

**ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION**

CARLTON, CHADRICK

Employee/Petitioner

Case# **13WC018872**

15WC022659

PEORIA PUBLIC SCHOOLS DISTRICT #150

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:

:

1824 STRONG LAW OFFICES
TODD A STRONG
3100 N KNOXVILLE AVE
PEORIA, IL 61603

:

5354 STEPHEN P KELLY
ATTORNEY AT LAW
2710 N KNOXVILLE AVE
PEORIA, IL 61604

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

CHADRICK CARLTON,

Employee/Petitioner

v.

PEORIA PUBLIC SCHOOLS DISTRICT #150,

Employer/Respondent

Case # **13 WC 18872**

Consolidated cases: **15 WC 22659**

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 **5/19/16**. 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 **Motion to Strike Defenses**

FINDINGS

On **1/9/13 and 4/9/13**, Respondent *was* operating under and subject to the provisions of the Act.

On these dates, an employee-employer relationship *did* exist between Petitioner and Respondent.

On 1/9/13, Petitioner *did* sustain an accident that arose out of and in the course of employment.

On 4/9/13, Petitioner *did not* sustain an accident that arose out of and in the course of employment.

Timely notice of the accident on 1/9/13 *was* given to Respondent.

Petitioner's current condition of ill-being *is not* causally related to the accidents on 1/9/13 or 4/9/13.

In the year preceding the injuries, Petitioner earned **\$41,766.40**; the average weekly wage was **\$803.20**.

On the date of accident, Petitioner was **31** years of age, *single* with **no** dependent children.

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

Respondent *has or will* pay all appropriate charges for all reasonable and necessary medical services.

Respondent shall be given a credit of **\$3,438.84** for TTD, **\$00.00** for TPD, **\$00.00** for maintenance, and **\$00.00** for other benefits, for a total credit of **\$3,438.84**.

Respondent is entitled to a credit of under Section 8(j) of the Act for any medical expenses pursuant to this Section of the Act.

ORDER

Respondent shall pay Petitioner temporary total disability benefits of \$535.47/week for 0 weeks, as provided in Section 8(b) of the Act, because petitioner was not temporarily totally disabled from 5/18/13 through 1/14/14.

Respondent shall pay reasonable and necessary medical services related to petitioner's right shoulder and thoracic back strain from 1/9/13 through 1/16/13, as provided in Sections 8(a) and 8.2 of the Act. Respondent shall receive credit for any of these medical services that have already been paid.

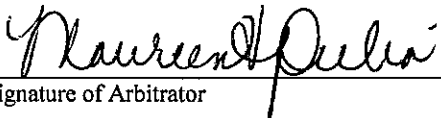
Respondent shall pay Petitioner permanent partial disability benefits of \$481.92/week for 0 weeks, because the injuries sustained caused the petitioner a 0% loss of the person as a whole, as provided in Section 8(d)2 of the Act.

Petitioner's Petition for Penalties is denied.

Petitioner's Motion to Strike Defenses is denied.

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

6/2/16
Date

ICArbDec p. 2

JUN 7 - 2016

THE ARBITRATOR HEREBY MAKES THE FOLLOWING FINDINGS OF FACT:

Petitioner, a 31 year old preventative maintenance technician, sustained an accidental injury to his cervical spine that arose out of and in the course of his employment by respondent on 1/9/13 (13 WC 18872), and alleges he sustained an accidental injury that arose out of and in the course of his employment by respondent on 4/9/13 (15 WC 22659). Petitioner started working of respondent in September of 2012.

Petitioner has a 10th grade education. He does not have a GED. Prior to working for respondent he worked in construction and performed farm work.

On 1/9/13 petitioner testified at trial that he was standing between the hood and the tire, fueling up one of the school buses. As another bus was trying to get around the bus he was working on it clipped the mirror of the bus he was working on and made the hood of the bus he was working on shake. Petitioner testified that he moved back as fast as he could by jumping over the tire, so that the hood of bus did not fall on him. Petitioner testified that he felt nothing for 45 minutes. Thereafter, he stated that his right shoulder starting hurting him.

He testified that after lunch he reported the injury to John Henry, his supervisor. He testified that he told Henry that his right shoulder was sore around the shoulder blade. Petitioner completed a safety sheet. An Illinois Form 45: Employer's First Report of Injury was completed for petitioner regarding an injury on 1/9/13 at 4:40pm. Petitioner wrote that while adding oil to bus #4, bus #22 came around pump and swiped the mirror on the hood of bus #4 while he was under the hood adding oil. Petitioner also wrote that he reported it to Lance. He noted that nothing struck him. He wrote "It sparred me and I jumped".

Petitioner presented to Proctor Care around 6:30 pm. He reported that he was under the hood of a bus and another bus hit the bus he was working under the hood on. He reported that he jumped when it happened. He reported pain in his right upper back. Petitioner reported that he was not struck, but believed he twisted his back. Petitioner was examined and assessed with thoracic back pain. He was prescribed Naproxin. Petitioner was released to full duty work without restrictions. Petitioner did not seek any further treatment until 4/11/13.

Between 1/9/13 and 4/9/13 petitioner testified that his right shoulder did not improve and his right arm was going numb to his fingers, which were tingling. He testified that he started getting more and more pain and weakness, and was working slower. He also testified that he had some headaches. Before 4/9/13 petitioner had some teeth pulled and was taking Vicodin for his teeth pain. He testified that he told Henry about it. Petitioner denied any other accidents during this period, and continued to work in respondent's bus barn. Petitioner testified that during this period he reported his ongoing problems to Henry and Darren, the union steward.

On 4/11/13 petitioner presented to IWIRC for evaluation of his right shoulder. Petitioner reported an injury on 1/9/13 at 6:30 pm. He testified that he was working under the hood of a bus and another bus hit his. Petitioner tried to get away and later noticed right shoulder pain. He rated his initial pain at 5/10, and his current pain was 1/10. He described his symptoms as dull aching pain with some pain radiating down his right arm.

Petitioner reported that 2 days ago he developed pain in the right upper back. He reported that he worked as a preventative maintenance worker on the buses. He reported that he was lifting and closing hoods and working under them all day. He reported that he developed pain and soreness in the upper right back and by the evening had moderate pain and left early. Petitioner took a Vicodin the night of 4/9/13 after work and the pain was much improved by the morning of 4/10/13. He only complained of mild soreness/tightness. He denied any specific job as the cause of his problems. He stated that he was just doing his job. He stated that the area that hurt him was the same area he hurt on 1/9/13. Petitioner reported that following the injury he had on 1/9/13, his pain resolved after about one week, and he had no problems until 2 days ago. Following an examination he was assessed with a thoracic strain. He was again given Naproxen. He was released to regular duty.

On 4/22/13 petitioner followed-up at IWIRC for his right shoulder. Petitioner reported that his symptoms were improved but he was still experiencing numbness in his right shoulder. He denied any pain and reported that he was not taking any medication for symptom relief. He reported that his upper back symptoms had resolved. Petitioner continued to report intermittent numbness in the posterior left arm that occurs with increased frequency. He reported that it had been occurring since the injury on 1/9/13. He denied any other radiating symptoms. Following an examination petitioner was assessed with a resolved right thoracic strain; and right arm numbness. Petitioner was unable to explain his symptoms as they relate to the injury described on 1/9/13 and 4/9/13. An MRI of the shoulder was ordered to assess for occult injury versus degenerative origin. Petitioner was continued on regular duty.

On 4/29/13 petitioner returned to IWIRC. Petitioner reported no change since last visit. He reported an episode where numbness/burning progressed into second right digit. He stated that he had no problems with his regular work duties, and his symptoms were more annoying than anything else. He stated that as the week progresses his right arm feels more tired. The cervical spine and right shoulder were examined. He was assessed with a resolved right thoracic strain, and right arm numbness. The nurse could not explain symptoms as they related to the injury described on 1/9/13 and 4/9/13.

On 5/6/13 petitioner returned to IWIRC after his MRI of the cervical spine that revealed a disk herniation at C6-C7 with nerve root. He was assessed with herniated cervical disc with right arm irritation. Petitioner was

given a Medrol Dose Pack. An EMG of the upper extremities was ordered, he was referred for a neurosurgery consultation, and was released to work with no use of the right arm above the shoulder height.

On 5/8/13 petitioner reviewed to IWIRC. He stated that his right arm still hurt with intermittent sharp, pulling pain and burning in his right forearm. He reported 2 hours of pain at an 8/10 the night before. He stated that it felt like a Charlie Horse. He reported increasing symptoms in the right arm, with burning pain in the arm starting the night before. Petitioner reported no relief with the Medrol Dose Pack. Petitioner was examined and assessed with a C6-C7 herniation with nerve root impingement. Petitioner was prescribed Vicodin and continued on Medrol Dose Pack. He was released to work on sedentary duty (sitting mostly with lifting up to 10 pounds occasionally; no above shoulder work; no commercial driving; and no safety sensitive duties).

By 5/13/13 petitioner reported to IWIRC that his symptoms had improved. However, he stated that if he moved around too much he has soreness and stiffness. His right arm pain was unchanged. He rated his current pain as 1/10, and noted that he was taking Vicodin. Petitioner stated that he sits 4 hours a shift and then walks around the lot for the rest of the time. Petitioner was examined and his assessment was unchanged. Petitioner was prescribed Mobic and Vicodin. He was released to work on sedentary duty (lifting up to 10 pounds occasionally, no above shoulder work, and no safety sensitive duties).

On 5/14/13 petitioner underwent an EMG/NCV of the his upper extremities. The assessment was right median neuropathy-mild to moderate, and right ulnar nerve entrapment of the cubital tunnel. No cervical radiculopathy was noted.

On 5/20/13 petitioner returned to IWIRC. He reported that his condition was unchanged. He rated his pain at a 6-7/10. He reported soreness and stiffness after moving around too much. Following an examination, petitioner was assessed with a C6-C7 disc herniation with nerve root impingement; right carpal tunnel syndrome and right cubital tunnel syndrome. Petitioner was referred to Dr. Mulconrey. Minimal bending and twisting of the back were added to his current restrictions. On 5/23/10 petitioner's medications were refilled.

By 5/28/13 petitioner reported that his symptoms had improved but he still had some bad days where he has soreness. He rated his pain at a 0/10. He stated that he has good days and bad days, and was doing very little activity. He reported loss of range of motion when the arm is numb. He stated that he was filing at work at chest level. An examination revealed good strength and FROM of arms bilaterally. His assessment and restrictions remained the same. On 6/4/10 petitioner reported that his symptoms had improved a little, but he still had tenderness and stiffness in his neck and shoulder area. He rated his pain at 3/10. Petitioner was examined and his assessment and restrictions remained the same.

On 6/9/13 petitioner presented to Dr. Daniel Mulconrey at Midwest Orthopaedic Center. His chief complaint was axial neck pain, upper extremity pain, numbness and weakness. Petitioner gave a history of working on a bus when he was struck by another bus and the hood struck him in the neck. He stated that since then he has had axial neck pain and upper extremity pain. He reported his pain at a 4/10. He complained of pain in the right upper back, forearm, upper arm and hand. Dr. Mulconrey was of the opinion that this was mainly in the C7 dermatomal distribution in the right upper extremity. He complained of moderate headaches. Following an examination and x-rays of the cervical spine; review of the EMG of the upper extremities that indicate petitioner had evidence of median and ulnar entrapment, which Dr. Mulconrey did not feel correlated with his current symptomatology; and review of the cervical MRI that indicated that petitioner had significant disc protrusion on the right at C6-C7, Dr. Mulconrey assessed disc displacement right C6-C7, right upper extremity radiculopathy, and failure of medical management. He discussed the possibility of surgical excision due to the fact that it had been 5 months and petitioner only had minimal improvement in his axial neck pain or upper extremity radiculopathy.

On 6/10/13 petitioner filed his Application for Adjustment of Claim with respect to 13 WC 18872 (DOA of 1/9/13). He alleged injuries to his neck, both arms and man as a whole, "injured when bus was struck in lot".

Petitioner continued to treat at IWIRC. On 6/11/13 petitioner reported that his symptoms included intermittent pulling pain in the right arm with some burning. He rated his pain at 2-7/10. Petitioner stated that he was not working due to his restrictions. He reported increased pain doing paperwork. On 6/25/13 he reported that he no longer had numbing sensations, but still had pain in the neck and right arm. He rated his pain at a 3/10. Physical therapy was ordered.

On 6/26/13 petitioner began a course of physical therapy at IWIRC. He gave a history of a neck strain in 1/13 when the bus he was working on was struck by another bus. He reported that he initially had paresthesias in the upper extremity that progressed to pain by 4/13. On 7/1/13 petitioner reported that his symptoms were unchanged. He reported ongoing central cervical pain and tightness. He complained of pain shooting down his right arm with any raising motion.

On 7/2/13 petitioner returned to IWIRC and reported that he was a little better. He reported increased pain with lifting his right side to the arm. He was still not working. Petitioner was given a Medrol Dose Pack. He was continued in physical therapy. On 7/5/13 petitioner reported that therapy was causing him right arm numbness. He stated that he was going to stop therapy. He also stated that the Medrol Dose Pack was not working. He reported that his neck was doing great and the numbness had dissipated. He also stated that his restrictions were lightened and he was going back to work. On 7/12/13 petitioner reported that his symptoms

had improved. He rated his pain at 2/10. He stated that he was back at work on the computer doing fine, but a little sore. He reported that he could not file because it is too painful for his shoulder.

On 7/8/13 Dr. Mulconrey drafted a letter stating that he was recommending an anterior cervical decompression and fusion at C6-C7 with instrumentation.

On 7/24/13 petitioner underwent a Section 12 examination by Dr. Andrew Zelby at the request of the respondent. Petitioner gave a history of adding oil to the school bus on 1/9/13 when another school bus clipped his bus. The hood of his bus started to move and he panicked, and jumped over the bus tire to get away from the hood. The hood never fell. He reported that he noticed right shoulder pain 30 minutes later. Petitioner reported that sometime in April 2013 he felt something else was going on because he developed numbness and tingling down the back of the right arm into the dorsal aspect of the forearm to the right second and third fingers. He stated that after 2 weeks of physical therapy he was a little better but as other exercises were added all his right arm symptoms returned. Following an examination and record review, Dr. Zelby's impression was cervical spondylosis, herniated cervical disc, and cervical radiculopathy. Dr. Zelby was of the opinion that petitioner's claim that his radicular symptoms in the right upper extremity that began in April of 2013 are causally related to his injury in January of 2013, is inconsistent with the natural history of a herniated cervical disc. Dr. Zelby opined that the onset of any radicular symptoms associated with his herniated disc would have typically began within 24-48 hours, and within 4-6 weeks at most. Dr. Zelby opined that petitioner's symptoms are related to his herniated C6-C7 disc, but his herniated C6-C7 disc is not related to any injury from January 2013, or any sequelae of that injury. He further opined that there is no medical evidence to even suggest that this condition that began in April 2013 was more likely to occur as a consequence of his injury in January of 2013. Dr. Zelby did not see findings suggestive of cubital or carpal tunnel. Dr. Zelby opined that petitioner sustained no permanent impairment from his work incident. Dr. Zelby opined that petitioner should not have an anterior cervical discectomy and fusion unless he stops smoking. Dr. Zelby opined that petitioner was at maximum medical improvement for his work injury prior to April 2013.

After the examination by Dr. Zelby respondent terminated petitioner's benefits.

On 8/6/13 petitioner presented to Dr. Kube at Prairie Spine & Pain Institute, at the request of his attorney. On his Intake Form petitioner reported that on 1/9/13 he hurt his shoulder in the scapular region. He stated that since April 2013 his problem worsened. He reported that his problem started with a bus accident at work. He reported that he was under the bus hood, and another bus hit his bus and he jumped out of the way and had pain within a half hour. He noted that his pain was mild. Following an examination and record review. Dr. Kube was of the opinion that petitioner has a cervical disk herniation and radiation. He believed petitioner was

initially misdiagnosed. He noted that he could see how a non-specialist could look at petitioner's condition and consider his periscapular pain as a shoulder disorder. However, pain in that region can often be shoulder or it can be cervical in nature. Dr. Kube was of the opinion that since the pain never resolved that disqualifies shoulder strain or muscle injury as the diagnosis as the pain should have resolved if that was the only issue. Since petitioner stated that his symptoms had continued consistently since January and there were no other intervening accidents and no history of any significant problems before that, Dr. Kube was of the opinion that petitioner probably herniated his C6-C7 disk at the time of the bus incident in January of 2013. He believed a decompression would be in order. However, he wanted to see the MRI films because he thought a cervical disc replacement may work due to the fact that there were no significant degenerative changes at C6-C7.

On 8/12/13 petitioner followed up with Dr. Kube. Dr. Kube had the chance to review all the images from the MRI of the cervical spine. Based on these films Dr. Kube was of the opinion that the films demonstrated a right sided C6-C7 disk herniation impinging the C7 root on the right side. He was of the opinion that the compression was significant. Based upon the absence of any kind of disc desiccation, Dr. Kube was of the opinion that this is an acute herniation that is consistent with the petitioner's history. He was also of the opinion that the herniation was directly caused by the incident petitioner described. He recommended a decompression and disk replacement.

On 8/8/13 petitioner filed a Motion to Strike the IME Opinion of Dr. Zelby. He also filed a Notice of Motion and Order for penalties under Sections 19(k) and 19(l) of the Act. Both Motions were to be heard before Arbitrator Fratianni on 10/15/13.

On 8/26/13 petitioner underwent a complete disk replacement at C6-C7, and decompression of C6-C7 performed by Dr. Kube. His post-operative diagnosis was right-sided herniated disc at C6-C7 with radiculopathy. Petitioner followed-up post-operatively with Dr. Kube. This treatment included a course of physical therapy.

On 11/6/13 petitioner filed a Notice of Motion and Order and Petition for Application of Issuance of Subpoena and Award of Attorneys' Fees pursuant to Section 16 of the Act, to be heard before Arbitrator Fratianni. Petitioner stated that he filed a subpoena for records from respondent regarding petitioner.

On 11/26/13 petitioner followed-up with Dr. Kube. He was doing really well, but continued to complain of pain when trying to raise his right arm out to the side.

On 12/6/13 Geri Hammer with Peoria Public Schools drafted a letter to petitioner re: work status. She wrote that petitioner was off work due to a non-work related injury since 7/31/13. Since that time he was

deemed ineligible for a FMLA leave because he did not meet FMLA's 12 month length of service requirement. Therefore, on 7/31/13 he became subject to the Board Policy 5:180 Temporary Illness or Temporary Incapacity. She noted that on 12/9/13 he would exhaust all leave available to him. She noted that as such, a recommendation would be made to the Board of Education to dismiss him from employment from Peoria Public Schools at their meeting on 12/16/13.

On 1/10/14 respondent's attorney sent petitioner's attorney a letter stating that petitioner was no longer an employee of respondent's. He requested petitioner's keys and uniform back.

On 1/23/14 petitioner filed a Notice of Motion and Order to Strike Defenses, or in the Alternate Motion to take a Negative Inference to be heard by Arbitrator Erbacci on 3/3/14.

On 1/10/14 petitioner underwent a Functional Capacity Evaluation to determine his present abilities and limitations. Petitioner's material handling abilities were occasional floor to waist 45#, waist to shoulder 30#, shoulder to overhead 22.5#, carry 27.5#, pushing 80#, pulling 81#; frequent floor to waist 22.5#, waist to shoulder 20#, shoulder to overhead 15#, carry 13.5#, pushing 40#, pulling 40.5#; and constant floor to waist 11.25#, waist to shoulder 10#, shoulder to overhead 7.5#, carry 6.75#. Non-material handling were occasional overhead reaching; frequent bending, reaching at head height or below, kneeling, and crawling; and constant sitting, standing, grip/fine motor, an climbing..

On 1/14/14 Dr. Kube restricted petitioner to Medium Activity per the Functional Capacity Evaluation. He was of the opinion that these restrictions are permanent. Petitioner had no further treatment with Dr. Kube.

On 7/7/14 the evidence deposition of Dr. Kube, a spine surgeon, was taken on behalf of the petitioner. Dr. Kube testified that petitioner told him that he had ongoing right shoulder blade region pain since the accident on 1/9/13. Dr. Kube reviewed the MRI of May 2013 and opined that petitioner's cervical disk herniation appeared acute rather than degenerative. Dr. Kube testified that within several months you would start to see degenerative stuff. Dr. Kube saw no problem with petitioner's reports that he had no radicular complaints until three months after the alleged work injury. Dr. Kube took petitioner off work on 8/26/13 and returned him to light duty work on 10/15/13. Dr. Kube testified that on 1/14/14 he placed petitioner at a physical demand level of medium activity. Dr. Kube was of the opinion that radicular pain going down the arm within the first few days following an injury is consistent with a cervical herniated disc. Dr. Kube opined that petitioner's cervical disc replacement was reasonable and necessary and causally related to the injury petitioner sustained in January of 2013. He further opined that petitioner's permanent restrictions are causally related to his injury in January 2013. Dr. Kube admitted that he did not review the records from IWIRC.

On cross-examination, Dr. Kube admitted that he did not know petitioner's exact job duties after 1/9/13. He also testified that he did not know any of petitioner's outside activities after 1/9/13. Dr. Kube admitted that when petitioner followed-up in October, November and December of 2013, a couple times he said he felt excellent and his pain level was very, very low. Dr. Kube testified that he knew of no other places petitioner worked other than for respondent. Dr. Kube admitted that he was not totally clear on the mechanism of injury as it pertains to how petitioner got out of the way when he thought the hood was going to fall. He also did not know if petitioner fell to the ground, or twisted his body. Dr. Kube agreed that petitioner's complaints appeared to change in April 2013. Dr. Kube agreed there was medical literature to support a finding that radicular symptoms would appear by 4-6 weeks following a herniated disk. Dr. Kube was of the opinion that if there are medical records that show petitioner had been examined, and was pain free in January or early February 2013, and stayed that way for months then that type of scenario could mean his condition of ill-being is not related to the work accident in January of 2013.

On 8/14/14 Bob Hammond, Vocational Consultant, issued a Vocational Report at the request of petitioner's attorney, after meeting with petitioner and reviewing the file information. Hammond noted that petitioner had been released to medium level work with occasional overhead and frequent posture activities. He was of the opinion that petitioner has skills with knowledge of mechanic parts, but will have reduced access to the labor market because of his weight limits and lack of education. Hammond noted that petitioner was looking into getting his GED, but this may take a significant amount of time. Because of petitioner's limits and lack of education, Hammond was of the opinion that petitioner would have a significant wage loss. He noted that petitioner earned \$29.06 per hour at his previous position which he cannot perform, and will at best earn \$9-\$9.50/hr. Hammond opined that petitioner will have a significant wage loss for other positions in the area.

On 10/30/14 the evidence deposition of Bob Hammond, vocational consultant, was taken on behalf of respondent. Hammond testified that he reviewed some job logs but could not produce them or remember how many there were, but mentioned in his report that petitioner told him he applied for 50 to 60 jobs. Hammond was of the opinion that petitioner had a number of skills that would carry into other positions. He defined them as a skilled mechanic in gas and diesel engines. Hammond testified that petitioner's salary was \$20.06 an hour, not the \$29.06 per hour mentioned in his report. He opined petitioner was permanently and totally disabled from returning to his regular job because he cannot do overhead work and the job of a mechanic requires it. He opined that petitioner could not make more than \$12 an hour now.

On cross examination Dr. Hammond testified that he never contacted respondent regarding this case. He also did not review the deposition of Dr. Kube; any more current FCEs; or any records after his FCE.

Hammond testified that petitioner called him and told him he was going to drive a grain truck for a farmer. He testified that petitioner told him he was not working when he interviewed him. Hammond agreed that raising deer can be more than a medium type work. He testified that petitioner told him he did not sell any deers when he interviewed him. Dr. Hammond was of the opinion that petitioner has deer hunted and that could at times exceed a medium level. Hammond testified that job logs do not tell him whether a client can work or not, just that they were looking for work. Dr. Hammond opined that petitioner's job for respondent did not fall within his permanent restrictions, but then admitted that he never reviewed petitioner's job description for respondent. He agreed that petitioner could work jobs that start between \$14 and \$15. Hammond admitted that he did perform a labor market survey or do any testing of petitioner.

On 11/14/14 petitioner underwent another Section 12 examination performed by Dr. Zelby at the request of the respondent. Dr. Zelby was of the opinion that petitioner's cervical range of motion was normal, except for a little diminished hyperextension. His Hoffman's, Spurling's, squatting, straight leg raise, toe walking, heel walking, gait, tandem gait, strength, sensation, and reflexes were normal. Dr. Zelby examined petitioner and reviewed additional medical records including Dr. Kube's surgical report and the FCE. He noted that petitioner noted definite improvement after the surgery. Dr. Zelby was of the opinion that petitioner was at maximum medical improvement and based on his examination could return to heavy physical labor without restrictions.

On 6/15/15 the evidence deposition of Dr. Zelby, a neurosurgeon, was taken on behalf of the respondent. Dr. Zelby opined that petitioner had cervical spondylosis, which is degeneration; a herniated cervical disk; and cervical radiculopathy. He recommended an anterior cervical discectomy and fusion if he stopped smoking, or a microdiscectomy of right C6-C7. He had no problem with Dr. Kube's recommendation for a cervical disk replacement. Dr. Zelby opined that the cervical surgery recommendation is not causally related to the accident on 1/9/13 because at the time of the injury he reported right shoulder pain at the bottom of the right scapula, and it was not until 3 months later that he complained of pain radiating down the right upper extremity. He opined that this is inconsistent with the natural history of a herniated disk. He noted that petitioner noted a new set of symptoms in April of 2013 and based on the appearance of the disk herniation, the onset of radicular symptoms would typically begin within 24-48 hours, and certainly within 4-6 weeks. He opined that the symptoms in January of 2013 were on the right shoulder blade and were diagnosed as a thoracic strain and resolved. These symptoms were then replaced in April 2013 with radicular symptoms radiating down the arm. He opined these symptoms are consistent with a herniated disk that might have occurred in April of 2013. Dr. Zelby opined the symptoms are related to the herniated disk, but the herniated disk is not causally related to the January 2013 injury. Based on the IWIRC note from 4/11/13 Dr. Zelby was of the opinion that petitioner's symptoms

following the injury in January 2013 resolved within a week and he did not have any additional problems until 2 days before 4/11/13 without any injury.

On cross examination, Dr. Zelby opined that the FCE was an inaccurate representation of petitioner's abilities. Dr. Zelby opined that the surgery petitioner underwent for his cervical spine condition was reasonable and necessary, but not related to the injury in January 2013. Dr. Zelby did not believe petitioner sustained an accident on 4/9/11 that could account for his symptomatology as documented on 4/11/13 because petitioner reported that he did not know what brought on those symptoms, and that they just seemed to come on. Dr. Zelby opined that pain in the right upper scapular region and trapezius is not indicative symptomatology of a C6-C7 herniated disk.

On 7/9/15 petitioner's Application for Adjustment of Claim with respect to the alleged accident on 4/9/13. He alleged injuries to his neck, right arm and whole person. He described his accident as "lifting/closing hoods and working under them all day". Petitioner signed this Application on 6/30/15.

Currently, petitioner testified that any time he is overactive his right shoulder hurts and he gets headaches. He testified that he only takes over the counter medicine.

Petitioner testified that he underwent a self directed job search and got a job in September of 2014 with a farmer named John Meegan. He testified that he operates a tractor, and performs preventative maintenance on them. Petitioner testified that the farm is 18 miles from his home. Petitioner testified that he still works as a farm hand for \$10/hour. He works 25-30 hours a week. Some weeks he works over 70 hours and some weeks works less than 15 hours a week. His duties include machinery work using a cultivator, chisel plow, one pass, aerator, and disc. He also works the combine and has climbed on the silo to line up the auger. Petitioner also does field work and helps with the harvest. Petitioner claims none of this work requires him to lift over 45 pounds.

Petitioner testified that he was trying to rehab himself and started his own business raising white tail deer. He raises and sells bucks for hunting. Petitioner testified that he sold some deer last year and this year. On cross examination he testified that he had this business in May of 2013. As part of this business he lifts animals and things weighing more than 45 pounds.

On cross-examination petitioner testified that the accident of 1/9/13 caused his problems, not the accident in April of 2013. Petitioner admitted that when he filled out the accident report for the 1/9/13 accident he had no neck complaints or radiating pain down his right arm. He only had shoulder complaints.

Petitioner testified that on 1/9/13 that he did not fall on the ground, and did not hit anything on the bus. Petitioner testified that he was standing parallel to the engine. When the mirror was hit he jumped over the tire to get out of the way. He stated that the tire was 3 feet high. After that he continued working until lunch.

Petitioner testified that he worked from 1/9/13 through 4/9/13 and reported no accidents or problems while working full duty. He admitted he sought no treatment during this period.

Petitioner testified that he went to IWIRC on 4/11/13 because of increased activities. He testified that he was doing farm work and was lifting more than 45 pounds. He stated that he was doing vigorous activity at home and this was aggravating his neck.

Petitioner testified that before the accident he worked for Wagenbacks as a farm hand, but not after his surgery.

C. DID AN ACCIDENT OCCUR THAT AROSE OUT OF AND IN THE COURSE OF PETITIONER'S EMPLOYMENT BY RESPONDENT?

The parties stipulate that petitioner sustained an accidental injury that arose out of and in the course of his employment by respondent on 1/9/13. However, although the petitioner alleges he sustained an accidental injury that arose out of and in the course of his employment by respondent on 4/9/13, the respondent disputes this claim. Respondent claims petitioner did not sustain an accidental injury that arose out of and in the course of his employment by respondent on 4/9/13.

With respect to the alleged accident on 4/9/13, petitioner did not report an injury on that date, and did not seek any treatment on that day. The first treatment petitioner had after 4/9/13 was his visit to IWIRC on 4/11/13. On that day petitioner presented for evaluation of his right shoulder. He reported that two days ago he developed pain in the right upper back. He did not report a specific incident occurring on 4/9/13. All he reported was lifting and closing hoods and working under them all day and developed soreness in the upper right back. He reported that he took Vicodin that night and was much improved the next morning. Petitioner had Vicodin as a result of having some teeth pulled.

On 6/9/13 petitioner presented to Dr. Molconrey and gave a history of a work injury on 1/9/13. He gave no history of a work accident on 4/9/13.

On 6/10/13, two months after the alleged injury of 4/9/13 petitioner filed an Application for Adjustment of Claim. However, the only accident date he put on it was the accident on 1/9/13. Petitioner made no reference to an injury on 4/9/13.

On 7/24/13 petitioner was evaluated by Dr. Zelby. He gave a detailed history of the accident on 1/9/13. With respect to the alleged injury on 4/9/13, he reported that sometime in April of 2013 he felt something else was going on because he developed numbness and tingling down the back of the right arm into the dorsal aspect of the forearm to the right second and third fingers.

On 8/6/13 petitioner presented to Dr. Kube. Again he reported a specific injury to his shoulder in the scapular area while at work in 1/9/13. All he said with regard to his alleged accident was that in April 2013 his problem worsened. Dr. Kube noted that petitioner's symptoms changed in April of 2013.

On 7/9/15, over two years after the alleged injury, and after the depositions of Dr. Kube and Dr. Zelby were taken, petitioner filed an Application for Adjustment of Claim for an injury on 4/9/13. He alleged that he injured himself lifting/closing hoods and working under them all day. He did not allege any specific incident occurring on 4/9/13.

Petitioner testified at trial that the accident on 1/9/13 caused his problems, not the accident in April of 2013. Petitioner also testified that he went to IWIRC on 4/11/13 because of increased activities. He testified that he was doing farm work and lifting more than 45 pounds. He also testified that he was doing vigorous activity at home and that was aggravating his neck.

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 an accidental injury that arose out of and in the course of his employment by respondent on 4/9/13. The arbitrator bases this on the fact that at no time on or after 4/9/13 did the petitioner ever put forth a specific injury that occurred at work on 4/9/13. Additionally, the arbitrator finds it significant that petitioner had no injury report for this alleged injury like he did after the one on 1/9/13, and that he did not file an Application for Adjustment for Claim for this alleged injury two months after the alleged injury when he filed his Application for Adjustment of Claim for the accident on 1/9/13. The arbitrator finds it suspect that petitioner did not file any Application for Adjustment of Claim for an alleged injury on 4/9/13 until over two years later, and not until after the depositions of Dr. Kube and Dr. Zelby had been taken. Lastly, the arbitrator finds it very significant that at trial petitioner testified that when he went to IWIRC on 4/11/13 it was because of increased activities. He testified that he was doing farm work and lifting more than 45 pounds. He also testified that he was doing vigorous activity at home and this was aggravating his neck.

E. WAS TIMELY NOTICE OF THE ACCIDENT GIVEN TO RESPONDENT?

The parties stipulate that petitioner gave timely notice of the accident to the respondent with respect to the accident on 1/9/13. However, having found the petitioner has failed to prove by a preponderance of the credible evidence that he sustained an accidental injury that arose out of and in the course of his employment by respondent on 4/9/13, the arbitrator finds this issue moot as it relates to the alleged accident on 4/9/13.

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

Petitioner is alleging that his current condition of ill-being is causally related to the injury he sustained on 1/9/13. Respondent claims petitioner's current condition of ill-being is not causally related to the injury on 1/9/13.

Petitioner testified that following the injury on 1/9/13 he reported the same to his supervisor, John Henry. However, the Form 45 he completed on 1/9/13 states that he reported the injury to Lance. On that report petitioner noted that another bus swiped the mirror of the bus he was working on. He wrote that he injured his right shoulder. There is no mention of any neck pain. He noted that nothing struck him and "it sparrred me and I jumped." When he presented to Proctor Care later that day he gave a history of working under the hood of the bus when another bus hit his bus. He reported that he jumped back when it happened. He made no mention of jumping over a three foot tire to get out of the way. He only reported pain in right upper back. He stated that he was not struck, but believed he twisted his back. He was assessed with thoracic back pain. Petitioner did not seek any further treatment until he presented to IWIRC on 4/11/13.

Although petitioner testified that between 1/9/13 and 4/9/13 his right shoulder did not improve and his right arm was going numb to his fingers, which were tingling. He also testified that during this period he started getting more and more pain and weakness and was working slower. He also claimed he had some headaches.

Despite this testimony at trial, the arbitrator finds no credible evidence to support these claims. In fact, when petitioner presented to IWIRC on 4/11/13 he reported that following the injury he had on 1/9/13, his pain resolved after about one week and he had no problems until 2 days ago. He reported that he developed pain and soreness in his right upper back while opening and closing hoods and working under them all day. He did not report any specific incident occurring on 4/9/11. He was assessed with a thoracic spine sprain. The arbitrator finds it significant that despite these records, at trial, petitioner testified that when he went to IWIRC on 4/11/13 it was because of increased activities. He testified that he was doing farm work and lifting more than 45 pounds. He also testified that he was doing vigorous activity at home and this was aggravating his neck.

On 4/22/13 petitioner denied any pain and reported that he was not taking any medicine for symptom relief. He reported that his upper back symptoms had resolved. He was assessed with a resolved right thoracic strain and right arm numbness. On 4/29/13 he reported no change in his condition. He reported an isolated incident where numbness/burning progressed into his 2nd digit. His assessment remained unchanged.

Petitioner underwent an MRI of the cervical spine that revealed a disk herniation at C6-C7 with nerve root. Petitioner continued to complain of right arm pain. By 5/3/13 he reported that his symptoms had improved and he rated them at a 1/10. Around this time petitioner had his own business for raising white tail deer. Although petitioner was restricted to light duty at this time, he admitted that as part of this business he lifts animals and things weighing more than 45 pounds.

An EMG of the upper extremities performed 5/14/13 showed median neuropathy-mild to moderate, and right ulnar nerve root impingement, unrelated to the alleged injury. No cervical radiculopathy was noted. Based on the MRI and EMG petitioner was assessed with a C6-C7 disk herniation with nerve root impingement, right carpal tunnel and right cubital tunnel syndromes. On 5/28/13 petitioner rated his pain at a 0/10.

When petitioner presented to Dr. Mulconrey on 6/9/13, for the first time he provided a entirely different history of what occurred on 1/9/13. Petitioner reported that when he was working on a bus he was struck by another bus and the hood struck him in the neck. He reported that since 1/9/13 he has had axial neck pain and upper extremity pain. The arbitrator finds this history totally inconsistent with the credible medical records, and accident report most contemporaneous to the accident that provided a clearly different accident history. Based on this accident history to Dr. Mulconrey the arbitrator finds the petitioner less than credible.

On 6/11/13 petitioner reported that his pain was increased with doing paperwork for respondent, but admitted at trial that during this period he was raising white tail deer. On 7/5/13 petitioner reported that his neck was doing great and the numbness had dissipated.

When petitioner presented to Dr. Zelby, he gave a history of adding oil to the bus on 1/9/13 when another bus clipped his bus. For the first time he did not just state that he jumped back. Instead he elaborated a bit and stated that he jumped over the bus tire to get away from the hood. He then went on to state that he had right shoulder pain at that time. He reported no other problems until sometime in April of 2013 when he felt something else going on because he developed numbness and tingling down the back of the right arm into the dorsal aspect of the forearm to the right second and third fingers.

Dr. Zelby opined that petitioner's claim that his radicular symptoms in the right upper extremity that began in April of 2013 were causally related to his injury in January 2013, was inconsistent with the natural history of

a herniated cervical disk. He opined that the onset of any radicular symptoms associated with a herniated disk would typically begin within 24-48 hours, and no later than 6-8 weeks after the incident. The Arbitrator puts this timeframe no later than 3/8/13. He opined that there is no medical evidence to suggest that the cervical condition that began in April 2013 was more likely to occur as a consequence of his injury in January 2013.

Petitioner presented to Dr. Kube on 8/6/13. He reported that on 1/9/13 he hurt his shoulder in the scapular region and since April of 2013 his problem worsened. Dr. Kube was of the opinion that since the petitioner reported that his symptoms had continued consistently since January 2013, and there were no intervening accidents and no history of any significant problems before that, that petitioner probably herniated his C6-C7 disk at the time of the bus incident in January. The arbitrator finds the history petitioner provided Dr. Kube with respect to his symptoms continuing from 1/9/13 and 4/9/13 is unsupported by the credible medical record. As such, the arbitrator finds the opinions of Dr. Kube less than persuasive.

During his deposition Dr. Kube stated that reviewed the MRI of May 2013 and opined that petitioner's cervical disk herniation appeared acute rather than degenerative. Dr. Kube admitted that he did not review the records from IWIRC. He also admitted that he did not know petitioner's exact job duties after 1/9/13, or any of petitioner's outside activities after 1/9/13. Dr. Kube testified that he knew of no other places petitioner worked other than for respondent. Dr. Kube admitted that he was not totally clear on the mechanism of injury as it pertained to how petitioner got out of the way when he thought the hood was going to fall. He also did not know if petitioner fell to the ground, or twisted his body. Dr. Kube agreed that petitioner's complaints appeared to change in April 2013. Dr. Kube agreed there was medical literature to support a finding that radicular symptoms would appear by 4-6 weeks following a herniated disk. He was of the opinion that if there are medical records that show petitioner had been examined, and was pain free in January or early February 2013, and stayed that way for months then that type of scenario could mean his condition of ill-being is not related to the work accident in January of 2013. The arbitrator notes that the IWIRC records, which Dr. Kube did not review, clearly show that petitioner was pain free in late January of 2013, following the injury on 1/9/13.

Based on the above, as well as the credible evidence, it is clear that the credible records support a finding that as a result of the injury on 1/9/13 petitioner sustained a thoracic strain and right shoulder pain that essentially resolved after about one week. The arbitrator finds petitioner's claims that his problems continued to worsen between the injury on 1/9/13 and 4/9/13 to be totally unsupported by the credible record which includes his own history that the injuries he sustained on 1/9/13 resolved within a week of the incident. In further support of this finding the arbitrator finds petitioner sought no treatment between 1/10/13 and 4/10/13. Additionally, the arbitrator found the petitioner's histories to some of the healthcare providers less than credible

and unsupported by any credible medical evidence. The arbitrator also has significant concerns regarding the etiology of petitioner's neck symptoms especially given the fact that petitioner himself testified at trial that he went to IWIRC on 4/13/11 because of increased activity. He testified that he was doing farm work and vigorous activity at his home that was aggravating his neck.

The arbitrator finds the petitioner has failed to prove by a preponderance of the credible evidence that his current condition of ill-being is causally related to the accident on 1/9/13. The arbitrator finds the petitioner sustained some right shoulder pain and thoracic pain for which he was prescribed Naproxin. Petitioner reported on 4/11/13 at IWIRC that following the injury on 1/9/13 his pain resolved after one week and he had no problems until 2 days ago.

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's current condition of ill-being is not causally related to the injury petitioner sustained on 1/9/13, the arbitrator denies petitioner's claim for any medical expenses after 1/16/13, one week after the accident on 1/9/13.

Having found the petitioner had right shoulder pain following the injury on 1/9/13, and was diagnosed with a thoracic back strain, and sought no further treatment until 4/11/13, when he reported that following the injury on 1/9/13, his pain resolved after about one week, and he had no problems until 2 days ago, the arbitrator finds the respondent shall pay all reasonable and necessary medical expenses pursuant to Section 8(a) and 8.2, that are related to petitioner's right shoulder and thoracic spine through 4/16/13, the date petitioner reported that his pain related to the injury on 1/9/13 had resolved.

K. WHAT TEMPORARY BENEFITS ARE IN DISPUTE?

Petitioner claims he was temporarily totally disabled from 5/18/13 through 1/14/14. Having found the petitioner's cervical spine condition is not related to his injury on 1/9/13, and that petitioner had reached maximum medical improvement with respect to his injury on 1/9/13 by 1/16/13, the arbitrator finds the petitioner is not entitled to any temporary total disability benefits as a result of his cervical spine condition.

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

The arbitrator finds the petitioner sustained some right shoulder pain and thoracic back strain as a result of the injury on 1/9/13, and these conditions had resolved by 1/16/13 based on the petitioner's own history.

Having found the petitioner's current condition of ill-being is not related to the injury on 1/9/13, and petitioner was pain free with respect to the right shoulder and thoracic back strain he sustained on 1/9/13 by

1/16/13, the arbitrator finds the petitioner has not sustained any permanent disability. In support of this finding the arbitrator also relies on the opinion of Dr. Zelby that petitioner sustained no permanent impairment for his work incident.

M. SHOULD PENALTIES OR FEES BE IMPOSED UPON RESPONDENT?

On 8/8/13 petitioner filed a Motion for Penalties pursuant to Section 19(k) and 19(l) of the Act with respect to the accident on 1/9/13. The petitioner claims that there is a causal connection between petitioner's work injuries and the accident he had at the workplace, and the respondent has willfully and vexatiously refused to pay medical benefits, temporary total disability benefits, and future authorized medical treatment.

The arbitrator finds the petitioner has failed to prove by a preponderance of the credible evidence that petitioner's current condition of ill-being as it relates to his complaints on 4/9/13 and after are causally related to the injury on 1/9/13 after 1/16/13 based on the credible medical records that show petitioner sustained right shoulder pain and thoracic strain pain as a result of the injury on 1/9/13, and these problems resolved by 1/16/13.

The petitioner's claim for penalties is denied.

O. MOTION TO STRIKE DEFENSES

Petitioner filed a Motion to Strike Defenses on 1/23/14. This Motion was to be heard by Arbitrator Erbacci on 3/3/14. On 3/3/14 this Motion was not ruled on by Arbitrator Erbacci. It is unclear whether or not this Motion was presented to Arbitrator Erbacci on this date. Petitioner's claim is that it sent a subpoena to respondent for specific records pertaining to petitioner, and respondent did not comply with the subpoena by 9/17/13. Therefore, the petitioner wants the arbitrator to make negative inferences based on petitioner's refusal to comply with the subpoena, or strike the respondent's defenses as to accident, causal connection, and medical expenses.

Although that the arbitrator has no authority to enforce a subpoena, the arbitrator can rule on a Notice and Motion of Order to transfer the matter to the Circuit Court for enforcement. The arbitrator notes the petitioner never filed such a Notice of Motion and Order, and as such did not take all steps available to it for having the respondent comply with their subpoena. As such, the arbitrator denies the petitioner's Motion to Strike Defenses.