ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION

HERNANDEZ, BERTHA O
Employee/Petitioner

Case# **09WC020325**
09WC045959

ILLINOIS TAMALE CO
Employer/Respondent

On 1/16/2013, an arbitration decision on this case was filed with the Illinois Workers' Compensation Commission in Chicago, a copy of which is enclosed.

If the Commission reviews this award, interest of 0.10% shall accrue from the date listed above to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

A copy of this decision is mailed to the following parties:

2553 LAW OFFICES OF JAMES P McHARGUE
BRENTON M SCHMITZ
100 W MONROE ST SUITE 1112
CHICAGO, IL 60603

0532 HOLECEK & ASSOCIATES
STUART M PELLISH
161 N CLARK ST SUITE 800
CHICAGO, IL 60601

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

BERTHA O. HERNANDEZ
Employee/Petitioner

Case # **09** WC **020325**

Consolidated cases: **09 WC 045959**

v.

ILLINOIS TAMALE CO.
Employer/Respondent

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **David Kane**, Arbitrator of the Commission, in the city of **Chicago**, on **January 9, 2013**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

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

FINDINGS

On **January 29, 2009**, 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 not*** causally related to the accident.

In the year preceding the injury, Petitioner earned **$16,120.00**; the average weekly wage was **$310.00**.

On the date of accident, Petitioner was **29** years of age, ***single*** with **one** 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 **$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**.

Respondent is entitled to a credit of **$0.00** under Section 8(j) of the Act.

ORDER

Temporary Total Disability
No benefits are awarded as Petitioner failed to prove an entitlement for such benefits.

Medical benefits
No medical benefits are awarded. Respondent has paid related and necessary medical incurred prior to May 11, 2009. All medical care incurred subsequent to May 11, 2009 is denied. Neither Respondent nor Petitioner shall be liable for the denied bills.

Permanent Partial Disability: Person as a whole
Respondent shall pay Petitioner permanent partial disability benefits of $237.67/week for 30 weeks, because the injuries sustained caused the 6% loss 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 the decision of the Commission.

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

David A. Kane
Signature of Arbitrator

January 16, 2013
Date

JAN 1 6 2013

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Bertha O. Hernandez Petitioner, v. Illinois Tamale Co. Respondent.	No.: 09 WC 020325; 09 WC 045959

<u>STATEMENT OF FACTS</u>

On January 29, 2009, Bertha Hernandez worked at Illinois Tamale Company as a line worker, assembling frozen pizzas. As a line worker, she would assemble pizzas, keep her area clean, and feed materials into a machine. Her workday was from 6:00 a.m. through 3:45 p.m., Monday through Friday.

On January 29, 2009, she was instructed to clean some chairs. She took the arm off a chair. There was water and soap on the floor. She slipped and fell, striking her buttocks and both hips. She felt pain in her lower back. It took her about 10 minutes to get up from the floor. She continued working the rest of the day. The accident occurred five minutes before the end of her work shift. When she came home that night, she noticed pain in her back along with a bruise on her lower back. She did not tell anyone at work that day or the next day of the accident.

When she returned to work on the following Monday, she told her supervisor of the accident. She did not seek medical attention until February 2, 2009. On that date, she was seen by Dr. Villegas at

ErgoMedica. Ms. Hernandez was diagnosed with a thoracolumbar strain and contusion. She was prescribed medications. An x-ray was taken of the lumbar spine, which was interpreted to show mild scoliosis of the spine.

She returned to ErgoMedica on February 6, 2009. She was continued to be diagnosed as having suffered a strain and contusion. She was started on a home exercise program. She was last seen at ErgoMedica on February 11, 2009. The diagnosis did not change. She was prescribed muscle relaxers and told to perform home exercises.

Ms. Hernandez chose not to return back to ErgoMedica for any additional treatment. She was working full-duty. She was let go from the Respondent in March 2009, due to attendance issues. Ms. Hernandez acknowledged prior to the January 29, 2009 accident she had been placed on written warning about her attendance.

On April 21, 2009, Ms. Hernandez underwent an MRI of the lumbar spine. It was interpreted to show mild scoliosis. At L5-S1, the radiologist was of the opinion there was a mild posterior disc bulge without significant spinal stenosis or significant neural foraminal narrowing.

On May 11, 2009, at the request of the Respondent, Ms. Hernandez was examined by Dr. Trotter. Dr. Trotter reviewed the April 21, 2009 MRI, which showed degenerative abnormalities of the spine. On physical examination, Dr. Trotter noted Ms. Hernandez had full range of motion of the cervical, thoracic, and lumbar spine. Straight leg raising was negative for any disc pathology. No tenderness of the thoracic, lumbar, or sacral spine or sacroiliac joints was found. Dr. Trotter opined Ms. Hernandez sustained thoracic and lumbar/sacral sprain as a result of the January 29, 2009 accident. Dr. Trotter placed Ms. Hernandez at maximum medical

improvement. He opined there was no indication for any active or ongoing medical care, including diagnostics, office visits, medications, injections, or pain management.

Ms. Hernandez testified she came under the care of Marque Medicos. She testified she had four injections performed by Dr. Chundura. Dr. Chundura continued with medical treatment of Ms. Hernandez until January, 2010, at which time she was discharged from medical care.

Ms. Hernandez testified in 2009 and subsequently, she worked for various employers through a temporary work agency. She could not remember the names of these employers. She testified she worked as a line worker for a paper company, which required her to perform lifting while standing. She also testified to working for a chocolate factory, also performing line work.

With respect to her activities of daily living, Ms. Hernandez testified she had difficulty lifting objects. She has difficulty lifting her child and moving certain furniture in her house. She testified of not being able to wear high heeled shoes.

TEMPORARY DISABILITY

The Arbitrator denies Petitioner's Request for Temporary Total Disability Benefits. The Arbitrator finds Petitioner's own testimony indicates she was working during the periods for which temporary total disability benefits were sought. The Arbitrator adopts the opinions of Dr. Trotter, who indicated Ms. Hernandez was capable of full-time work.

MEDICAL CARE

With respect to medical care, the Arbitrator has listened to Petitioner's testimony and reviewed the treating records from ErgoMedica,

Marque Medicos, and the reports of Dr. Trotter. The Arbitrator finds Petitioner was entitled to medical care from ErgoMedica pursuant to Section 8 of the Workers' Compensation Act. It is the Arbitrator's understanding that such medical bills have been paid.

The Arbitrator notes various additional medical care performed at Marque Medicos was paid, including 27 days of physical therapy and 2 MRI scans of the lumbar spine. (Respondent's Exhibit #2) The Arbitrator finds Petitioner is entitled to receive pursuant to Section 8, medical care incurred through May 11, 2009, the date of the Independent Medical Examination with Dr. Trotter. Based on the evidence submitted by Petitioner, the Arbitrator finds medical bills incurred through the date of the Independent Medical Examination have been paid. Regarding medical care subsequent to the Independent Medical Examination, the Arbitrator finds such medical care was neither necessary nor causally-related to the January 29, 2009 accident. The Arbitrator takes note of the physical findings of Dr. Trotter, showing full range of motion of the back with negative straight leg testing. The Arbitrator adopts the opinion of Dr. Trotter that additional medical treatment subsequent to May 11, 2009 was not necessary (Respondent's Exhibits #7, #8). The Arbitrator denies all medical expenses incurred subsequent to the Independent Medical Examination. Neither Petitioner nor Respondent shall be liable for these bills.

NATURE AND EXTENT

The Arbitrator takes note of Ms. Hernandez' testimony that subsequent to the January 29, 2009 accident she returned to working as a line worker for various companies. The MRI of the lumbar spine shows Ms. Hernandez had degenerative disc disease with a disc bulge at L5-S1.

Ms. Hernandez testified to being able to resume full time work as a line worker. She has difficulty moving furniture in her house and lifting certain objects. The Arbitrator, based on the testimony of Ms. Hernandez and the physical findings of Dr. Trotter concludes, Ms. Hernandez suffered a 6% loss of use person as a whole.

FILED-5

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, LAW DIVISION

2013 DEC 13 AM 8:45

DOROTHY BROWN
CLERK OF CIRCUIT COURT
LAW DIVISION

MARQUE MEDICOS FULLERTON, LLC and MEDICOS PAIN & SURGICAL SPECIALISTS, S.C.,	)	
Plaintiffs,	)	Case No. 2013L014071 CALENDAR/ROOM 0 TIME 00:00 Breach of Contract
vs.	)	
BERTHA HERNANDEZ,	)	Breach of Contract
	)	Amount Claimed: $107,498.92
Defendant.	)	

VERIFIED COMPLAINT

Plaintiffs, Marque Medicos Fullerton, LLC and Medicos Pain & Surgical Specialists, S.C. ("Plaintiffs"), by and through their attorney, the Law Offices of Richard E. Nawracaj, for their Verified Complaint against Defendant, Bertha Hernandez ("Defendant"), state as follows:

1. Plaintiffs are in the business of providing outpatient medical care, including chiropractic, physical therapy, pain management and outpatient surgical services.

2. Plaintiffs Marque Medicos Fullerton, LLC is an Illinois limited liability company in good standing with the State of Illinois. Plaintiff Medicos Pain & Surgical Specialists, S.C. is an Illinois service corporation in good standing with the State of Illinois.

3. Defendant is an individual who maintains his residence at 2064 N. Western Avenue, Chicago, Illinois 60647.

4. Defendant sustained a work-related injury on or around January 29, 2009 for which Defendant sought medical treatment from Plaintiffs.

5. During the time period of April 15, 2009 through January 19, 2010, Defendant received medical services from Plaintiffs. All such services were provided in Cook County, Illinois.

6. Defendant filed a workers' compensation claim with the Illinois Workers' Compensation Commission on May 11, 2009.

7. Plaintiffs have not received full payment for their services, nor did Defendant negotiate a settlement with the Plaintiffs for their outstanding medical bills.

8. Defendant signed written contractual agreements with Plaintiffs, which provide that Defendant is personally responsible for Plaintiffs' charges, whether or not such charges are covered by insurance. A true and correct copy of the signed contract with Marque Medicos Fullerton, LLC is attached hereto as Exhibit A (the "Fullerton Contract"). A true and correct copy of the signed contract with Medicos Pain & Surgical Specialists, S.C. is attached hereto as Exhibit B (the "Medicos Pain Contract").

9. Plaintiffs have made written demands, in the form of invoices, for payment of the remaining balances due for services rendered to Defendant. A true and correct copy of the invoice from Marque Medicos Fullerton, LLC to Defendant is attached hereto as Exhibit C. A true and correct copy of the invoice from Medicos Pain & Surgical Specialists, S.C. to Defendant is attached hereto as Exhibit D. (Exhibits C and D are collectively referred to as the "Invoices").

10. The Invoices were sent to the Defendant via certified mail; the Defendant has not paid the Invoices, in whole or in part, or responded to any of them.

COUNT I

Breach of Contract - Marque Medicos Fullerton, LLC

11. Plaintiff Marque Medicos Fullerton, LLC realleges and incorporates by reference the allegations set forth in Paragraphs 1 through 10 of this Verified Complaint as Paragraph 11 of this Count I.

12. The Fullerton Contract constitutes a valid and enforceable contract between Plaintiff Marque Medicos Fullerton, LLC and Defendant.

13. Plaintiff Marque Medicos Fullerton, LLC has fulfilled its obligations under the Fullerton Contract and, further, mailed written notice to Defendant of breach thereof prior to the filing of this Verified Complaint.

14. Defendant's failure to pay Plaintiff Marque Medicos Fullerton, LLC its outstanding charges for services rendered to Defendant constitutes a breach of the Fullerton Contract.

15. As a direct and proximate cause of Defendant's breach of the Fullerton Contract, Marque Medicos Fullerton, LLC has been damaged in the amount of Fifty-Six Thousand Three Hundred Seventy-Nine and 92/100 Dollars ($56,379.92).

WHEREFORE, Marque Medicos Fullerton, LLC prays for judgment in its favor and against Defendant in the amount of Fifty-Six Thousand Three Hundred Seventy-Nine and 92/100 Dollars ($56,379.92), plus pre-judgment interest and costs.

COUNT II

Breach of Contract - Medicos Pain & Surgical Specialists, S.C.

16. Plaintiff Medicos Pain & Surgical Specialists, S.C. realleges and incorporates by reference the allegations set forth in Paragraphs 1 through 10 of this Verified Complaint as Paragraph 16 of this Count II.

17. The Medicos Pain Contract constitutes a valid and enforceable contract between Medicos Pain & Surgical Specialists, S.C. and Defendant.

18. Plaintiff Medicos Pain & Surgical Specialists, S.C. has fulfilled its obligations under the Medicos Pain Contract and, further, mailed written notice to Defendant of breach thereof prior to the filing of this Verified Complaint.

19. Defendant's failure to pay Medicos Pain & Surgical Specialists, S.C. its outstanding charges for services rendered to Defendant constitutes a breach of the Medicos Pain Contract.

20. As a direct and proximate cause of Defendant's breach of the Medicos Pain Contract, Medicos Pain & Surgical Specialists, S.C. has been damaged in the amount of Fifty-One Thousand One Hundred Nineteen and 00/100 Dollars ($51,119.00).

WHEREFORE, Medicos Pain & Surgical Specialists, S.C. prays for judgment in its favor and against Defendant in the amount of Fifty-One Thousand One Hundred Nineteen and 00/100 Dollars ($51,119.00), plus pre-judgment interest and costs.

Respectfully submitted,

MARQUE MEDICOS FULLERTON, LLC and
MEDICOS PAIN & SURGICAL
SPECIALISTS, S.C.

By: ______________________
One of Their Attorneys

Richard E. Nawracaj
Law Offices of Richard E. Nawracaj
One South Dearborn Street, 21st Floor
Chicago, Illinois 60603
(312) 212-4460 (telephone)
(312) 264-0419 (facsimile)
Firm ID: 45811

VERIFICATION

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct, except as to matters therein stated to be on information and belief and as to such matter, the undersigned certifies as aforesaid that the undersigned verily believes the same to be true.

Dr. Derrick. D. Wallery,
an officer, and on behalf, of Medicos Pain
& Surgical Specialists, S.C. and Marque
Medicos Fullerton, LLC

ME[redacted]OS PAIN & SURGICAL SPECIALISTS S.C.

PATIENT AGREEMENTS & AUTHORIZATIONS-ACUERDOS Y AUTORIZACIONES DE PACIENTE

CONSENT FOR TREATMENT/CONSENTIMIENTO DE TRATAMIENTO. (BH)
I hereby consent to the treatment provided by MEDICOS PAIN & SURGICAL SPECIALISTS S.C. ("Practice") and its employees or designees. I authorize the mental and physical health care services deemed necessary or advisable by my caregivers to address my needs.

Yo por medio de la presente autorizo el tratamiento proporcionado por MEDICOS PAIN & SURGICAL SPECIALISTS S.C. y ("Práctica") sus empleados o designados. Autorizo los servicios mentales y físicos de asistencia médica que crean necesario o conveniente para mis cuidados y necesidades.

AUTHORIZATION FOR RELEASE OF PERSONAL HEALTH INFORMATION/ AUTORIZACION PARA LA REVELACION DE INFORMACION PERSONAL DE SALUD. (BH)
I authorize use and disclosure of my personal health information for the purposes of diagnosing or providing treatment to me, obtaining payment for my care, or for the purposes of conducting the healthcare operations of the Practice. I authorize the Practice to release any information required in the process of applications for financial coverage for the services rendered. This authorization provides that the Practice may release objective clinical information related to my diagnoses and treatment, which may be requested by my insurance company or its designated agent.

Autorizo el uso y la revelación de mi Información personal de salud para los propósitos de diagnosticar o proporcionarme el tratamiento obtener el pago de mi cuidado, o para los propósitos de conducir las operaciones de asistencia médica de la Práctica. Autorizo a la Práctica revelar cualquier información requerida en el proceso de aplicaciones para el alcance financiero por los servicios rendidos. Esta autorización proporciona que la Práctica puede revelar información clínica objetiva relacionado con mi diagnóstico y tratamiento, que puede ser solicitado por mi compañía de seguros o su agente designado.

ASSIGNMENT OF INSURANCE BENEFITS/ PAYMENT GUARANTEE/ COLLECTION FEE/ TAREA DE BENEFICIOS DE SEGURO/GARANTIA DE PAGO/HONORARIO DE COLECCION. (BH)
I authorize payment to be made directly to the Practice for insurance benefits payable to me. I understand that I am financially responsible to the Practice for any covered or non-covered services, as defined by my insurer. I understand that if my account balance becomes overdue and the overdue account is referred to a collection agency, I will be responsible for the costs of collection including reasonable attorneys fees.

Doy mi autorización para que el pago sea hecho directamente a la Práctica por beneficios de mi seguro pagaderos a mí. Entiendo que soy económicamente responsable a la Práctica por cualquier servicio cubierto o no cubierto, como definido por mi aseguradora. Entiendo que si mi saldo de cuenta llega a ser atrasado y la misma es referida a una agencia de colección, yo seré responsable de los gastos de colección incluyendo honorarios razonables de abogados.

PRIVACY POLICY/ POLITICA DE PRIVACIDAD. (BH)
I acknowledge having received the Practice's, "Notice of Privacy Policies". My rights, including the right to see and copy my record, to limit disclosure of my health information, and to request an amendment to my record, is explained in the Policy. I understand that I may revoke in writing my consent for release of my health care information, except to the extent the Practice has already made disclosures with my prior consent.

Reconozco haber recibido la "Poliza de Políticas de Privacidad" de la Practica y que mis derechos, incluyendo el derecho de ver y copiar el registro, limitar la revelación de mi información médica, y para solicitar una enmienda en mi registro, se explica en la Póliza. Entiendo que puedo revocar por escrito mi consentimiento para la revelación de mi información médica, menos a la extensión que la Práctica ya ha hecho las revelaciones con mi consentimiento de anterioridad.

BERTHA
Print Name/Nombre

Patient or Authorized Person Signature / Firma del Paciente o persona autorizada

Relationship/Relación

05/12/09
Date/Fecha

Witness Signature/Firma de Testigo

5-12-09
Date/Fecha

Patient unable to sign. Verbal consent given/ Paciente incapaz de firmar. Consentimiento verbal dado.

Reason/Razon: ____________________

PATIENT AGREEMENTS & AUTHORIZATIONS-ACUERDOS Y AUTORIZACIONES DE PACIENTE

CONSENT FOR TREATMENT/CONSENTIMIENTO DE TRATAMIENTO. KBH.)

I hereby consent to the treatment provided by Marque Medicos Fullerton, LLC ("Practice") and its employees or designees. I authorize the mental and physical health care services deemed necessary or advisable by my caregivers to address my needs.

Yo por medio de la presente autorizo el tratamiento proporcionado por Marque Medicos Fullerton, LLC y ("Práctica") sus empleados o designados. Autorizo los servicios mentales y físicos de asistencia médica que crean necesario o conveniente para mis cuidados y necesidades.

AUTHORIZATION FOR RELEASE OF PERSONAL HEALTH INFORMATION/ AUTORIZACION PARA LA REVELACION DE INFORMACION PERSONAL DE SALUD. KBH)

I authorize use and disclosure of my personal health information for the purposes of diagnosing or providing treatment to me, obtaining payment for my care, or for the purposes of conducing the healthcare operations of the Practice. I authorize the Practice to release any information required in the process of applications for financial coverage for the services rendered. This authorization provides that the Practice may release objective clinical information related to my diagnoses and treatment, which may be requested by my insurance company or its designated agent.

Autorizo el uso y la revelación de mi información personal de salud para los propósitos de diagnosticar o proporcionarme el tratamiento, obtener el pago de mi cuidado, o para los propósitos de conducir las operaciones de asistencia médica de la Práctica. Autorizo a la Práctica a revelar cualquier información requerida en el proceso de aplicaciones para el alcance financiero por los servicios rendidos. Esta autorización proporciona que la Práctica puede revelar información clínica objetiva relacionado con mi diagnóstico y tratamiento, que puede ser solicitado por mi compañía de seguros o su agente designado.

ASSIGNMENT OF INSURANCE BENEFITS/ PAYMENT GUARANTEE/COLLECTION FEE/ TAREA DE BENEFICIOS DE SEGURO/GARANTIA DE PAGO/HONORARIO DE COLECCION. KBH)

I authorize payment to be made directly to the Practice for insurance benefits payable to me. I understand that I am financially responsible to the Practice for any covered or non-covered services, as defined by my insurer. I understand that if my account balance becomes overdue and the overdue account is referred to a collection agency, I will be responsible for the costs of collection including reasonable attorneys fees.

Doy mi autorización para que el pago sea hecho directamente a la Práctica por beneficios de mi seguro pagaderos a mi. Entiendo que soy economicamente responsable a la Práctica por cualquier servicio cubierto o no cubierto, como definido por mi aseguradora. Entiendo que si mi saldo de cuenta llega a ser atrasado y la misma es referida a una agencia de colección, yo seré responsable de los gastos de colección incluyendo honorarios razonables de abogados.

PRIVACY POLICY/ POLITICA DE PRIVACIDAD. KBH)

I acknowledge having received the Practice's, "Notice of Privacy Policies". My rights, including the right to see and copy my record, to limit disclosure of my health information, and to request an amendment to my record, is explained in the Policy. I understand that I may revoke in writing my consent for release of my health care information, except to the extent the Practice has already made disclosures with my prior consent.

Reconozco haber recibido la "Poliza de Pólíticas de Privacidad" de la Practica y que mis derechos, incluyendo el derecho de ver y copiar mi registro, limitar la revelación de mi información médica, y para solicitar una enmienda en mi registro, se explica en la Póliza. Entiendo que puedo revocar por escrito mi consentimiento para la revelación de mi información médica, menos a la extensión que la Práctica ya ha hecho las revelaciones con mi consentimiento de anterioridad.

[signature]	[signature]		04/15/09
Print Name/Nombre	Patient or Authorized Person Signature / Firma del Paciente o persona autorizada	Relationship/Relación	Date/Fecha

[signature]	04/05/09
Witness Signature/Firma de Testigo	Date/Fecha

Patient unable to sign. Verbal consent given/ Paciente incapaz de firmar. Consentimiento verbal dado.

Reason/Razon: ____________________

Version 1.0

Cited
As of: August 8, 2014 3:51 PM EDT

Tiburzi Chiropractic v. Kline

Appellate Court of Illinois, Fourth District
September 16, 2013, Filed
NO. 4-12-1113

Reporter: 2013 IL App (4th) 121113; 996 N.E.2d 1164; 2013 Ill. App. LEXIS 632; 375 Ill. Dec. 108; 2013 WL 5175237

TIBURZI CHIROPRACTIC, an Illinois Corporation, Plaintiff-Appellee, v. DAVID KLINE, Defendant-Appellant, and ROVEY SEED COMPANY, INC., an Illinois Corporation, Third-Party Defendant.

Prior History: [***1] Appeal from Circuit Court of Macoupin County. No. 11SC109. Honorable Joshua A. Meyer, Judge Presiding.

Disposition: Affirmed as modified.

Core Terms

services, fee schedule, workers' compensation, provider, compensable, trial court, third-party, chiropractor, parties, medical bills, costs, chiropractic, settlement, modified, bills

Case Summary

Overview

HOLDINGS: [1]-The provider was entitled to judgment in the amount of $200, plus costs, because although 820 ILCS 305/8.2(e-20) (2010) did not allow the provider to recover for compensable services in excess of the fee schedule, it did allow the provider to recover for services not compensable, when payment for services deemed not covered or not compensable under the Workers' Compensation Act was the responsibility of the employee unless the provider and employee had agreed otherwise in writing.

Outcome

Judgment affirmed as modified.

LexisNexis® Headnotes

Workers' Compensation & SSDI > Benefit Determinations > Medical Benefits > General Overview

HN1 Under Section 8(a) of the Workers' Compensation Act, 820 ILCS 305/8(a) (2006), a claimant is entitled to recover reasonable medical expenses, the incurrence of which are causally related to an accident arising out of and in the scope of his employment and which are necessary to diagnose, relieve, or cure the effects of the claimant's injury.

Workers' Compensation & SSDI > Benefit Determinations > Medical Benefits > General Overview

HN2 See 820 ILCS 305/8(a) (2010).

Workers' Compensation & SSDI > Benefit Determinations > Medical Benefits > General Overview

HN3 Pursuant to the Workers' Compensation Act, the employer must adjust the medical bills to conform to the fee schedule found in Section 8.2 f the Workers' Compensation Act. 820 ILCS 305/8.2 (2010). Except as provided under Subsections (e-5), (e-10), (e-15), and (e-20), a provider shall not bill or otherwise attempt to recover from the employee the difference between the provider's charge and the amount paid by the employer or the insurer on a compensable injury. 820 ILCS 305/8.2(e) (2010).

Workers' Compensation & SSDI > Benefit Determinations > Medical Benefits > General Overview

HN4 See 820 ILCS 305/8.2(e-20) (2010).

Workers' Compensation & SSDI > Benefit Determinations > Medical Benefits > General Overview

HN5 The provider shall not require a payment rate greater than the lesser of the actual charge or the payment level set by the Workers' Compensation Commission in the fee schedule established. 820 ILCS 305/8.2(e-20) (2010).

Workers' Compensation & SSDI > Benefit Determinations > Medical Benefits > General Overview

HN6 Payment for services deemed not covered or not compensable under the f the Workers' Compensation Act is the responsibility of the employee unless a provider and

employee have agreed otherwise in writing. *820 ILCS 305/8.2(e-20)* (2010).

Syllabus

In a chiropractor's small claims action to collect for services provided to treat defendant's work-related injury, the trial court erred in awarding plaintiff a judgment, since defendant had filed a workers' compensation claim and the chiropractor's bill, as conformed to the fee schedule set forth in the workers' compensation statute, was paid pursuant to the settlement contract lump-sum petition and order in defendant's workers' compensation case, and although the amount paid was less than the amount the chiropractor sought from defendant, the chiropractor was not entitled to recover the balance of its bill from defendant, but the judgment was modified to allow the chiropractor to recover for items supplied by the chiropractor that were not compensable under the Act.

Counsel: For appellant: Timothy F. Campbell, Campbell & McGrady, of Godfrey.

For appellee: Rick Verticchio, Verticchio & Verticchio, of Carlinville.

Judges: JUSTICE TURNER delivered the judgment of the court, with opinion. Justices Pope and Harris concurred in the judgment and opinion.

Opinion by: TURNER

Opinion

[*P1] **[**1165]** In May 2011, plaintiff, Tiburzi Chiropractic, filed a small-claims complaint against defendant, David Kline, to collect the balance of fees charged following the performance of chiropractic services. In November 2012, the trial court found in favor of plaintiff and ordered defendant to pay $2,155.

[*P2] On appeal, defendant argues the trial court erred in entering a money judgment in favor of plaintiff. We affirm as modified.

[*P3] I. BACKGROUND

[*P4] In October 2008, defendant suffered an injury while working for third-party defendant, Rovey Seed Company, Inc. Thereafter he filed a workers' compensation claim. Defendant sought and received treatment from plaintiff's office in Carlinville. In August 2010, defendant and third-party defendant entered into a settlement contract lump-sum petition and order, whereby third-party defendant agreed to satisfy, pursuant to the fee schedule, all medical bills for medically causally related treatment received **[***2]** on or before June 10, 2010.

[*P5] In March 2011, plaintiff filed a small-claims complaint against defendant, alleging defendant was indebted to plaintiff in the sum of $2,336.60 for an overdue account related to chiropractic and related services. Plaintiff claimed defendant refused to pay and no part had been paid despite being requested to do so.

[*P6] In May 2012, defendant filed a petition and application under section 19(g) of the Workers' Compensation Act (Act) (*820 ILCS 305/19(g)* (West 2010)) for judgment on a workers' compensation award. Defendant attached a certified copy of the final award to the petition. Defendant also stated his belief that plaintiff alleged defendant and/or third-party defendant had failed to satisfy, pursuant to the fee schedule, certain medical bills incurred by defendant. He stated he had demanded **[**1166]** third-party defendant pay all such bills pursuant to the fee schedule and third-party defendant had claimed it made full payment.

[*P7] In July 2012, the trial court entered an order on defendant's *section 19(g)* petition. The court found third-party defendant had made full payment pursuant to the terms of the settlement contract lump-sum petition and order, including payment **[***3]** pursuant to the fee schedule and *section 8* of the Act of "all medical bills for medically causally related treatment, including, but not limited to, any bills for medical treatment provided by [plaintiff]." The court held defendant and third-party defendant had met all of their obligations under the Act. The court denied defendant's demand for additional payment, costs, fees, and interest because "all medical bills, including, but not limited to, the bills from [plaintiff] have been satisfied pursuant to the [Act]."

[*P8] In November 2012, the trial court conducted a bench trial on plaintiff's complaint. The proceedings were not transcribed, but the court entered a bystander's report pursuant to *Illinois Supreme Court Rule 323(c)* (eff. Dec. 13, 2005). The report stated, in part, as follows:

> "a. Kline testified that he sustained an injury at work on October 7, 2008[,] and filed a workers' compensation claim pursuant to *820 ILCS 305* (the Illinois Workers' Compensation Act or the 'Act'). His trial counsel noted that *Section 8.2* of the Act contained a fee schedule in effect for physicians' services rendered after February 1, 2006. Kline further testified that he sought treatment by Tiburzi, a **[***4]** chiropractor, at his Carlinville office for the injury that he had sustained. Kline's counsel pointed out that on August 2, 2010[,] Kline and his employer had entered into a settlement contract, approved by the Illinois

[*P11] In the case *sub judice*, plaintiff relies on the exception in *subsection (e-20)* (*820 ILCS 305/8.2(e-20)* (West 2010)), which states as follows:

> ***HN4*** "Upon a final award or judgment by an Arbitrator or the Commission, or a settlement agreed to by the employer and the employee, a provider may resume any and all efforts to collect payment from the employee for the services rendered to the employee and the employee shall be responsible for payment of any outstanding bills for a procedure, treatment, or service rendered by a provider as well as the interest awarded under subsection (d) of this Section. In the case of a procedure, treatment, or service deemed compensable, the provider shall not require a payment rate, excluding the interest provisions under subsection (d), greater than the lesser of the actual charge or the payment level set **[**1168]** by the Commission in the fee schedule established in this Section. Payment for services deemed not covered **[***9]** or not compensable under this Act is the responsibility of the employee unless a provider and employee have agreed otherwise in writing. Services not covered or not compensable under this Act are not subject to the fee schedule in this Section."

Plaintiff argues *subsection (e-20)* supports the trial court's judgment based on its finding that the parties had entered into a private agreement, whereby defendant guaranteed payment to plaintiff for services he specifically requested. Defendant, however, argues the court held the employer paid in full according to the fee schedule. Thus, defendant contends that since plaintiff's services were covered and compensable under the Act, and thereby subject to the fee-schedule rate, plaintiff is not entitled to recover the balance of its bill. We agree with defendant that plaintiff's compensable services under the Act are not recoverable.

[*P12] Contrary to plaintiff's argument, it did not treat defendant as a private-pay patient. Instead, plaintiff submitted its bill to defendant's workers' compensation insurance carrier. The exhibits offered at trial reflect that except for 20 cold packs ($10 each), the chiropractic services were deemed compensable by **[***10]** the insurer and were paid at the fee-schedule rate. Thus, ***HN5*** plaintiff, as the provider, "shall not require a payment rate *** greater than the lesser of the actual charge or the payment level set by the Commission in the fee schedule established." *820 ILCS 305/8.2(e-20)* (West 2010). Accordingly, the trial court erred in awarding plaintiff a monetary judgment in the amount of $2,010.

[*P13] Although we find *subsection (e-20)* does not allow plaintiff to recover for compensable services in excess of the fee schedule, we find it does allow plaintiff to recover for services not compensable. Specifically, "***HN6*** [p]ayment for services deemed not covered or not compensable under this Act is the responsibility of the employee unless a provider and employee have agreed otherwise in writing." *820 ILCS 305/8.2(e-20)* (West 2010). Here, the workers' compensation insurer paid nothing for the 20 cold packs, each billed in the amount of $10. Thus, plaintiff is entitled to judgment in the amount of $200, plus costs.

[*P14] III. CONCLUSION

[*P15] For the reasons stated and pursuant to *Illinois Supreme Court Rule 366(a)(5)* (eff. Feb. 1, 1994), we affirm the monetary judgment in favor of plaintiff and against defendant but reduce **[***11]** the amount awarded to $200, plus court costs of $145, for a total of $345.

[*P16] Affirmed as modified.

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CIRCUIT COURT OF
COOK COUNTY, ILLINOIS
MUNICIPAL DIVISION
CLERK DOROTHY BROWN

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
MUNICIPAL DEPARTMENT, FIRST DISTRICT

MARQUE MEDICOS 26th STREET, LLC, and MEDICOS PAIN & SURGICAL SPECIALISTS, S.C.,	)	
Plaintiffs,	)	
v.	)	Case No.
ELITE LABOR SERVICES, LTD. a/k/a ELITE STAFFING, INC. and GO SELF INSURED, LLC,	)	Amount Claimed: In excess of $10,000.00
Defendants.	)	

COMPLAINT FOR MONETARY DAMAGES

Marque Medicos 26th Street, LLC and Medicos Pain & Surgical Specialists, S.C. (the "Plaintiffs"), by and through their undersigned attorneys, for their complaint against Elite Labor Services, Ltd. a/k/a Elite Staffing, Inc. ("Elite") and Go Self Insured, LLC ("Go Self Insured") state as follows:

NATURE OF THE ACTION

1. Plaintiffs, two commonly owned medical service providers, bring this action in their individual capacities as well as the assignees of insurance benefits provided to them by their patient and assignor, Mr. Roberto Hermosillo (the "Patient"), seeking payments due them under such assignments, pursuant to a settlement contract between the Patient and the Defendants, and further pursuant to the Workers' Compensation Act, 820 ILCS 305/1 *et seq. & especially Section 8.2(d) thereof* (the "Act"). Although the Defendants accepted responsibility to pay medical bills submitted to them by the Plaintiffs, the Defendants have: a) failed to pay the Plaintiffs for all their reasonable and causally related services provided; b) delayed payment for such services for more than three (3) years after such services were provided; and c) refused to pay statutory

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interest due to the Plaintiffs that accrued during the delays in payment, which have caused the Plaintiffs to suffer damages in excess of $10,000.00.

PARTIES

2. Plaintiff Marque Medicos 26th Street, LLC is an Illinois limited liability company with its principal place of business located in Cook County, Illinois.

3. Plaintiff Medicos Pain & Surgical Specialists, S.C. is an Illinois corporation with its principle places of business located in Cook County, Illinois

4. Defendant Elite is an Illinois corporation, located and doing business in Cook County, Illinois.

5. Defendant Go Self Insured is an Illinois limited liability corporation regularly conducting business in Cook County, Illinois.

FACTS COMMON TO ALL COUNTS

6. The Patient suffered a work-related injury that occurred during the course of his employment with Elite on May 12, 2011 (the "Injury").

7. The Plaintiffs treated the Patient for the Injury from June 7, 2011 through July 18, 2011.

8. The Patient assigned any and all insurance benefits and payments available to him to the Plaintiffs at the outset of his treatment with the Plaintiffs. A true and correct copy of that assignment is attached hereto as **Exhibit A**. Moreover, in light of the erroneous representations made by the Defendants to the Patient, as alleged more fully below, on June 11, 2014, the Patient expressly assigned all of his rights to proceed against the Defendants pursuant to **Exhibit B** attached hereto.

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9. At the time of the Injury, and thereafter, Elite provided its employees, including the Patient, with workers' compensation insurance coverage.

10. At the time of the Injury, Go Self Insured was the third-party claims administrator for Elite.

11. Go Self Insured, acting on behalf of and as the disclosed agent for Elite, assigned claim number ESI110287 to the Injury, and Go Self Insured accepted responsibility for itself, and Elite to make workers' compensation benefit payments on claim number ESI110287.

12. All the billing transactions giving rise to this cause of action occurred within Cook County, Illinois. Pursuant to the Act, the Plaintiffs billed the Patient's employer, defendant Elite, for the medical services provided to the Patient in connection with the Injury, by sending their bills, medical records and communications to Go Self Insured, which, at all relevant times to this Complaint, was the third-party claims administrator for defendant Elite.

13. On or around July 22, 2011, the Patient filed a claim under the Act with the Illinois Workers' Compensation Commission (the "IWCC") for disability benefits and unpaid medical expenses resulting from the Injury.

14. On or around December 18, 2012, the Patient, as Petitioner, and Elite, as Respondent, entered into a settlement agreement, pursuant to which, Elite agreed to pay the Patient a lump sum disability benefit and to pay unpaid medical expenses incurred by the Patient as a result of the Injury. A copy of the IWCC Settlement Contract Lump Sum Petition and Order (the "IWCC Settlement Contract") is attached hereto as **<u>Exhibit C</u>**.

15. At all times relevant herein, the Act, and specifically Section 8.2(d)(3) thereof, was in full effect: Section 8.2(d)(3) of the Act provides:

> In the case of nonpayment to a provider within 30 days of receipt of the bill which contained substantially all of the required data elements necessary to adjudicate

> the bill or nonpayment to a provider of a portion of such a bill up to the lesser of the actual charge or the payment level set by the Commission in the fee schedule established in this Section, ***the bill, or portion of the bill, shall incur interest at a rate of 1% per month <u>payable to the provider</u>. Any required interest payments shall be made within 30 days after payment.*** [1]

820 ILCS 305/8.2(d)(3) (emphasis added).

16. Throughout the course of claim number ESI110287, the Plaintiffs provided the Defendants with bills for services rendered to the Patient in a regular and timely manner after said services were performed. All the Plaintiffs' bills for services rendered to the Patient contained appropriate Current Procedural Terminology ("CPT") and/or Healthcare Common Procedure Coding System ("HCPCS") coding; and said bills were submitted to the Defendants on either CMS-1500 or CMS-1450 medical billing forms, which contained all the necessary data elements to adjudicate the bills as required by the Act.

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17. At no time did the Defendants provide the Plaintiffs with written notification explaining, describing or requesting any additional data elements.

18. The Defendants have not fully paid for the reasonable, necessary and causally related services provided by the Plaintiffs to treat the Injury, and they have not paid the applicable accrued interest due to the Plaintiffs for failing to pay the Plaintiffs' bills timely as required by the Act.

19. Under the Act, and pursuant to the IWCC[2], interest is owed on claims that are disputed for valid reasons but are later determined to be compensable. If there were any doubt regarding an employer's obligation to pay interest on medical bills for reasonable and necessary treatment of work-related injuries in the State of Illinois which the employer fails to pay within

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[1] Although Section 8.2(d) of the Act became effective on February 1, 2006, Section 8.2(d) was amended, effective June 28, 2011, to require that payment of a provider's bill be made within thirty (30) days (rather than 60 days) of receipt of a provider's bills.

[2] *See: http://www.iwcc.il.gov/faqmed.htm#interest.*

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thirty (30) days of receipt of a provider's bill, the Illinois Department of Insurance issued Company Bulletin 2012-09, notifying all insurance companies and self-insured entities/self-insured pools licensed/approved to provide workers' compensation coverage in Illinois, to maintain compliance with the interest provision contained in Section 8.2(d)(3) of the Act. A true and correct copy of Company Bulletin 2012-09 is attached hereto as **Exhibit D**.

20. The Defendants have not satisfied the Plaintiffs' bills for medical services rendered to the Patient as a result of the Injury; pursuant to Section 8.2(d)(3) of the Act, the Defendants will owe the Plaintiffs accrued statutory interest on the Plaintiffs' underlying unpaid medical bills within thirty (30) days of when said bills are paid.

COUNT I:
BREACH OF THE IWCC SETTLEMENT CONTRACT

1-20. The Plaintiffs re-allege and incorporate by reference paragraphs 1 through 20 of their Complaint as paragraphs 1-20 of this Count I.

21. The IWCC Settlement Contract, **Exhibit C**, constitutes a valid and enforceable contract between the Patient and the Defendants herein.

22. Specifically, the IWCC Settlement Contract provides, *inter alia*, "**Respondent agrees to hold Petitioner harmless and to satisfy *all* reasonable, related and necessary medical bills**." (Emphasis added). That contractual provision demonstrated the parties' mutual understanding that the Defendants fully intended to pay all medical bills which had been submitted to them as of the date of the Settlement Agreement. However, defendant Elite has not paid all of the Plaintiffs' reasonable and necessary medical bills that were causally related to the Injury and submitted to the Defendants as of the date of the Settlement Agreement.

23. At the time the IWCC Settlement Contract was approved by the IWCC, the Defendants were aware that the Plaintiffs were providers of medical care and services to the

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Patient as a result of the Injury, and that there were unpaid amounts due to the Plaintiffs for said medical services.

24. All of the Plaintiffs' bills for services provided to the Patient to treat the Injury were submitted to the Defendants prior to the approval of the IWCC Settlement Contract. All such bills were medically necessary, reasonable and causally related to the Injury. Further, all of Plaintiffs' bills were submitted on claim forms containing all the required data elements necessary to adjudicate said bills pursuant to the Act; and since there was never a negotiated payment rate between the Plaintiffs and the Defendants, the Defendants must pay the Plaintiffs' outstanding bills in accordance with the IWCC Medical Fee Schedule.

25. The Plaintiffs, medical providers to the Patient, are intended third-party beneficiaries of the IWCC Settlement Contract, because as part of the IWCC Settlement Contract, defendant Elite represented that it would pay *all* reasonable, related and necessary medical bills pertaining to the injury. Moreover, to the extent that the Defendants could attempt to argue that the Plaintiffs were not express, intended third-party beneficiaries, the Patient has specifically assigned all of his rights under the IWCC Settlement Contract to the Plaintiffs in **Exhibit B**.

26. Prior to the filing of this Complaint, the Plaintiffs have made numerous demands to the Defendants for payment of their outstanding bills as required by the IWCC Settlement Contract and for the accrued interest on the Plaintiffs' unpaid bills.

27. Elite and its agent, Go Self Insured, have failed to pay, and continue to fail to pay the Plaintiffs' outstanding charges in accordance with the IWCC Medical Fee Schedule, as required by the IWCC Settlement Contract.

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28. Furthermore, Elite and its agent, Go Self Insured, have failed to pay, and continue to fail to pay the Plaintiffs for the accrued interest on Plaintiffs' outstanding bills.

29. The Plaintiffs and the Patient have fully performed all of their obligations under the IWCC Settlement Contract.

30. The Defendants' failure to pay the outstanding medical bills of the Plaintiffs constitutes a breach of the IWCC Settlement Contract. Defendants' refusal to pay accrued statutory interest on the Plaintiffs' unpaid claims constitutes a further breach of the IWCC Settlement Contract.

31. As a direct proximate result of Defendants' breaches of contract and failure to pay interest due under the IWCC Settlement Contract and through the Act, the Patient and his assignee Marque Medicos 26th Street, LLC have suffered damages in excess of $9,700.00 (*i.e.*, $6,662.45 in unpaid bills pursuant to the IWCC Medical Fee Schedule and more than $3,100.00 in interest attributable to those unpaid bills); and the Patient and his assignee Medicos Pain & Surgical Specialists, S.C. have suffered damages in excess of $400.00 (*i.e.*, $323.00 in unpaid bills pursuant to the IWCC Medical Fee Schedule and more than $100.00 in interest attributable to those unpaid bills).

32. The amounts sought herein are liquidated sums which have/will become fixed and liquated thirty (30) days after the Defendants pay for the medical services rendered by the Plaintiffs.

33. Interest is due for all such liquidated debts pursuant to the Act and/or other applicable Illinois statutes.

WHEREFORE, for their Count I, the Plaintiffs pray for an entry of judgment in their favor and against Defendants, Elite and Go Self Insured, jointly and severally, in excess of

$9,700.00 for Marque Medicos 26th Street, LLC, and in excess of $400.00 for Medicos Pain & Surgical Specialists, S.C., for an award of unpaid medical services and all interest due and owing pursuant to the Act and/or other applicable Illinois statutes, through the date of judgment herein and for any other relief this court deems proper.

COUNT II: PROMISSORY ESTOPPEL

1-33. The Plaintiffs re-allege and incorporate by reference paragraphs 1 through 33 of their Complaint as paragraphs 1-33 of this Count II.

34. As noted above, the IWCC Settlement Contract provides, *inter alia*, that Elite agrees "**to satisfy *all* reasonable, related and necessary medical bills**." (Emphasis added). That contractual provision demonstrated to the Patient the Defendants' intention to pay all of the medical bills which had been submitted to them as of the date of the IWCC Settlement Contract.

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35. The Defendants were in a superior position than the Patient to determine whether the medical bills had been paid as of the date of the Settlement Agreement.

36. The Patient reasonably relied upon the express written representation that the Defendants intended to pay the outstanding medical bills which had been submitted to them.

37. As part of his reasonable reliance on the Defendants' representation that they would pay all of his medical bills, the Patient settled his claim, executed the IWCC Settlement Contract and asked the Arbitrator to approve it.

38. The Defendants have failed to honor their representation that they would pay all of the reasonable, related and necessary medical bills submitted to them as of the date of the IWCC Settlement Contract.

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39. The Patient and the Plaintiffs herein have been damaged as a result of the Defendants' failure to honor their representation that they would pay all of the medical bills associated with the Injury.

40. As a result of the Defendants' failure to honor their representation that they would pay all of the medical bills associated with the Injury, the Patient and his assignee Marque Medicos 26th Street, LLC have suffered damages in excess of $9,700.00 (*i.e.*, $6,662.45 in unpaid bills pursuant to the IWCC Medical Fee Schedule and more than $3,100.00 in interest attributable to those unpaid bills); and the Patient and his assignee Medicos Pain & Surgical Specialists, S.C. have suffered damages in excess of $400.00 (*i.e.*, $323.00 in unpaid bills pursuant to the IWCC Medical Fee Schedule and more than $100.00 in interest attributable to those unpaid bills).

WHEREFORE, for their Count II, the Plaintiffs pray for an entry of judgment in their favor and against Defendants, Elite and Go Self Insured, jointly and severally, in excess of $9,700.00 for Marque Medicos 26th Street, LLC, and in excess of $400.00 for Medicos Pain & Surgical Specialists, S.C., for an award of unpaid medical services and all interest due and owing pursuant to the Act and/or other applicable Illinois statutes, through the date of judgment herein and for any other relief this court deems proper.

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COUNT III:
VIOLATION OF THE ILLINOIS CONSUMER FRAUD
AND DECEPTIVE BUSINESS PRACTICES ACT

1-40. The Plaintiffs re-allege and incorporate by reference paragraphs 1 through 40 of their Complaint as paragraphs 1-40 of this Count III.

41. The Patient is a "consumer" as defined by the Illinois Consumer Fraud and Deceptive Business Practices Act, 815 ILCS 505/1.

42. The Patient contracted with the Defendants for the payment of services, specifically medical services, which are included in the type of "merchandise" governed by and defined in the Illinois Consumer Fraud and Deceptive Business Practices Act, 815 ILCS 505/1.

43. The Defendants made specific written representations to the Patient that they would pay certain medical bills incurred in connection with the Injury.

44. The Defendants intended that the Patient rely on their written representations.

45. The Defendants' written representations were false, deceptive and misleading, and constitute a violation of the Illinois Consumer Fraud and Deceptive Business Practices Act, 815 ILCS 505/2.

46. The Patient has suffered actual damages as a result of the Defendants' false, deceptive and misleading representations.

47. The Defendants have failed to pay for all of the Patient's medical bills incurred in connection with the Injury.

48. As a result of the Defendants' violations of the Illinois Consumer Fraud and Deceptive Business Practices Act, the Patient and his assignee Marque Medicos 26th Street, LLC have suffered damages in excess of $9,700.00 (*i.e.*, $6.662.45 in unpaid bills pursuant to the IWCC Medical Fee Schedule and more than $3.100.00 in interest attributable to those unpaid

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bills); and the Patient and his assignee Medicos Pain & Surgical Specialists, S.C. have suffered damages in excess of $400.00 (*i.e.*, $323.00 in unpaid bills pursuant to the IWCC Medical Fee Schedule and more than $100.00 in interest attributable to those unpaid bills).

49. This Court may award actual and exemplary damages against the Defendants as a result of their violations of the Illinois Consumer Fraud and Deceptive Trade Practices Act.

WHEREFORE, for their Count III, the Plaintiffs pray for an entry of judgment in their favor and against Defendants, Elite and Go Self Insured, jointly and severally, in excess of $9,700.00 for Marque Medicos 26th Street, LLC, and in excess of $400.00 for Medicos Pain & Surgical Specialists, S.C., for an award of unpaid medical services and all interest due and owing pursuant to the Act and/or other applicable Illinois statutes, through the date of judgment herein and for any other relief this court deems proper.

COUNT IV:
BREACH OF STATUTORY DUTY OWED TO THE ASSIGNOR, HIS ASSIGNEES AND DIRECTLY TO THE MEDICAL PROVIDERS UNDER 820 ILCS 305/8.2(d)

1-49. The Plaintiffs re-allege and incorporate by reference paragraphs 1-49 of their Complaint as paragraphs 1-49 of this Count IV.

50. Pursuant to Section 8.2(d) of the Act, the Defendants owe a direct statutory duty to the Plaintiffs as medical providers who treated the Patient, to pay accrued interest to the Plaintiffs for medical bills incurred for treating the Patient as a result of the Injuries, which were not paid within the statutory grace period (*i.e.*, sixty (60) days for bills sent and received prior to June 28, 2011, and thirty (30) days for bills sent and received on or after June 28, 2011).

51. The Plaintiffs have made demands upon the Defendants for payment of statutory interest that has accrued, and continues to accrue, on Plaintiffs' unpaid bills incurred in treating the Injury that Defendants failed to pay within sixty (60) or thirty (30) days of receipt.

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52. Despite the Plaintiffs' demands, the Defendants have failed to make, and refuse to make, interest payments to the Plaintiffs, in violation of Section 8.2(d)(3) of the Act, and Exhibit D of this Complaint.

53. The Defendants' refusal to pay interest to the Plaintiffs constitutes a breach of their statutory duty owed to the Plaintiffs under Section 8.2(d)(3) of the Act.

54. Pursuant to Section 8.2 (d)(3) of the Act, interest continues to accrue on the Plaintiffs' underlying unpaid bills until such time as they are paid. Therefore, the Defendants will owe additional interest within thirty (30) days of payment of the Plaintiffs' unpaid medical bills referred to in Counts I, II and III herein.

55. As a direct proximate result of the Defendants' breaches of their statutory duty to pay accrued interest owed to the Plaintiffs through the Act, Medicos 26th Street, LLC has suffered damages in excess of $3,100.00 in accrued statutory interest and Plaintiff Medicos Pain & Surgical Specialists, S.C. has suffered damages in excess of $100.00 in accrued statutory interest.

56. The amounts sought herein are liquidated sums which will/have become fixed and liquated thirty (30) days after the Defendants pay for the medical services rendered by Plaintiffs.

57. Interest is due for all such liquidated debts pursuant to the Act and/or other applicable Illinois statutes.

WHEREFORE, for their Count IV, the Plaintiffs pray for an entry of judgment in their favor and against Defendants, Elite and Go Self Insured, jointly and severally, in excess of $3,100.00 for Marque Medicos 26th Street, LLC and in excess of $100.00 for Medicos Pain & Surgical Specialists, S.C., for an award of all interest due and owing pursuant to the Act and/or

other applicable Illinois statutes, through the date of judgment herein and for any other relief this court deems proper.

Respectfully submitted,

Plaintiffs MARQUE MEDICOS 26th STREET, LLC, and MEDICOS PAIN & SURGICAL SPECIALISTS, S.C.

By: /s/ Alan J. Mandel
One of Their Attorneys

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COMPLAINT FOR MONETARY DAMAGES

EXHIBIT A

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[ARQUE MEDICOS, LLC

4176 W. MONTROSE AVE.
CHICAGO, IL 60641

PATIENT AGREEMENTS & AUTHORIZATIONS-ACUERDOS Y AUTORIZACIONES DE PACIENTE

CONSENT FOR TREATMENT/CONSENTIMIENTO DE TRATAMIENTO. (RH)

I hereby consent to the treatment provided by Marque Medicos, LLC ("Practice") and its employees or designees. I authorize the mental and physical health care services deemed necessary or advisable by my caregivers to address my needs.

Yo por medio de la presente autorizo el tratamiento proporcionado por Marque Medicos, LLC y ("Práctica") sus empleados o designados. Autorizo los servicios mentales y físicos de asistencia médica que crean necesario o conveniente para mis cuidados y necesidades.

AUTHORIZATION FOR RELEASE OF PERSONAL HEALTH INFORMATION/ AUTORIZACION PARA LA REVELACION DE INFORMACION PERSONAL DE SALUD. (RH)

I authorize use and disclosure of my personal health information for the purposes of diagnosing or providing treatment to me, obtaining payment for my care, or for the purposes of conducting the healthcare operations of the Practice. I authorize the Practice to release any information required in the process of applications for financial coverage for the services rendered. This authorization provides that the Practice may release objective clinical information related to my diagnoses and treatment, which may be requested by my insurance company or its designated agent.

Autorizo el uso y la revelación de mi información personal de salud para los propósitos de diagnosticar o proporcionarme el tratamiento, obtener el pago de mi cuidado, o para los propósitos de conducir las operaciones de asistencia médica de la Práctica. Autorizo a la Práctica a revelar cualquier información requerida en el proceso de aplicaciones para el alcance financiero por los servicios rendidos. Esta autorización proporciona que la Práctica puede revelar información clínica objetiva relacionada con mi diagnóstico y tratamiento, que puede ser solicitado por mi compañía de seguros o su agente designado.

ASSIGNMENT OF INSURANCE BENEFITS/ PAYMENT GUARANTEE/ COLLECTION FEE/ TAREA DE BENEFICIOS DE SEGURO/GARANTIA DE PAGO/HONORARIO DE COLECCION. (RH)

I authorize payment to be made directly to the Practice for insurance benefits payable to me. I understand that I am financially responsible to the Practice for any covered or non-covered services, as defined by my insurer. I understand that if my account balance becomes overdue and the overdue account is referred to a collection agency, I will be responsible for the costs of collection including reasonable attorney's fees.

Doy mi autorización para que el pago sea hecho directamente a la Práctica por beneficios de mi seguro pagaderos a mí. Entiendo que soy economicamente responsable a la Práctica por cualquier servicio cubierto o no cubierto, como definido por mi aseguradora. Entiendo que si mi saldo de cuenta llega a ser atrasado y la misma es referida a una agencia de colección, yo seré responsable de los gastos de colección incluyendo honorarios razonables de abogados.

PRIVACY POLICY/ POLITICA DE PRIVACIDAD. (RH)

I acknowledge having received the Practice's, "Notice of Privacy Policies". My rights, including the right to see and copy my record, to limit disclosure of my health information, and to request an amendment to my record, is explained in the Policy. I understand that I may revoke in writing my consent for release of my health care information, except to the extent the Practice has already made disclosures with my prior consent.

Reconozco haber recibido la "Poliza de Póliticas de Privacidad" de la Práctica y que mis derechos, incluyendo el derecho de ver y copiar mi registro, limitar la revelación de mi información médica, y para solicitar una enmienda en mi registro, se explica en la Póliza. Entiendo que puedo revocar por escrito mi consentimiento para la revelación de mi información médica, menos a la extensión que la Práctica ya ha hecho las revelaciones con mi consentimiento de anterioridad.

Roberto Hernandez — 6/7/11

Print Name/Nombre | Patient or Authorized Person Signature / Firma del Paciente o persona autorizada | Relationship/Relación | Date/Fecha

Liz Rodriguez — 6/7/11

Witness Signature/Firma de Testigo | Date/Fecha

Patient is unable to sign. Verbal consent given/ Paciente incapaz de firmar. Consentimiento verbal dado.

Reason/Razon: ____________________

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<u>**COMPLAINT FOR MONETARY DAMAGES**</u>

EXHIBIT B

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ASSIGNMENT AGREEMENT

This Assignment Agreement (the "Agreement") is made on this 11th day of June, 2014, by and between Roberto Hermosillo, an individual with a principal residence at 2738 S. Christiana, Chicago, IL 60623 ("Assignor") and Marque Medicos 26th Street, LLC, an Illinois limited liability company with a principal place of business at 4176 West Montrose Avenue, Chicago, Illinois 60641 and Medicos Pain & Surgical Specialists, S.C., an Illinois service corporation with a principal place of business at 4176 West Montrose Avenue, Chicago, Illinois 60641 ("Assignees").

RECITALS

WHEREAS, Assignor entered into a certain Illinois Workers' Compensation Commission Settlement Contract Lump Sum Petition and Order dated December 18, 2012, with Elite Labor Services, Ltd. a/k/a Elite Staffing, Inc. ("Obligor") in connection with Assignor's workers' compensation case number 11 WC2 7956, filed with the Illinois Workers' Compensation Commission, a true and correct copy of which is attached hereto and incorporated herein as Exhibit A ("Contract");

WHEREAS, Assignor wishes to assign all of his rights and obligations under the Contract to Assignees; and

WHEREAS, the Contract does not require the prior consent of the Obligor in connection with an assignment thereof to Assignees;

NOW, THEREFORE, in consideration of the mutual covenants and agreements hereinafter set forth, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Assignor and Assignees agree to the foregoing as follows:

1. Assignor and Assignees hereby agree that the Assignor hereby assigns all his right, title, and interest, and delegates all her rights, obligations, responsibilities and duties, in and to the Contract, to Assignees.

2. Assignees hereby accept the assignment of all of Assignor's rights, obligations, responsibilities and duties under the Contract and all of Assignor's right, title and interest in and to the Contract.

3. Assignees agree to indemnify the Assignor from any and all claims, actions, judgments, liabilities, proceedings and costs, including reasonable attorney fees and other costs of defense and damages, resulting from Assignees' performance after the assignment of the Contract.

4. Although Assignees have the right, pursuant to 820 ILCS 305/8.2(e-20), to resume collection efforts against Assignor, Assignees agree to release Assignor from any liability their outstanding bills in exchange for Assignor's assignment of all his rights, obligations, responsibilities and duties, in and to the Contract, to Assignees, and further in exchange for Assignor's cooperation with respect to the enforcement of the Agreement and the Contract.

including providing further authorizations, assignments, information or testimony as may be necessary to effectuate the purpose of the Contract and Agreement.

5. In no way does the Agreement preclude Assignor or Assignor's counsel from filing with the Illinois Workers' Compensation Commission a petition to enforce the Contract, including penalties and fees for Respondent's vexatious delay in paying medical bills for services rendered to Assignor.

6. This Agreement is governed by the laws of the state of Illinois, without regard to its conflict or choice of law provisions, and both parties expressly consent to jurisdiction in such courts.

7. The provisions of this Agreement shall be deemed severable, and, if any portion of this Agreement shall be held invalid, illegal or unenforceable for any reason, the remainder of this Agreement shall be effective and binding upon the parties.

IN WITNESS WHEREOF, this Agreement has been executed by parties effective as of the date first stated above.

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Roberto Hermosillo

Marque Medicos 26th Street, LLC
Medicos Pain & Surgical Specialists, S.C.

By: ______________________
Dr. Derrick D. Wallery, their President & CEO

SUBSCRIBED AND SWORN to before me this 11th day of June, 2014.

____
Notary Public
My Commission Expires:

OFFICIAL SEAL
CLAUDIA SIBRI
Notary Public - State of Illinois
My Commission Expires Nov 19, 2014

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COMPLAINT FOR MONETARY DAMAGES

EXHIBIT C

ILLINOIS WORKERS' COMPENSATION COMMISSION
SETTLEMENT CONTRACT LUMP SUM PETITION AND ORDER

LV/MP #1687

ATTENTION. Please type or print. File four copies of this form. Attach a recent medical report. Answer all questions.

Workers' Compensation Act X Occupational Diseases Act ___ Fatal case? No X Yes ___ Date of death ___________

Roberto Hermosillo
Employee/Petitioner

Case # 11 WC 27956

v.

Elite Staffing
Employer/Respondent.

Setting: CHICAGO, ILLINOIS

To resolve this dispute regarding the benefits due the petitioner under the Illinois Workers' Compensation or Occupational Diseases Act, we offer the following statements. We understand these statements are not binding if this contract is not approved.

Roberto Hermosillo	2738 S. Christiana Ave.	Chicago	IL	60623
Employee's name	Street address	City	State	Zip code
Elite Staffing	1400 W. Hubbard St.	Chicago	IL	60642
Employer's name	Street address	City	State	Zip code

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Employee's Social Security # ___________ Male X Female ___ Married X Single ___

Dependents under age 18 2 Birthdate: 8/27/1963 Average weekly wage: $175.54

Date of accident: 5/12/2011

- How did the accident occur? Finger popped while trying to pull plastic off of a pallet at work

What part of the body was affected? Left index finger

What is the nature of the injury? Non-displaced fracture

The employer was notified of the accident orally X in writing ___. Return-to-work date: 8/8/2011

Location of accident Chicago. Did the employee return to his or her regular job? Yes X No ___
If not, explain below and describe the type of work the employee is doing, the wage earned, and the current employer's name and address.

TEMPORARY TOTAL DISABILITY BENEFITS: Compensation was paid for 11 5/7 weeks at the rate of $175.54/week. The employee was temporarily totally disabled from 5/17/2011 through 8/7/2011

MEDICAL EXPENSES: The employer has ___ has not X paid all medical bills. List unpaid bills in the space below.
All outstanding liability is settled pursuant to the terms described below.

PREVIOUS AGREEMENTS: *Before the petitioner signed an Attorney Representation Agreement*, the respondent or its agent offered in writing to pay the petitioner $0 as compensation for the permanent disability caused by this injury.

An arbitrator or commissioner of the Commission previously made an award on this case on none regarding

TTD: none Permanent disability: none Medical expenses: none Other: none

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... medical report signed by the physician who examined or treated the employee.

To avoid further litigation, Respondent offers and Petitioner accepts a lump sum of $943.53 in full, final and complete settlement of these claims. Respondent is hereby released, acquitted and discharged from any and all liability under the Workers' Compensation Act (Act) or Occupational Diseases Act, or otherwise, in any way arising out of the accidental occurrence herein referred to, including the known, unknown, fatal or non-fatal, past, present or future effects, developments or sequelae, including medical and hospital expenses incurred or to be incurred, known or unknown, except as otherwise stated in the terms of settlement below. Respondent agrees to hold Petitioner harmless and to satisfy all reasonable, related and necessary medical bills. Respondent retains the right to satisfy said reasonable, related and necessary medical bills pursuant to bill review assessments. Review of this agreement under Sections 8(a) and 19(h) are expressly waived. This lump sum represents approximately 12.5% loss of use of the left index finger (5.375 weeks at a PPD rate of $175.54) for purposes of full and final settlement of Petitioner's claim. Respondent shall retain all rights under Section 5(b) of the Workers' Compensation Act and any other rights and recovery it may have relative to this claim. Petitioner's signature on these contracts affirms he is not subject to SSDI or MSA guidelines and not anticipated to be subject to same.

Total amount of settlement	$ 943.53
Deduction: Attorney's fees	$ 188.71
Deduction: Medical reports, X-rays	$ 80.00
Deduction: Other (explain)	$
Amount employee will receive	$ 674.82

PETITIONER'S SIGNATURE. ***Attention, petitioner. Do not sign this contract unless you understand all of the following statements.*** I have read this document, understand its terms, and sign this contract voluntarily. I believe it is in my best interests for the Commission to approve this contract. I understand that I can present this settlement contract to the Industrial Commission in person. I understand that by signing this contract, I am giving up the following rights:

1. My right to a trial(s)* before an arbitrator;
2. My right to appeal the arbitrator's decision(s)* to the Commission;
3. My right to any further medical treatment, at the employer's expense, for the results of the injury(s)*;
4. My right to any additional benefits if my condition worsens as a result of this injury(s)*.

Signature of petitioner — Roberto Hermosillo — Name of petitioner (please print) — Telephone number — Date

PETITIONER'S ATTORNEY. I attest that any fee petitions on file with the IWCC have been resolved. Based on the information reasonably available to me, I recommend this settlement be approved.

Signature of Attorney — Date

Brent Schmitz #2553
Attorney and IWCC attorney code # (please print)

Law Offices of James P. McHargue
Firm name

100 W. Monroe St., Suite 1605
Street address

Chicago IL 60603
City State Zip code

(312) 739-0000
Telephone Number Email address

RESPONDENT'S ATTORNEY. I attest that any fee petitions on file with the IWCC have been resolved. The respondent agrees to this settlement and will pay the benefits to the petitioner or the petitioner's attorney, according to the terms of this contract, promptly after receiving a copy of the approved contract.

Signature of Attorney — Date

Karolina M. Zielinska #4866
Attorney's name and IWCC code # (please print)

Knell & O'Connor, P.C.
Firm name

901 W. Jackson Blvd., Suite 301
Street address

Chicago IL 60607
City State Zip code

(312) 277-3000
Telephone Number Email address

Go Self Insured
Name of respondent's insurance or service company (please print)

ORDER OF ARBITRATOR OR COMMISSIONER:
Having carefully reviewed the terms of this contract, in accordance with Section 9 of the Act, by my stamp I hereby approve this contract, under the respondent to promptly in a lump sum the total amount of the settlement above, and dismiss this case.

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COMPLAINT FOR MONETARY DAMAGES

EXHIBIT D

Illinois Department of Insurance

PAT QUINN
Governor

ANDREW BORON
Director

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TO: ALL INSURANCE COMPANIES AND SELF-INSURED ENTITIES/SELF-INSURED POOLS LICENSED/APPROVED TO PROVIDE WORKERS' COMPENSATION COVERAGE IN THIS STATE.

FROM: ANDREW BORON
DIRECTOR OF INSURANCE AFB

DATE: DECEMBER 13, 2012

RE: COMPANY BULLETIN 2012-09

NOTIFICATION TO MAINTAIN COMPLIANCE WITH THE INTEREST PROVISIONS CONTAINED IN 820 ILCS 305/8.2(d)(3)

On June 28, 2011, Governor Pat Quinn signed Public Act 97-0018, which amended the Illinois Workers' Compensation Act and includes new Sections to the Act, 820 ILCS 305/8.2(d)(2) and 820 ILCS 305/8.2(d)(3) which collectively state:

"If the claim does not contain substantially all the required data elements necessary to adjudicate the bill, or the claim is denied for any other reason, in whole or in part, the employer or insurer shall provide written notification, explaining the basis for the denial and describing any additional necessary data elements, to the provider within 30 days of receipt of the bill"

"In the case of nonpayment to a provider within 30 days of receipt of the bill which contained substantially all of the required data elements necessary to adjudicate the bill or nonpayment to a provider of a portion of such a bill up to the lesser of the actual charge or the payment level set by the Commission in the fee schedule established in this Section, the bill, or portion of the bill, shall incur interest at a rate of 1% per month payable to the provider. Any required interest payment shall be made within 30 days after payment."

The purpose of this bulletin is to advise all insurance companies and claims administrators who adjust workers' compensation claims in Illinois of their duty to comply with the aforementioned statutory requirements.

Any questions or concerns regarding this matter should be referred to the Illinois Workers' Compensation Commission via e-mail at wcc.infoquestions@illinois.gov.

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF 19(b) DECISION OF ARBITRATOR

MOTA, MARTIN
Employee/Petitioner

Case# **11WC028693**

LABOR NETWORK
Employer/Respondent

14IWCC0592

On 4/1/2013, an arbitration decision on this case was filed with the Illinois Workers' Compensation Commission in Chicago, a copy of which is enclosed.

If the Commission reviews this award, interest of 0.10% shall accrue from the date listed above to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

A copy of this decision is mailed to the following parties:

0293 KATZ FRIEDMAN EAGLE ET AL
DAVID BARISH
77 W WASHINGTON ST 20TH FL
CHICAGO, IL 60602

1120 BRADY CONNOLLY & MASUDA PC
VALERIE J PEILER
ONE N LASALLE ST SUITE 1000
CHICAGO, IL 60602

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
19(b)

Martin Mota
Employee/Petitioner

v.

Labor Network
Employer/Respondent

Case # **11** WC **28693**

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 **George Andros**, Arbitrator of the Commission, in the city of **New Lennox**, on **1-17-2013**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

A. ☐ Was Respondent operating under and subject to the Illinois Workers' Compensation or Occupational Diseases Act?

B. ☐ Was there an employee-employer relationship?

C. ☐ Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?

D. ☐ What was the date of the accident?

E. ☐ Was timely notice of the accident given to Respondent?

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

G. ☐ What were Petitioner's earnings?

H. ☐ What was Petitioner's age at the time of the accident?

I. ☐ What was Petitioner's marital status at the time of the accident?

J. ☒ Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?

K. ☐ Is Petitioner entitled to any prospective medical care?

L. ☒ What temporary benefits are in dispute?
☐ TPD ☐ Maintenance ☒ TTD

M. ☐ Should penalties or fees be imposed upon Respondent?

N. ☒ Is Respondent due any credit?

O. ☐ Other ______

FINDINGS **14IWCC0592**

On the date of accident, **7-6-2013**, 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 **$13,728.00**; the average weekly wage was **$264.00**.

On the date of accident, Petitioner was **28** years of age, ***single*** with **0** dependent children.

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

Respondent shall be given a credit of **$4340.00** for TTD, **$286.59** for TPD, $ for maintenance, and $ for other benefits, for a total credit of **$4340.00 + 286.59**.

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

ORDER

Respondent shall be given a credit of **$4340.00** for TTD, **$286.59** for TPD, and $ for maintenance benefits, for a total credit of $.

Respondent shall be given a credit of $10,206.34 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 temporary partial disability benefits of $220.00/week for 78 2/7 weeks, commencing 7-18-2011 through 1-17-2013, as provided in Section 8(a) of the Act.

Respondent shall pay reasonable and necessary medical services of $82,323.88, as provided in Sections 8(a) and 8.2 of the Act.

In no instance shall this award be a bar to subsequent hearing and determination of an additional amount of medical benefits or compensation for a temporary or permanent disability, if any.

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.

FOR [signature] 3-29-13

Signature of Arbitrator Date

ICArbDec19(b)

APR 1 - 2013

Statement of Facts

Petitioner, Martin Mota, was employed as a packer for Respondent, Labor Network. He was assigned to work at Profile Foods earning $8.50 per hour. Petitioner had worked as a machine operator but was laid off. He took the job with Respondent as his girlfriend was pregnant and he needed work. He testified that he was in excellent shape before he started working for Respondent and could bench press 210 lbs. He worked packing bags that weighted 30 and 50 lbs.

Petitioner was injured on July 6, 2011 when he lifted 20 50 lb bags. He felt a sharp pain in his low back when he lifted the last bag. He told his supervisor at Profile, Miguel. He was sent to Labor Network and they sent him to Physician's Immediate Care. Petitioner gave the same history to Physician's Immediate Care. He was diagnosed with thoracic and lumbar sprains and advised to work with restricted lifting. He apparently took a drug screen that was positive for marijuana. Petitioner testified that he had not smoked marijuana on the date of accident but may have done so within the few weeks beforehand. He did not find out about the failed test until shortly before trial.

Petitioner worked light duty in Respondent's office for a while and received some temporary partial disability compensation. He testified that he cleaned a bathroom and lifted 40 lb boxes. Michelle Urbieta testified that she is Respondent's general manager and that light duty workers neither lift boxes nor clean bathrooms. She admitted that she did not directly supervise light duty workers. She was responsible for all 5,000 workers for Labor Network. A different person in the office handled the light duty workers. She did not supervise Petitioner.

Petitioner went to St. Alexius Medical Center on July 13, 2011 and was instructed to lift no more than 10 lbs. He Began seeing Dr. Riera on July 19, 2011. Dr. Riera recommended physical therapy, an MRI, medication and no work. The MRI was done on July 21, 2011 and revealed a disc herniation at L5/S1. An EMG was done on August 23, 2011 and was seen as compatible with an L5/S1 radiculopathy. Petitioner began to receive temporary total disability compensation and treated with Dr. Riera. Dr. Riera referred Petitioner to Dr. Vargas. Dr. Vargas did a selective nerve root block and epidural steroid injection on August 31, 2011.

Respondent had Petitioner evaluated by Dr. Singh on September 16, 2011. Dr. Singh read the MRI as showing a loss of signal intensity at L5/S1 with a disc protrusion. However, he saw no stenosis and disagreed with the radiologist's interpretation that there had been a disc herniation. He felt petitioner could work at a 10 lb restriction. Dr. Singh wrote a note dated September 17, 2011 indicating that he wanted to review the MRI. He felt there had been symptom magnification. On October 21, 2011 he wrote that injections were not appropriate for axial back pain and that there was no nerve root issue. He recommended work conditioning.

Petitioner's compensation was terminated shortly after the appointment with Dr. Singh. Petitioner testified that he was in crippling pain and could barely get out of bed. He had numbness in both legs. His girlfriend was pregnant. Petitioner went to Alexian Brother's Medical Center a few times in the Fall of 2011 and was not his best self. He was intoxicated when he went to the hospital on September 24, 2011. He returned the next day and acted poorly. He returned on October 12, 2011 and was in pain and berated the staff. During this period Dr. Vargas wanted to perform additional injections but there was no insurance approval. He wrote in his chart on October 5, 2011 that he disagreed with any intimation that Petitioner was malingering. He wrote that the physical findings all correlated with the diagnostic testing. He continued to authorize Petitioner off of work.

In early, 2012 Petitioner was still awaiting approval of an injection and/or resolution of the disputes in this case. He was still authorized off work by Dr. Vargas. In May, 2012 Dr. Vargas referred Petitioner to a surgeon, Dr. Erickson. Dr. Erickson recommended surgery as a result of the July 6, 2011 injury.

The parties agreed to an outside examination with Dr. Avi Bernstein. Dr. Bernstein evaluated Petitioner on August 30, 2012. He had some question about positive Waddell signs but did not find flagrant evidence of obvious exaggeration. He reviewed the MRI and wrote a follow up letter dated September 6, 2012. He felt that the MRI did not support a surgical lesion. He recommended that a Functional Capacities Evaluation be performed. Petitioner brought this information to Dr. Erickson. Dr. Erickson felt Petitioner still needs surgery and suggested a discogram to determine if there was concordant disc compression. He agreed to have Petitioner undergo a Functional Capacities Evaluation.

Petitioner underwent a Functional Capacities Evaluation on October 29, 2012 at Premier Physical Therapy. That test yielded a valid result and indicated that Petitioner could lift 11 lbs from the floor to the waist, 14 lbs from 11 inches off of the floor to the waist and 11 lbs overhead. He could carry 15 lbs for 20 ft and push and pull 45 lbs for 20 ft.

Petitioner testified that he still has numbness and tingling in his left leg when he lies down. He has sharp pain in his back to his left leg. He sometimes feels as if his left leg is not connected to the rest of his body. The leg gives out. He testified that he has lost muscle tone the left leg. He still takes medication for pain. He has difficulty attempting to pick up his young son. Petitioner testified that mornings are worst. He has difficulty getting out of bed.

Petitioner testified that nobody has offered him work since he originally worked light duty in July, 2011. Ms. Urbieta admitted that she has not offered any light duty since July, 2011

In support of the Arbitrator's decision relating to F the Arbitrator finds the following facts:

The Arbitrator finds Petitioner's low back condition causally related to the accident of July 6, 2011. Petitioner has a herniated disc at L5/S1. Petitioner testified that he had no prior injury to his low back. He testified that he was in the best shape of his life before he started working for Respondent. This testimony is unrebutted and uncontradicted. Petitioner has testified to no new injuries to his low back. That testimony is similarly unrebutted and uncontradicted. Petitioner has testified to physical complaints since July 6, 2011. The medical evidence supports Petitioner's testimony. There is no evidence anywhere to rebut a causal relationship between Petitioner's low back condition and the accident of July 6, 2011.

In support of the Arbitrator's decision relating to J and L the Arbitrator finds the following Facts:

Petitioner remains temporarily totally disabled and in need of additional medical care. In reviewing the medical evidence it is clear that nobody has released Petitioner to full duty since the accident of July 6, 2011. Petitioner's doctors: Riera, Vargas and Erickson, have all taken him off of work. Dr. Erickson has stated this even after receiving the result of the Functional Capacities Evaluation. Respondent had Petitioner evaluated by Dr. Singh. Dr. Singh released Petitioner to work with a 10 lb restriction. This is pretty close to the result of the Functional Capacities Evaluation. Petitioner's work is well in excess of these restrictions. Light duty was allegedly offered. Petitioner did this "light duty" for a short while in July, 2011 and testified that he was lifting 40 lb boxes and cleaning a bathroom. This was disputed by Ms. Urbieta. However, she was not Petitioner's supervisor at that time and her testimony has significantly less weight than that of Petitioner or any actual supervisor. No such person was called to testify. Finally, Dr. Bernstein suggested the Functional Capacities Evaluation. He never said what Petitioner could or could not do.

The dispute over medical is tied to the dispute over medical care. The parties had no discord until the examination of Dr. Singh called into question the need for an injection. Over a year later, these issues have not been resolved. Drs. Riera, Vargas and Erickson find a disc injury that requires either injections or surgery. Dr. Singh finds only axial back pain. Dr. Bernstein does not see nerve compression that is seen by Drs. Erickson and Vargas. Dr. Erickson suggested a discogram to see if there is concordant discogenic pain. This suggestion seems reasonable. The Arbitrator orders Respondent to approve a discogram. Further medical care or whether the case is ripe for vocational rehabilitation will be determined pending either a positive or negative result of the discogram.

The medical bills submitted by Petitioner totaling $28,388.63 are awarded subject to the Fee Schedule in Section 8.2 of the Act. Respondent has submitted utilization review documents and Dr. Vargas has testified and written explaining his disagreement with the

utilization review. The real issue is whether petitioner has discogenic pain. The Arbitrator finds that Petitioner indeed has discogenic pain and the treatment rendered thus far is reasonable, necessary and causally related. However, the Arbitrator hedges that decision as regards any future care including any proposed surgery. The discogram can help clarify whether Petitioner is a candidate for surgery.

In support of the Arbitrator's decision relating to N the Arbitrator finds the following facts:

Respondent is entitled to a credit in the amount of $4,340.00 for temporary total disability compensation and an advance that had been paid. Respondent has paid $286.59 in temporary partial disability and the parties have agreed that this represents payment in full for any claim for temporary partial disability. This amount is separate from the $4,340.00. The $286.59 is not a credit against any claim for temporary total disability compensation.

STATE OF ILLINOIS)	☐ Affirm and adopt (no changes)	☐ Injured Workers' Benefit Fund (§4(d))
) SS.	☐ Affirm with changes	☐ Rate Adjustment Fund (§8(g))
COUNTY OF WILL)	☐ Reverse Choose reason	☐ Second Injury Fund (§8(e)18)
		☐ PTD/Fatal denied
	☒ Modify down	☒ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

MARTIN MOTA,

Petitioner,

vs. NO: 11 WC 28693

14IWCC0592

LABOR NETWORK,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review under §19(b) having been filed by the Respondent herein and notice given to all parties, the Commission, after considering the issues of causation, temporary total disability ("TTD"), medical expenses and credit to Respondent, 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 further remands this case to the Arbitrator for further proceedings for a determination of a further amount of temporary total compensation or of compensation for permanent disability, if any, pursuant to Thomas v. Industrial Commission, 78 Ill.2d 327, 399 N.E.2d 1322, 35 Ill.Dec. 794 (1980).

The Commission vacates the Arbitrator's award of TTD benefits subsequent to October 29, 2012, the date the Petitioner underwent a functional capacity evaluation ("FCE") at Premier Physical Therapy (Petitioner's Exhibit 5). The Commission further modifies the Arbitrator's award with regard to medical expenses, finding that the Petitioner is not entitled to medical expenses incurred subsequent to September 16, 2012, the date of Dr. Bernstein's last report (Respondent's Exhibit 2). Finally, the Commission modifies the Arbitrator's award of medical

benefits prior to September 16, 2012 based upon the utilization review reports of Dr. Blum submitted into evidence by Respondent (Respondent's Exhibit 4), by which he found that the epidural injections performed on February 22 and April 18, 2012 were neither reasonable nor necessary.

The Petitioner initially underwent a Section 12 examination at the request of the Respondent on September 7, 2011 with Dr. Kern Singh, a board certified orthopedic surgeon. Dr. Singh opined that a July 21, 2011 lumbar MRI reflected minimal degenerative findings and no disc herniations, and that the Petitioner had displayed significant signs of symptom magnification based on pain complaints, pain diagrams he completed, and positive Waddell signs. (See Respondent's Exhibit 1). He also testified that he drafted a report on October 21, 2011 indicating that the same guidelines that treating anesthesiologist Dr. Vargas used to perform epidural injections, in fact, indicated just the opposite, i.e. that a lack of nerve compression per MRI and non-anatomic complaints of radicular symptoms dictate that epidural injections were not reasonable or necessary.

To resolve the differences of opinion regarding the treatment and care needed to alleviate the Petitioner of his pain and symptoms, the parties agreed to seek the services of Dr. Avi Bernstein. In effect, his opinion was to be a tie breaker, upon which all parties agreed to rely.(see August 3, 2012 e-mail from Petitioner's attorney to Dr. Bernstein and contained in Respondent's Exhibit 2).

Dr. Bernstein examined the Petitioner on August 30, 2012 and issued his last report on September 16, 2012. (Respondent's Exhibit 2). At that time Dr. Bernstein indicated that the lumbar MRI of July 21, 2012 showed minimal degenerative changes at L5/S1 with a very slight bulge/protrusion, no herniation and no evidence of spinal stenosis or nerve root compression. Additionally, he questioned the Petitioner's significant subjective complaints given the benign MRI. As noted above, Dr. Bernstein initially recommended the FCE. Following the FCE, the Petitioner testified that instead of returning to Dr. Bernstein, who had originally prescribed the FCE, he returned only to Dr. Erickson. He testified: "They've been treating me this whole time and I figured they knew me better than, you know, Dr. Bernstein." The Petitioner thus voluntarily chose not to provide the FCE report to Dr. Bernstein and failed to schedule a follow up visit with him. Given the dispute regarding treatment, leading up to the initial visit with Dr. Bernstein on August 30, 2012, the need to follow up with Dr. Bernstein should have been quite clear to the Petitioner.

The FCE indicated that the Petitioner was capable of light duty work. Dr. Erickson, on November 9, 2012, noted that he reviewed the FCE and was "in agreement with these findings based on my prior examinations of him." Nevertheless, he continued to hold the Petitioner off work without further explanation. Nothing prohibited the Petitioner from returning the FCE results to Dr. Bernstein.

The Respondent's general manager, Michelle Urbieta, testified that light duty would have been available at the time of the FCE, and continued to be available as of the hearing date. Petitioner never contacted the Respondent to determine if light duty was available (see Petitioner's testimony pp. 37-38). Thus, the Commission finds that had the Petitioner made an effort to return the FCE results to Dr. Bernstein or to contact his employer regarding the FCE restrictions, he would likely have been back to work following the FCE. It should be noted that about this time in late 2011 the Petitioner visited an emergency room several times, indicating that a level of abuse of alcohol and/or non-prescribed drugs was taking place.

Drs. Singh and Bernstein are credentialed orthopedic surgeons. As such, when dealing with questions regarding orthopedic surgery, their opinions may be given greater weight than practitioners who are credentialed in other medical disciplines.

Dr. Vargas is an anesthesiologist who specializes in pain management. His opinions regarding the efficacy of spine or orthopedic surgery are given less weight than those physicians that are credentialed in orthopedic and / or spine surgery.

Dr. Erickson is board certified in neurosurgery and as such he is competent to give an opinion regarding spinal surgery. He initially prescribed a discectomy to relieve the Petitioner of his discogenic pain. Thereafter, he propagated the need for a lumbar fusion. Such a procedure would result upon a positive discogram. Dr. Erickson noted that Dr. Bernstein had recommended a lumber fusion. Nowhere in the record is the Commission able to find a report from Dr. Bernstein, by which he suggests that the Petitioner undergo a discogram. From the Commission's perspective, Dr. Erickson ignored the reported findings and conclusions of two credentialed orthopedists, Drs. Bernstein and Singh. His refusal to explain the differences in his findings leads the Commission to find his (Dr. Erickson's) opinions less than credible and to rely upon the comments and opinions of Drs. Singh and Bernstein.

Dr. Erickson continued to hold the Petitioner off work despite an FCE which indicated the Petitioner was capable of light duty, and that his employer had the availability of same. The record reflects that the Petitioner has used illegal drugs, and declined a drug test, indicating he did so because he did not want prescription drugs to show up in the results. How proof of the use of prescription drugs that were properly prescribed would negatively impact his case is quite unclear to the Commission. The Commission instead believes that there may have been other reasons the Petitioner chose to avoid this test, noting that oftentimes the Petitioner visited emergency rooms to obtain medications beyond what was prescribed. It was not objectively reasonable for Dr. Erickson to rely solely on the Petitioner's subjective complaints and ignore the warnings received from Dr. Singh and Dr. Bernstein. This is supported by the reports of Dr. Belmonte in Petitioner's Exhibit 3, which reflect pain behavior with nothing to indicate the Petitioner had a surgical condition.

Under Section 8(a) of the Act, the Petitioner is entitled to recover reasonable medical expenses that are causally related to the accident and that are determined to be required to diagnose, relieve, or cure the effects of a Petitioner's injury. ***University of Illinois v. Industrial Comm'n***, 232 Ill.App.3d 154, 164, 596 N.E.2d 823, 173 Ill.Dec 199 (1992). The Petitioner has the burden of proving that the medical services were necessary and the expenses incurred were reasonable. ***F&B Manufacturing Co. v. Industrial Comm'n***, 325 Ill. App. 3d 527, 534, 758 N.E.2d 18, 259 Ill. Dec. 173 (2001). Whether an incurred medical expense was reasonable and necessary and should be compensated is a question of fact for the Commission. ***University of Illinois*, 232 Ill. App. 3d at 164.**

The Commission finds that the preponderance of the evidence reflects that the treatment rendered by the providers in this case after September 16, 2012 was unreasonable and unnecessary. For the same reasons, supported by the utilization reviews of Dr. Blum noted above and the testimony of Dr. Singh, the epidural injections performed by Dr. Vargas on February 22 and April 28, 2012 were neither reasonable nor necessary. Pursuant to Section 8.2(e) of the Act, neither the Petitioner nor the Respondent are to be held liable for the costs of treatment the Commission has determined to be unreasonable and unnecessary.

IT IS THEREFORE ORDERED BY THE COMMISSION that the decision of the Arbitrator is modified as indicated herein.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall pay to the Petitioner the sum of $220.00 per week for a period of 67 weeks, that being the period of temporary total incapacity for work under §8(b), and that as provided in §19(b) of the Act, this award in no instance shall be a bar to a further hearing and determination of a further amount of temporary total compensation or of compensation for permanent disability, if any.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $82,323.88 for medical expenses under §8(a) of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that this case be remanded to the Arbitrator for further proceedings consistent with this Decision, but only after the latter of expiration of the time for filing a written request for Summons to the Circuit Court has expired without the filing of such a written request, or after the time of completion of any judicial proceedings, if such a written request has been filed.

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.

14IWCC0592

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.

DATED: JUL 1 8 2014
TJT: pvc
o 5/20/14
51

Thomas J. Tyrrell

Michael J. Brennan

Kevin W. Lamborn

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION

PEREZ, HORACIO MARTIN
Employee/Petitioner

Case# **11WC013255**

14IWCC0533

METRO STAFF INC
Employer/Respondent

On 2/19/2013, an arbitration decision on this case was filed with the Illinois Workers' Compensation Commission in Chicago, a copy of which is enclosed.

If the Commission reviews this award, interest of 0.12% shall accrue from the date listed above to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

A copy of this decision is mailed to the following parties:

2553 McHARGUE, JAMES P LAW OFFICE
MATT JONES ESQ
100 W MONROE ST SUITE 1112
CHICAGO, IL 60603

0766 HENNESSY & ROACH PC
BRIAN H DRISCOLL ESQ
140 S DEARBORN 7TH FL
CHICAGO, IL 60603

STATE OF ILLINOIS)
)SS.
COUNTY OF Kane)

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

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

Horacio Martin Perez
Employee/Petitioner

v.

Metro Staff, Inc.
Employer/Respondent

Case # **11** WC **13255**

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 **George Andros**, Arbitrator of the Commission, in the city of **Geneva**, on **March 13, 2012& September 24, 2012**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

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

FINDINGS

On **November 15, 2010**, 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 **$20,646.60**; the average weekly wage was **$397.05**.

On the date of accident, Petitioner was **26** years of age, ***single*** with **0** 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 **$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**.

Respondent is entitled to a credit of **$0.00** under Section 8(j) of the Act.

ORDER

Temporary Total Disability

Respondent shall pay Petitioner temporary total disability benefits of $264.70/week for 28 4/7 weeks, commencing May 27, 2011 through December 13, 2011, as provided in Section 8(b) of the Act.

Medical benefits

Respondent is liable to pay to Petitioner and his attorney the following amounts for reasonable and necessary medical services of: Elite Physical Therapy, $8.975.78; Dr. Robert Erickson, $112,991.00; Lake County Neuro., $27,000.00; Metro Anesthesia, $9,625.63; Prescription Partners, $245.50; Specialized Radiology, $55.00; Quest Diagnostics, $84.95; Marque Medicos, $26,418.70; Medicos Pain & Surgical Specialists, $12,706.20; Ambulatory Surgical Care Facility, $110, 653.19, as provided in Section 8(a) of the Act. All amounts to be awarded pursuant to the applicable IWCC Fee Schedule and adopted rules and regulations..

Permanent Partial Disability: Person as a whole

Respondent shall pay Petitioner permanent partial disability benefits of $238.23/week for 112.5 weeks, because the injuries sustained caused the 22.5% loss 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 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.

#01 George J. Andros
Signature of Arbitrator

Feb 11, 2013
Date

FEB 19 2013

Findings of Fact & Conclusions of Law 11 WC 13255

On November 15, 2010, Petitioner, Horacio Martin Perez, was employed by Respondent, Metro Staff, Inc., where he had been so employed for a year and a half. (Tx. 8) During this entire period, Metro Staff had dispatched the Petitioner to work at a factory called Arthur Shuman. (Id.) Petitioner's position at this factory was that of a laborer. (Tx. 10) Petitioner was required to lift 45 pound blocks or boxes of cheese and place them on a conveyor belt. (Id.) These boxes were on the floor and Petitioner would have to lift them from the floor to the conveyor belt, which was at waist-level. (Id.) Petitioner was doing these work activities on November 15, 2010. (Id.) He was working his normal 5:00 AM to 4:00 PM shift that day, and at approximately 8:00 AM, Petitioner was lifting a 45 pound box and felt a pulling sensation and immediate pain in the central portion of his lower back. (Tx. 11) Petitioner reported the accident to his supervisor, Sergio Ramon Mibelli, immediately and filled out an accident report.

Petitioner was sent to Physicians Immediate Care by Respondent on November 15, 2010 during his shift. (Tx. 12) Petitioner was seen by Dr. Warren Wollin that day. (Tx. 13) The notes of Dr. Wollin indicate that on that date the Petitioner was experiencing severe low back pain with radiation down the right leg to the knee. Dr. Wollin provided Petitioner with some medications and a light duty work note and sent him back to work the rest of his shift. (Id.) Petitioner was placed in a light duty position where he was packing boxes and lifting no more than 25 pounds. (Id.) Petitioner continued to treat with Dr. Wollin following the date of accident. The Petitioner's radicular symptoms appeared intermittently, at times bilateral in nature, though his axial low back pain consistently remained the same, with Dr. Wollin noting negative Waddell's signs at every single visit throughout his care. The Petitioner began a physical therapy regimen per Dr. Wollin's recommendation on November 29, 2010. (Id.) Petitioner was kept at light duty restrictions until January 4, 2011, at which time, Dr. Wollin released him to work full duty, while continuing to treat the Petitioner. (Tx. 14) Petitioner testified that he continued to work the light duty packing position even after Dr. Wollin's full duty release.

Petitioner credibly testified at trial that he did not receive any benefit from the physical therapy that was completed at Physicians Immediate Care. (Tx. 14) Dr. Wollin recommended Petitioner undergo a lumbar MRI on January 11, 2011, and this was completed on January 22, 2011. (Tx. 14-15) While the Petitioner's radicular complaints largely subsided in January of 2011, they returned in February once again, worsening down his right leg while working. The lumbar MRI showed disc degeneration and small protrusions at L4-5 and L5-S1, as well as mild left lateral recess and neuroforaminal stenosis at L4-5 and borderline left neural frontal stenosis at L5-S1. (Pet. Ex. 2) Petitioner continued to treat with Dr. Wollin following the lumbar MRI. Dr. Wollin referred Petitioner to have a consultation with Dr. Babak Lami during Petitioner's February 17, 2011 visit. (Pet. Ex. 1) Petitioner was seen by Dr. Lami on February 23, 2011. (Tx. 15) Dr. Lami opined that Petitioner was not a surgical candidate and recommended home exercises and as needed anti-inflammatories. (Pet. Ex. 1) Dr. Wollin discussed this with Petitioner on March 17, 2011. (Id.) Petitioner stated that he was having more pain in his back and rated the pain at an 8/10 at that visit. (Id.) Dr. Wollin released Petitioner from care on March 17, 2011. (Id.)

The Arbitrator underscores the incongruity of Dr. Wolin finding the worker essentially at maximum medical improvement plus capable of full duty when 1) his pain waxes and wanes , the Petitioner rates his pain at 8/10 at that visit and by all doctor's accounts this worker is not a symptom magnifier. No typical distraction test or SLR resulted in any recordation of non anatomic pain distribution. As this unfolds the focus of the Respondent doctors' opinions turn on radiographic study and the ultimate surgeon in his deposition opinion on surgical remediation turns on the total clinical picture of the patient along with a highly sophisticated electrodiagnoistic SEEP .

This total clinical picture provides the tipping point for this Arbitrator to decide in the affirmative on the necessity of surgery by way of Dr. Robert Erickson explaining the benefit, usage and results of the SEEP electro diagnostic testing.

Petitioner testified that he continued to work in the light duty packing position following his discharge from Physicians Immediate Care. (Tx. 15) Petitioner was still feeling pain in his low back with radiation to his left leg at this time, and presented to Dr. Daniel Johnson at Marque Medicos on March 29, 2011. (Tx.16) Dr. Johnson placed Petitioner back in a physical therapy regimen of three times a week, and also gave Petitioner light duty restrictions of no lifting greater than 20 pounds. (Tx. 16-17) These restrictions were accommodated by Respondent. (Tx. 17)

Petitioner saw Dr. Andrew Engel a pain specialist at Marque Medicos for the first time on April 4, 2011. (Id.) Dr. Engel recommended medications and an EMG. (Id.) The EMG was completed April 8, 2011 and showed electrophysiologic evidence of acute denervation and reinnervation of the left S1 nerve root. (Pet. Ex. 2) The Arbitrator clearly realizes the interpretation of all tests and findings put the decision on surgery into the realm of judgment of physicians.

Following the EMG, Petitioner met with Dr. Engel on April 25, 2011. (Id.) Dr. Engel recommended Petitioner undergo a left L5 and S1 transforaminal epidural steroid injection to try to relieve Petitioner's 7/10 pain with radiation down his left leg into his left foot. (Id.) Petitioner received this injection on May 4, 2011. (Tx. 18) Petitioner testified at trial that he felt relief of the pain in his left leg for approximately four days following the injection. (Id.) Dr. Engel recommended Petitioner undergo a second epidural steroid injection on May 10, 2011, but Petitioner did not want to have another injection at that time. (Pet. Ex. 2) Thereafter,Dr. Engel also referred Petitioner to Dr. Robert Erickson, a neurosurgeon, at this visit. (Id.)

Petitioner first met with Dr. Erickson on May 27, 2011. (Tx. 18) the history shows that his leg pain had returned by that time. The utilization review doctor ignored that part of the record. Below are the conclusions of the admissibility of his opinion and weight of the same given his woefully inadequate credentials to deal with this very complex spine injury case.

Dr. Erickson recommended that Petitioner undergo somatosensory evoked potential testing, or SSEP testing, to determine whether a nerve impingement truly existed, noting the Petitioner's ongoing sciatica and low back pain. (Pet. Ex. 5) This test was completed on May 27, 2011, as well. (Id.) The SSEP test showed significant delay on the right side at L5 and S1, which Dr. Erickson explained to have been objectively positive in support of the existence of a neurological impingement requiring surgery. (Id.) Dr. Erickson presented the option of minimally invasive hemilaminectomy at L4-S1 on the right and left to treat Petitioner's symptoms on June 10, 2011. (Id.)

Petitioner agreed to undergo the surgical procedure, and it was completed on June 29, 2011. (Id.) Petitioner testified that his pain diminished greatly in the weeks following the surgery, and his lower extremity symptoms essentially disappeared altogether thereafter. (Tx. 20) Petitioner began a post-operative physical therapy regimen on July 14, 2011. (Tx. 20) Petitioner developed an area of fluid collection near the surgical incision in the weeks following surgery. (Tx. 20) Dr. Erickson ultimately decided to have Petitioner undergo a second surgical procedure to debride the wound and determine whether a more serious infection was developing at the wound site, which was performed on August 17, 2011 because the fluid was not dispersing on its own and was causing Petitioner discomfort. (Pet. Ex. 5) Following this second procedure, Petitioner had no other issues with the surgical site. (Tx. 21) Petitioner continued physical therapy beginning in early-September 2011. (Pet. Ex. 5)

Petitioner continued with physical therapy until September 26, 2011 when Dr. Engel recommended he complete a Functional Capacity Evaluation and begin work conditioning. (Tx. 21) The FCE was completed on October 13, 2011 and Petitioner began a work conditioning program at this time. (Id.) Petitioner completed this program and was discharged to full duty work on December 13, 2011. (Tx. 22) Petitioner reported his pain as 1/10 with no radiation into his left leg at his December 13, 2011 visit with Dr. Engel. (Pet. Ex. 2) Petitioner testified that prior to the work conditioning program, he did not have much confidence in his ability to lift. (Tx. 22) However, following the work conditioning program, Petitioner was able to lift more weight and had greater flexibility. (Id.) Petitioner saw Dr. Erickson once more on December 21, 2011. (Pet. Ex. 5) Dr. Erickson agreed with the decision to discharge to full duty work and released Petitioner from his care. (Id.)

Petitioner testified he is still working at the Arthur Shuman factory for Respondent doing packing work. (Tx. 23) This work requires that he assemble boxes and place them on a conveyor belt. (Id.) Petitioner testified that he still does not have the confidence to lift a lot of weight and feels pressure near the surgical site when turning or shifting the body rapidly. (Tx. 24) Petitioner also testified that he must change positions often during sleep, cannot play soccer or run, and cannot be seated for too long without discomfort. (Tx. 25) Finally, Petitioner stated that he feels pain near the surgical site in cold weather, and at times, must take Tylenol or Advil to manage this pain.

Also studied were the evidence depositions of: Dr. Robert Erickson, Petitioner's neurosurgeon; Dr. Ryon Hennessy, Respondent's Section 12 examiner; and Dr. Bart Olash, who completed a Utilization Review of Petitioner's medical records.

Arbitrator's Conclusions of Law

With regard to issue F, is Petitioner's current condition of ill-being causally related to the injury, the Arbitrator concludes as follows:

Based upon the totality of the evidence, the Arbitrator finds as a matter of law and fact that a causal relationship does exist between Petitioner's injury at work on November 15, 2010 and his current condition of ill-being, specifically, successfully treated spinal pain with nerve impingement at the L4-5 and L5-S1 levels causing radiculopathy.

The Arbitrator bases this decision on Petitioner's credible testimony, the temporal relationship between the onset of symptoms and his activities at work as testified to by Dr. Erickson at pages 30 and 31 of his evidence deposition. Moreover the Arbitrator finds the complaints and findings of the doctors at Marque Medicos to be consistent with the worker's complaints and later findings by the neurosurgeon- a long time professor at the University of Chicago medical school. The
Arbitrator finds the opinions of Dr. Erickson to be highly persuasive.
This is in part due to his frank acknowledgement as to the "debate regarding the significance of change at L5-S1 and whether there is a true nerve compression. See Dep page 8, lines 17-20." I thought there was enough uncertainly here- he was not doing well". Lines 22-23.

Determinative of adopting his opinion is the above plus hs testimony at pages nine through 12. Dr. Erickson discusses the MRI , changes at l5-s1, the EMG, and on page 10:line one, the acute denervation.

Any reader of this Award needs to put in context all the treatment with Dr Erickson's use of the SEEP to corroborate the increase in pain to the lack of clarity of significant pathology on the radiographic MRI.
His long explanation of SEEP at page 10 is a mini treatise on sophisticated treatment of difficult low back cases. At page 12, lines 16-21 the neurosurgeon explains that the SEEP finds things not determinative in an EMG.

Again, the medical opinions of the neurosurgeon and former professor at University of Chicago were far more sophisticated than the circumspect, equivocal and seemingly unpreprepared or at least unfocused answers of Dr. Ryon Hennessey, Respondent's section 12 examiner. The testimony and medical sophistication expressed in print by Dr. Hessessy pales to that of Dr. Erickson, the neurosurgeon.

Yes, the Arbitrator acknowledges the cross examination of Dr. Erickson by a very well prepared defense counsel making every effort to cloud the opinions, motives and credibility of Dr. Erickson – simply because Marque Medicos referred him the patient. Dr. Erickson acknowledged he gets some referrals as well as other doctors referred to by Medicos.

Arbitrator does not find the opinions of or Dr. Ryon Hennessy to be r persuasive on the issue of causal connection. His answers were vague , fraught with generality and he seemed to fade from the questions rather than deal with the lack of clarity of this back condition, found in many circumstances.

Petitioner's treating physicians have all stated that his lumbar spine condition is causally related to his reported work injury. Petitioner testified credibly at trial that his pain began immediately with the work injury on November 15, 2010. Petitioner felt pain in the center of his low back on the date of the accident. There was an unbroken chain of consistent pain complaints from the date of accident through the surgery performed by Dr. Erickson on June 29, 2011. There has been no evidence presented to suggest an intervening accident. Petitioner also testified credibly that he had not experienced any low back injuries or pain prior to November 15, 2010.

While intermittent in nature, the Petitioner experienced radicular symptoms to his lower extremities immediately following the injury, and consistently thereafter, through the date of surgery. This radicular component was temporarily resolved with his epidural injection, which Dr. Engel and Dr. Hennessey have remarked to have been significant in demonstrating a spinal component in the Petitioner's condition.
The overwhelmingly positive response to surgery further lends weight to this finding, as noted in the testimony of both Dr. Erickson and Dr. Hennessey, who very early on in the charts previously opined that the Petitioner suffered a lumbar strain.

Petitioner's neurosurgeon, Dr. Robert Erickson, testified to Petitioner's condition and the need for surgery in his evidence deposition. When he first met with Petitioner on May 27, 2011, Dr. Erickson reviewed the EMG test from April 8, 2011, which showed S1 abnormality on the left. (Pet. Ex. 5) Dr. Erickson also reviewed the lumbar MRI from January 22, 2011, which showed some lateral recess stenosis at L5-S1. (Id.) Dr. Erickson noted that there had been some discussion during the April 22, 2011 IME with Dr. Ryon Hennessy regarding the significance of a change at L5-S1 and whether or not there was true nerve compression. (Id.) In order to address this issue, Dr. Erickson sent Petitioner for an SSEP test to determine the true source of Petitioner's pain complaints. (Id.) Dr. Erickson stated that he uses the SSEP test in almost every spinal procedure and as a diagnostic test in many spinal procedures. (Pet. Ex. 13) He stated that the SSEP is more sensitive than an EMG test and provides immediate feedback, and testified that he finds it to be a highly reliable test. (Id.) The SSEP test was informative and showed significant delay on the right side at L5 and S1. (Pet. Ex. 5)

Based on Petitioner's complaints of right-sided sciatica, the MRI scan, which was not definitive in demonstrating nerve compression, and the SSEP, which correlated with Petitioner's pain complaints, Dr. Erickson decided to present Petitioner with the option of hemilaminectomy, otherwise known as nerve root decompression. (Pet. Ex. 13) Petitioner consented to this procedure and it was performed on June 29, 2011. (Id.) During the procedure, the nerves at L4-5 on the right and left and L5-S1 on the right were decompressed. (Id.) SSEP testing was done during the procedure and all evoked potentials returned to values of 0.8 standard deviations or less, from the pre-surgical level of 1.0 standard deviations. (Id.) Dr. Erickson stated during his deposition that evoked potentials of 1.0 standard deviations meant he was 95 percent sure something was wrong with the nerve at that level. (Id.)

When asked directly about a causal connection between Petitioner's symptoms and his mechanism of injury, Dr. Erickson stated that there was a direct association in time with the injury described and the onset of his pain. (Id.) A temporal relationship seemed clear. (Id.) Dr. Erickson went on to say that there was a disk abnormality at L5-S1 that probably occurred at the time of the lift injury. (Id.) This was the only abnormality seen on the MRI and during surgery. (Id.) This abnormality either directly or indirectly contributed to the narrowing of the nerve outlets on the right side of the spine and his condition at the time of surgery. (Id.)

The Utilization Review by Dr. Olash and all his testimony is stricken as a matter of law. Dr. Olash, despite some artful semantics trying to address the necessity of the surgery, does nothing but focus his Utilization Review report on the lack of causal connection. Utilization Review reports as a matter of law can not address that issue. Morever, his opinion is tainted by the use of a section 12 examination in formulating his opinion on causation.

Even if the law allowed a UR doctor to address causation in formulation of his opinion, the Arbitrator is shocked that Respondent would delegate the choice of experts to someone who picks an *internal medicine specialist* whose focus is rheumatology. The Arbitrator studied his CV over and over to find some nexus to the type of case at bar, a complex spine condition case, and found none.

Assuming his report was deemed admissible on Review, the doctor's lack of knowledge of the medical records is even to this Arbitrator, an embarrassment to his position.

Dr. Olash opined that Petitioner had presented with a consistent musculoligamentous injury without any evidence of radiculopathy resulting from the injury. (Olash Ev. Dep. 13) However, Dr. Olash admitted during his deposition that he was not aware of Petitioner's complaints of intermittent numbness and tingling down both legs to his feet reported on November 29, 2010 with Dr. Wollin. (Id. at 20) He also was not aware of those same complaints being reported on December 16, 2010 with Dr. Wollin. (Id. at 22)

Finally, Dr. Olash admitted that he was not aware that Petitioner was found to have a positive straight leg raise test bilaterally on March 29, 2011 with Dr. Engel. (Id. at 23) Dr. Olash agreed that radicular pain can wax and wane and be present some days and not others. (Id. at 30) Dr. Olash said he was not aware of any intervening accidents that could have occurred during his treatment period. (Id. at 24)
Finally, without any indication of an alternate cause of a later spinal injury at issue, Dr. Olash agreed that the injections and surgery were wholly appropriate and reasonable and necessary for the Petitioner's condition.

The opinions of Dr. Hennessy are not credible with respect to Petitioner's condition either. Dr. Hennessy completed an independent medical examination of Petitioner on April 22, 2011. Dr. Hennessy stated that Petitioner was at maximum medical improvement as of March 17, 2011 and had no disability or impairment that would prevent him from working. (Hennessy Ev. Dep. 12) Dr. Hennessy stated that Petitioner did not show any signs of symptom magnification during the examination on April 22, 2011. (Id. at 18) Petitioner reported pain of 7/10 at that visit. (Id.) Petitioner did not report radicular complaints at that visit, but he had reported them consistently in notes from other doctors' visits. (Id.) Dr. Hennessy said it was not unusual for a person to experience radicular pain some days and not others. (Id. at 19) Dr. Hennessy was not aware of the fact that Petitioner had undergone a nerve root decompression surgery on June 29, 2011 until it was mentioned to him during the deposition. (Id. at 22)

He admitted that if someone improves from a surgery, it is a fair indicator that the pathology that was operated on was symptomatic. (Id. at 28) Dr. Hennessy also was not aware of the epidural steroid injection that Petitioner received on May 4, 2011. (Id. at 30) He admitted that these injections can be diagnostic in nature if a patient shows improvement, even temporarily. (Id. at 30-31) Dr. Hennessy agreed that Petitioner's temporary relief after the epidural steroid injection may have changed his opinion on Petitioner's condition. (Id. at 31) Therefore, the Arbitrator also finds Dr. Hennessy's opinions regarding causality are not credible or persuasive.

The Arbitrator finds that, in light of the most persuasive and extremely medically sophisticated testimony of Dr. Erickson, as supported by the credible testimony of the Petitioner, the preponderance of the evidence presented at trial supports a finding as a matter of law that the Petitioner's current condition of ill-being is causally related to his accident at work, and that the Petitioner clearly sustained a spinal injury as opposed to a mere sprain/strain, as initially diagnosed.

With regard to issue J, were the medical services provided to the Petitioner reasonable and necessary, the Arbitrator concludes as follows:

Having found for Petitioner on the issue of causal connection, the Arbitrator also finds that the medical treatment provided to Petitioner was reasonable and necessary, and that Respondent is liable for all unpaid medical bills related to the injury the Petitioner sustained at work on November 15, 2010. The Arbitrator bases this decision on the credible testimony of Petitioner, along with the opinions of Petitioner's treating physicians.

Petitioner began his treatment with Dr. Wollin at Physicians Immediate Care, which is where Respondent sent him, on the date of the accident, November 15, 2010. Petitioner received medications and was placed on light duty initially. He then began a physical therapy regimen at Physicians Immediate Care. Petitioner underwent 20 sessions of physical therapy with this facility. These physical therapy sessions did not provide Petitioner with any relief. Petitioner also underwent an MRI of the lumbar spine on January 22, 2011, which showed disc degeneration and small protrusions at L4-5 and L5-S1, as well as mild left lateral recess and neuroforaminal stenosis at L4-5 and borderline left neural frontal stenosis at L5-S1. (Pet. Ex. 2) Petitioner was evaluated by Dr. Babak Lami on February 23, 2011 and told he was not a candidate for surgery or epidural steroid injections. Petitioner was discharged from care with Dr. Wollin to full duty work on March 17, 2011. Petitioner was discharged despite the fact that he reported 8/10 pain in his lumbar spine at this same visit. Petitioner also was still working in the same light duty position as he had been since the date of accident as of March 17, 2011.

Petitioner was still feeling significant pain in his low back that radiated down his left leg after his discharge from Physicians Immediate Care. Therefore, he sought treatment with Dr. Daniel Johnson at Marque Medicos on March 29, 2011. Dr. Johnson placed Petitioner back on a physical therapy regimen and gave him light duty restrictions of no lifting over 20 pounds.

Dr. Johnson referred Petitioner to Dr. Andrew Engel, who first saw Petitioner on April 4, 2011. Dr. Engel had Petitioner undergo an EMG to determine the cause of his lumbar pain and radicular complaints. This procedure was completed on April 8, 2011 and showed electrophysiologic evidence of acute denervation and reinnervation of the left S1 nerve root. (Pet. Ex. 2)

Given that Petitioner showed pathology on the EMG test and was still experiencing radicular pain down his legs, Dr. Engel administered left L5 and S1 epidural steroid injections on May 4, 2011. This injection provided Petitioner with relief of his radicular symptoms for four days. Petitioner decided not to undergo a second epidural steroid injection.

Following this course of conservative care, Dr. Engel referred Petitioner to Dr. Robert Erickson, a neurosurgeon. Dr. Erickson ordered an SSEP on May 27, 2011 to determine if there was a true nerve compression causing Petitioner's low back pain and radicular symptoms. The SSEP showed a significant delay on the right side at L4 and S1. These findings confirmed that there was a true nerve compression causing Petitioner's pain. Based on the subjective complaints, MRI findings, and SSEP findings, plus the fact that Petitioner had experienced his pain for over 6 months, Dr. Erickson determined that a hemilaminectomy would be an appropriate procedure. He discussed the procedure with Petitioner, who consented. The procedure was performed on June 29, 2011. Petitioner underwent a second necessary procedure on August 17, 2011, to resolve a spinal fluid leak that had collected under Petitioner's skin and was causing him discomfort. Petitioner felt a large amount of relief from the hemilaminectomy, saying that his back pain diminished, and his leg pain was now only occasional. Petitioner participated in a post-operative physical therapy regimen during July, August, and September of 2011.

On September 27, 2011, Dr. Engel recommended Petitioner undergo a Functional Capacity Evaluation. This was completed on October 13, 2011. Petitioner then began a work conditioning program. Petitioner successfully completed this program and was discharged by both Drs. Engel and Erickson to full duty work on December 13 and December 21, 2011, respectively. Petitioner reported that his pain level was down to 1/10 following the surgery and completion of the work conditioning program. Also, Petitioner was able to lift more weight and had greater flexibility.

Petitioner's treating physicians, Dr. Engel and Dr. Erickson, both opined in their records that the treatment provided was reasonable and necessary. The records from the treating physicians show that Petitioner's pain level decreased from 8/10 to 1/10 following his course of treatment. He appropriately progressed through conservative care to a surgical procedure, which was then followed by more physical therapy and a work conditioning program. Given this path, Petitioner was able to return to full duty work.

The Arbitrator does not find the opinions of Dr. Ryon Hennessy to be credible or persuasive regarding the reasonableness and necessity of Petitioner's treatment. Dr. Hennessy opined in his deposition testimony that Petitioner was at maximum medical improvement as of his discharge from Physicians Immediate Care on March 17, 2011. (Hennessy Ev. Dep at 14) However, Dr. Hennessy stated that Petitioner showed no signs of symptom magnification during his examination of Petitioner on April 22, 2011, at which time Petitioner had 7/10 pain complaints. (Id. at 18) Dr. Hennessy was not even aware of the surgical procedure Petitioner underwent until it was brought up during the evidence deposition. (Id. at 22) Dr. Hennessy said that he could not render an opinion regarding the reasonableness of this procedure given the fact that he had not seen the SSEP test results, nor the operative report from June 29, 2011. (Id. at 23-24) But, he did agree that generally speaking, when someone improves from surgery, it is a fair indicator that the pathology that was operated on was symptomatic. (Id. at 28) Dr. Hennessy was also not aware of the epidural steroid injection that Petitioner received on May 4, 2011 and the temporary relief Petitioner experienced. (Id. at 30) But, Dr. Hennessy did say that his opinion may have changed had he known that Petitioner experienced temporary relief of his radicular pain from the injection. (Id. at 31) Therefore, given Dr. Hennessy's complete lack of preparedness for the case, the lack of knowledge of Petitioner's later treatment and positive results, the Arbitrator does not find his opinions to be credible or persuasive in any way shape or form on the issue of reasonableness and necessity.

Petitioner's treating physicians, Dr. Engel and Dr. Erickson, each opined that the treatment rendered was reasonable and necessary. Respondent's IME physician stated that Petitioner was at MMI in March 2011, and was unaware that Petitioner continued to receive substantial benefit from the course of treatment that followed the examination.

Therefore, the Arbitrator awards as a matter of law under section 8 all of the bills for medical treatment rendered to date.

Specifically, this includes all treatment rendered from Elite Physical Therapy, Dr. Robert Erickson, Lake County Neurosurgery, Metro Anesthesia, Prescription Partners, Specialized Radiology, Quest Diagnostics, Marque Medicos, Medicos Pain & Surgical Specialists, and Ambulatory Surgical Care Facility. All dates of service noted in the records are awarded, pursuant to the Illinois Workers' Compensation fee schedule.

No medical evidence was presented from Dr. Hennessy that regardless of causation, the treatment modalities, frequencies or charges themselves were unreasonable. Thus, all bills admitted are Awarded to Petitioner and his attorneys under 8(a) subject to the fee schedule plus all adopted rules and regulations hereunder.

With regard to issue K, what is the amount of compensation due for temporary total disability, the Arbitrator concludes as follows:

Having found that the Petitioner's current condition of ill-being is causally connected to Petitioner's accident at work, the Arbitrator finds that the Petitioner is entitled to temporary total disability benefits for the period of May 27, 2011 through December 13, 2011, a period of 28 and 4/7 weeks. The Arbitrator bases this decision on the credible testimony of the Petitioner, along with the records of his treating physicians. Petitioner's treating physicians had him off work from the time the SSEP testing was done on May 27, 2011, through Petitioner's two surgical procedures and post-operative physical therapy, and Petitioner's participation in a work conditioning program. This course of treatment allowed Petitioner to return to full duty work as of December 13, 2011. Petitioner testified at trial that he would inform his supervisor with Respondent, Sergio Ramon Mibelli, each time he received a new off-work note throughout this entire period. (Tx. 27)

Dr. Wollin opined that Petitioner could return to full duty work on January 4, 2011. Dr. Wollin also opined that Petitioner could return to full duty work when he released Petitioner from his care on March 17, 2011. However, Petitioner credibly testified that even after these notes were provided, he continued to work the same light duty position with Respondent that he had been working since November 15, 2010. (Tx. 15) No physicians, other than Petitioner's treating physicians, commented on Petitioner's ability to work after the IME completed by Dr. Hennessy on April 22, 2011, which took place before Petitioner was ever taken off of work completely. It can be seen by Petitioner's later treatment and improvement that he was not close to MMI and capable of returning to full duty work as of his discharge from Physicians Immediate Care or his visit with Dr. Hennessy. Therefore, the Arbitrator does not find the opinions of Dr. Wollin or Dr. Hennessy to be credible in this regard.

Therefore, the Arbitrator orders the Respondent to pay to the Petitioner and his attorneys temporary total disability for the period of May 27, 2011 through December 13, 2011, a period of 28 and 4/7 weeks.

With regard to issue L, what is the nature and extent of the injury, the Arbitrator concludes as follows:

Having found for Petitioner on the issues of causal connection, medical treatment, and temporary total disability, the Arbitrator finds that Petitioner has been disabled to the extent of 22.5% of the person as a whole. The Arbitrator relies on the credible testimony of Petitioner, along with the credible opinions of Petitioner's treating physicians.

Petitioner was diagnosed with nerve compression at L4-5 and L5-S1. Petitioner underwent one epidural steroid injection, a nerve root decompression surgery, a necessary second surgery to resolve spinal fluid leakage at the original surgical site, and a work-conditioning program, in reasonable and necessary treatment of these injuries. Petitioner testified at trial that he is still working for Metro Staff, Inc. in the packing position that he has been working since November 15, 2010. This position requires that he assemble boxes, throw in some bags, and push them onto a conveyor belt.

Petitioner testified that compared with before the accident, he does not have the confidence or the trust to lift a lot of weight. He also stated that when he turns or shifts his body rapidly, he feels pressure at the surgical site as if it is stretching or might open. Petitioner stated that he has not attempted to lift more than 40 pounds in his current work for Metro Staff, Inc.

Petitioner has also experienced changes in his life outside of work since the accident on November 15, 2010. He stated that he cannot sleep well and must change positions often during sleep due to discomfort. Petitioner is unable to play soccer or run, as he did before the accident. He cannot remain seated for too long of a time period without discomfort. Petitioner also stated that he cannot remain standing for too long without having to sit and regroup.

Finally, Petitioner testified that he now has sensitivity to colder weather. When it is cold, Petitioner feels pain at the surgical site. He stated that when the weather is very cold, he has to continue taking Tylenol or Advil in order to manage his pain. (Tx. 26) The Arbitrator finds these anecdotes credible.

As to the five factors in section 8.1b , the Arbitrator records:

1) No impairment rating was offered and admitted;

2) The Petitioner is a young man:

3) He is a laborer in a factory:

4) The future earning capacity post spine surgery spans many years?

5) Evidence of disability is corroborated by the treating doctor's records as to surgery performed and the second procedure for fluid build up. Post surgical recovery is noted as is Petitioner's testimony.

STATE OF ILLINOIS)
) SS.
COUNTY OF KANE)

☐ Affirm and adopt (no changes)	☐ Injured Workers' Benefit Fund (§4(d))
☐ Affirm with changes	☐ Rate Adjustment Fund (§8(g))
☐ Reverse	☐ Second Injury Fund (§8(e)18)
	☐ PTD/Fatal denied
☒ Modify down	☒ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

HORACIO MARTIN PEREZ,

Petitioner,

vs. NO: 11 WC 13255

METRO STAFF, INC.,

Respondent,

14IWCC0533

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, temporary total disability, medical expenses, and 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.

The Commission finds that Petitioner failed to prove that $4,758.00 in transportation charges were reasonable and necessary medical expenses. As such, we reduce the award for Marque Medicos Pain & Surgical Specialists by $3,908.00 and the award for Ambulatory Surgical Care Facility by $850.00. The remainder of the medical bills shall be paid pursuant to the medical fee schedule in Section 8.2 of the Act.

All else is affirmed and adopted.

IT IS THEREFORE ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $264.70 per week for a period of 28-4/7 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 $238.23 per week for a period of 112.5 weeks, as provided in §8(d)2 of the Act, for the reason that the injuries sustained caused the 22.5% loss of use of the person as a whole.

14IWCC0533

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $303,997.95 for medical expenses under §8(a) of the Act pursuant to the medical fee schedule in Section 8.2 of the Act.

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.

DATED: JUL 0 7 2014

Charles J. DeVriendt

Ruth W. White

Daniel R. Donohoo

SE/
O: 5/22/14
49

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF 19(b) DECISION OF ARBITRATOR

GOMEZ, MARIA (PATRICIA MARIN) Case# **11WC003723**
Employee/Petitioner

SPEEDWAY SUPERAMERICA LLC
Employer/Respondent

14IWCC0444

On 6/10/2013, an arbitration decision on this case was filed with the Illinois Workers' Compensation Commission in Chicago, a copy of which is enclosed.

If the Commission reviews this award, interest of 0.08% shall accrue from the date listed above to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

A copy of this decision is mailed to the following parties:

0293 KATZ FRIEDMAN EAGLE ET AL
MARIA S BOCANEGRA
77 W WASHINGTON ST 20TH FL
CHICAGO, IL 60602

0766 HENNESSY & ROACH PC
LAUREN A SERAFIN
140 S DEARBORN 7TH FL
CHICAGO, IL 60603

STATE OF ILLINOIS)

)SS.

COUNTY OF COOK)

14IWCC0444

- [ ] Injured Workers' Benefit Fund (§4(d))
- [ ] Rate Adjustment Fund (§8(g))
- [ ] Second Injury Fund (§8(e)18)
- [x] None of the above

ILLINOIS WORKERS' COMPENSATION COMMISSION

ARBITRATION DECISION
19(B)

MARIA GOMEZ (PATRICIA MARIN)
Employee/Petitioner

Case # 11 WC 3723

v.

Consolidated cases: ____

SPEEDWAY SUPERAMERICA LLC
Employer/Respondent

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Carolyn Doherty**, Arbitrator of the Commission, in the city of **Chicago**, on **1/7/13 and Wheaton on 4/10/13**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

A. [ ] Was Respondent operating under and subject to the Illinois Workers' Compensation or Occupational Diseases Act?

B. [ ] Was there an employee-employer relationship?

C. [x] Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?

D. [ ] What was the date of the accident?

E. [x] Was timely notice of the accident given to Respondent?

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

G. [ ] What were Petitioner's earnings?

H. [ ] What was Petitioner's age at the time of the accident?

I. [ ] What was Petitioner's marital status at the time of the accident?

J. [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?
[ ] TPD [ ] Maintenance [x] TTD

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

M. [x] Should penalties or fees be imposed upon Respondent?

N. [ ] Is Respondent due any credit?

O. [x] Other - Prospective Medical Care Under 8(a).

14IWCC0444

FINDINGS

On **1/10/11**, Respondent ***was*** operating under and subject to the provisions of the Act.

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

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

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

Petitioner's current condition of ill-being prior to 6/6/11 ***is*** causally related to the accident. SEE DECISION

In the year preceding the injury, Petitioner earned **$13,067.60**; the average weekly wage was **$251.30**.

On the date of accident, Petitioner was **39** years of age, ***single*** with **3** dependent children.

Petitioner ***has*** received all reasonable and necessary medical services through 6/6/11. SEE DECISION.

Respondent ***has not*** 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 temporary total disability benefits of $251.30/week for 18-3/7 weeks, commencing 1/29/11 through 6/6/11, as provided in Section 8(b) of the Act.

Respondent shall pay directly to Petitioner reasonable and necessary medical services incurred through 6/6/11, as provided in Sections 8(a) and 8.2 of the Act.

In no instance shall this award be a bar to subsequent hearing and determination of an additional amount of medical benefits or compensation for a temporary or permanent disability, if any.

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

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

Signature of Arbitrator — 6/10/13 Date

JUN 10 2013

FINDINGS OF FACT

Petitioner testified via interpreter at trial. Petitioner testified that her name is Patricia Marin. The Application was filed under the name Maria Gomez which Petitioner testified is the name she "just used." T. 8. The Application was amended to reflect the name Patricia Marin at trial. T. 4. Petitioner testified that she is not legally married but refers to her partner as her husband. T. 8. Petitioner's highest level of education is "up until the first grade of secondary school in Mexico." T. 8.

Petitioner testified that she began working for Respondent Speedway on 1/26/05 and that when she worked for Respondent she used the name Maria Gomez. T. 9. Petitioner's job duties included putting out the coffee and food for the gas station store. Her activities included making breakfast, lunch and coffee and carrying heavy boxes of frozen food. T. 9. On 1/10/11, Petitioner began her shift at 4:30 am. At that time, she was preparing breakfast and "getting the boxes of frozen meat to prepare the breakfast." T. 10. Petitioner felt "good" when she started her shift. T. 10. Petitioner testified that about "... 10:00 am in the morning I went to the cooler to pick up – to get a box of chicken of about 30 pounds and I took it back to the Speedway and I placed it on a table, and just as soon as I kind of leaned forward and put it on the table I felt a pain in my lower back and I felt it but then I just continued working." T. 11. Petitioner finished her shift at noon. Petitioner testified that she worked that day with her boss "Lorenzo", Vanessa and Juan. Petitioner did not report her injury on 1/10/11. Petitioner testified that she went home after her shift, laid down and took Tylenol because she thought it would help the pain. She testified that "the pain was very strong, but after taking the Tylenol it only made it worse." T. 11.

Petitioner testified that she worked every day between 1/10/11 and her last day worked on 1/26/11. T. 12. During that period she noticed a "very strong pain" in her lower back that traveled down her leg. Petitioner continued taking Tylenol which did not help alleviate her pain. T. 12. Petitioner testified that on 1/26/11, she reported her injury to Lorenzo. Petitioner testified, "I reported on the 26th because my back was hurting really bad, and I didn't report it before because I was worried that they would fire me, but I waited and I reported it on the 26th." T. 13. Petitioner testified that she went to Speedway and reported to Lorenzo. Petitioner's daughter went with Petitioner so she could translate for Petitioner. Petitioner was given an accident report to complete. Petitioner testified that she completed the form and then was told by Lorenzo to go to the ER at MacNeal Hospital because the company clinic was too far. T. 15-16.

Petitioner's daughter Nancy Marin testified at trial. T. 30. Ms. Marin testified that she went with her mother to Speedway on 1/26/11 at 5:00 pm to report the accident. T. 31. Ms. Marin testified that she went with her mother because Petitioner needed a translator. Ms. Marin testified that she spoke with Lorenzo and "we explained to him about her going to the cooler and taking that box to Speedway because she had to do her job as a – cook breakfast and stuff like that. So we explained to him how she carried the box over to Speedway and when she put the box on the table that she felt that pain in her back." T. 32. Ms. Marin testified that Lorenzo told them to fill out a report for the company and she completed the report for her mother as the report must be in English. T. 33. Ms. Marin testified that she reported the same accident details on the report and added that Petitioner did not report the accident "as soon as possible" because she was afraid of being fired and that she took Tylenol to see if the pain would go away. T. 33.

The witness testified that she recalls signing the report and believes Petitioner signed it as well. Ms. Marin further testified that Lorenzo told them they should go to the company clinic but that it was too far and too late so they should just go to the ER. T. 34. Ms. Marin testified that she does not recall her mother telling Lorenzo that she was resigning from her position at Speedway. T. 34. Finally, she testified that her mother was given a copy of the completed report. T. 35.

Respondent called Lorenzo Lampignano to testify in his job capacity as Petitioner's manager at Speedway on 1/10/11. The witness currently works for Road Ranger which bought the former Speedway location where the accident occurred. T. 36. Mr. Lampignano testified that he supervised Petitioner from December 2010 until January 26, 2011. T. 37. On direct examination, the witness testified that on 1/26/11, Petitioner "… walked out of her job in the morning I think around 8:00 o'clock." He was asked his understanding of why Petitioner walked out and he responded, "That she couldn't handle the stress of her job and she didn't want to do the job anymore." T. 38. He further testified that Petitioner clocked out on 1/26/11. He further testified that Petitioner returned the next day on 1/27/11 with her daughter to report an injury she sustained to her back lifting a box. T. 39. Mr. Lampignano further testified that Petitioner never provided a date of her injury so he had no way to investigate the accident or look for accident footage on the store camera. T. 40. He testified that Petitioner did not state that she failed to report the accident earlier because she was afraid she would be fired. T. 41. Prior to 1/27/11, Petitioner made no complaints to the witness about back pain and she performed her normal job duties up to the day she quit. T. 41. Finally, on direct exam, the witness testified that Speedway had accident report procedures and that Petitioner was aware of those guidelines but did not comply. T. 42.

On cross-exam, Mr. Lamignano testified that Petitioner was made aware of the accident reporting procedures at monthly meetings. T. 43. He further testified that he recalled filling out an accident report but that he did not have the report with him at the trial. He testified that since Petitioner did not advised him of an accident date the date of accident on the report should be blank. T. 45. HE testified that he asked Petitioner for an accident date but that she had "no reply." T. 45. He explained to Petitioner that he needed the accident date to complete his investigation. T. 45. The witness agreed that he received an Application for Adjustment of claim filed by Petitioner with an accident date of 1/10/11 but he sent the document to the corporate office and did not complete an investigation after seeing the accident date alleged. T. 46. He testified that the corporate office would have done the necessary investigation and that once he completed the accident report his managerial job duties were done. T. 47. The witness was shown PX 15 which is the form 45 Employers First Report of Injury. He does not recall completing that report and does not recall the form he filled out with Petitioner on 1/27/11. T. 48-49. Mr. Lampignano again testified that if Petitioner would have told him an accident occurred on 1/10/11 he could have looked at surveillance footage to verify. He never looked at the film because he was not provided an accident date at any point. T. 49. Finally, he testified that he never told Petitioner to go to MacNeal Hospital. T. 55.

Despite the reference to the form 45 report as PX 15, the Arbitrator notes the report was admitted as PX 13. PX 13 is dated 2/15/11 and is signed by Erica Snow. The report lists the accident date as 1/10/11 at 9:00 am. The report further indicates that "EE went to subway side where freezers are located and retrieved a box of honey mustard chicken patties. As she went to place the box on the freezer table, she felt a pain in her lower back." The report further indicates that

Petitioner went to Herron Urgent Care at 10830 S. Halsted St. in Chicago. PX 13. Respondent submitted RX 10 which is an accident report entitled "Speedway Superamerica LLC Occupational Injury & Illness (OI&I) Report. The report was completed and signed by Nancy Marin as Petitioner's daughter and is dated 1/28/11. The report is stamped "SSA Jan 31 2011". The accident description reads the same as the description on PX 13 with the added detail that "upon placing the box on the table located where the freezers are I believe I pulled a lower back muscle. I had to place the box in a rapid motion because it was to [sic] heavy for me". RX 10. In detailing the injury Petitioner reported, "In the lower back pain has been getting worst after the incident not only does the lower back hurt but the legs get numb as well after the incident the pain came back but worst [sic]". RX 10. The accident was listed as reported to Lorenzo Lampignano on 1/28/11 at 5:00 pm. Under the date of incident is listed "unknown" and above the word "unknown" is "10-10 10-14." The time is listed as 9:00 am but then the box is checked for "time cannot be determined." Finally, the report indicates that Petitioner began work on the day of accident at 5- 6 am and that she worked 7 hours that day. Her last day worked was 1/26/11, two days before the report was signed on 1/28/11. RX 10. The report was signed in a printed signature of Maria Elena Gomez and is dated 1/28/11.

In the section of the report completed by the supervisor, Lorenzo Lampignano, he indicates that he disagrees with Petitioner's statements regarding an accident in the report because he is "unable to verify injury because date is unknown." RX 10.

Attached to the report at RX 10 is a second report entitled "Confidential SSA Workers' Compensation Investigation". Although this report is not dated, it references a completion date of 1/8/11 and 2/11/11 and is stamped received on 2/14/11. The report repeats verbatim Petitioner's provided accident description as contained in the RX 10 and PX 13 reports. Again, this report references that Petitioner could not provide an exact date of injury but rather stated that the accident happened on some date between 1/10/11 and 1/14/11 and that no injury was reported during that time period. The report indicates "We will go with 1/10/11 as the DOI, which is on the legal paper work." The report further states that according to Mr. Lampignano, Petitioner performed all of her job duties without perceived or reported problem up to the date she resigned without notice on 1/26/11. Mr. Lampignano further advised that Petitioner did not report an injury until 1/26/11 when she resigned without notice. However, contained on page 2 of the report is a section which reads "If another person completed OI&I identify by name, title, phone number and date: Nancy Mann, Daughter ... 1/28/11." RX 10. Finally the report indicates that Mr. Lampignano was advised by Petitioner that she sought medical treatment from Herron Medical Urgent Care but that Petitioner could not remember the date of care and that she was not provided copies of any medical reports. RX 10.

At trial, Petitioner testified that she went to MacNeal Hospital on 1/28/11. T. 16. She testified that she was given a 5 pound lifting restriction and that she "took the paper back to my boss and he told me that I no longer work there, but to go ahead and leave that paper, and I did that and I left." T. 17. The MacNeal records triage note dated 1/28/11 indicates "lower back pain x 2 weeks accident at work." PX 4. The history indicates, "Patient complains of having a twisting injury to the lower back 2 weeks prior to arrival. The pain radiates to the left posterior thigh to knee. No tingling. No numbness. No weakness. ... Pt was twisting placing box to the right when she got the pain." Petitioner was told to take Ibuprofen and follow up in 3 days if the pain did not stop. PX 4. Petitioner was told she could "work their next scheduled shift with the

following modification in their work: minimum bending or stooping work; no lifting over 10 pounds; no over the shoulder work; through Fri Feb 4, 2011 (1 week)." PX 4. Petitioner testified that she brought the work restrictions to Speedway and was told she no longer worked there. Petitioner left the work restrictions with Respondent.

Petitioner chose to treat with Alivio Physical Therapy Chiropractic on 1/31/11. PX 5. The records contain a consistent history of injury on 1/10/11 with continued pain in her lower back and numbness and tingling in her left leg. The history provided on this date further indicates that Petitioner "... told her boss on 1/28/11 she had not worked after 1/26/11. This injury. it happened about 9:30 am and told Lorenza the manager on 1/28/11." PX 5. Exam revealed limited range of motion and tenderness. The assessment was acute lumbar sprain/strain, lumbar spine radiculitis, lumbar disc displacement and lumbago. Dr. Barnabas recommended an MRI of the lower back, anti-inflammatories, physical therapy, electrical muscle stimulation, ultrasound and hot packs. On 2/1/11, Petitioner underwent an MRI of the lumbar spine at Lakeshore Open MRI and CT at the request of Dr. Barnabas. PX 6. Impression was "No significant spinal stenosis or foraminal stenosis is seen. No acute lumbar compression fracture deformity is seen. Mild left paracentral and foraminal disc protrusion is seen at the level of L1-2. Mild central disc protrusion is seen at L4-5". PX 6.

At her physical therapy visit of 2/3/11, Petitioner complained of low back pain 6-7/10 with "no radiation of pain." At her next visit on 2/11/11, Petitioner complained of low back pain with an increase of pain at night and pain radiating down into the buttocks and at times into her legs. Petitioner had already been to a consult with pain specialist Dr. Harsoor and was scheduled for an injection on 2/27/11. Physical therapy and medication was continued and Petitioner was taken off work. PX 6. While waiting for the injections, Petitioner continued at Alivio PT. On 3/14/11, Alivio assessed mild left paracentral and foraminal disc protrusion at L1-L2, mild central disc protrusion at L4-5 and lumbar sprain/strain. PX 6. Petitioner continued in PT thereafter through 6/6/11 on 15 visits each time receiving electrical muscle stimulation, hot packs, soft tissue massage and gentle mobilization. PX 6.

On 6/6/11, the Alivio notes indicate that Petitioner presented feeling improved with decreased pain noted in her low back. She states she feels no pain today. She has been performing range of motion exercises. Physical exam and testing elicited decreased pain. The notes of 6/6/11 indicate "From a conservative management point of view, the patient has reached maximum medical improvement. She is being discharged from care today. She was told if she does experience any exacerbation of her symptoms to use non steroidal anti-inflammatory medication, ice and moist heat and to continue with her range of motion and core exercises. The patient is working full duty." PX 5, p. 23.

One week later on 6/13/11, the Alivio notes that Petitioner returned and was administered more physical therapy. It was noted that "patient is working as tolerated and states that she feels pain in her low back at about 5-6/10 and radiates into the buttocks and sometimes into the legs. She is only taking Advil at this time when needed. She does have an appointment with Dr. Harsoor on 6/16/11." Petitioner received the same form of PT and was told to continue her range of motion exercises. PX 5, p. 24. Petitioner continued at another 13 visits until her "elective" surgery in October 2011. It was noted that although range of motion and strength had improved, Petitioner's level of pain remained the same as at initial evaluation 4 months earlier.

While treating at Alivio between February 2011 and October 2011, Petitioner also saw Dr. Harsoor. On 2/3/11, Dr. Harsoor noted that Petitioner gave a history of injuring herself at work on 1/10/11 when she went to place a box weighing approximately 30 pounds onto a table and felt a pain in her back. PX 6. Dr. Harsoor noted palpation of the lumbar intervertebal spaces reveals pain with palpable trigger points noted in the low back muscles and positive straight leg raise bilateral. Based on her review of Petitioner's symptoms and the diagnostic MRI showing disc protrusions at L1-2 and L4-5, the doctor recommended continued physical therapy and medications. On 2/17/11, Dr. Harsoor continued to note ongoing complaints of pain, palpation of the lumbar intervertebral discs, limited flexion, positive straight leg raise bilaterally and hyperalgesia. She noted that Petitioner was unable to work and ordered lumbar L4-5 injections. On 4/5/11, Petitioner underwent lumbar epidural steroid injections at L4-5. PX 6, PX 7. On 4/21/11, Dr. Harsoor noted Petitioner achieved moderate relief of pain following injections. She further noted continued left leg pain 3/10 and numbness. Dr. Harsoor diagnosed radiculopathy and recommended Petitioner continue physical therapies, medications. On 5/19/11 Petitioner reported pain 6/10 and continued left leg pain and numbness. PX 6. Again, injections and continued PT was recommended. On 5/20/11, Dr. Harsoor referred Petitioner to a spine surgeon for consult. PX 6, p. 26. On 6/2/11, Dr. Harsoor noted continued pain and left leg numbness and that Petitioner was waiting to see a spine surgeon. She further noted continued injections but that Petitioner wanted to wait until after she saw the spine surgeon. Petitioner was started on tramadol while waiting the surgical consult.

Again, on 6/6/11, the Alivio notes indicate that Petitioner presented feeling improved with decreased pain noted in her low back. She states she feels no pain today. She has been performing range of motion exercises. Physical exam and testing elicited decreased pain. The notes of 6/6/11 indicate "From a conservative management point of view, the patient has reached maximum medical improvement. She is being discharged from care today. She was told if she does experience any exacerbation of her symptoms to use non steroidal anti-inflammatory medication, ice and moist heat and to continue with her range of motion and core exercises. The patient is working full duty." PX 5, p. 23.

On 6/6/11, Petitioner saw Dr. Michael, spine surgeon. He noted the same history of accident 6 months earlier and that Petitioner underwent four months of physical therapy and one injection which failed to provide relief for her continued complaints. Specifically, Dr. Michael noted, "Her back pain is much, much worse than bilateral leg pain. Her pains are severe sitting, standing and walking. There is numbness and tingling bilaterally in the lower extremities. She has weakness bilaterally in the lower extremities." PX 8, p. 19. He recommended two additional injections while Dr. Michael awaited receipt of her MRI films.

One week later on 6/13/11, the Alivio notes that Petitioner returned and was administered more physical therapy. It was noted that "patient is working as tolerated and states that she feels pain in her low back at about 5-6/10 and radiates into the buttocks and sometimes into the legs. She is only taking Advil at this time when needed. She does have an appointment with Dr. Harsoor on 6/16/11."

On 6/16/11 Dr. Harsoor scheduled further injections and on 6/28/11, Petitioner underwent second set lumbar epidural injections with trigger point injections at three levels. PX 6, PX 7. On 7/7/11, Dr. Harsoor noted that the injections provided mild relief and that the low back pain and left leg pain and numbness continued. On 7/7/11, Dr. Harsoor noted "will schedule third

injection in 2 weeks if pain worsens with returning to work. She will be released to light duty work with 20 lb restriction and will consider releasing to full duty if she can handle this." PX 6, p. 45-46.

On 7/19/11, Petitioner underwent a third round of lumbar epidural injections. PX 7. Dr. Harsoor noted "she is doing light duty work with 20 lb restriction and will consider releasing to full duty if she can handle this." PX 6, p. 48. Petitioner was scheduled for follow up with Dr. Harsoor in 3 weeks. At a follow up upon 7/28/11, Dr. Harsoor noted that Petitioner was not working because her employer told her she could only work at 100%. PX 6, p. 57.

On 8/9/11, Petitioner underwent a lumbar discography with Dr. Harsoor at the request of Dr. Ronald Michael. Concordance of pain was noted most prominently at L4-5 being 10/10. PX 6, p. 63. Pain levels ranging from 1/10 to 8/10 were noted at L1-2 through L3-4. PX 6, p. 63. Petitioner underwent a post-discogram CT of the lumbar spine at Lakeshore Open MRI. PX 6, p. 70. Relevant findings showed multi-level annular tears with grade III annular tear at L4-5 with disc protrusion measuring 4mm, causing "overall" mild narrowing of the central canal and no significant narrowing of the foramina. PX 6, p. 70-71. No stenosis of the central canal or neural foramina was noted at any other level. The MRI of 2/1/11 showed mild central disc protrusion at L4-5. PX 6, p. 72.

On 8/29/11, having reviewed the discogram report, Dr. Michael diagnosed L4-5 diskogenic pain and offered Petitioner treatment options ranging from living with the pain and "accepting it" to posterior lumbar fusion surgery. Petitioner declined the offered disc decompression/bicuplasty and opted for the posterior lumbar fusion. Petitioner elected to proceed. *Id.* On 10/17/11, Dr. Michael reviewed the MRI of the lumbar spine and opined disk herniation at L4-5 and diskogenic pain at L4-5. Again, Petitioner as offered the option of living with her pain but advised Dr. Michael that she could not live with the pain and that she was "incapacitated by it." PX 8, p. 16.

On 11/10/11, Petitioner was admitted to Metro South Medical Center and underwent a posterior lumbar interbody fusion with hardware and discectomy. PX 8, PX 11, PX 9. The post-operative diagnosis was herniated nucleus pulpous at L4-5. On 11/11/11, a CT of the lumbar spine showed good alignment of fusion. PX 9. Petitioner was discharged home on 11/12/11.

On 11/21/11, Petitioner returned to Dr. Michael, who fit Petitioner with a bone growth stimulator to enhance bony fusion and healing for a minimum of 6 months after surgery. PX 8. At her exam on 11/21/11, Dr Michael noted that Petitioner reported "her low back pain is gone. Her leg pain is better than 80% improved." PX 11, p. 8. On 1/16/12, Dr. Michael noted Petitioner's improvement with right leg pain and ordered post-operative physical therapy and a CT of the lumbar spine which showed normal post op changes. PX 11, p. 20.

On 2/13/12, Petitioner began physical therapy at Oak Park Medical Center. PX 10. Petitioner attended PT through 8/13/12.

On 7/24/12, Dr. Michael noted that Petitioner had 6 weeks of PT at that point and that she was 80% improved versus preoperatively. On 7/24/12, Dr. Michael recommended work conditioning. Petitioner returned to Dr. Michael on 8/21/12 when Dr. Michael noted, "the patient complains of low back pain with work conditioning. She has right leg pain. Overall and

in consideration of these complaints she remains at least 70% improved versus preoperatively." He further noted that Petitioner should "... maintain her current level of activity and restrictions. She has reached maximum medical improvement (MMI). I am willing to discharge her from my care. She may return to this office on an as needed basis." PX 11, p. 17.

In May 2011, well prior to her surgery, Petitioner attended a Section 12 exam with Dr. Goldberg on 5/13/11. Dr. Goldberg questioned Petitioner's credibility based on the fact that she did not immediately report the accident to her employer and that she continued working for Respondent full duty after the accident until the day she reported the accident 18 days later. RX 1. He further noted that Petitioner's exam was normal except for the subjective lumbar tenderness with full lumbar motion. Dr. Goldberg read the MRI to show no significant pathology and only mild disc protrusions at L4-5. He did not read the MRI to show evidence of disc herniation or stenosis. At most, he determined that Petitioner sustained a mild lumbar strain and that her continued chronic pain complaints are not supported by clinical or MRI evidence of anatomic changes to her spine. He found Petitioner to be at MMI as of 5/13/11.

On 9/16/11 Dr. Goldberg issued an addendum report after reviewing records from Alivio and from Dr. Harsoor. Based on his prior opinion, he did not feel that additional injections were medically necessary. His prior opinions remained unchanged. RX 2.

Dr. Michael responded to Dr. Goldberg's report with a letter dated 12/4/11. In it, Dr. Michael opined that Petitioner lifting a box of food is a credible mechanism of injury to the lower back. PX 8, PX 3. Specifically, he noted that patients who bend, lift and potentially twist can injure their lower backs. He reviewed the MRI personally and opined a disc herniation at L4-5. Dr. Michael noted failed conservative care and positive discogram result with concordant pain at L4-5. Dr. Michael explained that Petitioner's internal disc disruption can be associated with mechanical low back pain but that this condition is not traditionally associated with radiculopathy nor would she be expected to have neurological deficits. Dr. Michael opined that the MRI of the lumbar spine, the lumbar discogram and CT scan of the lumbar spine confirmed Petitioner's pathology. Dr. Michael noted that Dr. Goldberg, Respondent's section 12 doctors, had not yet reviewed these studies when he issued his medical report, as they had not yet occurred. Regarding credibility, Dr. Michael noted that he found Petitioner to be credible and that exaggeration should not be confused with cultural expression of pain. The doctor believed Petitioner's medical treatment to date had been reasonable and necessary and that surgery was indicated following six months of failed conservative care.

Petitioner attended a Section 12 exam with Dr. Graf on 2/27/12 after Petitioner's fusion surgery. Dr. Graf reviewed Petitioner's medical records in addition to examining Petitioner. RX 3. He opined that Petitioner's subjective complaints of back pain had little correlation to objective findings. He documented multiple inconsistencies and non-organic pain signs, and believed that her condition was not a direct result of her alleged work injury. Dr. Graf also noted that there were no disc herniations present on her MRI scan, and that the imaging studies did not demonstrate any acute findings. Dr. Graf stated that any and all care and treatment was not related to the alleged injury.

On 7/6/12, Dr. Michael issued a report in response to the Section 12 report authored by Dr. Graf. Dr. Michael disagreed that Petitioner showed only degenerative changes, that Petitioner was not truthful and that surgery was not necessary. In addressing fusion following Petitioner's surgery,

Dr. Michael opined that achieving fusion is a process rather than a discrete event with definitive time lines. Dr. Michael agreed that Petitioner did not suffer from nerve root impingement but rather mechanical low back pain, which could exist independently of impingement. The doctor continued to opine that Petitioner suffered a low back injury at work and following failed conservative care and proved to be a surgical candidate. Her noted improvement, he opined, was evidence of injury in the first place.

On 9/18/12, Dr. Graf completed an addendum report to respond to Dr. Michael's report of 7/6/12. RX 4. Dr. Graf again stated that neither he nor the radiologist saw disc herniation on the MRI. Further, Dr. Graf noted Dr. Michael's agreement that Petitioner did not have any nerve impingement. Finally, Dr. Graf disagreed with Dr. Michael and noted that Petitioner did not improve following surgery but rather continued with pain complaints thereby proving that the surgery was not necessary to alleviate Petitioner's condition.

Respondent produced utilization review reports certifying 10 physical therapy sessions beginning 1/31/11 and post operative physical therapy of 31 sessions between 2/14/12 to 5/3/12. All other treatment including injections, discogram, surgery and work conditioning was decertified. RX 5-RX 9.

CONCLUSIONS OF LAW

The above findings of fact are incorporated into the following conclusions of law.

C. Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent? E. Was timely notice of the accident given to Respondent?

After consideration of the record in its entirety, the Arbitrator finds Petitioner sustained accidental injuries arising out of and in the course of her employment by Respondent on 1/10/11 and that proper notice of the accident was provided to Respondent on 1/28/11. In so finding, the Arbitrator places greater weight on the testimony of the Petitioner and her daughter Nancy Marin than on the testimony offered by Mr. Lampignano on the issue of accident and notice. The Arbitrator also places great weight on the accident reports submitted in finding accident and notice.

Petitioner had no back problems prior to 1/10/11. Petitioner's testimony regarding the mechanism of injury, i.e. lifting and placing the frozen chicken on a table, is reiterated in every treating record history. Further, the history of accident is reflected on every written accident report. Minor inaccuracies in the date of accident or the date of reporting, i.e., 1/26/11 or 1/28/11 provide an insufficient basis to deny accident and notice. The Arbitrator further notes that the documentary evidence clearly supports a finding of accidental injuries on 1/10/11 and reported on 1/28/11, two days after Petitioner's last day worked for Respondent. It is not lost on the Arbitrator that Petitioner worked from 1/10/11 to 1/26/11 without reporting an accident and that she reported the accident only after she left her job on 1/26/11. However, the Arbitrator finds credible Petitioner's testimony that she was afraid to report the accident for fear of getting fired and only reported the injury after she left the job she was no longer able to perform because of the injury received on 1/10/11.

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

The Arbitrator finds that Petitioner sustained an aggravation of a pre-existing, asymptomatic degenerative low back condition as a result of the lifting incident at work on 1/10/11 and that Petitioner reached MMI for that causally related condition was reached on 6/6/11. In so finding, the Arbitrator notes that in May 2011, well prior to her surgery, Petitioner attended a Section 12 exam with Dr. Goldberg on 5/13/11. Dr. Goldberg noted that Petitioner's exam was normal except for the subjective lumbar tenderness with full lumbar motion. Dr. Goldberg read the MRI to show no significant pathology and only mild disc protrusions at L4-5. He did not read the MRI to show evidence of disc herniation or stenosis. At most, he determined that Petitioner sustained a mild lumbar strain and that her continued chronic pain complaints are not supported by clinical or MRI evidence of anatomic changes to her spine. He found Petitioner to be at MMI as of 5/13/11.

The Arbitrator further notes the physical therapy notes from Alivio dated 6/6/11 which indicate Petitioner, "... presented feeling improved with decreased pain noted in her low back. She states she feels no pain today. She has been performing range of motion exercises. Physical exam and testing elicited decreased pain" and that "From a conservative management point of view, the patient has reached maximum medical improvement. She is being discharged from care today. She was told if she does experience any exacerbation of her symptoms to use non steroidal anti-inflammatory medication, ice and moist heat and to continue with her range of motion and core exercises. The patient is working full duty." PX 5, p. 23. On the same day, 6/6/11, Petitioner saw Dr. Michael, spine surgeon. He noted the same history of accident 6 months earlier and that Petitioner underwent four months of physical therapy and one injection which failed to provide relief for her continued complaints. Specifically, Dr. Michael noted, "Her back pain is much, much worse than bilateral leg pain. Her pains are severe sitting, standing and walking. There is numbness and tingling bilaterally in the lower extremities. She has weakness bilaterally in the lower extremities." PX 8, p. 19. He recommended two additional injections while Dr. Michael awaited receipt of her MRI films. Dr. Michael subsequently reviewed the MRI and determined that Petitioner had low back pain without impingement.

The Arbitrator is unable to reconcile the information contained in the two medical notes of 6/6/11 which contain vastly different snapshots of Petitioner's condition on that day. One note reflects improvement to the point of MMI and the other reflects severe and debilitating pain. No explanation of these records was offered at trial. Based upon the opinion of Dr. Goldberg finding MMI as of 5/13/11, the questionable status of Petitioner's condition raised by the two records of 6/6/11 and the subsequent opinions on the necessity of Petitioner's treatment after 6/6/11, including surgery, offered by Dr. Graf, the Arbitrator finds no causal connection for Petitioner's condition of ill-being after 6/6/11.

J. Were the medical services that were provided to Petitioner reasonable and necessary? Has respondent paid all appropriate charges for all reasonable and necessary medical services? O. Is Petitioner entitled to prospective medical care? K. What temporary benefits are in disputed – TTD?

Based on the Arbitrator's findings of the issue of causal connection, the Arbitrator further finds that Respondent is to pay to Petitioner reasonable and necessary medical expenses incurred prior to 6/6/11 in the care and treatment of the casually related injuries prior to that date. Respondent

shall receive credit for amounts paid, including credit under Section 8(j) of the Act, if any. Further, Respondent is to pay Petitioner temporary total disability benefits for a period of 18-3/7 weeks commencing 1/29/11 through 6/6/11. Respondent shall receive credit for amounts paid, if any.

Based on the Arbitrator's finding of causal connection through 6/6/11 and MMI on that date, the Arbitrator further finds that Petitioner is not entitled to prospective medical care to the extent any such request was made at trial. No such request is noted on the Amended Request for Hearing Form.

M. Should penalties or fees be imposed upon Respondent?

Based upon the record as a whole and upon the Arbitrator's foregoing findings, the Arbitrator further finds that Respondent's conduct in refusing to pay either TTD or medical benefits was not so unreasonable or vexatious so as to justify the imposition of fees or penalties under Sections 19(k), 19(l) or 16 of the Act in this matter.

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

☐ Affirm and adopt (no changes)	☐ Injured Workers' Benefit Fund (§4(d))
☐ Affirm with changes	☐ Rate Adjustment Fund (§8(g))
☐ Reverse [Choose reason]	☐ Second Injury Fund (§8(e)18)
	☐ PTD/Fatal denied
☒ Modify [down]	☒ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

RECEIVED
JUN 1 7 2014
Katz Friedman Eagle
Eisenstein Johnson
Billed

MARIA E. GOMEZ / PATRICIA MARIN,

Petitioner,

vs.

NO: 11 WC 03723

14IWCC0444

SPEEDWAY SUPER AMERICA, LLC.,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review under §19(b) having been filed by the Petitioner herein and notice given to all parties, the Commission, after considering the issues of causal connection, medical expenses, temporary total disability, prospective medical and penalties and attorney fees, 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 further remands this case to the Arbitrator for further proceedings for a determination of a further amount of temporary total compensation or of compensation for permanent disability, if any, pursuant to Thomas v. Industrial Commission, 78 Ill.2d 327, 399 N.E.2d 1322, 35 Ill.Dec. 794 (1980).

The Commission affirms and adopts the Arbitrator's finding that the causal relationship of Petitioner's condition to the January 10, 2011 accident ended as of June 6, 2011, for the same reasons noted by the Arbitrator, in particular the June 6, 2011 report of Alivio (Petitioner's Exhibit 5) finding the Petitioner had reached maximum medical improvement from a conservative standpoint. The Commission specifically finds that all of the medical treatment provided to the Petitioner after June 6, 2011 by numerous providers, including but not limited to Dr. Harsoor, Alivio Physical Therapy and Chiropractic, Rogers Park One-Day Surgery Center, Dr. Michael, Metro South Hospital and Oak Park Medical Center was excessive and unnecessary. Pursuant to Section 8.2(e) of the Act, these providers shall not bill or otherwise attempt to recover from the Petitioner for medical services or treatment that have been

14IWCC0444

determined by the Commission to be excessive or unnecessary. The Commission finds its support for this in the reports of Dr. Goldberg, Dr. Graf and in the utilization review reports submitted by Respondent as Exhibits 5 through 9.

In this case, the Commission notes that both it and the Arbitrator have determined, based on the preponderance of the totality of the evidence, that the Petitioner sustained an aggravation of a degenerative lumbar condition, for which she reached maximum medical improvement as of June 6, 2011. The noted providers, despite minimal objective findings on MRI, and opposing opinions from reputable surgeons Dr. Graf and Dr. Goldberg, provided ongoing conservative care that clearly provided little if any benefit, and when that failed went ahead and performed fusion surgery without authorization from the Respondent. As noted by Dr. Graf when he saw the Petitioner post-surgery on February 27, 2012, her subjective pain level improved from 6 to 7 out of 10 pain to 5 out of 10 pain, and she continued to complain of burning leg pain. This is far from the "rather spectacular achievement" surgical result that Dr. Michael references. Again, while different physicians have differing opinions on treatment protocols, in this case Dr. Michael took it upon himself to provide his recommended treatment without authorization, which the Commission now finds was excessive and unnecessary. The wiser choice would have been to heed the cautions from Dr. Goldberg and Dr. Graf with regard to the inconsistencies they noted in the preceding medical records in terms of significantly varying symptomatic complaints of the Petitioner, as well as on the examinations of Drs. Goldberg and Graf, and to review these inconsistencies within the medical records, rather than spending significant time drafting reports to attack his colleagues and performing a surgery that appears to have essentially been based on the Petitioner's subjective complaints. MRI findings were minimal. While Dr. Michael claims the discogram "unequivocally" demonstrated an L4/5 pathology, the Commission questions how this could possibly be so when the discogram report itself noted 8 out of 10 pain at two lumbar levels in addition to L4/5. The Commission reviews discogram results repeatedly on review, and the point of performing multi-level testing is to provide control levels to make certain of which level or levels are producing pain. In this case, three different levels produced at least 8 out of 10 pain. How this did not lead Dr. Michael to question a surgical remedy, particularly in the face of the other medical evidence in this case, remains unclear. In fact, on August 29, 2011 he specifically notes discogram showed L1/2, L3/4 and L4/5 pathology. MRI of February 1, 2011 showed no pathology whatsoever at L3/4, and very mild findings at the other two levels.

The narrative reports of Dr. Michael take on a tone wherein he appears to be personally offended by differing medical opinions. At one point Dr. Michael notes there may be a "cultural expression" of Petitioner's pain, whatever that means, which should not be taken as exaggeration. This tone does not help his credibility. In this specific case, we find that the questionable subjective complaints, minimal MRI findings and clearly equivocal discogram findings resulted in excessive and unnecessary treatment. Pursuant to Petitioner's Exhibit 12, including treatment both before and after June 6, 2011, the various providers billed upwards of $442,429.82 for a lumbar strain. The Commission continues to note that the "non-emergency transportation" charges from $275 to $125 per trip will not be accepted without very solid and credible proof of medical necessity, which is clearly lacking in this case.

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The Commission also specifically affirms the Arbitrator's denial of penalties and attorney fees, noting the evidence does not support a finding of unreasonable and/or vexatious behavior on the part of Respondent in issuing or failing to issue benefits.

IT IS THEREFORE ORDERED BY THE COMMISSION that Respondent shall pay to the Petitioner the sum of $251.30 per week for a period of 18-3/7 weeks, that being the period of temporary total incapacity for work under §8(b), and that as provided in §19(b) of the Act, this award in no instance shall be a bar to a further hearing and determination of a further amount of temporary total compensation or of compensation for permanent disability, if any.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the causally related medical expenses incurred by Petitioner through and including June 6, 2011 pursuant to §8(a) of the Act, and subject to the fee schedule contained in §8.2 of the Act.

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.

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.

IT IS FURTHER ORDERED BY THE COMMISSION that this case be remanded to the Arbitrator for further proceedings consistent with this Decision, but only after the latter of expiration of the time for filing a written request for Summons to the Circuit Court has expired without the filing of such a written request, or after the time of completion of any judicial proceedings, if such a written request has been filed.

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.

DATED: JUN 0 6 2014
TJT: pvc
o 4/8/14
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Thomas J. Tyrrell

Michael J. Brennan

Kevin W. Lamborn