

ILLINOIS WORKERS' COMPENSATION COMMISSION
DECISION SIGNATURE PAGE

Case Number	18WC026010
Case Name	Augustine J Vasquez v. City of Jacksonville Illinois
Consolidated Cases	18WC002600;
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	14
Decision Issued By	Adam Hinrichs, Arbitrator

Petitioner Attorney	Stephen Kelly
Respondent Attorney	R Mark Cosimini

DATE FILED: 6/27/2024

/s/ Adam Hinrichs, Arbitrator
Signature

THE INTEREST RATE FOR THE WEEK OF JUNE 25, 2024 5.14%

STATE OF ILLINOIS)
) SS.
COUNTY OF Springfield)

<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**

Augustine Vasquez
Employee/Petitioner

Case # **18** WC **26010**

v.

Consolidated cases:

City of Jacksonville
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 **Adam Hinrichs**, Arbitrator of the Commission, in the city of **Springfield**, on **April 30, 2024**. 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: **Loss of occupation & Collateral Estoppel**

FINDINGS

On 3/4/2016, 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 \$65,305.76; the average weekly wage was \$1,233.97.

On the date of accident, Petitioner was 45 years of age, *married* with 0 dependent children.

Petitioner *has not* 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 for TTD, \$0 for TPD, \$0 for maintenance, and \$34,986.59 in other benefits, for a total credit of \$34,986.59.

ORDER

Respondent shall pay the Petitioner TTD benefits from September 19, 2017 through May 18, 2022, or 243 and 1/7 weeks, at his weekly rate of \$822.64. Respondent is entitled to a full credit for all benefits previously paid.

The Respondent shall pay permanent partial disability benefits of \$740.38/week for 175 weeks, because the injuries sustained caused a 35% loss of use to Petitioner's man as a whole, pursuant to Section 8(d)2.

Respondent shall pay Petitioner compensation that has accrued from May 18, 2022, through the date of this award, and shall pay the remainder of the award, if any, in weekly payments.

Respondent shall pay all medical charges related to this claim, for Petitioner's reasonable and necessary medical treatment, as outlined in Petitioner's Exhibit 10. Respondent shall pay all medical charges consistent with the medical fee schedule, and pursuant to Sections 8(a) and 8.2 of the Act. Respondent shall make this payment directly to Petitioner's attorney in accordance with Section 9080.20 of the Rules Governing Practice before the IWCC.

Respondent shall provide and pay for Petitioner's ongoing reasonable, necessary and related follow up psychiatric visits, medications, and EMDR.

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

June 27, 2024

FINDINGS OF FACT

Testimony of Augustine Vasquez

The Petitioner testified that he began his employment with the Respondent in 2002 as a police officer. (AT 12). The Petitioner testified that prior to being hired for the Respondent, he passed the pre-employment physical and mental exams. (AT 12). The Petitioner further testified that he began his employment as a patrol officer, and then became a school resource officer around 2015. (AT 13). The job duties of a school resource officer included breaking up juvenile fights, and addressing theft calls and security. (AT 13). The Petitioner testified that he was still considered a law enforcement officer and would be required to report to emergency calls. (AT 14).

The Petitioner testified that prior to 2016, he had not been diagnosed with, nor received medical treatment for, post-traumatic stress disorder (PTSD). (AT 14). Petitioner testified that he was able to perform his duties as a police officer without restriction up to March 2016. (AT 15).

The Petitioner testified that on March 4, 2016, he was working as a school resource officer for Jacksonville Middle School. (AT 16). Petitioner testified that he worked at the school from 7:30 a.m. to 3:30 p.m., and then worked at the Jacksonville High School basketball game starting at 6:30 p.m. (AT 16).

On March 4, 2016, Petitioner was beginning to leave the basketball game when he heard an emergency call coming over the police dispatch. Petitioner testified that the call was for a child who was not breathing. (AT 17). Petitioner testified that he was supposed to meet his wife and in-laws at a Wendy's restaurant after the game. As he was driving towards Wendy's, he again heard the call over the radio about the emergency. The Petitioner testified that there was confusion going on with dispatch about the location of the vehicle that contained the child, and that a police car and ambulance were then involved. (AT 18).

The Petitioner testified that he got on the police radio and asked his supervisor, Eric Hansell, if he would like him to respond to the scene, Hansell replied affirmatively. (AT 20). Petitioner activated his emergency lights and sirens and responded to the scene. (AT 20).

The Petitioner testified that he drove 8 to 10 miles to get to the scene, just outside Murrayville. (AT 21). Petitioner testified that while driving to the scene, Hansell advised him to let him know the location as there was still confusion as to where it was happening. (AT 22). Petitioner came up on an emergency vehicle pulled off the side of the road, which was carrying the child. The emergency vehicle advised the Petitioner to keep going towards the scene. (AT 23-24).

The Petitioner testified that when he pulled up to the scene, there were already fire trucks and an ambulance on scene. (AT 25). A collision had occurred on an overpass. (AT 25). The Petitioner testified that he exited his vehicle and walked up to a scene of a mangled police car. Petitioner testified that Scot Fitzgerald was the officer for South Jacksonville Police Department in the mangled police car, and he later died. (AT 26).

The Petitioner testified that asked what he could do to help. He was advised that they needed to set up a landing strip for the medical helicopter. The Petitioner had done that before, so he offered to do it. (AT 27). Due to fog, the helicopter could not land at the scene. (AT 28).

The Petitioner testified that he went back to Officer Fitzgerald's vehicle and he saw that he was alive and mumbling. (AT 29). Petitioner helped load Officer Fitzgerald onto the ambulance cot where he was being transported to Passavant Area Hospital. (AT 30).

Petitioner testified that he completed his tasks at the scene and then went to the hospital to check on Officer Fitzgerald. (AT 31). Petitioner testified that he watched the hospital staff work on Officer Fitzgerald and he comforted Fitzgerald's wife upon arrival. Officer Fitzgerald was eventually airlifted to Springfield. (AT 33).

The Petitioner testified that he attended Officer Fitzgerald's funeral. Petitioner further testified that he was feeling extremely sad due to losing a police brother. (AT 36). The Petitioner testified that in the weeks after the funeral, he felt sad, disappointed and helpless. (AT 37). The Petitioner testified that he was not sleeping, eating or drinking. (AT 37).

The Petitioner testified that he went back to work immediately following the accident. (AT 38). The Petitioner testified that in the months after the accident, he was having night terrors reliving the scene and had feelings of guilt. (AT 39). The Petitioner further testified that he was experiencing intrusive thoughts, sleep disturbance, and lack of motivation. (AT 40).

The Petitioner testified that while at work, he did not share any of these feelings with his co-workers due to being embarrassed and prideful. (AT 41).

The Petitioner testified that he talked to the school counselor, Kelly Capriotti about his feelings following the accident. (AT 41). The Petitioner testified that Kelly could tell he was hurting and was persistent with him to open up about the accident. (AT 42).

The Petitioner testified that for a year following the accident, his symptoms were getting worse. (AT 43). Petitioner further testified that Kelly convinced him to reach out to her husband as he could relate to what he was going through. (AT 43). After talking with Kelly's husband, the Petitioner felt he needed to seek medical treatment. (AT 43).

The Petitioner testified that he talked to Cheryl Cooper in HR about seeking medical treatment. (AT 44-45). Cheryl recommended the Petitioner seeks treatment with a counselor, Bradley Breeman. (AT 44).

The Petitioner testified that in September 2017, the school made a request that Petitioner be removed as a school resource officer and be put back on the streets as a patrol officer. (AT 48). Petitioner testified that a meeting was held with him and the chief to discuss this job change. The Petitioner's phone had belonged to the City of Jacksonville and the chief indicated that some text messages were found that seemed concerning. The Petitioner testified that the chief was worried about him and wanted him to see somebody. (AT 50).

The Petitioner testified that at that time he felt embarrassed, and agreed to get help. (AT 50). The Petitioner testified that the chief advised him to take some time off and that he would get ahold of a doctor to schedule him. (AT 51).

The Petitioner testified that the chief contacted Dr. Campion. (AT 51). Dr. Campion referred Petitioner to Dr. Shapiro as his symptoms correlated with PTSD. (AT 53).

The Petitioner testified that while treating with Dr. Shapiro, he reported experiencing symptoms of nightmares, feelings of frustration, impatient, distancing from others, easily triggered and startled. (AT 53-54). The

Petitioner testified that in September 2017, Dr. Shapiro reported that he would not be going back to work at that time and diagnosed him with chronic PTSD. (AT 55).

The Petitioner testified that in September 2018, the City of Jacksonville separated themselves from the Petitioner. (AT 58). The Petitioner testified that when Dr. Shapiro took him off work, he was required to use his sick and personal time from September 19, 2017 to February 8, 2018. (AT 58). The Petitioner testified that from February 8, 2018 through the date of termination, he was paid PEDA, full salary. (AT 59). Petitioner further testified that PEDA ended on September 8, 2018. After September 8, 2018, the Petitioner received no income. (AT 59).

The Petitioner testified that he filed for line of duty disability pension benefits. (AT 59). The Petitioner was awarded his line of duty Pension benefits at a hearing held on October 8, 2020. (AT 60).

After October 2020, the Petitioner testified that he continued medical treatment and medications for his ongoing symptoms. (AT 61).

The Petitioner testified that in January 2017, he attempted to commit suicide. (AT 62). The Petitioner further testified that he was tired of feeling hopeless. (AT 62). The Petitioner testified that he attempted a second suicide attempt later in 2017. (AT 63). The Petitioner testified that he had never had thoughts of suicide or experienced any PTSD symptoms prior to the work accident. (AT 62).

The Petitioner testified that under the recommendation of Dr. Shapiro, he attended Warriors' Ascent in Kansas City. The Petitioner testified that it is a holistic healing program designed for military and law enforcement. (AT 65).

The Petitioner testified that at the time of trial, he is still taking Sertraline, Clonidine and Gabapentin daily for his PTSD. (AT 68). The Petitioner further testified that he is still under the care of Dr. Saini and has not been released to return to work by any medical provider. (AT 68).

The Petitioner testified that he still experiences night terrors, and places a big pillow between him and his wife when they sleep, as she is fearful. (AT 71). The Petitioner further testified that he has a service dog that alerts him or his wife when he is having a night terror so to not hurt himself or his wife. (AT 71).

On cross-examination, the Petitioner testified that after the accident, he lost the feeling of happiness. (AT 98). The Petitioner further testified that prior to the injury he was a happy and sappy man, but now he feels symptoms of depression even during what would be happy times. (AT 99).

The Petitioner testified that during the 18-month period after the accident, while he was working as a school resource officer, his symptoms never went away. (AT 104).

The Petitioner testified that at the time of trial, he still experiences PTSD episodes. The Petitioner further testified that these episodes are unpredictable and can be scenes where he is reliving the accident. (AT 106-107). The Petitioner testified that he has made progress and is hopeful for the future. (AT 108).

Testimony of Rodney Cox

Rodney Cox testified that he has been employed with the Respondent for 27 years. Mr. Cox testified that since 2015, he has been the Deputy Chief (DC). (AT 111). DC Cox testified that in 2016, his job duties consisted of overseeing civilians, school resource officers, and investigators. (AT 111).

DC Cox testified that he communicated with the Petitioner about once a week regarding upcoming training, and any issues that arose at the school. (AT 112). DC Cox testified that the Petitioner did not come forward to him immediately after the accident, or in the 18-month period after, about the symptoms he was experiencing (AT 114). DC Cox testified that he was made aware about the Petitioner's mental health issues during the investigation of removing the Petitioner from the school in September 2017. (AT 117).

On cross-examination, DC Cox testified that he believes the Petitioner to be a credible and hard-working person. (AT 119). DC Cox testified that this incident in 2016 was the first time an officer was killed in the line of duty in Jacksonville and South Jacksonville. (AT 119).

Testimony of Adam Mefford

Adam Mefford testified he is currently employed by the Respondent as Chief of Police (CP), and has been since March 26, 2017. (AT 128). CP Mefford testified that on March 4, 2016, he was employed by the Respondent as Lieutenant of Investigations. (AT 128).

CP Mefford testified that the protocol for reporting an injury is that the injury is to be reported immediately to the nearest supervisor. (AT 131). CP Mefford testified that prior to September 2017, the Petitioner had not mentioned any mental health issues he was having to him. (AT 132). CP Mefford testified that in September 2017, he received a call from the superintendent of the school requesting a meeting to discuss allegations against the Petitioner (AT 133).

CP Mefford testified that an investigation took place and it was determined that the Petitioner would be removed from the school resource officer position. (AT 135).

CP Mefford testified that during the investigation, texts were revealed and indicated that Petitioner was having mental health issues (AT 137). Mefford testified that he and the Petitioner had a discussion about his mental health at that time, and Mefford suggested Petitioner take time off in an effort to help his mental health. (AT 138-139).

CP Mefford testified that he called the police psychologist, Dr. Champion, about Petitioner's mental health issues. Dr. Champion referred Petitioner to Dr. Shapiro for further evaluation. (AT 140). CP Mefford testified that he would receive off work notes from Dr. Shapiro's office while Petitioner was treating there. (AT 143).

On cross-examination, CP Mefford testified that the Petitioner is a credible person. (AT 146). Mefford testified that the accident in question was a traumatic and tragic event involving police officers. (AT 146-147).

CP Mefford testified that the text messages he encountered were alarming enough to contact Dr. Champion. (AT 148). Mefford confirmed that while Petitioner was treating with Dr. Shapiro, he was not released back to work as a police officer. (AT 148).

Medical Treatment, Section 12 Exams, and Pension Disability Hearing

The Petitioner presented to Bradley Breneman LCSW (Licensed Clinical Social Worker) at Memorial Counseling Associates for sessions from January 16, 2017 to June 12, 2017. (PX 16)

The Petitioner presented to Dr. Larry Shapiro, Ph.D., at St. Louis Behavioral Health for an initial evaluation on September 14, 2017. Dr. Shapiro diagnosed the Petitioner with Post-Traumatic Stress Disorder (PTSD). Dr. Shapiro referred Petitioner to Dr. Sindhura Saini for psychiatric evaluation. (PX 6, p. 318-319).

On September 19, 2017, Dr. Saini noted a history of Petitioner being at the scene when another officer died in May 2016. He noted Petitioner complained of intrusive thoughts of horrific events Petitioner had in the past including seeing a neighbor's son hang himself and holding a kid's brains in his hands. Petitioner further reported that in the summers when not working as a school resource officer, he feels more vigilant. Dr. Saini diagnosed PTSD, and prescribed medication and psychotherapy. (PX 6, p. 297-298)

Petitioner continued to follow up with Dr. Shapiro and Dr. Saini, with ongoing complaints, but with signs of improvement over time with the treatment and medication. (PX 6).

Dr. Shapiro wrote a letter to Petitioner's prior attorney, John Boshardy, indicating Petitioner's diagnosis of PTSD. Dr. Shapiro noted there was no agreed upon timeline for the resolution of PTSD symptoms in the literature. Dr. Shapiro could not make a prediction as to if or when Petitioner may return to his job duties as a police officer. (PX 22, p. 1500)

On September 27, 2018, the Petitioner presented to Dr. Stephen Peterson, M.D., for a Section 12 examination requested by the Respondent. The Petitioner provided a history of the work accident and his symptoms. Dr. Peterson diagnosed the Petitioner with PTSD, an adjustment disorder with mixed disturbance of emotions and conduct. Dr. Peterson recommended the Petitioner undergo trauma focused cognitive processing therapy. Dr. Peterson found that the Petitioner's diagnoses were causally related to the accident of March 4, 2016 and opined that Petitioner could not return to work as a police officer. (PX 23).

On January 21, 2019, Dr. Shapiro wrote a letter to Petitioner indicating that he could engage in low stress part-time work, which would be beneficial to Petitioner's mental health. Dr. Shapiro wrote that Petitioner could not return to work in law enforcement. (PX 6, p. 121)

On October 8, 2020, the Jacksonville Police Pension Board found Petitioner to be entitled to a disability pension as a consequence of his PTSD related to the March 4, 2016 incident, which prevented Petitioner from performing the functions of a Police Officer. (PX 18, p. 1193)

On May 18, 2022, the Petitioner presented to Dr. David Fletcher, M.D., for a Section 12 examination requested by Petitioner's counsel. The Petitioner provided a history of the work accident and his symptoms. Dr. Fletcher diagnosed the Petitioner with PTSD and major depression. Dr. Fletcher opined that the traumatic event of March 4, 2016 was the triggering event for Petitioner's PTSD. Dr. Fletcher opined that Petitioner was nearing MMI, recommended a trial of Eye Movement Desensitization and Reprocessing (EMDR), opined that Petitioner was not disabled from all work, but was disabled from working as a police officer. (PX 3).

On March 30, 2023, the Petitioner presented to Dr. Lauren Marks, M.D., for a second Section 12 examination at the request of the Respondent. The Petitioner provided a history of the work accident and his symptoms. Dr.

Marks reviewed the medical records in this case. Dr. Marks found that the Petitioner had received reasonable and necessary medical treatment from his providers. Dr. Marks diagnosed the Petitioner with PTSD, found that he had reached MMI, and recommended that he continue to take his medications. Dr. Marks opined that the Petitioner's diagnosis of PTSD is a direct result of the traumatic event on March 4, 2016. (PX 2).

Dr. Philip Pan Testimony

Dr. Pan testified during an evidence deposition on August 6, 2021. Dr. Pan testified that he examined the Petitioner at the request of the Pension board. Dr. Pan testified that he reviewed the medical records provided to him and examined the Petitioner. Dr. Pan diagnosed the Petitioner with PTSD as a consequence of the triggering event at work in March 2016. (PX 9, p. 474).

Dr. Pan testified that with a diagnosis of PTSD, it is not unusual that symptoms develop gradually. In fact, Dr. Pan further testified that PTSD symptoms generally begin or get worse some time after the actual trauma. (PX 9, p. 30-31)

Dr. Pan testified that while Petitioner had other events occur after the March 2016 incident, those would be considered narcissistic injuries and would not lead to a PTSD diagnosis. (PX 9, p. 508). Dr. Pan testified that the Petitioner could not return to work as a police officer. (PX 9, p. 479).

Dr. Lawrence Jeckel Testimony

Dr. Jeckel testified during an evidence deposition on August 4, 2021. Dr. Jeckel testified that he is board certified in psychiatry, psychoanalysis, and forensic psychiatry. Dr. Jeckel examined the Petitioner at the request of the pension board. (PX 7).

Dr. Jeckel testified that he performed a thorough investigation of Petitioner's "experiences throughout the trauma, his lifestyle...medications...family problems, marital problems. We try to cover everything of the person's experience" as well as a thorough psychiatric evaluation, making sure there is nothing for Petitioner to hide. (PX 7, p. 328). Dr. Jeckel testified that he diagnosed the Petitioner with PTSD which was directly related to the incident on March 4, 2016. (PX 7, p. 345-348).

Dr. Jeckel testified that all medical treatment and medications Petitioner had received were reasonable, necessary and related to his PTSD diagnosis. (PX 7, p. 349) Dr. Jeckel further testified that the Petitioner was not able to return to work as police officer at the time he signed a certificate stating the same for the pension board, but he could not predict if Petitioner may one day be able to return if he makes progress in his treatment. (PX 7, 350-351).

Dr. Jeckel testified that PTSD can take time to manifest, noting Iraq War veterans as an example, and described the experience of PTSD as a psychological shattering, and the recovery as a putting back together of the pieces. (PX 7, p. 356-357, 366-367).

Dr. David Fletcher Testimony

Dr. Fletcher testified during an evidence deposition on September 14, 2022. Dr. Fletcher testified consistent with his report, finding Petitioner's PTSD and major depression related to the March 2016 triggering incident. (PX 8, p. 400, 406). Dr. Fletcher testified that PTSD is usually "insidious and gradual" after a triggering event. (PX 7, p. 400).

Dr. Fletcher testified that the Petitioner could not return to work as a police officer but could return to gainful employment. (PX 8, p. 410). Dr. Fletcher further testified that the care and treatment the Petitioner has received for his PTSD diagnosis is reasonable, necessary and causally related to the incident of March 4, 2016, and again recommended Petitioner undergo a course of EMDR. (PX 8, p. 409-410).

CONCLUSIONS OF LAW

ISSUE (E): Was timely notice of the accident given to Respondent?

The threshold issue in this matter is notice. For a workplace accident to be compensable, an employee must provide notice to the employer. Proper notice should provide the place of accident and approximate date. Notice must be given as soon as is practicable, but no later than 45 days after the accident. A claimant is barred from making a claim based on lack of notice in cases in which no notice at all is given.

The Act further states that: “[n]o defect or inaccuracy of such notice shall be a bar to the maintenance of proceedings on arbitration or otherwise by the employee unless the employer proves that he is unduly prejudiced in such proceedings by such defect or inaccuracy.” Moreover, the purpose of the notice requirement of the Act is to enable an employer to investigate the alleged accident. It has also been held by the Courts that the notice requirement is met when the employer possesses known facts related to the accident. *Tolbert v Illinois Workers Compensation Commission*, 11 N. E. 3d 453, (4th District 2014).

Typically, notice issues are liberally construed in the Petitioner’s favor so as not to be a trap for the uninformed employee who is not sure if a condition is work-related, or the employee who continues working with the hope that the injury will go away.

The facts show that the Respondent was well aware of the incident Petitioner experienced. CP Mefford confirmed that he was aware that multiple officers from his department responded to this fatal accident, including the Petitioner. Moreover, the Petitioner credibly testified that he was asked if he needed some time off immediately following the accident. (AT 34).

The Respondent has not been prejudiced, as they have had the chance to fully investigate the Petitioner’s claim.

The Respondent in this case had knowledge of the incident that all of the treating physicians and examining physicians agree was the triggering event of Petitioner’s PTSD. The Respondent acknowledged they were aware of this accident occurring on March 4, 2016. The Respondent acknowledged that the Petitioner was at the scene of the accident on March 4, 2016. The Respondent was able to investigate the accident thoroughly at the time, and later when Petitioner sought medical care related to the accident.

The Arbitrator finds that notice of the accident was given to Respondent.

Issue (C): Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent? & Issue (F): Is Petitioner's current condition of ill-being causally related to the injury?

A “mental-mental” injury occurs when there is no physical trauma. The standard for compensability of a “mental-mental” claim is if the psychological injuries are caused by a sudden severe emotional shock traceable to a definite time, place and cause, even though no physical trauma or injury was sustained. *Pathfinder Co. v. Industrial Comm’n*, 62 Ill. 2d 556 (1976). Additionally, recovery for non-traumatically induced mental disease is limited to

those employees who can establish that: (1) The mental disorder arose in a situation of greater dimensions than the day-to-day emotional strain and tension which all employees must experience; (2) The conditions exist in reality from an objective standpoint; and (3) The employment conditions, when compared with the non-employment conditions were the major contributing cause of the mental disorder. *Runion v. Industrial Commission*, 245 Ill.App.3d 470 (5th Dist. 1993).

On March 4, 2016, there was a catastrophic accident that resulted in the death of Officer Fitzgerald. The Petitioner's un rebutted and credible testimony establishes that he arrived at the scene while working as a police officer for the Respondent immediately after the fatal accident occurred. Petitioner saw officer Fitzgerald's dying body in the wreckage of the squad car. Moreover, Petitioner helped transport Officer Fitzgerald from the wreckage to the ambulance. The record reflects that Officer Fitzgerald's was the only police officer killed during Petitioner's time on the police force.

All of the treating doctors and examining physicians opined that Petitioner's PTSD is related to the incident of March 4, 2016.

The Petitioner has established that this situation was of a greater dimension of emotional strain for a police officer, that the conditions were objectively extreme, and that this incident was the major cause of his mental disorder.

The Arbitrator finds that the Petitioner has met his burden and proven that he sustained an accident that arose out of and in the course of the employment by the Respondent on March 4, 2016.

The Arbitrator also finds that the Petitioner has met his burden and his current condition of ill-being is causally related to his work injury.

Issue (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?

Incorporating the above, all of the treating doctors and examining physicians opined that the medical expenses incurred by the Petitioner for treatment for his PTSD are related to the incident of March 4, 2016.

The Arbitrator finds the medical care Petitioner received related to this claim to be reasonable and necessary. Respondent shall pay the reasonable, necessary and related medical expenses contained in Petitioner's exhibit 10, and shall have credit for any amounts paid through its group carrier. Respondent shall indemnify and hold Petitioner harmless from any claims arising out of the expenses for which it claims credit.

The record reflects that Petitioner requires ongoing follow up psychiatric office visits, a course of EMDR, and medication related to his PTSD. Respondent shall provide and pay for this continuing reasonable and necessary medical care related to Petitioner's PTSD.

ISSUE (K): What temporary benefits are in dispute? TTD.

Incorporating the above, Respondent removed the Petitioner from his work duties on September 19, 2017. This is the time frame that the Respondent directed the Petitioner to seek care from Dr. Shapiro in Saint Louis.

From September 19th, 2017, through September 27, 2018 the Petitioner was under active medical care and instructed not to return to work by his treating physicians. On September 27, 2018 the Petitioner had an

examination with Dr. Peterson at Respondent's request. Dr. Peterson opined that due to the Petitioners PTSD, the Petitioner was unable to return to his police duties at that time.

On January 21, 2019, Dr. Shapiro wrote a letter to Petitioner indicating that he could engage in low stress part-time work, which would be beneficial to Petitioner's mental health. Dr. Shapiro wrote that Petitioner could not return to work in law enforcement. There is no evidence Petitioner sought part-time employment.

On May 10, 2019, the Petitioner was examined by Dr. Jeckel at Respondent's request. Dr. Jeckel opined that Petitioner could not return to work as a police officer and that further medical care in form of counseling would be beneficial.

On October 8, 2020, the Jacksonville Police Pension Board found Petitioner to be entitled to a disability pension as a consequence of his PTSD related to the March 4, 2016, incident which prevented Petitioner from performing the functions of a Police Officer. (PX 18, p. 1193)

On May 18, 2022, Petitioner underwent an examination with Dr. David Fletcher at his attorney's request. Dr. Fletcher opined that Petitioner was capable of returning to work with the restriction of not returning as a police officer or first responder. Petitioner offered no evidence that he has sought employment in any capacity since his duty disability award. The record reflects that Petitioner has voluntarily removed himself from the labor force.

Given this, the Respondent shall pay the Petitioner TTD benefits from September 19, 2017 through May 18 2022, or 243 and 1/7 weeks.

ISSUE (M): Should penalties or fees be imposed upon Respondent?

The Arbitrator finds that Respondent's dispute regarding the threshold issue of notice was not unreasonable or vexatious. The Arbitrator declines to award penalties.

ISSUE L: What is the nature and extent of the injury?

With regard to the issue of nature and extent, the Arbitrator notes that pursuant to Section 8.1b of the Act, for accidental injuries occurring after September 1, 2011, permanent partial disability shall be established using five enumerated criteria, with no single factor being the sole determinant of disability. Per 820 ILCS 305/8.1b(b), the criteria to be considered are as follows: (i) the reported level of impairment pursuant to subsection (a) [AMA "Guides to the Evaluation of Permanent Impairment"]; (ii) the occupation of the injured employee; (iii) the age of the employee at the time of the injury; (iv) the employee's future earning capacity; and (v) evidence of disability corroborated by the treating medical records. Applying this, the Arbitrator finds as follows:

With regard to Sec. 8.1(b) (i): No impairment rating is contained in the record. The Arbitrator has considered this factor and lends it no weight.

With regard to Sec. 8.1(b) (ii): The Petitioner was employed by the Respondent as a police officer. The medical evidence demonstrates Petitioner cannot return to work as a police officer, but he is not prevented from returning to work in another capacity outside of a first responder role. Petitioner testified he has not made any attempt to return to work since being released to do so by his treating and examining physicians. The Arbitrator has considered and lends significant weight to this factor.

With regard to Sec. 8.1(b) (iii); Petitioner was 45 years old at the time of the injury. The Arbitrator has considered this factor and lends it some weight.

With regard to Sec. 8.1(b) (iv); Petitioner was granted his Pension disability benefits, and has not made an attempt to return to work in any capacity since being released to do by his treating and examining physicians. The Petitioner is highly educated, and during his testimony regarding the Warrior's Ascent group, it was clear that Petitioner has the requisite motivation and capacity to help others who have faced challenging mental circumstances. The Arbitrator has considered and lends this factor some weight.

With regard to Sec 8.1(b) (v); Petitioner was diagnosed with PTSD and depression as a direct result of the work injury. The Petitioner testified that at the time of trial, he is still taking Sertraline, Clonidine and Gabapentin daily for his chronic PTSD. (AT 68). The Petitioner testified that he still experiences night terrors. The Petitioner testified that at the time of trial, he still experiences PTSD episodes. The Petitioner testified that he has made progress and is hopeful for the future. All the medical evidence establishes that the Petitioner has medical restrictions that preclude him from performing police and first responder duties. This is a "loss of occupation" case, however, Petitioner's treating doctors and examining physicians noted that Petitioner should return to work in a capacity outside of a first responder role, as it would be beneficial to his mental health.

Given these factors, the Arbitrator finds that the Petitioner is entitled an award of 35% loss of use to his man as a whole.

Issue(s) (O): Loss of Occupation & Collateral Estoppel

The Arbitrator addressed the loss of occupation issue within the findings for the nature of extent of the injury, supra.

Turning to the issue of collateral estoppel, the IWCC is not bound by the ruling of the City of Jacksonville Police Pension Fund as a result of the collateral estoppel doctrine.

The minimum requirements for the application of collateral estoppel are: (1) The issue decided in the prior adjudication is identical to the one presented in the suit in question; (2) There was a final judgment on the merits in the prior adjudication; and (3) The party against whom estoppel is asserted was a party or in privity with a party to the prior adjudication. *Demski v. Mundelein Police Pension Board, et al*, 358 Ill.App.3d 499 (2d Dist. 2005).

Petitioner filed a Petition for a Duty Disability Pension before the City of Jacksonville Police Pension Fund. The Pension Board issued a decision finding Petitioner is disabled based upon a post-traumatic disorder diagnosis as a result of an "act of duty." (PX 18, p. 1193)

In this case, Petitioner is alleging his post-traumatic stress disorder arose out of and in the course of his employment for Respondent. However, the Appellate Court has established an "act of duty" is not the same as whether an accident arose out of an in the course of employment. *Demski*, 358 Ill.App.3d at 502-503.

Also, this case involves a "mental-mental" injury. As stated herein above, a psychological injury is a compensable work injury if the claimant proves he or she suffered a sudden severe emotional shock traceable to a definite time, place and cause, even though no physical trauma or injury was sustained. *Pathfinder Co. v. Industrial Commission*, 62 Ill.2d 556 (1976).

In reliance upon *Demski*, and the standard set forth in *Pathfinder*, the Arbitrator finds the issues presented to the City of Jacksonville Police Pension Fund are not identical to those presented to the IWCC. Therefore, the doctrine of collateral estoppel does not apply, and the IWCC is not bound by the decision of the Pension Board.