

**ILLINOIS WORKERS' COMPENSATION COMMISSION**  
**DECISION SIGNATURE PAGE**

Case Number	19WC018473
Case Name	Frankie King v. City of Peoria
Consolidated Cases	
Proceeding Type	Petition for Review
Decision Type	Commission Decision
Commission Decision Number	23IWCC0127
Number of Pages of Decision	12
Decision Issued By	Marc Parker, Commissioner

Petitioner Attorney	Stephen Kelly
Respondent Attorney	Kevin Day

DATE FILED: 3/21/2023

*/s/Marc Parker, Commissioner*  

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**Signature**

STATE OF ILLINOIS )  
 ) SS.  
COUNTY OF PEORIA )

<input type="checkbox"/> Affirm and adopt (no changes)	<input type="checkbox"/> Injured Workers' Benefit Fund (§4(d))
<input checked="" type="checkbox"/> Affirm with changes	<input type="checkbox"/> Rate Adjustment Fund (§8(g))
<input type="checkbox"/> Reverse	<input type="checkbox"/> Second Injury Fund (§8(e)18)
<input type="checkbox"/> Modify	<input type="checkbox"/> PTD/Fatal denied
	<input checked="" type="checkbox"/> None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Frankie King,

Petitioner,

vs.

No. 19 WC 18473

City of Peoria,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by Respondent herein and notice given to all parties, the Commission, after considering the issues of maintenance benefits and permanent partial disability, and being advised of the facts and law, supplements the Decision of the Arbitrator as stated below, and otherwise affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.

Pursuant to §8.1b(b) of the Act, for injuries that occur after September 1, 2011, the Commission is to base its determination of the level of permanent partial disability upon five enumerated factors, set forth in subparagraphs (i) through (v). The Commission notes that the Arbitrator, in his decision, omitted assigning a weight to subparagraph (v) of §8.1b(b), "evidence of disability corroborated by the treating medical records." In reaching his determination of permanent partial disability, the Arbitrator did address the evidence supporting this factor and explain its relevancy. However, the Arbitrator neglected to assigning it a weight, as required by §8.1b(b).

For the reasons stated in the Arbitrator's decision, with which the Commission agrees, the Commission now assigns moderate weight to subparagraph (v) of §8.1b(b). Regarding the factors in subparagraphs (i) through (iv), the Commission affirms and adopts the findings, determinations

19 WC 18473

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and weights which the Arbitrator assigned, and further affirms and adopts the §8(d)2 award of 27.5% loss of use of person as a whole.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed September 8, 2022, is hereby supplemented as stated herein, and otherwise affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall pay to Petitioner interest under §19(n) of the Act, if any.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall have credit for all amounts paid, if any, to or on behalf of Petitioner on account of said accidental injury.

No bond is required for removal of this cause to the Circuit Court. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

**March 21, 2023**

MP/mcp

o-03/02/23

068

/s/ Marc Parker

Marc Parker

/s/ Christopher A. Harris

Christopher A. Harris

/s/ Carolyn M. Doherty

Carolyn M. Doherty

## ILLINOIS WORKERS' COMPENSATION COMMISSION

## DECISION SIGNATURE PAGE

Case Number	19WC018473
Case Name	Frankie King v. City of Peoria
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	9
Decision Issued By	Bradley Gillespie, Arbitrator

Petitioner Attorney	Stephen Kelly
Respondent Attorney	Kevin Day

DATE FILED: 9/8/2022

THE INTEREST RATE FOR THE WEEK OF SEPTEMBER 7, 2022 3.32%

*/s/ Bradley Gillespie, Arbitrator*

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Signature

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**

**FRANKIE KING**

Employee/Petitioner

v.

**CITY OF PEORIA**

Employer/Respondent

Case # **19 WC 018473**

Consolidated cases: \_\_\_\_\_

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 **Bradley Gillespie**, Arbitrator of the Commission, in the city of **Peoria**, on **April 25, 2022**. 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 **August 15, 2018**, 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 **\$65,083.20**; the average weekly wage was **\$1,251.60**.

On the date of accident, Petitioner was **59** years of age, *married* with **0** dependent children.

Petitioner has received all reasonable and necessary medical services.

Respondent has paid all appropriate charges for all reasonable and necessary medical services.

Respondent shall be given a credit of **\$29,348.51** for TTD, **\$0** for TPD, **\$834.40** for maintenance, and **\$0** for other benefits, for a total credit of **\$30,182.91**.

Respondent is entitled to a credit of **\$0** under Section 8(j) of the Act.

## ORDER

- Petitioner sustained an accident that arose out of and in the course of his employment with Respondent on August 15, 2018.
- Petitioner's condition of ill-being is causally related to the August 15, 2018, work injury.
- Petitioner's correct average weekly wage is \$1,251.60
- Respondent shall pay Petitioner the sum of **\$750.96/week** for a further period of **137.5 weeks**, totaling **\$103,257.00**, because the injuries alleged by Petitioner resulted in **27.5%** loss of use of the person-as-a-whole pursuant to §8(d)(2) of the Act.
- Respondent shall pay Petitioner maintenance benefits in the sum of **\$750.96/week** from April 13, 2021, through June 24, 2021, a period of **10 3/7 weeks**. as set forth in the Decision of Arbitrator.

**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.

**SEPTEMBER 8, 2022**

***Bradley D. Gillespie***

Signature of Arbitrator

**BEFORE THE WORKERS' COMPENSATION COMMISSION**

<b>FRANKIE KING,</b>	)	
	)	
<b>Petitioner,</b>	)	
	)	
v.	)	<b>Case No: 19 WC 18473</b>
	)	
<b>CITY OF PEORIA,</b>	)	
	)	
<b>Respondent.</b>	)	
	)	

**DECISION OF THE ARBITRATOR**

This matter proceeded to hearing on April 25, 2022, in Peoria, Illinois. (Arb. Ex. 1). The following issues were in dispute at arbitration:

- Maintenance Benefits
- Nature and Extent

**FINDINGS OF FACT**

**I. August 15, 2018 Accident and Claim for Compensation**

In August of 2018, Petitioner, Frankie King, was a fifty-nine (59) year-old maintenance worker for Respondent, City of Peoria. At that time, he had been employed by Respondent for twenty (20) years. Res. Ex. 1. Petitioner’s job duties included plowing snow in the wintertime as well as asphalt work on roads, shoveling, and some concrete work. Res. Ex. 1. Petitioner worked with jackhammers, shovels, and his position required lifting heavy weights. Res. Ex. 1. Petitioner testified the Maintenance Worker job description submitted into evidence at that time as Respondent’s Exhibit 5 accurately described his work duties for Respondent. Res. Ex. 1.

On August 15, 2018, Petitioner was working for Respondent on the south-end of Peoria, near Kettelle Street, when a vehicle struck the left side his truck. Petitioner testified he had his hand on the steering wheel and the impact caused the steering wheel to twist, snapping his right wrist and causing his right arm to strike the iron console inside the truck. Res. Ex. 1. Petitioner was taken to the hospital by his supervisor following the accident. Res. Ex. 1.

Petitioner filed an Application for Adjustment of Claim on June 17, 2019, alleging an injury to his right hand as a result of a work-related auto accident. Pet. Ex. 4.

**II. April 12, 2021 Arbitration**

This case was previously tried on a 19(b) basis. Tr. 4. At that time, the issues were casual connection, AWW, TTD, and maintenance. Tr. 5. On July 2, 2021, a decision was rendered awarding Petitioner causation, an average weekly wage of \$1,251.60, TTD benefits for the time periods of 3/17/2020 through 8/4/2020 and 12/23/2020 through 4/5/2021, maintenance benefits from 4/6/2021 through 4/12/2021, and Respondent was ordered to authorize and pay for the Functional Capacity Evaluation recommended by Dr. Vander Naalt. Pet. Ex. 4.

### **III. Issues in Dispute at April 25, 2022 Arbitration**

At arbitration, the parties submitted a Request for Hearing, which was admitted into evidence as Arbitrator's Exhibit 1. Arbitrator's Exhibit 1 lists the following issues in dispute: (1) whether maintenance benefits are owed from the purported time period of April 12, 2021 through September 13, 2021, a period of 22 weeks, which is disputed by Respondent and (2) the nature and extent of Petitioner's injury. Arb. Ex. 1; Tr. 4-5.

### **IV. Petitioner's Medical Treatment**

On April 5, 2021, Petitioner was seen by Dr. Vander Naalt. Dr. Vander Naalt felt Petitioner would be unable to work in a full-duty capacity given his symptoms over the last year. Dr. Vander Naalt placed Petitioner at MMI for his right wrist injury. Dr. Vander Naalt ordered a functional capacity evaluation to finalize Petitioner's work restrictions and kept Petitioner on a thirty-five (35) pound weight restriction for his right hand. Res. Ex. 2.

On May 12 and 13 of 2021, Petitioner was seen by Sean McGinn for a functional capacity evaluation. Following the two-day evaluation, Petitioner's restrictions were elevated. It was recommended that Petitioner not carry or lift from the ground to his waist more than sixty (60) pounds at an occasional level. It was further recommended that he not lift more than fifty (50) pounds to shoulder height at an occasional level. Grip and pinch test should be limited to his tolerance level. Pet. Ex. 1.

Petitioner was seen by Dr. Vander Naalt on May 24, 2021. During this examination, Dr. Vander Naalt confirmed and finalized the permanent restrictions placed on Petitioner during the FCE. Pet. Ex. 2.

### **V. Petitioner's Testimony at Arbitration**

At arbitration, Petitioner testified he attended an FCE on or about May 14<sup>th</sup>, 2021. Tr.11. The FCE indicated Petitioner had certain restrictions on his work activities and he was unable to return to work in his normal capacity. Tr. 11-12. Petitioner then followed up with his surgeon, Dr. Vander Naalt, where Petitioner was provided with permanent work restrictions. Tr. 12.

Petitioner testified his wrist hasn't been the same since the injury, and it bothers him on and off every night. Tr. 19. He described waking up around 2:00 or 3:00 in the morning "because constant hurting." *Id.* Petitioner decided he wasn't going to do any more work and would deal with it the best he can. *Id.* He testified that his hand feels like it is tightening up throughout the night.



*Id.* During arbitration, Petitioner was wearing a brace which he stated helps his wrist from swelling. Tr. 20.

Petitioner stated he does not have any problems or any concerns about climbing ladders but has to be extra careful because he doesn't have a full grip. *Id.* Petitioner further stated the weather affects his hand and wrist all the time. Tr. 20-21.

Petitioner has not returned to see any doctors for his right wrist or hand since his last visit with Dr. Vander Naalt on or about May 24, 2021. Tr. 17. Petitioner testified he would have sought further treatment on his wrist if he felt it was necessary. Tr. 24.

Petitioner testified he tried to go out and find a job following the permanent restrictions placed on him by Dr. Vander Naalt. Tr. 13. Petitioner stated he went to the local union hall around May to see if they had work for him within his restrictions. *Id.* The local union hall never got back to Petitioner. *Id.* Petitioner did not offer any documents into evidence regarding any job search he conducted. Tr. 25.

Petitioner elected to take the early retirement incentive offered by Respondent which was effective June 25, 2021. Tr. 14. Petitioner testified he elected to retire early because the package deal that was offered in conjunction with his hand restrictions. Tr. 14-15. He wanted to retire and be done with it. Tr. 15.

On September 13, 2021, Petitioner received an email from Respondent offering a vocational assistance appointment. Tr. 16. Petitioner decided to not move forward with that process because he no longer wanted to go back to work, he wanted to enjoy his retirement. *Id.* Petitioner further testified Respondent had previously offered two separate vocational assessments which Petitioner declined and opted to move forward with the 19(b) trial on April 12, 2021. Tr. 22. Petitioner has never asked for vocational assistance following the 19(b) decision which was filed on July 2, 2021. Tr. 22-23. Further, Petitioner has at no time participated in a vocational assessment offered by the Respondent. Tr. 23.

## **FINDINGS OF LAW**

### **Vocational Rehabilitation and Maintenance**

Petitioner placed maintenance benefits from the purported time period of April 12, 2021, through September 13, 2021, a period of 22 weeks, at issue.

Section 8(a) of the Act requires an employer to pay only those maintenance costs and expenses that are incidental to rehabilitation. An employer is obligated to pay maintenance benefits only "while a claimant is engaged in a prescribed vocational-rehabilitation program." *W.B. Olson, Inc.*, 2012 IL App (1st) 113129WC at ¶ 39; see also *Nascote Industries*, 353 Ill. App. 3d at 1075. Thus, if the claimant is not engaging in some type of "rehabilitation," the employer's obligation to provide maintenance is not triggered. *Jimenez v. Illinois Workers' Comp. Comm'n*, 2012 IL App (2d) 120154WC-U, ¶ 44

The evidence establishes Respondent requested Petitioner's cooperation with, and attendance at, three separate vocational assessments with Respondent's retained vocational consultant. Res. Ex. 5-7; 10. At arbitration, Petitioner testified he declined each of Respondent's requests and never participated in the vocational assessments offered by Respondent. Tr. 22-23. On March 15, 2021, Respondent requested Petitioner's cooperation with a vocational assessment with Respondent's retained vocational consultant on March 23, 2021. Res. Ex. 5. Respondent again requested Petitioner's cooperation with the March 23rd vocational assessment on March 17, 2021. Res. Ex. 6. On April 7, 2021, Respondent again requested Petitioner's attendance at a vocational assessment. Res. Ex. 7. Petitioner declined to attend the vocational assessment and elected to proceed with arbitration under Section 19(b) on April 12, 2021, placing vocational assistance and maintenance benefits at issue. Pet. Ex. 4. However, the Arbitrator notes, consistent with the previous 19(b) hearing, that Respondent's offer of vocational assistance was premature without the benefit of the FCE and permanent restrictions to guide a meaningful and productive job search. (*See* Pet. Ex. 4)

On May 14, 2021, the Functional Capacity Evaluation along with recommendations for permanent restrictions was issued. Pet. Ex. 1. On May 24, 2021, Petitioner returned to Dr. Vander Naalt and received permanent restrictions. Pet. Ex. 2. On the same day, Petitioner expressed his intention to retire from his employment with Respondent on June 25, 2021. Resp. Ex. 8. On June 25, 2021, Petitioner voluntarily retired from his employment with Respondent. Tr. 14. Petitioner testified he elected to retire early based on the early retirement incentives offered and his hand restrictions. Tr. 14-15. He wanted to retire and be done with it. Tr. 15. Petitioner testified that he was not offered any position by Respondent up to June 25, 2021. *Id.*

A Section 19(b) Arbitration Decision was issued on July 2, 2021. Pet. Ex.4. Petitioner testified he never requested vocational assistance following the Decision. Tr. 22-23. On September 13, 2021, Respondent requested Petitioner's participation in a vocational assessment scheduled for September 16, 2021. Res. Ex. 10. On September 15, 2021, Petitioner, through his counsel, advised he wished to discuss settlement "before we start the Vocational [*sic*] assessment Process [*sic*]." At arbitration, Petitioner testified he did not participate in vocational rehabilitation, because he no longer wanted to work and wanted to enjoy retirement. Tr. 22-23.

The records show that Petitioner was on restricted duty as of April 5, 2021. Resp. Ex. 2. Respondent was no longer accommodating Petitioner's restrictions at that point. Tr. 12; *see also* Pet. Ex. 4. On April 7, 2021, Respondent offered Petitioner a vocational assessment. Resp. Ex. 7. On April 12, 2021, Petitioner declined that offer and instead proceeded with the 19(b)/8(a) hearing. Pet. Ex. 4. As indicated above, the Arbitrator found that the offer of vocational assessment premature without a FCE to gauge Petitioner's need for permanent restrictions. On May 14, 2021, the Functional Capacity Evaluation along with recommendations for permanent restrictions was issued. Pet. Ex. 1. On May 24, 2021, Petitioner returned to Dr. Vander Naalt and received permanent restrictions. Pet. Ex. 2. On the same day, Petitioner expressed his intention to retire from his employment with Respondent on June 25, 2021. Resp. Ex. 8. On June 25, 2021, Petitioner voluntarily retired from his employment with Respondent. Tr. 14. Petitioner testified that he was not offered any light duty work up until June 25, 2021. Tr. 15. Petitioner was not offered any type of position following the issuance of his permanent restrictions on May 24, 2021, and his retirement on June 25, 2021. Petitioner showed a desire to retire and had no intention of

returning to the workforce. Petitioner did not provide any evidence of a self-directed job search at arbitration other than his testimony that he went to the local union hall and was not provided work. Tr. p. 13. The Arbitrator finds Respondent attempted to fulfill its obligations pursuant to 50 ILL. Admin Code 9110.10(a), but Petitioner did not wish to receive rehabilitation and re-enter the workforce.

Wherefore, the Arbitrator finds and concludes that Petitioner has established entitlement to maintenance benefits from April 13, 2021, through June 24, 2021. Petitioner removed himself from the workforce on June 25, 2021, by retiring and declining Respondent's offer of vocational rehabilitation, he is not entitled to maintenance benefits for the period of June 25, 2021, through September 13, 2021.

### **Nature and Extent**

Section 8.1b of the Illinois Workers Compensation Act requires consideration of the following enumerated factors in determining an employee's permanent partial disability:

- (i) The reported level of impairment pursuant to an American Medical Association Impairment Rating;
- (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.

Section 8.1b further provides no single factor shall be the sole determinant of disability. Additionally, Illinois Appellate Courts have affirmed the aforementioned factors are not exclusive, meaning the Commission is free to evaluate other relevant considerations. See *Flexible Staffing Services v. Illinois Workers' Compensation Comm'n*, 2016 IL App (1<sup>st</sup>) 151300WC. In accordance with Section 8.1b, the relevance and weight of any factors used in reaching a conclusion in this matter are set forth below.

(i) First, with regard to the reported level of impairment pursuant to the AMA 6<sup>th</sup> Edition Guidelines, an AMA impairment rating was not submitted by either party. Accordingly, the Arbitrator gives no weight to this factor.

(ii) Second, regarding the occupation of the injured employee, the Arbitrator notes Petitioner was a public works employee for the City of Peoria at the time of the August 15, 2018, work accident. The Arbitrator acknowledges the heavy-duty nature of Petitioner's occupation and gives some weight to this factor.

(iii) Third, regarding the age of the injured employee, the evidence establishes Petitioner was fifty-nine (59) years old at the time of his work-injury. The Arbitrator considers Petitioner's

age at the time of the accident and his relatively long average life expectancy. Based on the foregoing, the Arbitrator places some weight on this factor.

(iv) Fourth, with regard to Petitioner's future earning capacity, the Arbitrator finds Petitioner was placed at MMI on April 5, 2021. Further, Petitioner underwent an FCE on May 12 and 13 of 2021 where he was given permanent restrictions. Petitioner elected to pursue an early retirement incentive through Respondent on June 25, 2021, and testified he is enjoying retirement. As such, the Arbitrator places some weight on this factor.

(v) Lastly, with regard to evidence of disability corroborated by the treating medical records, the Arbitrator notes the medical records in evidence establish Petitioner underwent a right scapholunate ligament reconstruction with free tendon graft, a right radial styloidectomy and posterior interosseous neurectomy of his right wrist on March 17, 2020, performed by Dr. Steven Vander Naalt. Petitioner subsequently underwent approximately six months of post-op physical therapy where he was discharged on November 20, 2020.

On April 5, 2021, Petitioner was placed at MMI by Dr. Vander Naalt and an FCE was recommended to confirm and finalize Petitioner's permanent work restrictions. Petitioner attended the FCE on May 12 and May 13 of 2021. The following recommendations are based off Mr. King's performance in the functional capacity assessment: It is recommended that he not carry or lift from the ground to his waist more than 60 pounds at an occasional level. It is further recommended that he not lift more than 50 pounds to shoulder height at an occasional level. Grip and pinch test should be limited to his tolerance level. Petitioner was seen by Dr. Vander Naalt on May 24, 2021, where the restrictions from the FCE were finalized.

Petitioner has not returned to see any doctors for his right wrist or hand since his last visit with Dr. Vander Naalt on May 24, 2021. Petitioner testified he would have sought further treatment on his wrist if he felt it was necessary. Petitioner ultimately retired from his position with Respondent on June 25, 2021.

Based on the above factors, and the record taken as a whole, the Arbitrator finds Petitioner sustained permanent partial disability to the extent of 27.5% loss of use of the person-as-a-whole, totaling 137.5 weeks, or \$103,257.00 pursuant to §8(d)(2) of the Act.