

ILLINOIS WORKERS' COMPENSATION COMMISSION
DECISION SIGNATURE PAGE

Case Number	18WC008936
Case Name	Scott Edward McNeal v. Beelman Truck Company
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	15
Decision Issued By	Edward Lee, Arbitrator

Petitioner Attorney	Matthew Brewer
Respondent Attorney	J Bradley Young, Daniel Simmons

DATE FILED: 5/6/2024

/s/ Edward Lee, Arbitrator
Signature

THE INTEREST RATE FOR THE WEEK OF APRIL 30, 2024 5.165%

STATE OF ILLINOIS)
)SS.
COUNTY OF Sangamon)

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

**ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION**

Scott McNeal
Employee/Petitioner

Case # **18** WC **008936**

v.

Consolidated cases: _____

Beelman Trucking
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 **Edward Lee**, Arbitrator of the Commission, in the city of **Springfield**, on **3/26/24**. 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 **12/26/17**, 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 **\$8,501.97**; the average weekly wage was **\$708.54**.

On the date of accident, Petitioner was **43** years of age, *single* with **1** 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 **\$154,055.50** for TTD, **\$0.00** for TPD, **\$0.00** for maintenance, and **\$0.00** for other benefits, for a total credit of **\$154,055.50**.

ORDER

The Arbitrator finds that the Petitioner has met his burden of proof that his current condition of ill-being is causally related to the 12/26/17 work accident.

Respondent shall pay Petitioner permanent and total disability benefits of \$540.23/week for life, commencing 6/28/22, as provided in Section 8(f) of the Act. Commencing on second July 15 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.

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.

Edward Lee
Signature of Arbitrator

May 6, 2024

Findings of Fact

The Petitioner was born on 10/16/74 and has a high school education with some college. Petitioner currently lives in Petersburg, IL where he has lived since 2019.

The Petitioner was employed by the Respondent as a truck driver, a position he started in September 2017. Petitioner described his normal job duties of a truck driver which included doing pre-trip checks to making sure that his truck and load is safe for the road. He would then go get his truck filled up with coal and run it up to Chicago, dump it, and bring a load of ash back. As part of his job, the Petitioner had to climb, bend, stoop, squat and lift. (AT 6-8)

On 12/26/17, the Petitioner injured his right knee while shoveling coal. The Petitioner immediately noticed a lot of pain and swelling in his right knee and reported the incident to his employer the following morning. (AT 9-10)

The Petitioner initially presented to the Orthopedic Center of Illinois and saw Dr. Christopher Graves on 12/28/17. Petitioner presented for an initial consultation regarding right knee pain and provided a consistent history of his 12/26/17 injury while shoveling coal. An examination was conducted and the Petitioner was diagnosed with right knee pain. It was recommended the Petitioner would initially treat conservatively and he was issued work restrictions of no lifting over 20 pounds and no squatting or repetitive motions with the right leg. Dr. Graves recommended physical therapy. (PX 2, p 5-8)

Prior to 12/6/17 the Petitioner did not have any pain, had never sought medical care, had never taken any medications, or been on any work restrictions for his right knee. Prior to 12/26/17 the Petitioner was able to work his job as a truck driver full duty without any issues in his right knee. (AT 11-12)

On 1/4/18, the Petitioner had his initial physical therapy evaluation at Midwest Rehabilitation. (PX 2, p 9-11)

Petitioner followed up with Dr. Graves on 1/9/18. Physical therapy had not provided any relief and at that time Dr. Graves recommended the Petitioner have an MRI and maintained the same work restrictions as previously issued. (PX 2, p 18-20)

On 1/22/18, the Petitioner had an MRI of his right knee. This study revealed a linear tear to the inferior apical surface posterior horn and posterior aspect body medial meniscus, small joint effusion. (PX 3, p 2)

The Petitioner followed up with Dr. Graves on 1/30/18. The MRI was reviewed with the Petitioner and it was recommended that he stop physical therapy. Dr. Graves at that time referred the Petitioner to be evaluated by a sports medicine expert within his practice, either Dr. Herrin or Dr. Romanelli. Petitioner was also continued on light duty restrictions of no twisting, no repetitive bending of the right knee, no kneeling or squatting, no climbing of stairs or ladders, no lifting over 20 pounds, no pushing or pulling over 20 pounds. (PX 2, p 31-33)

The Petitioner initially saw Dr. Rodney Herrin on 2/14/18. The Petitioner provided a consistent history of his accident. Dr. Herrin performed an examination and reviewed the Petitioner's MRI. At this visit, Dr. Herrin administered an intraarticular steroid injection for both diagnostic and therapeutic purposes into the Petitioner's right knee. Dr. Herrin diagnosed right knee pain, complex tear of the medial meniscus of the right knee as current injury and **work related injury**. Petitioner was continued on his light duty restrictions. (PX 2, p 38-41)

The Petitioner next saw Dr. Herrin on 3/8/18. The injection performed at the previous visit did not provide any significant relief. As such, Dr. Herrin recommended that the Petitioner proceed with a right knee arthroscopic procedure for treatment of his meniscal pathology. (PX 2, p 43-45)

On 4/11/18, Dr. Herrin performed a right knee arthroscopy with arthroscopically assisted partial medial meniscectomy. Preoperative diagnosis was status post injury to the right knee with probable medial meniscal tear. Postoperative diagnosis was status post injury to the right knee with a complex tear of the body and posterior horn of the medial meniscus. The Petitioner was off of work following his surgery. (PX 2, p 50-54)

The Petitioner followed up with Dr. Herrin postoperatively on 4/23/18. At this time, Dr. Herrin ordered the Petitioner to begin physical therapy and maintained his off work status. (PX 2, p 56-59)

The Petitioner began postoperative physical therapy at Midwest Rehabilitation on 5/8/18. (PX 2, p 63-65)

The Petitioner followed up with Dr. Herrin on 5/10/18. It was recommended that the Petitioner continue to participate in physical therapy. Petitioner was also issued light duty restrictions of sit down work only. (PX 2, p 76-81)

Petitioner next saw Dr. Herrin on 5/31/18. The Petitioner had been participating in physical therapy which was providing relief. Petitioner did note significant progress with therapy. Given the Petitioner's progression, Dr. Herrin allowed the Petitioner to return to work full duty as of 6/7/18. Petitioner was to complete the remaining few weeks of physical therapy. (PX 2, p 104-108)

Petitioner followed up with Dr. Herrin on 6/28/18. Petitioner did report to Dr. Herrin that his job duties had caused increased pain and swelling in his right knee. Despite this, Dr. Herrin continued the Petitioner at full duty and instructed him to follow up in four weeks. (PX 2, p 123-126)

Petitioner followed up with Dr. Herrin on 7/23/18. It was noted the Petitioner had been doing his full duties at work but still noted occasional aching and throbbing in the knee. Petitioner also had popping anteriorly and laterally. At this point Dr. Herrin released the Petitioner from his care. (PX 2, p 129-132)

The Petitioner testified that he did return to work in June of 2018. When the Petitioner returned to work full duty, he noticed that his knee pain returned and it continued to get more aggravated and hurt worse. The Petitioner specifically noticed increased complaints when he returned to work in June 2018 when he would perform tasks that required climbing and scooping. Due to the increased and ongoing complaints in his right knee, the Petitioner returned to the Orthopedic Center of Illinois in October 2018. (AT 16-17)

The Petitioner saw PA Robert Whitman on 10/8/18. Petitioner described the continued complaints of pain in his right knee. An examination was performed and it was recommended that the Petitioner continue a home exercise program and treat conservatively for the time being. (PX 2, p 133-136)

The Petitioner then saw Dr. Herrin in follow up on 12/10/18. Petitioner reported to Dr. Herrin that his knee pain continues to worsen with activity. Petitioner noted difficulty with stairs and noted a popping sensation. Dr. Herrin reviewed the arthroscopic photos from the initial procedure and noted that there was evidence of a chondral injury of the central portion of the patella at the time of the initial arthroscopic surgery. Dr. Herrin diagnosed a complex tear of the lateral meniscus of the right knee, complex tear of the medial meniscus of the right knee, pain of the right patellofemoral joint, right knee pain, **work related injury. Dr. Herrin also noted that it does appear that the Petitioner's current complaints are still most likely related to his work injury.** It was recommended that the Petitioner reengage in physical therapy. There was also a discussion that if an additional surgery was needed that a cartilage biopsy for a potential MACI procedure would be appropriate. (PX 2, p 137-140)

The Petitioner restarted physical therapy at Midwest Rehabilitation on 1/15/19. (PX 2, p 142-145)

The Petitioner next saw Dr. Herrin on 2/11/19. The Petitioner continued to complain of right knee pain worsening with activity, especially at work. At this time, Dr. Herrin recommended that the Petitioner undergo viscosupplementation injections into his right knee. Dr. Herrin would seek approval of the viscosupplementation injections from the workers' compensation carrier. (PX 2, p 156-158)

On 3/7/19, Dr. Herrin saw the Petitioner and continued to recommend the viscosupplementation injections and would continue to seek approval from the workers' compensation carrier who had not authorized those up to this point. The Petitioner was also taken off work at this time. (PX 2, p 161-162)

Petitioner underwent his first viscosupplementation injection on 3/21/19, performed by Dr. Herrin. (PX 2, p 163-164)

On 4/22/19, Petitioner again saw Dr. Herrin and at this time it was recommended the Petitioner have an updated MRI of his right knee. (PX 2, p 165-167)

The Petitioner underwent the recommended right knee MRI at Springfield Memorial Hospital on 5/11/19. This study revealed the body of the medial meniscus is diminutive in size and slightly irregular, likely related to postsurgical change, chondromalacia patella with a small cartilage tear involving the patellar apex, and mild chondrosis and joint space narrowing in the medial compartment. (PX 7, p 1)

The Petitioner followed up with Dr. Herrin on 5/29/19. Dr. Herrin reviewed the updated MRI at which time he recommended proceeding with a right knee arthroscopy with debridement of the patella with possible biopsy of the articular cartilage for future MACI procedure potentially. (PX 2, p 168-169)

Dr. Herrin performed the second right knee surgery on 6/28/19. This was a right knee arthroscopy with arthroscopic debridement of the chondral flap as well as debridement of the surrounding area of the patella to accomplish a chondroplasty as well as obtainment of articular cartilage for biopsy. Postoperative diagnosis was status post injury to the right knee with unstable chondral flap of the central portion of the patella. The Petitioner was kept off of work at this time. (PX 2, p 170-172)

Petitioner followed up with Dr. Herrin on 7/11/19. Petitioner was kept off of work and was instructed to follow up in one month if symptoms persist. In the patellofemoral joint, he maybe considered a MACI procedure. (PX 2, p 173-174)

On 8/14/19, Dr. Herrin recommended the Petitioner begin postoperative physical therapy. Petitioner was kept off of work. (PX 2, p 175-176)

The Petitioner began postoperative physical therapy on 9/16/19. (PX 2, p 177-179)

On 9/19/19, the Petitioner followed up with Dr. Herrin. Petitioner continued to note problems with swelling of the knee. Dr. Herrin administered cortisone injection for pain relief and issued light duty restrictions. (PX 2, p 180-181)

Dr. Herrin next saw the Petitioner on 10/17/19. The injection which was previously administered did not provide any significant relief. Dr. Herrin discussed performing additional viscosupplementation injections and potentially having the Petitioner seek out a second opinion. (PX 2, p 188-189)

The Petitioner last saw Dr. Herrin on 12/30/19. At this time, given the Petitioner's ongoing complaints and lack of success, Dr. Herrin recommended the Petitioner proceed with obtaining a second opinion with another surgeon. (PX 2, p 190-192)

The Petitioner then sought a second opinion with Dr. Brian Cole at Midwest Orthopedics at Rush in Chicago. Dr. Cole took a history and performed a physical examination of the Petitioner. Dr. Cole diagnosed right knee chondral defect central lateral patella. Dr. Cole recommended the Petitioner obtaining an updated MRI to evaluate the subchondral bone to determine if treatment surgically would be indicated and whether that would be the MACI

transplant of the patella along with tibial tubercle osteotomy versus a osteochondral allograft of the patella also would be along with tibial tubercle osteotomy. Dr. Cole issued light duty restrictions of a sitting job with minimal walking. (PX 5, p 27-34) **Dr. Cole also noted that the Petitioner's current condition, diagnosis, and treatment is causally related to his work accident of 12/26/17.**

Petitioner underwent the recommended MRI of his right knee on 3/9/20. This study revealed medial meniscus surgery with residual tear, and associated effusion and baker's cyst. (PX 3, 3)

The Petitioner saw Dr. Cole in follow up 7/2/20. The MRI was reviewed at which time Dr. Cole recommended the Petitioner undergo the MACI procedure. (PX 5, p 36-38)

On 1/13/21, Dr. Cole performed a right knee arthroscopy, medial meniscectomy, right knee tibial tubercle osteotomy and right knee MACI or autologous chondrocyte implantation patella. Postoperative diagnosis was right knee patellar defect 18x14 with increased patellofemoral load and medial meniscal tear. (PX 5, p 144-146) Petitioner was off of work following the MACI procedure.

On 1/25/21, the Petitioner had a telemedicine visit with Dr. Cole's office. It was recommended the Petitioner begin physical therapy at this time and he was kept off work. (PX 5, p 70, 95)

The Petitioner did begin postoperative physical therapy at PhysioTherapy Professionals on 2/3/21. (PX 6, p 107-109)

Petitioner followed up with Dr. Cole on 3/4/21. Petitioner's physical examination was overall impressive with no concerns. Dr. Cole recommended the Petitioner return to work light duty. Light duty restrictions were issued for sedentary work. No squatting, kneeling, climbing and limited lifting, pushing, and pulling to 20 pounds or less for the next few months. (PX 5, p 87-91)

The Petitioner then an additional telemedicine visit with Dr. Cole's office on 4/12/21. The Petitioner expressed concern regarding swelling in his leg and knee. As such, a doppler ultrasound was ordered. The Petitioner was also instructed to continue his light duty restrictions of sedentary desk job only. (PX 5, p 57, 92)

The Petitioner again saw Dr. Cole on 5/27/21. The Petitioner had been participating in physical therapy as recommended. Dr. Cole instructed the Petitioner to continue physical therapy. Dr. Cole also ordered a Functional Capacity Evaluation and instructed the Petitioner to maintain his light duty restrictions. (PX 5, p 48-50, 89)

The Petitioner underwent the recommended Functional Capacity Evaluation at PhysioTherapy Professionals on 7/29/21. The Petitioner demonstrated abilities to perform in the medium work classification determined by the physical demand definitions from the Dictionary

of Occupational Titles. It was determined that the Petitioner was able to perform a frequent lift of at least 20 pounds from all levels tested. Petitioner gave a valid and consistent effort and it was determined that the results of the study were consistent with the Petitioner's objective and subjective findings. (PX 6, p 118-126)

The Petitioner followed up with Dr. Cole on 8/16/21. The Petitioner reported that following his Functional Capacity Evaluation he feels as though it reagravated his right knee. Since the FCE the Petitioner has noted increased swelling, pain and limitations. At this visit, Dr. Cole administered an intraarticular cortisone injection in effort to calm down the Petitioner's right knee symptoms. It was noted if the symptoms persist that an updated MRI would be recommended. The Petitioner was maintained on his light duty restrictions. (PX 5, p 108, 122)

The Petitioner last saw Dr. Cole on 11/4/21. The Petitioner continued to report a significant amount of pain in his right knee. Pain was located primarily around the lateral joint as well as posteriorly. At this time, Dr. Cole released the Petitioner at maximum medical improvement and issued permanent work restrictions. Petitioner's permanent work restrictions included a sitting job with minimal walking, minimal bending or stooping, no commercial driving, minimal work involving the right leg, limited driving, limited walking, no squatting, no kneeling, no climbing. (PX 5, p 131, 141-143)

The Petitioner described the condition of his knee as of the time of trial. Petitioner testified that his knee is always stiff and always feels swollen. It effects his daily life in many aspects. The Petitioner was an active person before the accident and now lives a primarily sedentary lifestyle. (AT 25-26)

Subsequent to the Petitioner's release by Dr. Cole with permanent restrictions. The Petitioner did request that the Respondent provide a job within the permanent restrictions issued. The Respondent did not provide a job for the Petitioner within his permanent restrictions. The Petitioner also requested vocational rehabilitation to begin if a job within his permanent restrictions was not going to be offered. (AT 26-27; PX 13)

The Respondent did hire Mary Andrews to provide vocational services to the Petitioner, which began in February 2022. The Petitioner worked with Ms. Andrews from February 2022 until the time Ms. Andrews retired in November 2023. Petitioner worked with her during that entire 21 month period. Petitioner testified that he gave a good faith effort when working with Ms. Andrews. Petitioner made himself available for a full time job search as required. Petitioner submitted the job applications that Ms. Andrews asked him to submit. Petitioner believed that he averaged about four job applications per week. The Petitioner testified that Ms. Andrews did not require him to do anything more as far as job as job applications than the four per week that submitted. Petitioner testified that if Ms. Andrews had asked him to submit more weekly applications that he would have. (AT 27-28)

The Petitioner testified that he is unable to go back to any jobs that he had previously held for which he may have transferable skills for. This included jobs involving commercial driving, hanging drywall, painting, deburring and/or sandblasting. The Petitioner does not believe that he is physically capable of doing any of those types of jobs at the present time given the condition of his right knee. The Petitioner no longer has a CDL. (AT 29-31)

The Petitioner also has other significant health issues that have affected his ability to return to the work force. These health issues include tremors, COPD, congestive heart failure, A-fib, anxiety, IBS, pancreatitis, as well as memory issues and sleep apnea. Petitioner testified that these health issues affect him horribly on a day to day basis. Petitioner testified that these did affect his job search efforts but more importantly would affect his ability to hold down a job. (AT 32)

Petitioner also testified that he did take a medical terminology course at Lincoln Land Community College at the recommendation of Ms. Andrews. The Petitioner had no objection to taking and participating in that course. The Petitioner described the course as essentially learning medical terms like arthritis, inflammation and what those words mean. The Petitioner described this course as essentially a kind of vocabulary class. The Petitioner did not have to do any typing for that class and this was not a medical transcription course. Petitioner testified that he has minimal experience with computers. Petitioner described his current computer skills as almost nonexistent with very limited ability at typing. The Petitioner did work on his typing skills throughout the time period that he was working with Ms. Andrews. (AT 33-35)

The Petitioner also testified regarding some of the interviews that he had with prospective employers while working with Ms. Andrews. Several of the interviews that he had were with medical providers who required that the Petitioner be vaccinated in order to be hired. The Petitioner is not vaccinated and does not wish to be vaccinated. The Petitioner testified that his reason not to be vaccinated had nothing to do with his case or with his desire to get back into the workforce. The Petitioner made the decision not to become vaccinated shortly after the vaccination was released to the public in early 2021. The Petitioner's decision to not be vaccinated was made in early 2021 and he did not begin working with Ms. Andrews for vocational purposes until February 2022. As such, the Petitioner's decision to not be vaccinated was made over a year before Ms. Andrews and vocational rehabilitation ever were a part of his workers' compensation case. (AT 35-37)

The other interviews that the Petitioner he was informed by the interviewer that he was either not qualified for the position or that he was not a good fit for the position. In the 21 months that the Petitioner worked with Ms. Andrews, he had roughly five phone interviews. No job offers were ever made by any prospective employers while working with Ms. Andrews. Petitioner testified that in these interviews he put his best self forward and gave a good faith effort. The Petitioner was not rude or abrasive in the interviews. The Petitioner testified that he

did nothing in the interviews to intentionally not be hired by the prospective employers. (AT 39-41)

Regarding the Petitioner's effort and the Respondent's claims regarding the Petitioner's effort in vocational rehabilitation, the Petitioner testified that at no time were his maintenance benefits ever cut off because of lack of cooperation in vocational rehabilitation. (AT 67-68)

The Petitioner did apply for Social Security Disability in early 2022 and was awarded the same. The Petitioner is receiving Social Security Disability benefits as of the time of trial. The Petitioner testified that his receipt of Social Security benefits has not affected his job search efforts. The Petitioner testified that he is receiving approximately \$960.00 per month from Social Security which is not enough to live on. The Petitioner testified that prior to his accident he had been consistently in the work force his entire life. (AT 43-44)

Kristen Hardy also testified at the time of trial. Ms. Hardy is the Petitioner's fiancé and caregiver. Ms. Hardy has been the Petitioner's caregiver since 2020. Ms. Hardy indicated that she was present in the Petitioner's meeting with Dennis Gustafson and that she did not provide any information to Mr. Gustafson directly. She simply helped the Petitioner to recall any specific dates or medications that he was taking during the questioning of Mr. Gustafson to the Petitioner. (AT 70-71)

The Petitioner hired Dennis Gustafson as an expert witness on the subject of vocational rehabilitation. Mr. Gustafson's deposition was taken on 4/12/23. Mr. Gustafson is a vocational counselor consultant, a position he has held for 48 years. He has a Master of Science degree in counseling and psychology and has been working as a vocational rehabilitation counselor and evaluator for 48 years. He has also been a certified rehabilitation counselor since 1980. He has served as a vocational expert for the Social Security Administration for 34 years. (PX 9, p 9-10)

Mr. Gustafson met with the Petitioner to perform a vocational assessment on 5/11/22. Mr. Gustafson took an extensive history regarding the Petitioner's education and work background. Mr. Gustafson also described his process when performing a vocational assessment with an individual such as the Petitioner. In addition to obtaining an education and work history from the Petitioner, he also obtained relative medical information including the surgeries that the Petitioner had underwent, the Functional Capacity Evaluation that had been performed, as well as the permanent restrictions issued by Dr. Cole. Mr. Gustafson testified that it would be very difficult for the Petitioner to succeed even in an extensive and hard fought job search to find employment based upon his knee condition alone. When also taking into account his work background, educational background, and lack of transferrable skills, Mr. Gustafson opined that even a major job search effort would probably not result in obtaining employment. (PX 9, p 26-27) Mr. Gustafson opined that the Petitioner would not qualify for sedentary positions and that it would be very difficult for him to succeed in a job search even only addressing his residual functional capabilities for his right knee. (PX 9, p 28) Mr. Gustafson concluded that taking the totality of all factors in this case that the Petitioner is not employable. (PX 9, p 30) Mr. Gustafson

testified that there is no stable labor market even only when looking at the Petitioner's knee. (PX 9, p 38-39) Mr. Gustafson noted that the Petitioner is unable to return to his original position with the Respondent and given his work history the Petitioner has developed no transferrable skills to sedentary employment which is the level in which his permanent restrictions from Dr. Cole leave him.

The Petitioner also hired Mr. Ed Steffan to perform a vocational evaluation and rehabilitation plan for the Petitioner. Mr. Steffan is a vocational rehabilitation counselor and has held that position since 1981. Mr. Steffan began his career placing individuals with disabilities in gainful employment. He has a Bachelor's degree in psychology and a Master's degree in rehabilitation counseling. Mr. Steffan is also a licensed professional counselor in the State of Illinois. (PX 10, p 6-9)

Mr. Steffan was hired to perform a vocational assessment and a transferrable skills analysis for the Petitioner. Mr. Steffan performed his initial evaluation with the Petitioner over the phone on 11/1/22. Mr. Steffan spent a little over 2 hours on the phone with the Petitioner. (PX 10, p 10) Mr. Steffan testified that his vocational assessment is done to evaluate and obtain information related to the Petitioner's education, work history and the type of skills they may have acquired. He reviews medical records provided to identify available capacities for work including Functional Capacity Evaluations and other relevant documents. At the conclusion of Mr. Steffan's meeting with the Petitioner he opined that any of the numerous positions identified with the Petitioner's transferrable skills do not coincide with his local labor market and require physical capabilities beyond those identified by his permanent restrictions. Mr. Steffan opined that the Petitioner was not a candidate for vocational placement and there was no readily available and stable labor market for him. (PX 10, 33-34) Mr. Steffan further testified that no stable labor market exists even when only addressing the Petitioner's right knee due in part to his lack of computer and customer service skills. (PX 10, p 34)

Mr. Steffan further testified that he does know Ms. Andrews personally and finds her to be highly competent. Mr. Steffan testified that the fact that the Petitioner had worked with Mary Andrews for the length of time that he did and did not find him a job this fact only further provided that no stable labor market exists for the Petitioner. (PX 10, p 35)

Mary Andrews' evidence deposition was conducted on 2/2/23. Ms. Andrews was hired by the Respondent to provide vocational services to the Petitioner. Ms. Andrews is a rehabilitation counselor. She has a Bachelor's and Master's degree from the University of Wisconsin. Her Master's degree is in vocational rehabilitation counseling. She has been a certified rehabilitation counselor for over 30 years and is also a Licensed Clinical Professional Counselor in the State of Illinois. (RX 2, p 5-6)

Ms. Andrews testified that she believed that the Petitioner had various transferrable skills that he could use in a position within his current restrictions. (RX 2, p 8) Ms. Andrews testified that the Petitioner never ruled out retraining as evidenced by him later participating in and

passing the medical terminology course that was recommended. (RX 2, p 12) **Most importantly, Ms. Andrews testified that in terms of job skills training the Petitioner provided a valid effort in that training.** (RX 2, p 16) Ms. Andrews also testified that the Petitioner met the criteria of applying for the required 3-5 jobs per week, per the job placement plan she provided to the Petitioner. (RX 2, p 23) Despite the fact that Ms. Andrews worked with the Petitioner for a period of 21 months which did not result in any job offers, she believed that the Petitioner is employable regarding his right knee. Ms. Andrews testified that the Petitioner met the minimum requirements for the job placement plan but admitted that the Petitioner was not required to do more than the minimum and she did not ask the Petitioner to do more than the minimum. (RX 2, p 82-83) Most importantly, Ms. Andrews never testified as to whether or not a stable labor market exists for the Petitioner. In fact, Ms. Andrews could not even provide the court with a definition as to what a stable labor market is. (RX 2, p 93)

The Petitioner admitted his job search efforts that he did initially be himself and that he subsequently submitted to Ms. Andrews. (PX 14) From approximately 11/22/21 through 3/8/22, a period of 16 weeks, the Petitioner made 242 contacts with prospective employers. From 2/14/22 through 11/8/23, a period of approximately 90 weeks while the Petitioner worked with Ms. Andrews, he submitted 362 job search efforts. In addition to the job search efforts with Ms. Andrews, the Petitioner routinely met with Ms. Andrews, worked on his typing skills, and attended and passed a medical terminology course at Lincoln Land Community College. (PX 14)

The Petitioner also admitted the decision of the Social Security Administration at the time of trial as Petitioner's Exhibit 11. Administrative Law Judge John P. Mills found that the Petitioner has the residual functional capacity to perform sedentary work. Judge Mills also found that the Petitioner is unable to perform any past relevant work and that his acquired job skills do not transfer to other occupations within his residual functional capacity. Finally, Judge Mills found that considering the Petitioner's age, education, work experience, and residual functional capacity, there are no jobs that exist in significant numbers in the national economy that the Petitioner can perform. (PX 11)

Conclusions of Law

Causation

The Arbitrator finds the Petitioner has met his burden of proving that his current condition of ill-being regarding his right knee is causally related to his 12/26/17 work accident. The Petitioner clearly testified that prior to his accident he had no problems, had not sought medical care, had never taken any prescriptions and had never been placed on any work restrictions regarding his right knee. Petitioner had an accident that is undisputed, notified his employer shortly thereafter, and sought medical care for his right knee within 48 hours. The Respondent has provided no real basis for dispute regarding the issue of causal connection.

Furthermore, the Petitioner's medical records include numerous references that his condition of ill-being regarding his right knee is causally related to the work accident including the records from Dr. Graves, Dr. Herrin, and Dr. Cole. It should also be noted that the Respondent admitted into evidence at the time of trial the Independent Medical Examination Report of Dr. Lawrence Li who also agreed that a causal connection exists between the Petitioner's current condition of ill-being and his work accident.

The opinions from medical experts contained in the record as well as the chain of events support the Arbitrator's findings that the Petitioner has met his burden of proof on the issue of causal connection.

Nature and Extent

Consistent with the humane and remedial nature of the Workers' Compensation Act, the Supreme Court has found a continuing expression of legislative concern and intent that an employee who is completely disabled shall be correspondingly compensated under the Act. *Springfield Park District v. Ind. Comm.*, 49 Ill.2d 67, 273 N.E.2d 376 (1971) A person is totally disabled when he cannot perform any services except those which are so limited in quantity, dependability, or quality that there is no reasonable stable market for them. It is also well established that an employee may be rendered totally and permanently disabled for the purposes of determining workers' compensation benefits by a mental disorder as well as a physical one. *South Import Motors, Inc. v. Ind. Comm.*, 52 Ill.2d 485, 288 N.E.2d 373 (1972)

The Arbitrator finds that the Petitioner is an odd-lot perm total under Section 8(f) the Act. The only evidence that exists in the record is that a stable labor market does not exist for the Petitioner given his residual functional capacity. The Arbitrator notes the testimony of Mr. Dennis Gustafson who opined that a stable labor market does not exist for the Petitioner regarding the condition of his knee. Mr. Gustafson also testified that the Petitioner does not qualify for sedentary positions and he believed that even after a major job search effort Petitioner would not be able to locate suitable employment. This opinion is consistent with the facts in this case as Petitioner participated in a job search for over 2 years and was not able to secure employment.

Furthermore, Mr. Ed Steffan also testified that Petitioner is not even a candidate for vocational placement as there is not a readily available or stable labor market for the Petitioner. Mr. Steffan went so far as to say that the fact that Ms. Andrews, who he finds to be very competent, has not found him a job only further proves that no stable labor market exists.

Another key point is the involvement of Ms. Andrews in this case. Ms. Andrews worked with the Petitioner for a period of 21 months and at no time did she secure work for the Petitioner not were any job offers even made. Ms. Andrews testified the Petitioner provided a valid effort with job skill training and met the requirements of the job placement plan that she provided to the Petitioner. At no time did Ms. Andrews opine that a stable labor market existed.

Ms. Andrews only opined that the Petitioner was employable but never actually issued an opinion regarding whether or not a stable labor market existed for the Petitioner. Evidence that the claimant has been or is able to earn occasional wages or to perform certain useful services neither precludes a finding of total disability nor requires a finding of partial disability. For the purposes of Section 8(f), a person is totally disabled when he cannot perform any services except those for which no reasonably stable labor market exists. *E.R. Moore Co. v. Ind. Comm.*, 71 Ill.2d 353, 376 N.E.2d 206 (1978) Ms. Andrews testimony is completely insufficient to counter the opinions of Mr. Gustafson and Mr. Steffen who both testified that a stable labor market for the Petitioner does not exist. The evidence supports the opinions of Mr. Gustafson and Mr. Steffan.

The Petitioner met his burden of proving a stable labor market does not exist under an odd lot theory of permanent and total disability. As such, the burden then shifts to the Respondent to prove that a stable labor market does exist. The Arbitrator finds that no evidence exists in the record that a stable labor market exists for the Petitioner, and Respondent presented no evidence to meet the burden that shifted to Respondent once the opinions of Mr. Gustafson and Mr. Steffen were issued. The Arbitrator further finds that there is insufficient evidence that the Petitioner did not cooperate with vocational rehabilitation. The Arbitrator finds it significant in this regard that at no time did the Respondent stop paying Petitioner his maintenance benefits during the time period that he worked with Ms. Andrews and participated in vocational rehabilitation.

The preponderance of evidence supports that the Petitioner is permanently and totally disabled under an odd lot theory. As of his 6/28/22 report, Mr. Gustafson opined that a stable labor market does not exist. As such, the Respondent is ordered to pay Petitioner permanent and total disability benefits of \$540.23/week for life, commencing 6/28/22, as provided in Section 8(f) of the Act.