

ILLINOIS WORKERS' COMPENSATION COMMISSION

DECISION SIGNATURE PAGE

Case Number	20WC024171
Case Name	Patrick Jordan v. City of Peoria
Consolidated Cases	
Proceeding Type	
Decision Type	Arbitration Decision
Commission Decision Number	
Number of Pages of Decision	10
Decision Issued By	Bradley Gillespie, Arbitrator

Petitioner Attorney	Stephen Kelly
Respondent Attorney	Kevin Day

DATE FILED: 3/21/2023

THE INTEREST RATE FOR THE WEEK OF MARCH 21, 2023 4.62%

/s/ Bradley Gillespie, Arbitrator

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
NATURE AND EXTENT ONLY**

Patrick Jordan
Employee/Petitioner

Case # **20** WC **24171**

v.

Consolidated cases:

City of 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 **Bradley Gillespie**, Arbitrator of the Commission, in the city of **Peoria**, on **July 27, 2022**. By stipulation, the parties agree:

On the date of accident, **October 7, 2020**, 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 **\$93,600.00**, and the average weekly wage was **\$1,800.00**.

At the time of injury, Petitioner was **56** years of age, *married* with **0** dependent children.

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

Respondent shall be given a credit of \$0.00 for TTD, \$0.00 for TPD, \$0.00 for maintenance, and \$0.00 for other benefits, for a total credit of \$0.00.

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 **\$871.73/week** for a further period of **5.375** weeks, because the injuries sustained caused **an additional 2.5% loss of use to Petitioner's left leg**.

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.

Bradley D. Gillespie

Signature of Arbitrator

MARCH 21, 2023

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

PATRICK JORDAN,)
)
 Petitioner,)
)
 v.) **Case No: 20 WC 024171**
)
 CITY OF PEORIA,)
)
 Respondent.)
)

DECISION OF THE ARBITRATOR

This matter proceeded to hearing on July 27, 2022, in Peoria, Illinois. (Arb. Ex. 1). The following issues were in dispute at arbitration:

- Wages
- Medical Bills; and
- Nature and Extent.

FINDINGS OF FACT

I. Petitioner’s Medical Treatment

Petitioner was kicked in the left knee by a suspect on October 7, 2020. He first sought treatment at OSF Occupational Health, where he saw Joan Mason on October 9, 2020. He reported he continued to work, but he was still having pain in his left knee. Objectively, his gait was normal. An X-ray was taken which showed patellofemoral compartment degenerative joint disease. The X-ray was negative for acute fracture, dislocation, or joint effusion. Petitioner was put on light duty work restrictions. (Pet. Ex. 3, p. 28-31).

Petitioner returned to OSF Occupational Health on October 12, 2020, and was seen by Dr. Edward Moody. Petitioner reported he continued to have some soreness in his anterior-lateral left knee, but he had no clicking, catching, or giving way. Petitioner stated he felt capable of performing regular duty work. Objectively, Dr. Moody did not detect an intra-articular effusion. He further noted Petitioner was able to do a deep squat without difficulty. Dr. Moody diagnosed Petitioner with a contusion. He returned Petitioner to full duty with no work restrictions and told him his symptoms should continue to improve going forward. (Pet. Ex. 3, p. 32-33).

On October 19, 2020, Petitioner was seen again by Dr. Moody. He reported the pain in his knee had worsened since his previous visit. He said he was having increased pain by the end of the day. He felt he could probably run if he had to. Dr. Moody put Petitioner back on light duty work restrictions and ordered an MRI of the left knee. (Pet. Ex. 3, p. 33-34).

The MRI recommended by Dr. Moody was performed on October 29, 2020. The MRI showed Petitioner's menisci and cruciate ligaments were intact. The MRI further showed tricompartmental chondral degeneration, moderate to severe, at the trochlea. (Resp. Ex. 5, p. 4-5).

On November 4, 2020, Petitioner followed up with Dr. Moody for results of his October 29, 2020, MRI. Dr. Moody noted there was no evidence of any structural issue on the MRI other than diffuse degenerative changes. Dr. Moody opined Petitioner had an exacerbation of underlying degenerative joint disease. He prescribed Meloxicam, an anti-inflammatory medication, and ordered physical therapy. (Pet. Ex. 3, p. 34-37).

Petitioner followed up with Dr. Moody on January 5, 2021 and reported he had developed a new location of pain in the posterior knee. He further reported he had lost his prescription for Meloxicam. Dr. Moody offered to write a new prescription, but Petitioner declined. (Pet. Ex. 3, p. 39-41).

On February 10, 2021, Petitioner was seen by Dr. Jeffrey Akeson at Midwest Orthopaedic Center. Petitioner reported he was not taking any pain medication. Objectively, Petitioner had good patella mobility with minimal pain and no joint effusion. He had good stability to varus and valgus stressing and a stable ligamentous exam. Dr. Akeson noted there was no significant structural damage to Petitioner's knee, and his pain was likely to improve with time. He told Petitioner to follow up as needed. (Pet. Ex. 2, p. 11-12).

Petitioner followed up with Dr. Moody for the final time in regard to this knee injury on March 4, 2021. Petitioner reported his left knee was significantly better, and he was essentially back to his pre-injury baseline. (Pet. Ex. 3, p. 41-42). Dr. Moody told Petitioner he could resume full activity with no restrictions. Petitioner was told to contact Dr. Moody's office if he had a flare up. (Pet. Ex. 3, p. 41-42). There is no indication in the medical records that Petitioner ever sought any further treatment for his left knee after March 4, 2021.

Medical records in evidence show Petitioner previously suffered a left knee injury on March 18, 2019, when he was kicked by a suspect. At that time, he was diagnosed with a contusion of the left knee. (Resp. Ex. 3, p. 3). In regard to this previous knee injury, Petitioner underwent an MRI on March 26, 2019. (Resp. Ex. 5, p. 1-3). The March 26, 2019, MRI showed extensor tendinopathy without a full-thickness tendon tear, articular cartilage loss, particularly prominent within the femoral trochlea with additional mild chondromalacia within the medial patellar facet, trace suprapatellar knee joint effusion, a popliteal fossa cyst, and mild subcutaneous soft tissue edema within the anterior infrapatellar soft tissues. (Resp. Ex. 5, p. 1-3). The Arbitrator notes the findings of the October 29, 2020 MRI were present at the time of the March 26, 2019 MRI, taken before the October 7, 2020 work accident. (Resp. Ex. 5, p. 1-5).

On June 27, 2019, Dr. Charles Miller opined Petitioner's pain was likely related to an aggravation of his chronic chondromalacia patellae. (Resp. Ex. 4, p. 36).

Petitioner then sought a second opinion with Dr. Stephen Orlevitch, who diagnosed Petitioner as having prolonged symptoms from a contusion of the anterolateral knee. (Resp. Ex. 4, p. 38-41). He noted he could not explain why Petitioner had such a protracted course of getting

back to regular duty. He noted Petitioner has patellofemoral arthritis and opined the work injury may have exacerbated Petitioner's patellofemoral degenerative change. Dr. Orlevitch recommended an injection, which Petitioner declined to undergo. (Resp. Ex. 4, p. 38-41).

On September 16, 2019, Dr. Miller released Petitioner to return to full duty, having completed work hardening. (Resp. Ex. 4, p. 50-52). On September 17, 2019, Petitioner was declared to be at maximum medical improvement and released to full duty by Dr. Batek at OSF Occupational Health. She noted Petitioner continued to have some associated discomfort, but it did not interfere with his activities or function. (Resp. Ex. 3, p. 40-41).

II. Testimony of Patrick Jordan at Arbitration

Petitioner testified he was hired by the City of Peoria Police Department as a patrol officer in August of 1993. (Arb. Tr. p. 19-20). Petitioner testified he suffered a left knee injury in March of 2019 for which he filed a previous workers' compensation claim. This previous injury occurred when a suspect kicked Petitioner in the left knee. (Arb. Tr. p. 30-31).

Petitioner underwent an MRI or or about March 26, 2019 which showed he had cartilage loss and a cyst in his left knee. (Arb. Tr. p. 64-65). He underwent an X-ray of the left knee which showed arthritis and a patellar bone spur. (Arb. Tr. p. 65). On May 14, 2019, he was seen by Dr. Charles Miller who diagnosed him with osteoarthritis in the left knee. (Arb. Tr. p. 65). Petitioner then sought a second opinion with Dr. Stephen Orlevitch, who diagnosed him as having prolonged symptoms from a knee contusion and patellofemoral arthritis. Petitioner underwent some physical therapy. He never underwent any surgery or injections for his left knee. (Arb. Tr. p. 65-66). Petitioner was returned to full duty at maximum medical improvement for this previous knee injury on September 17, 2019, approximately six months after the accident. (Arb. Tr. p. 67). The claim was arbitrated, and Petitioner was awarded six and a half percent (6.5%) loss of use of the left leg. (Arb. Tr. p. 31). At arbitration, Petitioner testified he still experienced aching, pain, and swelling in his knee at the end of his workdays. (Arb. Tr. p. 68). Petitioner appealed the arbitration decision. The decision was affirmed by the Illinois Workers' Compensation Commission, and Respondent paid the award. (Arb. Tr. p. 68).

The injury which is the subject of the present claim occurred on October 7, 2020. Petitioner suffered a left knee injury when a suspect kicked him in the left knee. (Arb. Tr. p. 33). He was fifty-six (56) years old at the time. (Arb. Tr. p. 64). He initially sought treatment at OSF Occupational Health. X-rays were taken of the left knee, which were negative, and Petitioner was put on light duty work restrictions. (Arb. Tr. p. 34, 69). Petitioner returned to OSF Occupational Health on October 12, 2020. He was released from care and told to return as needed. (Arb. Tr. p. 34). Petitioner testified he disagrees with the medical record corresponding to his October 12, 2020 visit at OSF Occupational Health, which states he told Dr. Moody he felt capable of returning to full duty, and Dr. Moody released him to full duty that day. Petitioner testified he never returned to full duty. (Arb. Tr. p. 69-70, Pet. Ex. 3, p. 32).

Petitioner testified he returned to OSF Occupational Health on October 19, 2020 and complained of worsening knee pain. (Arb. Tr. p. 35). He further testified he reported to his doctor he had concerns at that time about being able to perform his duties as a police officer. Petitioner

was then placed on light duty and an MRI was ordered. (Arb. Tr. p. 36). The MRI showed his menisci and cruciate ligaments were all intact. It also showed cartilage loss in his knee. (Arb. Tr. p. 71-72). Petitioner then underwent physical therapy. (Arb. Tr. p. 37).

Petitioner voluntarily retired on October 31, 2020, while he was still treating for this left knee injury. (Arb. Tr. p. 37-38, 72). He testified no doctor ever told him he would be unable to return to full duty. (Arb. Tr. p. 76). On November 4, 2020, Petitioner followed up with Dr. Moody, who prescribed him meloxicam, an anti-inflammatory. (Arb. Tr. p. 72). Petitioner saw Dr. Moody again on December 17, 2020 and reported his left knee symptoms had improved at that time. Petitioner next saw Dr. Moody on January 5, 2021. He reported he had developed pain at a new location in his posterior knee. Petitioner testified there was no subsequent accident which caused this new pain in the back of his knee. (Arb. Tr. p. 73-74). Petitioner told Dr. Moody he had lost his meloxicam prescription. Dr. Moody offered to write Petitioner a new prescription, but Petitioner declined. (Arb. Tr. p. 74).

On February 10, 2021, Petitioner was seen for an orthopedic consult by Dr. Jeffrey Akeson at Midwest Orthopaedic. (Arb. Tr. p. 74-75). Petitioner only saw Dr. Akeson one time. (Arb. Tr. p. 38). Petitioner reported he was not taking any pain medication at that time. Dr. Akeson gave the opinion Petitioner's pain was likely to improve with time. He told Petitioner to follow up as needed. Petitioner never followed up with Dr. Akeson after the February 10, 2021 appointment. (Arb. Tr. p. 75).

Petitioner then followed up with Dr. Moody for the final time on March 4, 2021. He reported his left knee was significantly better. Dr. Moody told Petitioner he could resume full activity with no restrictions. He told Petitioner to follow up as needed. Petitioner testified he never followed up with Dr. Moody again after March 4, 2021. (Arb. Tr. p. 75-76).

Petitioner testified, as of the time of arbitration, he still had pain in the lower part of his knee. He further testified he cannot jog like he used to and does not have the strength he used to have. (Arb. Tr. p. 45). Petitioner also testified, as of the time of arbitration, he was not on any occupational or non-occupational restrictions from any doctor, and he had not sought any further treatment for his knee since being released to full activity by Dr. Moody on March 4, 2021. At the time of arbitration, Petitioner was fifty-eight (58) years old and remained retired. (Arb. Tr. p. 77).

III. Respondent's Credit

Petitioner suffered a previous knee injury on March 18, 2019, which was the subject of workers' compensation case 19-WC-11557. The claim was arbitrated before the Honorable Adam Hinrichs on January 22, 2020. This arbitration resulted in an award of six and a half percent (6.5%) loss of use of the left leg. Petitioner filed an appeal to the Illinois Workers' Compensation Commission, and the Commission assigned the claim the case number 20-IWCC-0708. The Commission affirmed and adopted the Arbitrator's decision. The finding of the Commission was not appealed. Respondent paid to Petitioner the arbitration award of six and a half percent (6.5%) loss of use of the left leg. As such, in the present matter, Respondent has a credit equivalent to six and a half percent (6.5%) loss of use of the left leg. (Pet. Ex. 6).

CONCLUSIONS OF LAW

In support of the Arbitrator's Decision relating to the nature and extent of the injury, the Arbitrator finds the following:

This claim arose after September 1, 2011. Therefore, the five factors for determining Permanent Partial Disability are applied here pursuant to 820 ILCS 305/8.1b.

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. AMA Impairment Rating;
- ii. Occupation of the injured employee;
- iii. Age of the employee at the time of the injury;
- iv. Employee's future earning capacity; and
- v. Evidence of disability corroborated by the treating medical records

Section 8.1b further states that no single factor shall be the sole determinant of disability and that the Arbitrator shall discuss the relevance and weight of any factors used in addition to the level of impairment as reported by the AMA Impairment Rating.

With regard to subsection (i) of Section 8.1b(b), the Arbitrator notes no AMA impairment rating was submitted into evidence. The arbitrator therefore gives no weight to this factor.

With regard to subsection (ii) of Section 8.1b(b), the occupation of the employee, the Arbitrator notes Petitioner was employed as a police officer at the City of Peoria Police Department at the time of the accident. Petitioner voluntarily retired on October 31, 2020. At the time of arbitration, Petitioner remained retired. Because Petitioner voluntarily retired and remains retired, the Arbitrator gives no weight to this factor.

With regard to subsection (iii) of Section 8.1b(b), the age of the employee at the time of the injury, the Arbitrator notes Petitioner was fifty-six (56) years old at the time of the accident. The Arbitrator gives less weight to this factor, as the Petitioner is retired, and likely has little to no occupational life and reasonable non-occupational life ahead of him.

With regard to subsection (iv) of Section 8.1b(b), the employee's future earning capacity, the Arbitrator notes Petitioner was released to full activity with no occupational or non-occupational restrictions. The record contains no evidence of any loss of future earning capacity. As such, the Arbitrator gives no weight to this factor.

With regard to subsection (v) of Section 8.1b(b), evidence of disability corroborated by the treating medical records, the Arbitrator notes the treating records substantiate Petitioner's subjective complaints to the extent that he suffered a contusion and a temporary exacerbation of non-occupational degenerative disease in the left knee.

The medical records show Petitioner initially treated at OSF Occupational Health, where he was diagnosed with a contusion. After two visits, Petitioner was able to perform a deep squat

without difficulty and reported he felt ready to work full duty. Petitioner filed his Application for Adjustment of Claim on October 12, 2020. At Petitioner's next appointment with OSF Occupational Health on October 19, 2020, Petitioner reported the pain in his knee had worsened since his previous visit, and an MRI was ordered.

The primary finding on the MRI, taken October 29, 2020, was tricompartmental chondral degeneration at the trochlea. The Arbitrator notes Petitioner previously underwent a left knee MRI on March 26, 2019, prior to the work accident which is the subject of this claim. The previous MRI showed greater than fifty percent (50%) articular cartilage loss and fissuring, particularly prominent at the trochlea. The arbitrator further notes the cyst in Petitioner's left knee was seen on this previous MRI. The October 29, 2020 MRI does not show any significant new findings when compared to the prior March 26, 2019 MRI.

After the MRI, Petitioner followed up with Dr. Moody who noted there was no evidence of any structural issue on the MRI other than diffuse degenerative changes. Dr. Moody prescribed Meloxicam, but Petitioner lost the prescription and declined Dr. Moody's offer to write a new prescription. Petitioner followed up with Dr. Moody on January 5, 2021 and reported he had developed a new location of pain in the posterior knee, which would seemingly be unrelated to the knee contusion.

Petitioner then attended an orthopedic consult with Dr. Jeffrey Akeson at Midwest Orthopaedic Center. Petitioner reported he was not taking any pain medication at that time. Objectively, Petitioner had good patella mobility with minimal pain and no joint effusion, and Dr. Akeson noted there was no significant structural damage to Petitioner's knee, and his pain was likely to improve with time. He told Petitioner to follow up as needed, and Petitioner never returned for any further treatment.

On March 4, 2021, Dr. Moody released Petitioner to return to full activity with no restrictions. Subjectively, Petitioner reported his knee was significantly better, and he was essentially back to his pre-injury baseline. As such, the Arbitrator notes the treating medical records show Petitioner suffered only a temporary exacerbation of his pre-existing degenerative knee conditions, without any permanent aggravation.

After Dr. Moody released Petitioner from care on March 4, 2021, there is no record of Petitioner receiving any further treatment for his left knee from any provider. No doctor has placed Petitioner on any permanent occupational or non-occupational restrictions. The treating records corroborate Petitioner's subjective complaints to the extent that he suffered a knee contusion, caused by an occupational incident, and that he has non-occupational degenerative disease in his left knee. While the work incident caused no structural damage to the knee, and Petitioner's symptoms eventually returned to his pre-injury baseline, the treating medical records do corroborate Petitioner's knee injury, subsequent conservative treatment, recovery, and unrestricted release. As such, the Arbitrator gives greater weight to this factor.

In addition to the Section 8.1b(b) factors, the Arbitrator also takes into account Respondent's six and a half percent (6.5%) credit in regard to Petitioner's left leg.

The Arbitrator notes the determination of permanent partial disability benefits is not simply a calculation, but an evaluation of all of the factors as stated in the Act in which consideration is not given to any single factor as the sole determinant. Based on the above factors, Respondent's credit of six and a half percent (6.5%), and the record in its entirety, the Arbitrator finds and concludes that **Petitioner's left knee injury caused additional permanent partial disability of 2.5% loss of use to the Petitioner's left knee.**