

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION

WEAVER, JEFFREY

Employee/Petitioner

Case# **14WC029603**

UNITYPOINT METHODIST MEDICAL CENTER

Employer/Respondent

On 6/7/2016, an arbitration decision on this case was filed with the Illinois Workers' Compensation Commission in Chicago, a copy of which is enclosed.

If the Commission reviews this award, interest of 0.43% shall accrue from the date listed above 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.

A copy of this decision is mailed to the following parties:

0192 CUSACK GILFILLAN & O'DAY
DANIEL P CUSACK
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PEORIA, IL 61602

5354 STEPHEN P KELLY
ATTORNEY AT LAW
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PEORIA, IL 61694

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**

JEFFREY WEAVER,
Employee/Petitioner

Case # **14 WC 29603**

v.

Consolidated cases: _____

UNITYPOINT METHODIST MEDICAL CENTER,
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 **Maureen Pulia**, Arbitrator of the Commission, in the city of **Peoria**, on **5/17/16**. 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 **7/26/14**, 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 as it relates to his right shoulder *is* causally related to the accident.

In the year preceding the injury, Petitioner earned **\$23,021.96**; the average weekly wage was **\$442.72**.

On the date of accident, Petitioner was **25** years of age, *single* with **no** dependent children.

Petitioner *has* received all reasonable and necessary medical services.

Respondent *has not* paid all appropriate charges for all reasonable and necessary medical services.

Respondent shall be given a credit of **\$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**.

Respondent is entitled to a credit of **\$00.00** under Section 8(j) of the Act.

ORDER

The Respondent shall pay Petitioner temporary total disability benefits of **\$295.15/week** for **0** weeks, as provided in Section 8(b) of the Act. Petitioner has failed to prove by a preponderance of the credible evidence that he was temporarily totally disabled from **8/6/14** to **1/15/15**.

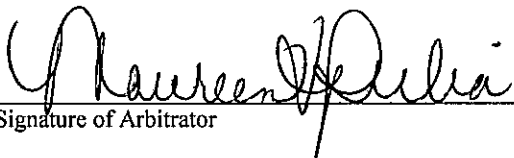
Respondent shall pay reasonable and necessary medical services, pursuant to the medical fee schedule, for all treatment to petitioner's right shoulder from **7/26/14** through **10/13/14**, as provided in Sections 8(a) and 8.2 of the Act. Respondent shall receive credit for all reasonable and necessary medical services to the right shoulder from **7/26/14** through **10/13/14** that have been paid pursuant to the Fee Schedule.

Respondent shall pay Petitioner permanent partial disability benefits of **\$265.63/week** for **0** weeks, because the injuries sustained caused the **0%** loss of his person as a whole, as provided in Section 8(d)2 of the Act.

Respondent shall pay to Petitioner penalties of **\$0**, as provided in Sections 19(k) and 19(l) of the Act. The arbitrator finds the respondent's failure to pay temporary total disability benefits from **8/6/14-1/15/15** was not unreasonable or vexatious.

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

6/1/16
Date

ICArbDec p. 2

JUN 7 - 2016

THE ARBITRATOR HEREBY MAKES THE FOLLOWING FINDINGS OF FACT:

Petitioner, a 25 year old CNA, sustained an accidental injury to his right shoulder and neck that arose out of and in the course of his employment by respondent on 7/26/14. On this day petitioner tripped over a call light electrical cord after getting a patient in bed. Petitioner testified that after he tripped on the cord, he started falling and caught himself before he fell to the ground. He testified that he had a little right arm pain at that time. Petitioner is left hand dominant.

Petitioner sought treatment on 7/26/14 at Unity Point Health. He provided a consistent history of the accident. He complained of right shoulder pain for the past 3 hours. He stated that it radiates up and down his right arm, and is worse with movement. Petitioner denied any previous injuries to his right arm. Petitioner was examined and assessed with right shoulder pain.

On 7/28/14 petitioner presented to IWIRC. He gave a consistent history of the accident. He rated his right shoulder pain at 3-4/10. He described his symptoms as a constant throbbing with intermittent pulling pain with movement. Petitioner was examined and assessed with a right shoulder strain. He was released to light duty with maximum lifting of 10 pounds and 20 pounds of lifting occasionally. On 7/30/14 petitioner returned complaining of worsened symptoms. He reported tingling and pain radiating down his arm and stated that his fingers were numb. He complained of pain when lifting anything. Petitioner was examined and again assessed with a right shoulder strain. Petitioner was given a Medrol Dose Pack and continued on light duty. On 8/4/14 he reported that his symptoms had improved a little. He stated that his swelling was better, but had intermittent throbbing. He was examined and assessed with a right shoulder strain that was slowly improving.

On 8/5/14 petitioner testified that it was a busy night in the emergency room and he was helping with surgical vitals and stacking shelves within his restrictions. While he was doing these activities he experienced pain radiating down his arm and into his neck from his shoulder. He testified that he had a swollen right hand.

On 8/5/14 petitioner presented to the emergency room at Unity Point Health. He complained of severe right shoulder and neck pain that radiates to the right leg. Petitioner reported that at the time of the injury he had not fallen to the ground, but rather caught himself on the recliner with his right arm. Petitioner was examined. Generalized tenderness was noted in the right shoulder, as well as slight swelling. Petitioner was diagnosed with right shoulder pain.

On 8/7/14 petitioner returned to IWIRC and reported that his symptoms were worse. He reported constant tightness, throbbing and aching sensations in the right shoulder. He reported that on Tuesday he had shooting sensations radiating to his neck, and down his right leg. He also reported swelling in the right wrist/hand.

Petitioner stated that his symptoms were worse when working. Petitioner stated that his face swelled on the right and felt hot. He also reported gait changes. It was noted that petitioner had a 5mm cyst growing on his pituitary, as was seen by MRI. Following an examination petitioner was assessed with a resolved right shoulder strain. PA Korf noted that she was unable to correlate the mechanism of injury with his current symptoms. Petitioner was released from care by IWIRC. He was taken off work until cleared by PCP for non-work related medical problems.

On 8/13/14 petitioner presented to Unity Point Clinic Family Medicine for follow-up of his right shoulder pain. He rated his pain at a 5-6/10, and stated that it was aggravated with overhead activities. He did not feel he could return to work. An examination revealed pain on flexion abduction external rotation. Am drop test was mildly positive on right. Cervical range of motion was within normal movements. Impingement test was positive. Dr. Dawalibi diagnosed right shoulder pain, probably related to a sprain/strain. Petitioner was referred to orthopedics for further evaluation.

Thereafter, petitioner sought legal representation. On 8/18/14 petitioner signed an Application for Adjustment of Claim, alleging injuries to his right, shoulder, right arm and right hand as a result of the injury on 7/26/14. This was filed on 9/2/14.

On 8/20/14 petitioner presented to Dr. Daniel Hoffman, a General Practitioner, at the direction of his attorney, Cusack. Petitioner reported that he hurt his right shoulder and cervical spine when he tripped on 7/26/14. He complained of pain in the right shoulder radiating down his arm. Petitioner reported that he was taken off work by the Methodist emergency room and had not been released by his primary care doctor to return to work. Petitioner was examined and assessed with a right shoulder strain, possible nerve compression and cervical strain. An MRI of the right shoulder was ordered, and a nerve study of the right arm was ordered. Petitioner was continued off work.

On 8/26/14 the petitioner underwent an MRI of the right shoulder. The impression was no acute fracture or rotator cuff; minimal fluid signal associated with the biceps tendon sheath that could be an asymptomatic finding or represent some tenosynovitis; and very small joint effusion.

Petitioner followed-up with Dr. Hoffman periodically from 9/3/14 through 1/15/15. Petitioner was authorized off work by Dr. Hoffman until 1/15/15. At that time he released petitioner on a trial basis.

On 10/6/14 petitioner's attorney sent letter to IRMS (Mika). He indicated that medical records with regards to petitioner's 7/26/14 injury were included. He claimed that the attached records show petitioner had been off of work since 8/6/14. Cusack claimed that petitioner had not received any TTD benefits, and asked

that respondent issue a check immediately. He further noted that petitioner's PCP Dr. Hoffman had referred petitioner to an orthopedic surgeon for evaluation, and wanted approval from respondent for the same. The records petitioner's attorney Cusack claims were attached to this letter were not included as part of his PX12.

On 10/13/14 petitioner was seen by Dr. Mark Markley for his right shoulder. He gave a history of tripping and catching himself with his arms extended in front of him. He rated his pain at a 5/10. He reported that his hand swelling and associated numbness and tingling had improved somewhat. Dr. Markley reviewed an outside MRI that showed scant effusion. There was no evidence of cuff or labral pathology. His impression was right rotator cuff strain, right shoulder acromioclavicular joint synovitis. Dr. Markley performed a corticosteroid injection into petitioner's right shoulder. Dr. Markley gave petitioner no restrictions at waist level, and 20 pound restriction waist to chest level. He ordered some physical therapy for petitioner's right shoulder.

On 10/30/14 Cusack drafted another letter to respondent's attorney (Kelly). He stated that attached to his letter were a copy of petitioner's medical records with regard to his injury of 7/26/14 along with a copy of his 10/6/14 correspondence directed at IRMS. (The records were not included in PX12). Cusack claimed that the records show petitioner had been off since 8/6/14 and had not received any TTD benefits. He noted that petitioner had been referred to Dr. Markley, and paid for that visit out of pocket. Cusack noted that Dr. Markley recommended physical therapy, but petitioner was unable to pay out of pocket for this treatment.

On 11/6/14 petitioner underwent an MRI of the cervical spine. The impression was minimal diffuse disc bulge at C5-C6 of doubtful significance. No other disc bulge or protrusions were noted.

On 1/15/15 petitioner presented to Dr. Patrick O'Leary, at Midwest Orthopaedic Center, on the referral of Dr. Hoffman. Petitioner gave a history of hurting his right shoulder and neck when he tripped over a cord by a patient's bed at work on 7/26/14. He reported that he had to "kind of throw his arms out to catch himself". Dr. O'Leary noted that petitioner had undergone an MRI of the cervical spine and had injections into his right shoulder by Dr. Markley, that really helped him a lot. Petitioner identified the area of pain as the right trapezial, paracervical shoulder region on the right side. He rated his pain as a 4/10. Petitioner demonstrated full range of motion of his cervical spine. All petitioner had was some tenderness in the right trapezial region that was aggravated by a shoulder shrug. X-rays of the cervical spine showed mild spondylosis. He also reviewed the MRI of the cervical spine that showed no disk protrusions. He noted that a minimal disk bulge of doubtful significance was noted at C5-C6. Dr. O'Leary recommended physical therapy for petitioner's trapezius. He released petitioner on an as needed basis. He released petitioner with no work restrictions.

On 2/16/15 petitioner underwent an Initial Evaluation at Professional Therapy Service, Inc. Petitioner continued in physical therapy until 3/2/15. Petitioner had 5 visits.

On 10/1/15 petitioner amended his Application of Adjustment of Claim and added a new body part injured. Petitioner indicated that his neck was also injured as a result of the accident on 7/26/14.

On 10/27/15 petitioner filed a petition for penalties under Section 19(k) and 19(l) of the Act. He claims petitioner was injured on 7/26/15, and respondent has refused to pay medical expenses for treatment despite being furnished with copies of the medical bills. Petitioner claims that respondent has no medical opinion stating medical treatment is not necessary. Petitioner claims he was off work from 8/6/14 through 1/15/15. Petitioner claims respondent has refused to pay TTD benefits, which is in violation of Sections 19(k) and 19(l).

On 12/16/15 the evidence deposition of Dr. Dru Hauter, who specializes in occupational medicine, was taken on behalf of the respondent. Dr. Hauter is from IWIRC in Peoria, the office where petitioner treated on four occasions. Dr. Hauter is the supervising physician at IWIRC and has physician assistants and nurse practitioners that work under him. Dr. Hauter testified that petitioner was seen by three of his physician assistants, and one nurse practitioner. Dr. Hauter testified that he did not personally examine petitioner. However, as supervising physician he reviews the notes of the visits, and is available for consult.

Dr. Hauter went over the notes of the four office visits and opined that a right shoulder strain was consistent with the mechanism of injury petitioner provided. He was of the opinion that a shoulder strain will typically resolve in 3-6 weeks. He opined that petitioner had reached MMI on 8/7/14 for his right shoulder strain and could return to unrestricted duty work. Dr. Hauter did not believe petitioner's complaints of pain going up the arm to the face area were related to this injury, and needed further follow-up with his primary care physician. He believed petitioner's treatment at IWIRC was reasonable and necessary. Dr. Hauter was of the opinion that Methodist had a light duty program. When petitioner was discharged from IWIRC on 8/7/14 he did not see any evidence of any permanent disability of petitioner as a result of his work injury.

On cross examination Dr. Hauter testified that he is a shareholder in the Integrated Work Injury network and is not a shareholder in the Illinois Work Injury Resource Center, which includes the Peoria facility where petitioner was seen. Dr. Hauter has a company called Hauter Medical that has a contract with IWIRC in Peoria. He testified that his clients are companies and not all his patients are clients. Dr. Hauter agreed that petitioner sustained a right shoulder strain that had resolved. Dr. Hauter testified that petitioner stopped being treated at IWIRC when his symptoms were no longer consistent with the documented injury. Petitioner was then sent back to his primary care physician.

On 4/19/16 the evidence deposition of Dr. O'Leary, an orthopedic spine surgeon, was taken on behalf of petitioner. Petitioner saw Dr. O'Leary to get his neck checked out. He noted that he saw petitioner once and he had a little bit of pain in the neck/shoulder region. He only noted a little bit of pain near the trapezius. He stated that petitioner's range of motion of the neck was normal and there were no neurological findings. Dr. O'Leary was of the opinion that petitioner's cervical MRI was pretty normal. Dr. O'Leary stated that he did not have petitioner off work. Dr. O'Leary was of the opinion that the mechanism of injury of 7/26/14 caused him to be symptomatic.

On cross examination Dr. O'Leary stated that his examination revealed no evidence of permanent disability. Dr. O'Leary was not certain whether petitioner fell to the floor or not on 7/26/14, or if he had both hands stretched out or only one. Dr. O'Leary was of the opinion that whether or not petitioner fell to the ground or not, if he tried to brace himself from falling with an extremity that could essentially cause stress to the neck or shoulder region and precipitate symptoms. He also did not know of any preexisting problems with petitioner's right arm or cervical spine. He saw no signs of malingering. Dr. O'Leary did not know if petitioner had a neck injury, but noted that petitioner described pain in that region. Dr. O'Leary could not opine that petitioner injured his cervical spine at the time of the injury. Dr. O'Leary could not opine if petitioner's pain was either just innate related to a trapezial muscle strain or just something that might be connected to the shoulder. He did not believe it was related to the cervical spine. Dr. O'Leary testified that the MRI showed no nerve root compression and he did not think petitioner's pain was radicular.

At trial petitioner testified that he feel fines. He testified that he was in the same shape he was before the injury. He stated that he had no pain and nothing was bothering him. Petitioner testified that he was in a motor vehicle accident in April, 2014, after which he treated with his primary care physician, and his chiropractor Dr. Walker for about a month for his neck and left shoulder. Petitioner said his treatment included adjustments to his neck, and thoracic and lumbar spine. After that he got a full release. He thinks he only missed 2 days of work. Petitioner admitted that his first complaints of neck pain were on 8/7/14 and he felt the neck pain was radiating pain from his right shoulder.

F. IS PETITIONER'S CURRENT CONDITION OF ILL-BEING CAUSALLY RELATED TO THE INJURY?

Petitioner is alleging that his current condition of ill-being as it relates to his right arm and neck are causally related to the injury on 7/26/14. When petitioner first sought treatment for his injury on 7/26/14 he complained of right shoulder pain. He had no neck complaints. When he treated at IWIRC on 7/28/14, 7/30/14, and 8/4/14 he only reported complaints of right shoulder pain. He had no neck complaints. Petitioner's first

complaints of neck pain were not until 8/5/14 when he complained of severe right shoulder and neck pain. There was no diagnosis at that time with respect to the neck. He was only diagnosed with shoulder pain.

His complaints at IWIRC on 8/7/14 continued to be his right shoulder with pain radiating to the neck. At that time it was also noted that an MRI revealed a 5mm cyst growing on petitioner's pituitary gland. Petitioner was found at that time to have symptoms such as face swelling and hot feeling on his face, as well as gait changes, that did not correlate to the mechanism of injury. Petitioner was examined and assessed with a resolved right shoulder and released from care for the right shoulder. He was referred to his PCP for his non-work related medical issues.

Despite this release from care for the right shoulder by IWIRC petitioner continued to treat. On 8/13/14 Dr. Dawalibi diagnosed right shoulder pain, probably related to a sprain/strain. Petitioner told Dr. Dawalibi that he did not feel he could work. When he was not taken off work, he sought legal representation and was sent to Dr. Hoffman by his attorney on 8/20/14. Petitioner reported to Dr. Hoffman that he had shoulder and cervical injuries when he tripped on 7/26/14. The arbitrator finds this accident history inconsistent with the credible medical records to date. At no time prior to this date did petitioner allege that he injured his cervical spine on 7/26/14. The only test Hoffman ordered was an MRI of the right shoulder. No tests were ordered for the neck.

Even when petitioner filed his Application for Adjustment of Claim days later on 9/2/14 he did not allege any injury to the neck as a result of the accident on 7/26/14.

Petitioner saw Dr. Markley on 10/13/14 and complained of right shoulder pain. Dr. Markley assessed a right rotator cuff strain and right shoulder acromioclavicular joint synovitis. He performed an injection into petitioner's right shoulder. Petitioner reported that it really helped.

Petitioner then saw Dr. O'Leary on 1/15/15 for his cervical spine. He reported a little bit of pain in the neck/shoulder region. He noted that petitioner's cervical range of motion was normal and there were no neurological findings. He was also of the opinion that petitioner's cervical spine MRI was pretty normal. He could not opine as to whether or not petitioner had a neck injury as a result of the accident.

Dr. Hauter opined that a right shoulder strain was consistent with the mechanism of injury petitioner provided, and that a shoulder strain will typically resolve in 3-6 weeks. He opined petitioner reached maximum medical improvement on 8/7/14 for his right shoulder strain.

It was not until 10/1/15 that petitioner amended his Application for Adjustment of Claim and alleged that he sustained a neck injury as a result of the accident on 7/26/14.

Based on the above, as well as the credible evidence, the arbitrator finds the petitioner has failed to prove by a preponderance of the credible evidence that he sustained a neck injury as a result of the accident on 7/26/14. Petitioner did not have neck complaints for weeks, and not even Dr. O'Leary, who treated him for his neck complaints, could opine that petitioner's neck complaints were related to the injury. Additionally, the arbitrator finds it significant that it was not until petitioner saw Dr. Hoffman, after seeking legal representation, that he reported for the first time that when he was injured on 7/26/14 that he injured his neck. The arbitrator also finds it significant that it was not until 10/1/15 that petitioner amended his Application for Adjustment of Claim and added a neck injury as a result of the accident on 7/26/14. The arbitrator also notes that petitioner had treatment to his neck just months before the injury. In April of 2014 petitioner was in a motor vehicle accident and sustained injuries to his neck for which he underwent chiropractic treatment for about a month before receiving a full release.

The arbitrator finds the petitioner injured his right shoulder as a result of the injury on 7/26/14. The arbitrator finds it significant that petitioner did not fall on his right arm and through 8/13/14, prior to seeking treatment with Dr. Hoffman, at the request of his attorney, petitioner was only diagnosed with a right shoulder strain. Even after petitioner sought legal representation and began seeing doctors at the request of his attorney, petitioner was never diagnosed with anything more than a strain, and some joint synovitis. Following the injection by Dr. Markley on 10/13/14 petitioner's right shoulder condition was improved.

Although Dr. Hauter opined that petitioner reached MMI for his right shoulder on 8/7/14, the arbitrator finds it significant that Dr. Hauter never examined petitioner and the records show that on 8/7/14 petitioner reported that his symptoms were worse. He reported constant tightness, throbbing, and aching sensations in the right shoulder.

Based on the above, the arbitrator finds the petitioner has proven by a preponderance of the credible evidence that he sustained an accidental injury to his right shoulder as result of the injury on 7/26/14 and that his current condition of ill-being as it relates to his right shoulder is causally connected to the injury on 7/26/14.

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?

Having found the petitioner has failed to prove by a preponderance of the credible evidence that he sustained an injury to his cervical spine as a result of the injury on 7/26/14, the arbitrator find none of the medical services petitioner was provided for his cervical spine were reasonable and necessary.

With respect to petitioner's right shoulder the arbitrator finds all treatment to his right shoulder was reasonable and necessary through 10/13/14. Respondent shall pay all reasonable and necessary medical services for petitioner's right shoulder from 7/26/14 through 10/31/14 pursuant to Sections 8(a) and 8.2 of the Act.

K. WHAT TEMPORARY BENEFITS ARE IN DISPUTE?

Petitioner claims he is entitled to temporary total disability benefits from 8/6/14 through 1/15/15. Prior to 8/6/14 petitioner had been working light duty for respondent. On 8/7/15 petitioner was released from care by IWIRC. His off work authorization at that point was related to his non-work related medical problems.

On 8/13/14 when petitioner presented to Unity Point. Petitioner told Dr. Dawalibi that he wanted to be off work. Dr. Dawalibi would not take him off work. Days later petitioner sought legal representation, and was referred to Dr. Hoffman, a doctor his attorney selected for him. On 8/20/14 petitioner was taken off work by Dr. Hoffman, despite the fact that he only assessed a shoulder strain, which was the same as what all the prior doctors had authorized. For that reason, the arbitrator finds no credible medical evidence to support a finding that petitioner could not have continued working light duty for respondent, unless it was related to the cervical spine which is not related to petitioner's injury. Despite no further changes in petitioner's condition, Dr. Hoffman continued petitioner off work through 1/15/15.

The arbitrator finds it significant that even when Dr. Markley saw petitioner on 10/13/14 he also believed petitioner was a capable of light duty work, and petitioner had not proven by a preponderance of the credible evidence that he presented these restrictions to respondent, and they declined to accommodate them.

Based on the above, as well as the credible evidence the arbitrator finds the petitioner has failed to prove by a preponderance of the credible evidence that he was temporarily totally disabled from 8/6/14 through 1/15/15.

L. WHAT IS THE NATURE AND EXTENT OF THE INJURY?

With regard to subsection (i) of §8.1b(b), the Arbitrator notes that the record contains no impairment rating pursuant to the most current edition of the American Medical Association's Guides to the Evaluation of Permanent Impairment. Therefore, the Arbitrator therefore gives no weight to this factor.

With regard to subsection (ii) of §8.1b(b), the occupation of the employee, the Arbitrator notes that the record reveals that Petitioner was employed as a CNA at the time of the accident. He provided no credible evidence to support a finding that he is not currently able to perform this job. Therefore, the Arbitrator gives lesser weight to this factor.

With regard to subsection (iii) of §8.1b(b), the Arbitrator notes that Petitioner was 25 years old at the time of the accident. Because petitioner has many years left of employment without any restrictions, the Arbitrator therefore gives lesser weight to this factor.

With regard to subsection (iv) of §8.1b(b), Petitioner's future earnings capacity, the Arbitrator notes there was no discussion regarding the impact of petitioner's future earnings capacity. Because of this, the Arbitrator therefore gives no weight to this factor.

With regard to subsection (v) of §8.1b(b), evidence of disability corroborated by the treating medical records, the Arbitrator notes that when petitioner last treated on 1/15/15 with Dr. O'Leary he reported an area of pain in the right trapezial, paracervical shoulder region on the right. Petitioner demonstrated some tenderness in the right trapezial region that was aggravated by a shoulder shrug. Petitioner was released with no work restrictions. Dr. O'Leary opined that petitioner had no evidence of permanent disability. At trial on 5/17/16 petitioner testified that he felt fine. He stated that he was in the same shape he was before the injury. He testified that he had no pain and nothing was bothering him.

Based on the above factors, and the record taken as a whole, the Arbitrator finds that Petitioner sustained permanent partial disability to the extent of 0% loss of use of his person as a whole pursuant to §8(d)2 of the Act because the petitioner has no evidence of permanent disability.

M. SHOULD PENALTIES OR FEES BE IMPOSED UPON RESPONDENT?

On 10/27/15 petitioner filed a petition for penalties under Section 19(k) and 19(l) of the Act. He claims petitioner was injured on 7/26/15, and respondent has refused to pay medical expenses for treatment despite being furnished with copies of the medical bills. Petitioner claims that respondent has no medical opinion stating medical treatment is not necessary. Petitioner claims he was off work from 8/6/14 through 1/15/15. Petitioner claims respondent has refused to pay TTD benefits, which is in violation of Sections 19(k) and 19(l).

Having found the petitioner is not entitled to temporary total disability benefits from 8/6/14 through 1/15/15, the arbitrator finds respondent's failure to pay temporary total disability benefits during this period was not unreasonable or vexatious.

Based on the above, as well as the credible evidence, the arbitrator finds the petitioner is not entitled to penalties pursuant to Sections 19(k) and 19(l) of the Act.