WCLA Newsletter
Case Summaries June 2021

I. WORKING CONDITIONS

Vazquez v. Chicago Transit Authority, 18 WC 36940, 21 WC 00114 (March 10, 2021).

Petitioner worked for Respondent as a bus operator. She sustained injuries to her right shoulder, arm, and leg on November 2, 2018, while she was exiting the driver's seat. Petitioner fell forward after getting her left foot caught in a trash bag. As Petitioner was falling, she caught herself before hitting the ground by using her right arm to grab onto a railing. Following the accident, Petitioner was diagnosed with a right thigh strain and a tear to her right rotator cuff.

The Arbitrator found Petitioner's injuries compensable based on the Petitioner's testimony, medical records, and surveillance video. The Arbitrator reasoned that the act of exiting the bus with limited space surrounding the driver's seat, followed by a loss of balance due to stumbling over something on the floor, involved an increased risk directly related to Petitioner's employment. The Arbitrator also found that the current condition of ill-being was causally connected to the work-related accident because there was no evidence of right shoulder symptoms before the accident. The Commission affirmed the Arbitrator's decision.

II. UNUSUAL BODY MOVEMENT

Henderson v. Illinois State University, 11 WC 15795, 21 WC 00139 (March 22, 2021).

Petitioner worked for Respondent as a building service laborer and sustained injuries to his back and right shoulder. Petitioner testified that on August 19, 2010, he was on one knee cleaning the bottom half of an elevator, when he stood up and felt a sharp pain in his back. Petitioner then grabbed onto a rail, which was located near the center of the elevator wall, to pull himself up and felt a sharp pain in his right shoulder. Following this accident, Petitioner was diagnosed with a right rotator cuff tear.

The Arbitrator found that Petitioner sustained a compensable accident and awarded benefits accordingly. The Arbitrator reasoned that Petitioner's job required him to be in an awkward and uncomfortable position because the Petitioner had to be on one knee for a period of time in order to clean the bottom half of the elevator walls, while also using the railing to hold and lift himself up with his right arm. Collectively, these factors created an increased risk of injury distinct to the Petitioner's employment. The Commission affirmed the decision of the Arbitrator.

III. WORK RELATED TRAVEL

***Cox v. Illinois, State of*, 13 WC 13610, 21 WC 00117 (March 11, 2021).**

Petitioner worked as a personal assistant for Respondent. Her job duties required that she travel to her clients to provide care. Petitioner injured her shoulders and knees when she slipped and fell outside of Respondent's building entrance after she turned in her time sheets. At trial, Petitioner testified that on April 1, 2013, she went to Respondent's state office building to drop off her time sheets. As she exited the building, she slipped and fell on rock salt and gravel outside the building's entrance.

The Arbitrator found that Petitioner was a traveling employee, and that it was reasonably foreseeable that the Petitioner could slip and fall at Respondent's office building while dropping off her time sheets. Accordingly, the Arbitrator found that Petitioner's fall was compensable under the Act.

On review, the Commission found that the traveling employee analysis was inapplicable since a traveling employee's injury is compensable only if the injury occurs while the employee is traveling for work. In the instant case, Petitioner was not traveling for work. Rather, she was on-site at the Respondent's premises when she slipped and fell. Accordingly, the Commission found that the standard "arising out of" analysis applied. Applying the "arising out of" analysis, the Commission found that the hazardous condition of the Respondent's premises was an employment-related risk. Therefore, Petitioner's slip and fall arose out of her employment. Although the Commission disagreed with the applicability of the Arbitrator's traveling employer analysis, the Commission affirmed the Arbitrator's decision and awarded temporary total disability benefits, medical expenses, and permanent partial disability for Petitioner's left leg injury.

IV. REPETITIVE CONDITIONS

***Wilkins-Simmons v. Illinois, State of/Elgin Mental Health Center*, 14 WC 024866, 21 WC 00127 (March 16, 2021).**

Petitioner sustained injuries to her right thumb while working for Respondent as a security therapy aid. Petitioner had various job duties, including pushing wheelchairs, removing garbage bags, opening doors, passing out food trays, bathing patients, doing laundry, changing patient's clothes and diapers, restraining patients when necessary, and occasionally using a computer. On June 22, 2014, Petitioner was passing out food trays when she felt a severe pain in her right thumb. After seeking treatment, she was diagnosed with right wrist CMC joint arthritis, which was exacerbated as a result of the accident, and DeQuervain's disease.

The Arbitrator found that the Petitioner sustained a repetitive trauma injury to her right thumb that arose out of and in the course of her employment. The Arbitrator relied on that fact that (1) Petitioner had no prior symptoms involving her thumbs, wrists or hands until June 22, 2014; (2) Petitioner provided a detailed listing of 20 activities she performed at work that required the use of her hands; and (3) medical testimony indicated that Petitioner's duties were both repetitive and strenuous enough to cause

the cumulative trauma of arthritis. Further, the Arbitrator reasoned that despite the fact that Petitioner performed a variety of activities at work, it did not negate the repetitive nature of the work tasks she performed with her hands. The Commission affirmed the Arbitrator's decision and awarded medical expenses, temporary total disability, and permanent partial disability.

Cesario-Farraj, Lori v. UChicago Argonne LLC, **16 WC 19582, 21 IWCC 0044 (February 1, 2021).**

Petitioner worked for Respondent as a Data Management Specialist. She alleged injuries to her right hand due to repetitive data entry work. Petitioner testified that her working conditions significantly changed due to an increase in her work schedule by adding more shifts and a new ticketing system and assignment to update to user manuals, which required her to use the keyboard more. Petitioner developed soreness in her right hand, which continued to increase, and she was ultimately diagnosed with de Quervain's disease and right trigger thumb.

The Arbitrator determined that the Petitioner's injuries were compensable because the injuries arose out of her employment. The Arbitrator reasoned that Petitioner had no prior symptoms with her hand and thumb, and that her symptoms manifested with an increased volume of hand-intensive job duties. Additionally, there was medical testimony by Petitioner's doctor indicating that the Petitioner's work activities, at a minimum, started the inflammation process. Upon review, the Commission affirmed and adopted the Arbitrator's decision.

Harvey, Ronald v. Northern Illinois University Foundation, **12 WC 16123, 21 IWCC 0063 (February 11, 2021).**

Petitioner worked for Respondent as a press operator. He alleged injuries to his hands due to his repetitive and hand-intensive work. Petitioner testified that his job duties consisted of loading reams of paper into a printing press. During the loading process, Petitioner would grab 20 pounds of paper at a time, fan the papers to spread them, and then load the paper into the press. In addition to feeding paper, Petitioner would also trim paper to the proper size to feed the press. In January 2012, Petitioner sought treatment after having difficulties performing his job duties, and he was diagnosed with thumb CMC joint arthritis and bilateral carpal tunnel syndrome.

The Arbitrator determined that the Petitioner's injuries arose out of and in the course of his employment and awarded benefits for a compensable injury. The Arbitrator reasoned that the repetitive nature of Petitioner's job duties required him to load and feed the press machine for up to four hours of his eight-hour shifts. Further, the Arbitrator stated that Petitioner's testimony described that he had to use his wrists in a forced flexion position to feed the reams of paper into the press machine. Lastly, the Arbitrator found the opinions of the Petitioner's doctors credible as they stated that Petitioner's bilateral carpal tunnel syndrome and thumb CMC joint arthritis were

aggravated by repetitive work gripping activities and Petitioner's highly repetitive position as a press operator. The Commission affirmed the decision of the Arbitrator.

V. BACK CONDITIONS

Cisneros v. Northshore University Health System, 18 WC 30297, 21 WC 00112 (March 10, 2021).

Petitioner alleged an injury her lower back while she worked for Respondent as a medical assistant. On August 10, 2018, Petitioner attempted to pick up a heavy box when she felt a pop in her back and noted numbness in her right leg shortly thereafter. Petitioner sought treatment the following day and was diagnosed with a lower back strain, prescribed physical therapy and steroids, and received restrictions of no heavy lifting. In February 2019, Petitioner began treatment with a pain specialist due to her ongoing pain, who diagnosed two disk protrusions. The pain specialist recommended a transforaminal lumbar interbody fusion. At trial, the Arbitrator found that the Petitioner's ongoing condition was not causally related to the work accident and only awarded temporary total disability benefits through November 2, 2018 and denied medical treatment after November 20, 2018 because Petitioner did not prove causation.

On review, the Commission found that there was a causal connection between Petitioner's ongoing spine treatment and the work accident. The Commission disagreed with the Arbitrator on causation because (1) prior to the accident, the Petitioner did not exhibit any symptoms nor receive treatment for back pain; (2) Respondent's Section 12 exam supported the Petitioner's subjective complaints; and (3) the Arbitrator did not consider testimony from the Petitioner's treating doctors who recommended an EMG / NCV, back brace, therapy, and epidural steroid injections in November 2018. The Commission modified the temporary total disability award to 59-3/7 weeks, through October 2, 2019, and ordered payment of all outstanding medical expenses.

Maroney, Kevin v. Joe's Towing and Recovery, 17 WC 14133, 19 IWCC 0484 (September 6, 2019).

Petitioner worked for Respondent as a tow truck driver. He slipped on snow and fell on his back on December 18, 2016. Petitioner was diagnosed with syncope, and acute back and neck pain. Petitioner was worked full duty and did not pursue treatment until April 2017, when he alleged a second work accident to his back due to driving on a rough road. At trial, the Arbitrator did not award benefits for the second accident in April 2017 but did find that the Petitioner's current condition was causally related to the first accident in December 2016. Therefore, the Arbitrator awarded Petitioner temporary total disability benefits for 26-6/7 weeks, medical expenses, and permanent partial disability to the extent of 75% loss of use of the person as a whole for Petitioner's herniated disks that required surgical repair.

On review, the Commission found that the Petitioner sustained a work-related accident on December 18, 2016. However, the Commission found that Petitioner's current back condition, including the need for surgery in 2017, was not causally

connected to the work-related accident in 2016. The Commission relied on testimony by the employer's examining doctor, who testified that the work-related fall from December 18, 2016. did not cause herniated discs. Instead, the doctor opined the CT scan showed no signs that the Petitioner had sustained a herniated disk. When comparing the CT to a scan taken in 2012, the physician did not find any changes between the 2012 and 2016 scan. Based on the doctor's testimony, the Commission vacated the TTD benefits and reduced the medical and PPD awards.

The Circuit Court affirmed the Commission's decision. On appeal, the Illinois Appellate Court found the Commission reasonably concluded that Petitioner's current condition was not related to the work-related fall from December 18, 2016. Therefore, the court affirmed the Commission's decision.

Roesch Joseph, v. Afton Chemical, **18 WC 28785, 21 IWCC 0031 (January 25, 2021).**

Petitioner was working for Respondent as a chemical production officer on a conveyor belt line and felt a pop in his neck and back. Petitioner's orthopedic spine surgeon diagnosed Petitioner with tandem stenosis and several disk herniations and performed a three-level cervical fusion. The doctor also recommended a lumbar fusion and opined the need for the lumbar surgery was causally connected to the work accident. Respondent sent the Petitioner for a Section 12 examination. The Section 12 physician opined that Petitioner only sustained lumbar and cervical strains, which did not require additional medical treatment.

The Arbitrator found Petitioner's cervical and lumbar spine conditions were both causally related to the work accident. The Arbitrator gave more weight to the treating doctor's opinions than those of Respondent's examining doctor. This weight was based on the treating doctor's extensive treatment of Petitioner, comprehensive testimony, and detailed records. The Arbitrator noted that the Respondent's examining doctor seemingly had no knowledge of tandem stenosis. Further, the Respondent's examining physician was not an orthopedic surgeon. The Arbitrator found Petitioner was entitled to prospective medical care and awarded payment for the recommended lumbar fusion.

Respondent appealed the decision. The Commission affirmed and adopted the decision of the Arbitrator.

VI. PERMANENT PARTIAL DISABILITY

***Kaiser v. St. Michael's Counseling Center Inc.*, 14 WC 33647, 21 WC 00142 (March 24, 2021).**

Petitioner worked as a nurse at a methadone clinic and her job duties required her to draw blood. On August 22, 2014, Petitioner was drawing blood from a patient when the patient jumped, causing the needle to stick Petitioner in the thumb and exposed Petitioner to the patient's blood.. Petitioner knew the patient was a heroin addict and had hepatitis C, which concerned her for potentially contracting hepatitis C or HIV. As a precaution, Petitioner underwent a 28-day course of antiviral medication.

Petitioner alleged psychological trauma based on the amount of stress and anxiety that she endured after being stuck by the needle that she used to draw blood from the patient. Petitioner testified that the multiple and prolonged testing caused her daily stress for months. Based primarily on Petitioner's testimony, the Arbitrator found that the Petitioner sustained 3.5% loss of use of the person as a whole due to her psychological trauma. On review, the Commission reversed the Arbitrator's decision. The Commission found that: (1) despite Petitioner's testimony about her concerns for potentially contracting a disease, Petitioner never followed up with her doctor for additional testing; (2) Petitioner never exhibited any symptoms or tested positive for any disease after the work incident; (3) although Petitioner may have experienced stress due to the incident, there was no indication the stress level rose to the level for permanent disability; (4) Petitioner was never diagnosed with stress or an anxiety disorder; and (5) after the work incident, Petitioner continued her job as a nurse. Therefore, the Commission found that Petitioner failed to meet her burden of proving she sustained any permanent disability as a result of the work incident.

VII. PERCENT LOSS OF USE

***Vantrecce v. Comprehensive Behavioral Health*, 19 WC 22482, 21 WC 00122 (March 15, 2021).**

Petitioner worked for Respondent as a home health care provider. Petitioner sustained injuries to her back and left leg when she was attacked by a patient. Petitioner was released from care by her treating physician and returned to work full duty. She continued to experience soreness in her low back and had symptoms in her legs as she was diagnosed with sciatica/radiculopathy.

The Arbitrator found that Petitioner sustained permanent disability of 5% loss of use of the person as a whole under Section 8(d)2. The Arbitrator placed significant weight on evidence of disability based on the Petitioner's medical records. Diagnostic records showed Petitioner had spondylolisthesis, disk bulges, and foraminal stenosis. The Arbitrator found no evidence the injury had any effect on the claimant's future earning capacity because Petitioner was able to return to her same job she was working prior to the accident how this factor was only given little consideration. As such, the Arbitrator mainly considered the medical records in awarding PPD.

The Commission affirmed the Arbitrator's permanency award but disagreed with the Arbitrator's decision to give no weight to Petitioner's future earning capacity. The Commission found that Petitioner endured soreness and occasional pain related to the accident after returning to work. The Commission assigned some weight to this factor but did not change the permanent disability award.

***Donato, Anthony v. HD Plumbing & Heating*, 17 WC 29615, 21 IWCC 0046 (February 1, 2021).**

Petitioner worked as a plumber for Respondent. He sustained a torn rotator cuff when he fell off a ladder, requiring surgery. The Arbitrator found that Petitioner had failed to establish that his accident arose out of his employment. Therefore, the Arbitrator denied payment of benefits.

Petitioner appealed and the Commission reversed the decision of the Arbitrator, finding Petitioner established by a preponderance of evidence that he had sustained a compensable accident by conducting an analysis of the five factors under Section 8.1(b) to determine the nature and extent of the disability. The Commission assigned a moderate weight to the first factor, an AMA impairment rating, as Respondent submitted a report indicating a 4% impairment of the person as a whole. The Commission gave greater weight to the second factor, Petitioner's occupation, as he was still employed as a plumber, but could no longer perform overhead drilling. The Commission assigned some weight to the third factor, as Petitioner's age at the time of the accident was 61 years old. The Commission gave no weight to the fourth factor because there was no evidence that Petitioner's injury had any impact on his future earning capacity. The Commission gave greater weight to the fifth factor, evidence of disability corroborated by the treatment medical records. The Commission determined that Petitioner sustained permanently partial disability to the extent of 15% loss of the use of the person as a whole.

Cross, Bonita v. Champaign County Headstart, **18 WC 02618 and 18 WC 06791, 21 IWCC 0052 (February 3, 2021).**

Petitioner worked for Respondent as preschool teacher and sustained an injury to her arm and shoulder. She was diagnosed with a SLAP tear and subsequently underwent surgery. The Arbitrator found Petitioner was permanently and partially disabled to the extent of 10% loss of use of the person as a whole.

On appeal, the Commission increased the Arbitrator's permanency award to 15 % loss of the person as a whole. The Commission assigned some weight to Petitioner's age, which was 54 years old at the time of the accident meaning that she had several working years in her future. The Commission gave little weight to Petitioner's future earning capacity because she returned to the same type of work she held prior to the injury. The Commission assigned greater weight to Petitioner's occupation as she now requires assistance in performing some tasks such as lifting children. Finally, the Commission gave greater weight to the last factor. Petitioner had consistent and ongoing treatment for her shoulder and arm, underwent surgery for a SLAP tear. Petitioner had decreased strength in her arm, which would inhibit her from lifting children in the event of an emergency.

VIII. PERMANENT TOTAL DISABILITY

Parra v. Admiral Heating and Ventilating**, 12 WC 43353, 13 WC 0609, 21 WC 00123 (March 15, 2021).**

Petitioner sustained an injury to his right elbow while working for Respondent. Petitioner alleged that he was permanently and totally disabled. Petitioner never

underwent a functional capacity evaluation. Respondent's Section 12 expert opined Petitioner could perform sedentary to light-duty work. Both Petitioner's and Respondent's vocational counselors stated that Petitioner could benefit from a vocational rehabilitation plan.

The Arbitrator awarded permanent total disability benefits. Respondent appealed the decision. The Commission vacated the decision of the Arbitrator and remanded the case to the Arbitrator to award vocational rehabilitation services for Petitioner. The Commission was not convinced Petitioner was unable to work because of the restrictions for his right elbow. The Commission noted that no doctor had concluded Petitioner was medically, permanently, and totally disabled. Additionally, he failed to prove that no jobs were available to him due to his age, training, education, experience, and condition.

IX. CHOICE OF PHYSICIAN

Bockhom v. Three Springs Lodge, 18 WC 09957, 21 WC 00121 (March 15, 2021).

Petitioner sustained two injuries to her left elbow while working for Respondent on February 14, 2017, and February 22, 2017. Petitioner sought treatment with her first choice of physician. The physician referred her to an orthopedist who specialized in elbow injuries. After treatment, the orthopedist concluded that Petitioner had achieved maximum medical improvement. The Petitioner sought a second opinion due to continuing complaints in her left elbow. That doctor became the Petitioner's second choice of physician under Section8(a). The second doctor treated the left elbow injury but referred Petitioner to a shoulder specialist when she complained of right shoulder pain. The issue in dispute was whether Petitioner had exceeded her choice of medical providers.

The Arbitrator found that Petitioner's medical treatment fell within the choice of physicians allocated to Petitioner pursuant to Section 8(a). The Commission found that the second physician referred Petitioner to the shoulder specialist. Therefore, the shoulder doctor fell within Petitioner's choice of physicians allotted by Section 8(a) and their chain of referrals. The Commission affirmed the decision.

X. UNREASONABLE & VEXATIOUS CONDUCT

Daciolas v. Chicago, City of, 15 WC 11389, 15 WC 32525, 17 WC 15385, 17 WC 15386, 21 WC 00118 (March 11, 2021).

Petitioner worked in the Department of Forestry and sustained injuries resulting from four separate work injuries. He sustained injuries to his left index finger, left shoulder, neck, left thumb and right knee. Respondent's Section 12 examiner agreed with the treating physician that the Petitioner sustained work-related injuries and was not at maximum medical improvement at the time of the examination.

The Arbitrator noted in the award that Respondent had not provided medical evidence it relied on rely on in refusing to pay TD benefits and medical expenses. The Arbitrator noted that both of Respondent's Section 12 examining doctors agreed Petitioner sustained work-related injuries and was not at maximum medical

improvement. The Arbitrator awarded temporary total disability benefits and medical expenses. Additionally, the Arbitrator ordered Respondent to pay $64,025 under Section 19(k), $10,000 under Section 19(l), and $25,610 for attorney's fees under Section 16. The Commission modified the Arbitrator's decision and reduced the Section 19(k) penalties to $47,465 and Section 16 attorney's fees to $18,986. The Commission based its award of penalties only on the medical bills. The Commission otherwise affirmed the Arbitrator's decision.

XI. DELAYS

***Diaz v. Harvey Police Dept.*, 17 WC 35923, 21 WC 00126 (March 16, 2021).**

Petitioner worked as a probationary police officer for Respondent. She sustained injuries to her head, neck, and right knee while involved in a car accident. She was ultimately released to return to work full duty and did not undergo treatment after November 20, 2017. The Petitioner alleged that Respondent refused to pay her medical bills without good cause and requested penalties and attorney's fees. Petitioner also alleged that she sent several requests for payment and Respondent did not reply. Respondent asserted this was due to its lack of funds and provided an order from a federal case where they were ordered to deplete three bank accounts to satisfy a previous judgment.

The Arbitrator awarded the Section 19(1) penalty of $10,000 because Respondent did not provide just cause for its failure to pay benefits under section 8(a). Further, the Arbitrator noted that Respondent should have replied to the requests under Rule 9110.70(d). The Arbitrator found Respondent had acted in bad faith. The Commission affirmed the Arbitrator's assessment of the Section 19(1) penalty but vacated the 19(k) penalties and Section 16 attorney's fees using its discretion despite the Arbitrator finding that the employer acted in bad faith.

XII. PERSONAL RISKS

***Purcell, Emily v. University of Illinois*, 16 WC 30424, 19 IWCC 0432 (August 13, 2019).**

Petitioner worked for Respondent as a temporary employee. Petitioner's job duties required her to coordinate events among various departments on and off campus. Petitioner was traveling across campus to drop off her timecard when she hopped over a fence and fell on Respondent's premises, injuring her right elbow. At trial, the Arbitrator found, that Petitioner was not a traveling employee. The Arbitrator found that Petitioner's injuries did not arise out of her employment. The Arbitrator relied on the fact that Petitioner took a shorter route that had a fence, despite acknowledging that there was a path with no obstructions 10 to 15 feet to the left of where she sustained her injuries. The Commission affirmed the decision of the Arbitrator.

On review, the Illinois Appellate Court addressed whether Petitioner established that she was a traveling employee or that her accident arose out of her employment. First, the Court found that the Commission's decision that Petitioner was not a traveling employee was not against the manifest weight of the evidence because the Commission relied on the testimony of Petitioner's supervisor. The Supervisor testified

that Petitioner performing duties outside of her workspace was not common. Further, the Court reasoned that Petitioner was not assigned duties outside of her workspace on the day she sustained her injuries, and that employees turned in timecards outside of their work hours. Therefore, the Court did not need to decide whether Petitioner was a traveling employee.

Secondly, the Appellate Court held that Petitioner's claim did not satisfy the "arising out of" requirement of the Act because Petitioner voluntarily placed herself in an unnecessary situation that was unrelated to her duties when she attempted to climb the fence. Further, Petitioner did not claim her actions were in an effort to avoid an obstruction or defect, and she acknowledged that there was a safer route 10 to 15 feet to the left of where she sustained her injuries. Therefore, Petitioner's decision to hop over the fence was done for her own convenience and not her employer. Based on the record, the Appellate Court affirmed the Commission's decision denying benefits to the Petitioner.

XIII. COMMON RISKS

Vaughan, Lois M. v. Memorial Medical Center, 16 WC 17341, 18 IWCC 0690 (November 8, 2018).

Petitioner worked for Respondent as a technician. She sustained injuries to her right knee, which included a fracture of the patella, when she exited her employer's building and fell while walking to the parking lot. The Petitioner testified that on October 29, 2015, she was walking along a sidewalk outside her employer's building. As she stepped off the sidewalk curb and onto the parking lot, she did not notice the difference in height between the parking lot and the sidewalk curb. This caused her to stumble and fall on her knee.

The Commission found that Petitioner failed to establish that her injuries arose out of her employment. Petitioner asserted that her injuries were due to the conditions of her employment because of the height differential between the sidewalk curb and the parking lot, as the curb appeared to be level with the parking lot asphalt. The Commission found that the height differential between the parking lot and the sidewalk curb was due to design and not a defect. Furthermore, the Commission also found that the Respondent's premises was free from defects, special hazards, and risks, such as water, ice, holes, rocks or debris. Therefore, the Commission denied the Petitioner's claim for benefits.

Petitioner appealed the Commission's decision and the circuit court affirmed. On review, the Illinois Appellate Court held that the Commission's decision was not against the manifest weight of the evidence. The potential fall from a misstep while stepping over a curb onto lower-level asphalt was not a risk to the Petitioner's employment where there is no evidence of a defect. Therefore, the Court affirmed the Commission's decision because the Petitioner failed to establish that her injuries arose out of her employment.

XIV. CREDIBILITY

Podlasek, Mary Beth v. Dahl Landscape Co., Inc., **18 WC 26682, 21 IWCC 0039 (January 26, 2021).**

Petitioner was working for a landscaping company. She developed low back pain while loading plants into a customer's vehicle. She was diagnosed with a posterior right paracentral disk protrusion/extrusion and several bulging disks. She underwent a laminotomy and diskectomy surgery. Respondent later requested a Section 12 examination and the doctor opined Petitioner reached maximum medical improvement. Although Petitioner requested further medical treatment, Respondent denied additional treatment based on the Section 12 opinion.

At trial, Petitioner testified she experienced pain daily, had excruciating pain when bending down, and could not walk for more than 20 minutes. Respondent presented her physical therapy notes into evidence, which include statements by Petitioner to her therapist on several occasions that her low back pain had significantly improved. Respondent also presented a surveillance video of Petitioner walking with a normal gait for more than 40 minutes and picking up dropped objects with no difficulty. The Arbitrator found Petitioner's additional treatment was not causally related to her work injury and that she was not credible. Based on the contradiction between the surveillance video and Petitioner's testimony, the Arbitrator found that Petitioner had reached MMI on the date of the Section 12 examination and any treatment after that date was not causally related to the work accident.

The Petitioner appealed. The Commission affirmed and adopted the decision of the Arbitrator.

XV. JURISDICTION

Bowen Joseph, v. William A. Niekamp Truck Service, **14 WC 15914, 18 WC 0008 (January 4, 2018).**

Petitioner appealed two Circuit Court decisions regarding the issue of credits for the Petitioner's right leg injury. In addressing the first decision of the Circuit Court, the Illinois Appellate Court noted that the lower court neither confirmed nor set aside the Commission's denial of credit under Section 8(e)17. The Circuit Court characterized the Commission's denial of credit as legally erroneous and against the manifest weight of the evidence. The Circuit Court determined Respondent to be entitled to a 22.5% credit against the award of for injury to Petitioner's right leg. In doing so, the court entered a decision it deemed was justified by law. However, the Appellate Court found the Circuit Court should have set aside the decision of the Commission before entering its own decision. If the Circuit Court does not set aside the Commission's decision to deny credit, then there are two conflicting decisions in effect. Respondent's claim to credit under Section8(e)17 remained unresolved, and therefore, the Circuit Court's decision was not appealable until it either confirmed or set aside the Commission's decision to deny credit.

In the second decision of the Circuit Court, Respondent challenged the denial of its Section 19(f) motion. The Appellate Court found this issue also remained unresolved and was therefore, not appealable. The Circuit Court determined that the Commission's

denial of Respondent's Section 19(f) motion was moot because the calculation of credit had been corrected. Because a moot case should be dismissed, the second decision did not resolve the case.

XVI. EXCLUSIVE REMEDY PROVISION

Ibarra, Elia v. Prospera LLC, 2021 WL 1921015, N.D. Ill. 2021 (May 12, 2021).

Respondent required Petitioner to have a fingerprint scanned to be enrolled in their time tracking database. Petitioner filed a lawsuit in U.S. District Court, Northern District of Illinois, under Biometric Information Privacy Act (BIPA), alleging: (1) Respondent failed to develop and adhere to a publicly available retention schedule for biometric data; (2) Respondent collected and stored Petitioner's biometric information without obtaining a release; and (3) Respondent disclosed Petitioner's biometric information without obtaining consent for disclosure.

The defendant filed a motion to dismiss and argued that Petitioner's claims were preempted by the Workers Compensation Act because, as an employee, their exclusive remedy was under the Workers Compensation Act. The U.S. District Court denied the motion, explaining BIPA claims are not preempted by the Workers Compensation Act.