 8(j) of the Act.

Respondent is entitled to a credit of $ **0** in medical bills paid through its group medical plan for which credit may be allowed under Section 8(j) of the Act.

ORDER

RESPONDENT SHALL PAY PETITIONER TEMPORARY TOTAL DISABILITY BENEFITS OF $ 451.45/WEEK FOR 9 5/7 WEEKS, COMMENCING [*7] **6/21/2012 THROUGH 8/27/2012, AS PROVIDED IN SECTION 8(B) OF THE ACT.**

RESPONDENT SHALL PAY PETITIONER PERMANENT PARTIAL DISABILITY BENEFITS OF $ 406.31/WEEK FOR 28.5 WEEKS, BECAUSE THE INJURIES SUSTAINED CAUSED THE 7.5% LOSS OF THE EACH 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.

July 8, 2013

Date

Nancy Watkins v. Masterbrand Cabinets, 12WC17286

The issues in dispute are temporary total disability benefits and the nature and extent of Petitioner's injuries. Witnesses testifying before the Arbitrator included Petitioner, Cheryl Ryan, and Grant Roehrs.

In support of the Arbitrator's [*8] **Decision, the Arbitrator finds as follows:**

Respondent is a manufacturer of kitchen and bathroom cabinetry. Petitioner testified she has worked for Respondent since March of 2004 as an auditor. As an auditor Petitioner would use a hand drill/screw gun, hammer, pliers and other hand tools to perform a portion of her duties. In November of 2011 Petitioner began to notice pain and numbness in both hands as well as a loss of grip strength. She notified her employer of her symptoms and was enrolled in Respondent's Wellness Center to treat her symptoms. The parties stipulated that Petitioner sustained a repetitive trauma injury to her hands on November 18, 2011. (AX 1)

Because Petitioner's symptoms were not responding to treatment at the Wellness Center Petitioner was referred to Dr. Hartman on February 20, 2012. An EMG performed on February 23, 2012 revealed moderately severe bilateral carpal tunnel syndrome, more so on the right than the left. (PX 1)

Dr. Hartman referred Petitioner to Dr. Naam for a surgical consultation. Dr. Naam examined Petitioner on May 1, 2012 and recommended Petitioner undergo a surgical release of her carpal tunnels in both of her wrists. (PX 2) Dr. Naam [*9] noted Petitioner had more complaints with regard to her left hand than her right (dominant) hand.

Petitioner continued working for Respondent until June 18, 2012, shortly before her first surgery. (PX 2)

On June 21, 2012 Dr. Naam performed a left carpal tunnel release at the Effingham Ambulatory Surgery Center. (PX 4) The operative report notes Petitioner's left median nerve was moderately congested. (PX 4) Following surgery Petitioner experienced bleeding from the wound and she returned to surgery where bleeding from muscle tissue was noted and controlled. Petitioner's numbness and tingling in her left upper extremity subsided after surgery. (PX 2,4)

According to Dr. Naam's notes, Petitioner remained off work as of June 28, 2012. (PX 2)

Petitioner's sutures were removed on July 3, 2012 and no signs of infection were noted. Petitioner was then referred for scar massage and active range of motion therapy. Dr. Naam's office notes indicate Petitioner reported that no light duty was available at work so he instructed her to remain off work for two more weeks. (PX 2)

On July 16, 2012, Dr. Naam noted Petitioner was doing very well and she was very happy with the operative results. Dr. [*10] Naam released Petitioner to return to one-handed duty for one week, if it was available. (PX 2)

Cheryl Ryan, Respondent's safety associate, testified that light duty is typically available. Ms. Ryan further testified that Respondent has a light duty policy whereby employees with work-related restrictions are accommodated in a light duty position for up to ninety days. Ms. Ryan testified that Petitioner came in on July 16, 2012 with a paper and reported she was going to be going to be off work in a few days as she was going to be undergoing another surgery. Petitioner was told not to return to work between July 16, 2012 and July 23, 2012 because Petitioner would be going back off work on July 23rd due to her second surgery.

A right carpal tunnel release was performed on July 23, 2012. (PX 6) The operative report indicated a moderately congested median nerve. (PX 6) Petitioner was kept off work for one week. (PX 2)

Following the carpal tunnel release surgery Petitioner underwent removal of her sutures followed by physical therapy at Working Hands through October 2, 2012. (PX 2, 7)

On August 7, 2012 Petitioner returned to see Dr. Naam and his notes indicate light duty work was unavailable [*11] with Respondent. He kept her off work for two weeks. (PX 2)

Petitioner received temporary total disability benefits between June 24, 2012 and August 6, 2012. (AX 1) Petitioner did not receive any further temporary total disability benefits after August 6, 2012.

Dr. Naam re-examined Petitioner on August 28, 2012. Both scars had completely healed; a slight degree of tenderness to them was noted. Active range of motion was examined. Petitioner had 60 degrees extension and 60 degrees flexion on the right with 63 degrees extension and 55 degrees flexion on the left. Petitioner's grip strength was 24 lbs. on the right; 36 lbs. on the left. Her lateral pinch was 6 lbs. on the right and 11 lbs. on the left. Palmar pinch was 6 lbs. on the

right and 11 lbs. on the left. Petitioner was told to continue scar massage and active range of motion exercises. Petitioner was released with light duty restrictions (no lifting over five pounds) if available. (PX 2)

Respondent did accommodate Petitioner's restrictions and she returned to work in a light duty capacity on August 29, 2012.

Petitioner's medical records indicate that as of September 18, 2012 Petitioner's scars were completely healed with [*12] minimal tenderness over the scars. Petitioner was doing very well and grip strength and active range of motion were continuing to improve. Petitioner was released to unrestricted duty as of September 19, 2012. (PX 2)

Petitioner was last seen at Working Hands on October 2, 2012. At that time she reported increased bilateral tenderness although she noted decreasing tenderness with use of a "gel shell." Petitioner also reported "crampiness" and aches on the ulnar aspect of her palm as well as the ring and small finger after use. Measurements for active range of motion and strength were taken. Both measurements reflected functional limits with strength measurements for the right upper extremity being described as "slightly decreased." (PX 7)

Dr. Naam released Petitioner from his care on October 2, 2012 to return as needed. At that time, Petitioner denied any further tenderness over her scars and she reported she was doing "very well." His office notes contain no mention or discussion of future medical care, including the need for any ongoing pain medications. Active range of motion and grip strength had continued to improve. (PX 2) Petitioner has not returned to Dr. Naam regarding her [*13] hands since then.

Petitioner has returned to her regular job for Respondent. She earns the same or more than she did pre-injury. Petitioner has not required any accommodation of her job duties for Respondent nor has she complained of any problems or pain in performing her job duties for Respondent since receiving her full duty release from care.

Petitioner's supervisor, Grant Roehers, testified that he has not observed Petitioner having any difficulty with the performance of her job duties. Petitioner testified that she has not lost any seniority as a result of her injury.

Petitioner testified that she has good and bad days and that she experiences some numbness and tingling when reaching into tight spots and/or awkward positions.

Petitioner acknowledged that she did not check with Ms. Ryan or anyone else at Respondent regarding whether her restrictions could be accommodated at that time. Since the doctor did not believe any light duty work was available he kept Petitioner off work.

Petitioner acknowledged that she has also held a part-time position as a cashier at a local convenience/gasoline store while working for Respondent. Petitioner works/worked n1 [*14] there approximately five hours per week.

Petitioner was evaluated by Dr. Benson on November 28, 2012 for the assignment of an AMA permanent partial impairment rating pursuant to the 6th Edition of the AMA Guides to Impairment. (RX C) On examination, Dr. Benson found no evidence of weakness in her hands or thenar atrophy. Petitioner's neurovascular function was intact. Petitioner had well-healed scars of approximately 1.5" in length on the palms of her hands. She complained of some occasional soreness in that area. Petitioner displayed normal digit motion and normal wrist motion bilaterally. Based on the Petitioner's responses to the QuickDash report and her examination, Dr. Benson issued a 1% upper extremity rating which he converted to a 1% whole person impairment based on the Guides. (RX C)

In the QuickDash Report, Petitioner indicated that at the time of evaluation, and within the previous week, her hand problem had not interfered at all with her social activities, sleeping, or work or regular daily activities. (RX B) B) She noted moderate difficulty opening a jar, and mild difficultly in a few activities such as recreational activities requiring impact or force in the hands, [*15] pain, and using a knife to cut food. (RX B)

Ms. Ryan testified that light duty work was available as of August 7, 2012 and Petitioner's restrictions could have been accommodated.

Ms. Ryan further testified that on July 16, 2012, Petitioner was told Respondent would accommodate her restrictions when she received them again.

Cheryl Ryan further testified that Petitioner has the ability to bid into a higher pay grade for other positions, such as an Assistant Team Leader position, a position which would not require additional education. Petitioner's income potential has not been impacted by her injury according to Ms. Ryan.

Petitioner was born on December 5, 1964. (AX 2)

The Arbitrator concludes:

1.Temporary Total Disability (TTD).

Petitioner is entitled to TTD benefits from June 21, 2012 through August 28, 2012. Petitioner underwent bilateral carpal tunnel releases on June 21, 2012 and July 23, 2012. Dr. Naam restricted Petitioner from returning to work completely following the June 21, 2012 surgery through July 16, 2012, and allowed Petitioner to return to work on a light duty basis through July 23, 2012. (PX 3) Petitioner testified she presented Respondent with [*16] the light duty restrictions on July 16, 2012, but Respondent did not accommodate the restrictions at that time. Safety director, Cheryl Ryan's testimony confirms that Petitioner presented Dr. Naam's July 16, 2012 restriction note to Respondent and Respondent did not offer a position within the restrictions at that time,

Following her surgery on July 23, 2012 Dr. Naam again restricted Petitioner from returning to work through August 7, 2012. On August 7, 2012 Petitioner informed Dr. Naam her employer did not have light duty work available at that time. As before, Dr. Naam continued to restrict Petitioner from work. On August 28, 2012 Dr. Naam allowed Petitioner to return to work with light duty restrictions until September 18, 2012 after which time she was released to return to work without restrictions. (PX 3)

Dr. Naam kept Petitioner off work after her second surgery just as he had after the first surgery. Petitioner was under the impression no light duty was available on July 3rd and reported as much to the doctor. He kept her off work. Respondent paid TTD benefits while Petitioner remained off work during that time and said nothing to Petitioner or her attorney to suggest Petitioner [*17] had misunderstood the availability of light duty at that time (July 3, 2012). Dr. Naam imposed restrictions on July 16, 2012 and while the Arbitrator believes Respondent could have accommodated her at that time Respondent chose to have Petitioner remain off work due to her upcoming surgery. Respondent kept Petitioner off work due to her upcoming second surgery. While Ms. Ryan testified Respondent "typically" accommodates restrictions, Petitioner had no restrictions imposed on her after the second surgery until August 28, 2012. Respondent's conduct with Petitioner after her first surgery left Petitioner under the reasonable impression she was correct when she told the doctor on July 3, 2012 that no light duty was available. Accordingly, Petitioner was not acting unreasonable when she informed Dr. Naam on August 7, 2012 that her employer did not have light duty work available as, for whatever reason, she was under the impression in early July of 2012 that light duty work was unavailable.

2. Nature and Extent.

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

(a) A physician [*18] 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. Benson's impairment [*19] rating of 1 % total body impairment. When evaluated by Dr. Benson, Petitioner was one and one-half months post MMI. She reported no difficulty in the majority of all activities and no difficulty in sleeping, working or social activities of daily living. Moderate difficulty opening a jar was noted as well as mild difficulty with using a knife to cut food and certain recreational activities. Dr. Benson was also aware of Petitioner's occasional soreness in the palm of her hand. Petitioner reported mild difficulty using her "usual technique" at work and performing her usual work activities.

2. The occupation of the injured employee.

Petitioner's current occupation is that of an auditor in a manufacturing environment. Petitioner returned to that position and has continued performing it full-time and full duty. Petitioner also works/worked as a part-time cashier for a convenience store. No evidence was presented indicating any problems performing cashier duties or that Petitioner may have quit that job due to her injuries. She uses her upper extremities in both occupations. Petitioner repairs and inspects cabinets before they are shipped. She uses hand tools. As a cashier she stocked, [*20] swiped, and mopped. Petitioner has returned to her usual and customary occupation, albeit she notices some occasional soreness when working.

3. The age of the employee at the time of the injury.

At the time of her accident, Petitioner was 46 years old. No evidence was presented as to how Petitioner's age might affect her disability.

4. The employee's future earning capacity.

No evidence regarding Petitioner's earning capacity was presented by Petitioner. Respondent produced evidence indicating Petitioner's injury has not adversely impacted her current wage rate with Respondent nor does it appear that it will impact her future earning capacity. No evidence suggests a diminishment in Petitioner's future earning capacity as a result of her injury.

5. Evidence of disability corroborated by the treating medical records.

Petitioner developed bilateral carpal tunnel syndrome due to her work activities with Respondent. She underwent surgical carpal tunnel releases to repair her injuries. Petitioner testified she continues to experience tenderness to both hands with some activities. Petitioner was prescribed "gel shells" bilaterally to wear as needed during functional activities, [*21] including work. (PX 7) While the shells have helped decrease tenderness during hand usage, she reported "crampiness" and aching in the ulnar aspect of her palm as well as her ring and small fingers after use. The Arbitrator recalls no testimony being elicited at arbitration to indicate if she continues to use the shells and, therefore, draws no inferences therefrom. Petitioner takes no medications. She has no permanent restrictions.

Petitioner's medical records note active range of motion and strength within functional limits and complete healing over the incision sites. Petitioner's complaints are corroborated by Dr. Naam's records and the therapy records. Petitioner's testimony was credible and forthright.

Overall, the evidence supports an award of permanent partial disability. Petitioner had surgery and her strength and range of motion, while in the functional range, have been diminished. After considering

all of the above factors, the Arbitrator concludes that Petitioner has sustained permanent partial disability of 7.5% of each hand ((190 weeks x 7.5% x 2) x $ 406.31).

DISSENTBY: KEVIN W. LAMBORN

DISSENT: I respectfully dissent from the decision of the majority. I would affirm and adopt the Arbitrator's [*22] decision, and would specifically note that the majority upon making the same findings as the Arbitrator modified and increased Petitioner's award. Arbitrator Lindsay's award was both thorough and in compliance with the Act as recently reformed. The majority does not appear to modify or take issue with any findings set forth by the Arbitrator and as such does not present itself with a basis to disturb the award of the Arbitrator. I would affirm and adopt this decision in its entirety.

Legal Topics:

For related research and practice materials, see the following legal topics:
Workers' Compensation & SSDIAdministrative ProceedingsClaimsTime LimitationsNotice PeriodsWorkers' Compensation & SSDICompensabilityCourse of EmploymentRecreational ActivitiesWorkers' Compensation & SSDICompensabilityInjuriesGeneral Overview

n1 Petitioner testified she "gave notice." The Arbitrator is unclear if Petitioner still works there or not.