

ILLINOIS WORKERS' COMPENSATION COMMISSION
DECISION SIGNATURE PAGE

Case Number	23WC012119
Case Name	Brandon Berkley v. City of East Peoria
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	7
Decision Issued By	Maureen Pulia, Arbitrator

Petitioner Attorney	Stephen Kelly
Respondent Attorney	Michael Bantz

DATE FILED: 4/25/2024

/s/ Maureen Pulia, Arbitrator
Signature

THE INTEREST RATE FOR THE WEEK OF APRIL 23, 2024 5.16%

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
NATURE AND EXTENT ONLY**

BRANDON BERKLEY,
Employee/Petitioner

Case # **23** WC **12119**

v.

Consolidated cases: _____

CITY OF EAST PEORIA,
Employer/Respondent

The only disputed issue is the nature and extent of the injury. 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 **Maureen Pulia**, Arbitrator of the Commission, in the city of **Peoria**, on **4/16/24**. By stipulation, the parties agree:

On the date of accident, **3/20/23**, Respondent was operating under and subject to the provisions of the Act.

On this date, the relationship of employee and employer did exist between Petitioner and Respondent.

On this date, Petitioner sustained 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 **\$97,056.96**, and the average weekly wage was **\$1,866.48**.

At the time of injury, Petitioner was **31** years of age, *single* with **0** dependent children.

Necessary medical services and temporary compensation benefits have been provided by Respondent.

Respondent shall be given a credit of **\$00.00** for TTD, **\$00.00** for TPD, **\$00.00** for maintenance, and **\$00.00** for other benefits, for a total credit of **\$00.00**.

After reviewing all of the evidence presented, the Arbitrator hereby makes findings regarding the nature and extent of the injury, and attaches the findings to this document.

ORDER

Respondent shall pay Petitioner the sum of **\$998.02/week** for a further period of **41.75** weeks, as provided in Section **8(e)11** of the Act, because the injuries sustained caused **a 25% loss of use of his right foot.**

Respondent shall pay Petitioner compensation that has accrued from **3/20/23** through **4/16/24**, and shall pay the remainder of the award, if any, in weekly payments.

RULES REGARDING APPEALS Unless a Petition for Review is filed within 30 days after receipt of this decision, and a review is perfected 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

April 25, 2024

THE ARBITRATOR HEREBY MAKES THE FOLLOWING FINDINGS OF FACT:

Petitioner, a 31 year old Police Officer, sustained an accidental injury to his right foot that arose out of and in the course of his employment by respondent on 3/20/23. Petitioner was hired as a Police Officer for respondent 2 years ago. Prior to his hiring petitioner underwent a preemployment physical, that he passed. Petitioner denied any injuries to his right foot prior to 3/20/23.

Petitioner's duties as a Police Officer include enforcing the laws, patrolling his district, responding to emergencies, writing reports, protecting life that is at risk, detaining suspects if needed, and possible altercation with resisting suspects.

On 3/20/23 petitioner was directed to respond to a call for retail theft. He was given a description of a suspect. Once he arrived at the scene he attempted to detain and handcuff the suspect. While trying to place the suspects hands behind his back, the suspect pulled away from him and began fighting with him. A struggle ensued between the petitioner and the suspect and the petitioner was eventually able to take the suspect to the ground. At that time, other officers arrived and were able to then get the suspect's hands behind his back and handcuff him. Once petitioner got the suspect up off the ground and began walking him to his squad car, he noticed pain in his right foot and big toe. Petitioner testified that after this injury he began feeling burning anytime he put pressure on his right foot.

After 3/20/23 petitioner noted pain and swelling in his right foot, and that his right big toe was crooked. He testified that he would limp when working. He could not put pressure on his right foot. He also testified that in April 2023 he trained with the Police Chief. During that training the Police Chief noticed his right foot problems and ordered him to go to the doctor. Petitioner also completed an accident report.

On 4/5/23 petitioner presented to OSC Occupational Health at the request of respondent for his right foot complaints. He provided a consistent history of the accident. Petitioner reported that since the accident he has had pain around the metatarsophalangeal joint, as well as swelling, that had not improved. He reported that he would weightbear preferentially on the lateral aspect. Following an examination and x-rays of the right foot that showed no acute displaced fracture, Dr. Moody assessed a sprain of the right foot. He was of opinion that petitioner most likely had a Grade 1, possibly Grade 2, sprain of the medial collateral ligament of the right 1st MTP joint. Immobilization in a boot was discussed, but since petitioner was on vacation he wished to continue wearing a shoe that minimized symptoms. Dr. Moody restricted petitioner to a maximum waist level lift/carry of 40 pounds, no running, and no tactical training or confrontational situations.

On 4/19/23 petitioner returned to Dr. Moody. His reported that his right MTP joint continued to hurt with running. He reported that he took ibuprofen as needed. He stated that he feels better when wearing a shoe. Petitioner stated that his pain was minimal at rest, and worse at night after working. He also reported increased

pain with running or jumping. He was still taking ibuprofen for pain. Following an examination, Dr. Moody assessed continued acute swelling of the right MTP joint. Because of this, he ordered an MRI of the right foot. Dr. Moody continued petitioner's work restrictions.

On 4/5/23 petitioner underwent an MRI of the right foot. The impression was a sprain and partial tearing of the medial capsuloligamentous structures of the first MTP joint, and mild degenerative changes of the first MTP joint.

On 5/4/23 petitioner followed-up with Dr. Moody to discuss the results of the MRI. He reported that he was still having pain with ambulation and weightbearing. He rated his pain at rest at a 1/10, and his pain with activity at a 5/10. He again noted that he felt better when wearing a shoe. An examination revealed that the right MTP joint still had a medial prominence, and pain with palpation to the medial collateral ligament. Dr. Moody noted that petitioner could walk on his heels and toes, but had mild pain with stress of the medial collateral ligament and when flexed with resistance. Following an examination and review of the MRI, Dr. Moody continued petitioner's work restrictions. He referred petitioner to orthopedics.

On 5/17/23 petitioner presented to Dr. Fahed Nazem ElChami at Midwest Orthopedic Center for evaluation of his right foot. Petitioner provided a consistent history of the accident. Petitioner reported pain when weightbearing and ambulating over the big toe joint, and during increased physical activities. Following an examination and review of right foot x-rays and MRI of the right foot, Dr. Moody taped the hallux in an adduction position, and dispensed bunion pads to use. He instructed petitioner to ambulate with supportive shoe gear, and avoid high impact activities. Dr. Moody released petitioner to desk work only as it applies to the right lower extremity.

On 6/21/23 petitioner returned to Dr. ElChami for his right foot complaints. Petitioner reported ongoing pain when weightbearing and ambulating. He denied other pedal complaints. Following an examination, Dr. ElChami was of the opinion that due to petitioner's ongoing complaints he was recommending a repair of the first metatarsophalangeal joint capsule, and cheilectomy of the first metatarsal head.

On 8/10/23 petitioner underwent a right first metatarsal phalangeal joint cheilectomy, and right first MPJ capsule repair. This procedure was performed by Dr. ElChami. Petitioner's post-operative diagnosis was right great toe injury; right hallux rigidus; and right first metatarsal phalangeal joint ligament sprain. Petitioner followed up with Dr. ElChami.

On 8/14/23 petitioner followed-up postoperatively with Dr. ElChami. Petitioner reported that he was doing well with pain, and was ambulating in a postop shoe. He was instructed to use the postop shoe when weightbearing and ambulating, continue taking antibiotics, and take pain medication as needed.

On 8/21/23 petitioner returned to Dr. ElChami to have his sutures removed. He was instructed to continue ambulating in a postop shoe. Dr. Moody instructed petitioner to use a bunion pad to keep the digit in good anatomical alignment once the dressing was removed.

On 9/5/23 petitioner followed-up with Dr. ElChami. He was still in the postop shoe. Petitioner reported that he was improving, but still had slight pain. Dr. ElChami instructed petitioner to continue the postop shoe for 7-10 days, and then use his pain as guidance for transitioning to supportive shoe gear such as tennis shoes. He was given home exercises to perform.

On 10/4/23 petitioner returned to Dr. ElChami. Although petitioner was doing much better and ambulating in regular shoe gear, he continued to have pain during increased physical activities and high impact activities. Dr. ElChami instructed petitioner to ambulate with supportive shoe gear such as tennis shoes and avoid high impact activities.

Petitioner last followed-up with Dr. ElChami on 11/1/23. Petitioner presented ambulating in regular shoe gear. He reported that he was doing much better. He reported that he sometimes gets pain that can be 1 out of 10 on the pain scale during high impact activities. He reported that overall, he was doing much better. Following his examination, Dr. ElChami was of the opinion that petitioner could return to his routine activities slowly and as tolerated. Petitioner was educated on supportive shoe gear. Dr. ElChami provided him with a work status note releasing him to work without restrictions. He also released petitioner from his care and told him to return on an as needed basis.

While petitioner was off work from 7/25/23 through 11/5/23 for this injury, petitioner received his full salary through PEDDA.

Petitioner testified that since returning to work he is able to perform all his work duties. Currently, petitioner still experiences pain with walking and running. Petitioner tries to avoid running due to the pain.

With regard to the nature and extent of the injury, the Arbitrator makes the following conclusions of law. In support of this conclusion, the Arbitrator notes the following:

Pursuant to §8.1b of the Act, permanent partial disability from injuries that occur after September 1, 2011 is to be established using the following criteria: (i) the reported level of impairment pursuant to subsection (a) of §8.1b of the Act; (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. 820 ILCS 305/8.1b. The Act further provides that "No single enumerated factor shall be the sole determinant of disability." 820 ILCS 305/8.1b(b)(v).

With regard to subsection (i) of §8.1b(b), the Arbitrator notes that neither party submitted an impairment rating. Therefore, no weight is given to this factor.

With regard to subsection (ii) of §8.1b(b), the occupation of the employee, the Arbitrator notes petitioner was a Police Officer, who after being returned to full duty work “slowly and as tolerated” by Dr. ElChami on 11/1/23, returned to full duty work as a Police Officer for respondent. Petitioner testified that although he is performing all the duties of his job as a Police Officer, he still experiences pain with walking and running. For this reason, the Arbitrator gives greater weight to this factor.

With regard to subsection (iii) of §8.1b(b), the Arbitrator notes Petitioner was 31 years old on 3/20/23. Petitioner has anywhere from 20-35 years of gainful employment remaining. For this reason, the Arbitrator gives greater weight to this factor.

With regard to subsection (iv) of §8.1b(b), Petitioner’s future earning capacity, petitioner testified that on 11/1/23 he was able to return to his full duty job without restrictions. Petitioner did not testify to any possible effect on his future earnings capacity. For this reason, the Arbitrator gives no weight to this factor.

With regard to subsection (v) of §8.1b(b), evidence of disability corroborated by the treating medical records, petitioner underwent failed conservative care for his right foot, and as a result, on 8/10/23 underwent a right first metatarsal phalangeal joint cheilectomy, and right first MPJ capsule repair. Petitioner’s post-operative diagnosis was right great toe injury; right hallux rigidus; and right first metatarsal phalangeal joint ligament sprain. Petitioner had four post-operative follow-up visits with Dr. ElChami.

On 11/1/23 when petitioner last followed-up with Dr. ElChami he presented ambulating in regular shoe gear. He reported that he was doing much better, but sometimes gets pain that can be 1 out of 10 on the pain scale during high impact activities. He reported that overall he was doing much better. At that time Dr. ElChami was of the opinion that petitioner could return to his routine activities slowly and as tolerated.

Petitioner testified that since returning to work he is able to perform all his work duties, but still experiences pain with walking and running. Petitioner tries to avoid running due to the pain.

For these reasons, the Arbitrator gives greater weight to this factor.

Based on the above, as well as the credible evidence, the arbitrator finds the petitioner sustained a 25% loss of use of his right foot, pursuant to Section 8(e)11 of the Act.