

ILLINOIS WORKERS' COMPENSATION COMMISSION  
NOTICE OF ARBITRATOR DECISION

**MARTIN, PERRY**

Employee/Petitioner

Case# **17WC008553**

**RIVER CITY CONSTRUCTION**

Employer/Respondent

On 6/19/2020, 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 0.18% 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:

5354 STEPHEN P KELLY  
ATTORNEY AT LAW LLC  
2710 N KNOXVILLE AVE  
PEORIA, IL 61604

2389 GILDEA COGHLAN & REGAN LTD  
FRANK GILDEA  
901 W BURLINGTON AVE SUITE 500  
WESTERN SPRINGS, IL 60558

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

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

ILLINOIS WORKERS' COMPENSATION COMMISSION  
ARBITRATION DECISION

**Perry Martin**

Employee/Petitioner

v.

**River City Construction**

Employer/Respondent

Case # **17 WC 8553**

Consolidated cases: None.

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Gerald Granada**, Arbitrator of the Commission, in the city of **Peoria**, on **June 15, 2020**. 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 the date of accident, **12/27/08**, 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 **\$92,664.00**; the average weekly wage was **\$1,782.00**. On the date of accident, Petitioner was **49** years of age, *married* with **0** dependent children. Respondent *has not* paid all reasonable and necessary charges for all reasonable and necessary medical services. The Respondent has paid a portion of the medical expenses and shall pay the remaining medical expenses as outlined in the order. Respondent shall be given a credit of **\$710,816.00** for TTD for a time period of 598.27 weeks, from December 27, 2008 to June 15, 2020, **\$0** for TPD, **\$0** for maintenance, for a total credit of **\$710,816.00**. Respondent is entitled to a credit of **\$0** under Section 8(j) of the Act.

**ORDER**

Respondent shall pay Petitioner permanent and total disability benefits of **\$1,188.08/week** for life, commencing **6/15/20**, as provided in Section 8(f) of the Act. Commencing on the second July 15th after the entry of this award, Petitioner may become eligible for cost-of-living adjustments, paid by the Rate Adjustment Fund, as provided in Section 8(g) of the Act.

Respondent shall pay any outstanding, related, reasonable and necessary medical expenses, subject to the Medical Fee Schedule, including but not limited to: \$15,000.00 towards the Life Care Plan costs for obtaining said report; \$80,000.00 towards the purchase of a new ADA compliant home needed as a result of the work injury; any related medical expenses as set forth in Petitioner's medical bill exhibits 18, 19, 20, 21, 22 and 23; and any related prospective medical expenses, such as those outlined in the Life Care Plan. Respondent shall receive a credit for any medical expenses it has already paid.

**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 Gerald Granada

**6/18/20**

Date

JUN 19 2020

**FINDINGS OF FACT**

This case involves Petitioner Perry Martin, who alleges injuries sustained while working for Respondent River City Construction on December 27, 2008. The issues in dispute are: 1) causation; 2) medical expenses; and 3) nature and extent.

The parties stipulate that, on December 27, 2008, the Petitioner sustained a catastrophic injury while working for the Respondent when a boilerplate fell on the Petitioner. As a result, Petitioner sustained multiple fractures – including fractures to his thoracic spine at two levels; a ruptured aorta; and other multiple injuries. The work injury resulted in a prolonged stay at OSF Hospital, wherein the Petitioner underwent a multi-level hardware fixation to four levels of his thoracic spine. The surgeons advised Petitioner that he would never be able to walk again.

While in recovery from his surgeries, the Petitioner developed MRSA and multiple deep vein issues. After month of intensive therapy, the Petitioner was able to walk with the use of parallel bars. Since the work injury, the Petitioner has only been able to walk with the assistance of a walker. The Petitioner's mobility is dependent on a scooter and wheelchair.

The parties stipulate that all of the Petitioner's complaints at the time of trial and his conditions of ill-being are causally related to the December 27, 2008 work accident, including but limited to: his spinal injuries (cervical, thoracic, lumbar); bilateral shoulders; bilateral elbows; bilateral knees; bilateral ankles; inability to urinate and have bowel movements on his own; and all the other conditions the Petitioner indicated at trial as set forth in the medical evidence and Petitioner's testimony.

The Petitioner testified that he is dependent upon using a walker, but occasionally has to use a scooter. He recently underwent a left shoulder replacement, which the parties did not dispute as being directly related to the work injury. He further testified that as a result of the work injuries he is basically dependent upon his wife for his daily care, who assists him with his daily catheterization and bowel movements. The Life Care Plan admitted into evidence establishes that the Petitioner will need a significant amount of ongoing care for the work injuries.

**CONCLUSIONS OF LAW**

1. Regarding the issue of causation, the Arbitrator finds that the Petitioner has met his burden of proving that all of his complaints, diagnoses and conditions of ill-being are causally connected his undisputed December 27, 2008 work accident. The Petitioner's credible testimony and all the medical evidence support this finding.

2. With regard to the issue of medical expenses, the Arbitrator finds that the Petitioner's medical treatment has been reasonable and necessary in addressing all his work related conditions. Therefore, subject to the Fee Schedule, Respondent is ordered to pay all reasonable and necessary outstanding medical expenses, including but not limited to the following: \$15,000.00 towards the Life Care Plan costs for obtaining said report; \$80,000.00 towards the purchase of a new home for ADA compliance

needed as a result the injury; the related medical expenses outlined in Petitioner's Exhibit 18, 19, 20, 21, 22, and 23; and all prospective medical treatment needed by the Petitioner as his related conditions of ill-being worsens and degenerates - which includes the medical costs outlined in the Life Care Plan.

3. Regarding the issue of nature and extent, the Arbitrator applies the factors set forth in Section 8.1b of the Act and notes the following: (i) no AMA rating was introduced into evidence, so the Arbitrator gives this factor no weight; (ii), Petitioner was an iron worker who will not be able to return to any type of work as a result of his injuries - a factor to which the Arbitrator gives great weight; (iii) Petitioner was 49 years old at the time of injury, a factor to which the Arbitrator gives some weight; (iv) Petitioner has lost all future earning capacity and the Arbitrator gives significant weight to this factor; (v), there was evidence of disability which show that the Petitioner sustained a catastrophic injury requiring very extensive and ongoing medical care, and has rendered the Petitioner being wholly and permanently incapable of work in any capacity - the Arbitrator gives paramount weight to this factor. Based on the factors above, the Arbitrator concludes the injuries sustained by Petitioner caused Petitioner to be permanently and totally disabled.

Therefore, the Respondent shall pay Petitioner permanent and total disability benefits of \$1188.08/week for life, commencing June 15, 2020, as provided in Section 8(f) of the Act.