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February 9, 2009

Ms. Mickie Martin
Sedgwick Claims Management Services
PO Box 14446
Lexington, KY 40512-4446

RE: Claim No. 20050818846-0001
Employer: PBF (Quaker Oats)
Employee: Greg L. Cushman
DI: 8/10/05

Dear Mickie:

I am pleased to enclose the Commission's Decision and Opinion on Review. After a somewhat length analysis, a two commissioner majority has affirmed Arbitrator White's decision. There is a dissent by Commissioner Mason which merely complains that the "chain of events" supports causation for the back pain. The majority correctly points out the problems with that. Also please note the first that full paragraph on the second page contains a credibility finding for the Petitioner of "highly questionable". It is unusual for the Commission to make a specific credibility finding where the Arbitrator had not done so. The only correction the majority makes is on some dates, as contained in the second full paragraph on the first page.

Needless to say, I am pleased that we were able to sustain this clear win in a complicated case such as this one. We presented a lot of evidence, mostly through Cheryl Wright's testimony, regarding work availability and the Petitioner's complaints, all of which were adopted by the Commission majority and the Arbitrator. It is particularly gratifying in this case to have been able to get this good result.

Since this was a 19(b) finding, this does not end the case. The problems with the knees are compensable, its just that we don't owe anything with regard to TTD or medical on those. The Petitioner's attorney had indicated to me in the past that if this was the result on the case that he would be approaching us about settlement for the knees alone, which we have been willing to do all along. Of course, they have 20 days from receipt of this decision within which to go on to the Circuit Court. The decision was received in our offices on Monday, February 9, 2009 so we should mark our calendars accordingly.

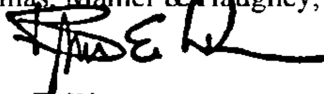
2/12/2009 200508188460001 5120090212045143

In the meantime, it looks like we won another one.

Thank you.

Very truly yours,

Thomas, Mamer & Haughey, LLP



Bruce E. Warren
NoTTD@tmh-law.com

BEW/ct
Enclosure

cc: David Agius w/encl.
Terri Compton w/encl.
Israel Garza w/encl.

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FEB -9 2009

STATE OF ILLINOIS)
) SS.
COUNTY OF)
VERMILION

- [ ] Injured Workers' Benefit Fund (§4(d))
- [ ] Rate Adjustment Fund (§8(g))
- [ ] Second Injury Fund (§8(e)18)
- [ ] PTD/Fatal denied
- [x] None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Greg Cushman,
Petitioner,

vs.

09IWCC0118

NO: 05WC38511

Quaker Oats,
Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review under §19(b) having been filed by the Petitioner herein and notice given to all parties, the Commission, after considering the issue(s) of causal connection, temporary total disability and medical expenses, and being advised of the facts and law, affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof. The Commission further remands this case to the Arbitrator for further proceedings for a determination of a further amount of temporary total compensation or of compensation for permanent disability, if any, pursuant to Thomas v. Industrial Commission, 78 Ill.2d 327, 399 N.E.2d 1322, 35 Ill.Dec. 794 (1980).

In affirming and adopting the Arbitrator's Decision the Commission notes that some clarification and correction of the Arbitrator's Decision is in order. In her causation findings, the Arbitrator correctly stated that Petitioner initially complained only of knee pain. She then correctly stated that Petitioner "began complaining of low back pain several weeks after his [August 10, 2005] accident". Thereafter, she states that Dr. Fletcher first saw the Petitioner on August 11, 2005 with no mention of back pain and references a first injury report dated "October 12, 2005". She further states that it was on October 26, 2005 that Petitioner mentioned back pain to Dr. Fletcher. For the reasons to be set forth herein the Commission finds that the references to "October 12, 2005" and "October 26, 2005" were typographical errors and should be corrected to read "August 12, 2005" for the date of the first injury report and "August 26, 2005" as the date Petitioner mentioned back pain to Dr. Fletcher. Both Dr. Fletcher's records (PX2) and the Respondent's company medical records (RX 10) support these corrections. PX 2 includes Dr. Fletcher's "First Injury Report" and it is dated August 12, 2005. Dr. Fletcher's first documentation of back pain complaints was on August 26, 2005, which, as the Arbitrator correctly noted, was several weeks after the accident. Dr. Fletcher did not examine Petitioner on October 12, 2005 or October 26, 2005. Therefore, the Commission concludes that there were two typographical errors in the Arbitrator's Decision which should be corrected to indicate the dates of August 12, 2005 instead of October 12, 2005 and August 26, 2005 rather than October 26, 2005 under paragraph two of the Arbitrator's causation findings.

As further support for the Arbitrator's causation findings it should be noted that Dr. Fletcher's records show that his August 17, 2005, note lists back sprain/strain as one of Petitioner's diagnoses but there is no mention of a specific complaint of back pain. PX 2. It appears to be an

isolated entry and, in the Commission's view, it is unclear how Dr. Fletcher arrived at such a diagnosis at that time. Furthermore, there is no other information explaining the diagnosis or connecting it to the accident. Thus, in the Commission's view, the Arbitrator correctly noted in her Decision that Petitioner did not mention any pain that day. Furthermore, when Dr. Fletcher recorded Petitioner's initial complaints of back pain on August 26, 2005 he proceeded to contact nurse Cheryl Wright and inform her. According to Dr. Fletcher's notes, Petitioner attributed his back pain complaints to both the accident and the seated work he was performing at work. A review of Respondent's company medical records shows that Petitioner was scheduled to return to work on August 24, 2005. Absent Dr. Fletcher's notation of back pain, the company medical records don't record any specific back complaints until October 4, 2005. Furthermore, those records show that Petitioner wasn't working any type of restricted duty on August 26, 2005, as he had not returned to work. The records further show that Respondent was having a difficult time getting Petitioner to return to work during this time. RX 10. A note dated August 22, 2005, states Petitioner's home was called as Petitioner was a "no show for [return to work]". A return to work slip was received by Respondent on August 24, 2005. Petitioner failed to report to work. Later that day Petitioner was again contacted at home. The progress note states he was advised several times that week that a job was available and he could return to work. Petitioner noted he was unhappy with Dr. Wilson and Dr. Fletcher. He questioned his treatment, medications, and assigned job as he was on crutches. On August 25, 2005, Petitioner called in and advised he would not be in until noon as he was going to the doctor for blood pressure pills. On August 26, 2005, Dr. Fletcher called and indicated Petitioner had shown up for an unscheduled visit complaining of back pain and ankle pain and requesting a second opinion. In the interim Dr. Fletcher felt Petitioner could continue performing restricted work. He also noted enabling behavior on the part of Petitioner's wife. PX 2. Later that day (August 26, 2005) Petitioner called into Respondent's medical department stating he was not coming in and was going to see his doctor for blood pressure pills.

The Arbitrator's Decision contained no credibility finding on the part of the Petitioner; however, in light of the foregoing the Commission finds Petitioner's credibility regarding the onset of his back complaints highly questionable. Respondent was providing Petitioner with medical care and had work available for him within his restrictions. Petitioner appears to have been unwilling to return to restricted duty and, unable to avoid returning to work due to his knee complaints, attempted to do so by bringing up back complaints and a need for blood pressure medications. However, there are no medical records in evidence corroborating Petitioner's complaints about his blood pressure. Furthermore, the Commission notes that Petitioner signed his Application for Adjustment of Claim on August 26, 2005, the same day he unexpectedly saw Dr. Fletcher for his alleged back complaints. If Petitioner felt he had injured his back as part of his claim one could reasonably infer he would have included his back in response to the question, "What part of the body was affected?", especially when he was specific with respect to including his knees, legs, ankles, and feet therein. In light of the foregoing, the Commission finds the Petitioner's lack of credibility as another basis for finding Petitioner failed to prove causation as to his lumbar spine condition.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed January 28, 2008 is hereby affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that this case is remanded to the Arbitrator for further proceedings consistent with this Decision, but only after the later of expiration of the time for filing a written request for Summons to the Circuit Court has expired without the filing of such a written request, or after the time of completion of any judicial proceedings, if such a written request has been filed.

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

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

The probable cost of the record to be filed as return to Summons is the sum of $35.00, payable to the Illinois Workers' Compensation Commission in the form of cash, check or money order therefor and deposited with the Office of the Secretary of the Commission.

Dated: FEB 3 2009

Nancy Lindsay

Paul W. Rink

MCM:bjg
0-12/9/08
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DISSENT

I disagree with the Arbitrator's and majority's causation analysis. It is undisputed that Petitioner fell from a height on August 10, 2005 and landed feet first on a concrete surface. It is also undisputed that this fall resulted in significant bilateral lower extremity injuries. The Arbitrator cited a delay in reporting as the basis for denying causation as to Petitioner's claimed back injury but mischaracterized the delay. According to the Arbitrator, Petitioner did not voice any back-related complaints until October 26, 2005. It is clear that Petitioner voiced such complaints to Respondent's selected treater, Dr. Fletcher, by at least August 26, 2005 and probably by August 17, 2005, the date on which the doctor first recorded a diagnosis of back sprain/strain and recommended an orthopedic consultation. PX 2, p. 187. On August 26, 2005 the doctor noted that Petitioner attributed his back pain to both the accident and the restricted (seated) work he performed after the accident. [The majority asserts that Petitioner did not perform restricted work between the accident and August 26th but Dr. Fletcher's note of August 17, 2005 reflects that Petitioner is to "continue modified duty" (PX 2, p. 187) and Cheryl Wright's "diary" reflects that Petitioner was off work through August 16th and that the doctor allowed him to begin seated work as of August 17th, RX 11.] Dr. Fletcher further noted that Petitioner felt his back pain had been "masked" by his bilateral knee pain. Petitioner's back pain could also have been masked by the narcotic pain medication he began taking for his leg condition on August 11, 2005. While Petitioner had experienced back problems in the past, there is no evidence suggesting that he had disabling back pain immediately before the accident.

The mechanics of Petitioner's fall and the ensuing "chain of events" support a finding of causation as to the lumbar spine condition.

I respectfully dissent.

Molly C. Mason

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF 19(b) DECISION OF ARBITRATOR

09IWCC0113

CUSHMAN, GREG Case# **05WC038511**

Employee/Petitioner

QUAKER OATS

Employer/Respondent

On 01/28/2008, 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 2.40% 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:

2009021202 4343

=REDERICK & HAGLE
129 W MAIN ST
JRBANA, IL 61801

2009021204 5143

HOLECEK & ASSOCIATES
:00 NORTH LASALLE STREET
SUITE 2050
:HICAGO, IL 60601

522 THOMAS MAMER & HAUGHEY
'O BOX 560
0 WEST MAIN STREET
UITE 500
HAMPAIGN, IL 61824-0560

STATE OF ILLINOIS)
)
COUNTY OF VERMILION)

09IWCC0113

ILLINOIS INDUSTRIAL COMMISSION
19(b) ARBITRATION DECISION

GREG CUSHMAN
Employee/Petitioner

Case # 05 WC 38511

v.

QUAKER OATS
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 Ruth White, arbitrator of the Industrial Commission, in the city of Danville, on November 27, 2007. After reviewing all of the evidence presented, the arbitrator hereby makes findings on the disputed issues indicated below, and attaches those findings to this document.

DISPUTED ISSUES

A. Was the 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 the petitioner's employment by the respondent?

D. What was the date of the accident?

E. Was timely notice of the accident given to the respondent?

F. Is the petitioner's present condition of ill-being causally related to the injury?

G. What were the petitioner's earnings?

H. What was the petitioner's age at the time of the accident?

I. What was the petitioner's marital status at the time of the accident?

J. Were the medical services that were provided to petitioner reasonable and necessary?

K. What amount of compensation is due for Temporary Total Disability?

L. Should penalties or fees be imposed upon the respondent?

M. Is the respondent due any credit?

N. Other

FINDINGS

09IWCC0113

- On August 10, 2005, the respondent QUAKER OATS *was* operating under and subject to the provisions of the Act.
- On this date, an employee-employer relationship *did* exist between the petitioner and respondent.
- On this date, the petitioner *did* sustain injuries that arose out of and in the course of employment.
- Timely notice of this accident *was* given to the respondent.
- In the year preceding the injury, the petitioner earned $ 41,662.40 ; the average weekly wage was $ 801.20 .
- At the time of injury, the petitioner was 39 years of age *married* with *3* children under 18.
- Necessary medical services *have* been provided by the respondent.
- To date, no compensation has been paid by the respondent on account of this injury.

ORDER

- Petitioner's claim for Temporary Total Disability benefits is denied.
- The respondent shall pay $ -0- for medical services, as provided in Section 8(a) of the Act.
- ~~The respondent shall pay $ in penalties, as provided in Section of the Act.~~
- ~~The respondent shall pay $ in penalties, as provided in Section of the Act.~~
- In no instance shall this award be a bar to subsequent hearing and determination of an additional amount of Temporary Total Disability, medical benefits, or compensation for a permanent disability, if any.

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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.

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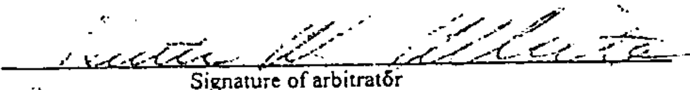
STATEMENT OF INTEREST RATE If the Commission reviews this award, interest of % shall accrue from the date listed below to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.


Signature of arbitrator

January 23, 2008
Date

ICArbDec19(b) p. 2

JAN 28 2008

09IWCC0113

FACTUAL FINDING IN SUPPORT OF ARBITRATOR'S DECISION
GREG L. CUSHMAN v. QUAKER OATS

In support of the Arbitrator's decision relating to all issues, the Arbitrator finds as follows:

The Petitioner testified, and it is undisputed, that on his date of accident he had to jump down from a height of approximately three feet, landing on both feet and causing injury to both knees. He was treated initially at Provena United Samaritan Medical Center, Carle Clinic Association and Christie Clinic Association (Petitioner's Exhibit 2).

Petitioner's primary treating physician for his knee problems was Dr. Paul Plattnar, orthopedic surgeon, who performed orthroscopic surgery on 11/8/05. Dr. Plattnar's note of that date (contained in Respondent's Exhibit 9, chronologically arranged.) indicates a diagnosis of chomdromalacia patella and the surgery consisted of the debridement and smoothing of the cartilage on the underside of the kneecaps. The doctor did not find a torn meniscus or other ligament or tendon damage. Following surgery, the Petitioner was returned to light duty work for the Respondent.

Respondent made efforts to accommodate every restriction that the Petitioner provided since the date of accident. Documentation of those efforts is contained in Respondent's Exhibits 11, a timeline of every contact involving the Petitioner and the Respondent, including all medical care and return to work efforts. Respondent's Exhibit 12 consists of correspondence internal to the Respondent involving efforts to assign the Petitioner to work suited to his various restrictions as claimed by the treating doctors and examiners.

The Petitioner was examined as an IME by Dr. Stephen Weiss, orthopedic surgeon, on July 24, 2006 with regard to the problem with his knees and also as to back pain. Due to symptom magnification, it was difficult for the doctor to assess the Petitioner's subjective complaints; however, the doctor felt no further treatment was warranted as the objective evaluation of both the Petitioner's knees and back was unremarkable. This doctor felt that due to degenerative disc disease in his back the Petitioner should not be lifting more than 55 pounds frequently and no more than 75 pounds occasionally. At the time of this evaluation, the Petitioner was doing desk work only. (Respondent's Exhibit 1).

At the recommendation of Dr. James Hensold, a physician retained by the Respondent, the Petitioner underwent two separate functional capacity evaluations, intended to give an objective measurement of his abilities. The first of these, both of which were done by Industrial Rehabilitation Consultants, was undertaken on August 21, 2006, and came to the conclusion that the Petitioner had failed to provide a valid test, finding specifically:

1. Test results were not reflective of maximum voluntary effort;
2. Pain questionnaires were positive for symptom magnification;
3. No correlation between lifts of unmarked steel weights and corresponding lifts using other equipment;
4. Substantially different physical responses to workloads that differed only in appearance;

5. The knees appear to be stable;
6. The Petitioner was neurologically intact; and
7. There was no factor which would reasonably explain the Petitioner's presentation during the test. (Respondent's Exhibit 2)

Based upon these factors, the tester recommended release to full duty. (Respondent's Exhibit 2).

Dr Hensold ordered a second evaluation which was performed on December 26, 2006 by Industrial Rehabilitation Consultants (Respondent's Exhibit 3), and which produced basically the same conclusions as had the first test. In addition to the negative findings as set out in the first FCE Report (Respondent Exhibit 2), the tester felt that the Petitioner had learned how to fake disability by the time he took the second testing. Once again, recommendation for release to return to work without restrictions was made.

Dr. Weiss issued a follow up report on February 7, 2007 (Respondent's Exhibit 5) following review of the FCE Reports, indicating that the Petitioner could work without restrictions consistent with the reports. Dr. James Hensold followed up with a release to regular duty with no restrictions in accordance with the FCE, on March 8, 2007 (Respondent's Exhibit 6).

Petitioner testified that throughout this period he continued to work sporadically for the Respondent on light duty restrictions given to him by various doctors. He agreed at trial that the Respondent had accommodated every restriction up to his release to full duty without restrictions in early 2007.

As of the time of the trial, Petitioner testified that he was not at work due to having been deferred completely from work by his family physician, Dr. Ringer, and that that physician was the only one keeping him off work. He acknowledged that he was still an employee of the Respondent.

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<u>**In support of the Arbitrator's decision relating to (F) is the petitioner's present condition of ill-being causally related to the injury, the Arbitrator finds as follows:**</u>

The Arbitrator finds the facts as indicated in the section above.

The Petitioner began complaining of low back pain several weeks after his accident. All records initially were silent as to any back pain or injury. The evolution of the Petitioner's complaints is illustrated by a review of the following records:

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1. Dr. Fletcher first saw the Petitioner on August 11, 2005 with no mention of back pain and only the knee problems complained of. His first injury report of October 12, 2005 restates the problem as "bilateral and internal derangement knees". In the visit of August 17, 2005 the Petitioner did not mention back pain. On the October 26, 2005 visit the Petitioner, in addition to the knees told Dr. Fletcher "he is doing sit down work only which is causing low back pain", and says his "knee

pain masked his back and ankles". Treatment continued to be directed exclusively to the knees(Petitioner's Exhibit 2 at p. 182 *et seq.*);

2. On Dr. Fletcher's referral, the Petitioner was seen by Dr. Franklin Wilson of Sports Medicine of Indiana on August 23 and September 21, 2005 (Respondent's Exhibit 7), making no mention of low back pain. Dr. Wilson issued a report on April 1, 2005 summarizing his involvement with the Petitioner, once again without mention of any back problem (id.);
3. The Petitioner's first complaint of low back pain to his treating orthopedic surgeon, Dr. Plattnar, did not occur until November 29, 2005, more than three weeks after his knee surgery, and nearly four months after the accident. (Respondent's Exhibit 9, chronically arranged). The next note, of 12/5/05, indicates that the back pain had intensified on November 30, 2005 without a reason being given;
4. The first mention of low back pain to the Petitioner's treating occupational medicine physician, Dr. Allison Jones at Carle Clinic Association, is dated January 9, 2006 (id.) at which time the Petitioner told her "that he began having trouble with his back on November 30, 2005";
5. On 4/27/06 Dr. Jones was told by the Petitioner that he had been sleeping on a couch at the hospital overnight due to a family illness and that he had had pain in his back as well as bilateral hips since then. He also complained of having some problem mowing three acres of property over the previous weekend. He supervised others who were mowing and provided gas. In that same evaluation, Dr. Jones noted the following:
   a. That the symptoms appeared to be related to a medical situation and should be taken care of by his family physician since the symptoms were aggravated away from work and were otherwise new symptoms caused by sleeping on a couch. Petitioner was aggravated to hear this;
   b. The Petitioner had no consistent findings in the back, with the Petitioner refusing to do any type of flexibility when asked to do so but was noted passively to be able to bend over and pick up a cane and get himself on and off a chair without any apparent back problems;
   c. The Petitioner had symptom magnification and inconsistency with prior tests and examinations;
   d. The Petitioner was restricted in his yard work activities and sleeping positions;
   e. Although he was ambulatory, the Petitioner asked to be taken to the door in a wheelchair; and
   f. The Petitioner's mother appeared at the examination and reinforced his complaints. (id.)

On February 6, 2006 the Petitioner began a course of care with Dr. James Harms, orthopedic surgeon, at Carle Clinic Association, strictly for his back. Petitioner's Exhibit 1 is the evidentiary deposition of Dr. Harms. Although Dr. Harms initially testified to a causal connection between the accident and the low back pain, when presented with a hypothetical assuming the facts of medical treatment and reports of low back pain as set forth above, and taking into account prior low back problems documented in the medical records, the doctor

stated that he could not state with a reasonable degree of medical certainty that the back pain was connected to the incident in August of 2005. (Petitioner's Exhibit 1 at Page 18-23)

Part of what Dr. Harms relied upon in stating his lack of causal connection was the fact that the Petitioner had past medical problems with his back. At trial, the Petitioner admitted that he had problems with his low back in March of 2003, but testified that it was a minor condition requiring minimal treatment. The treatment records for that condition are contained in the medical records for Charlotte Ann Russell Medical Center. (Respondent's Exhibit 8). These records document that the Petitioner was first seen for low back pain in February of 2001, when he reported bilateral low back pain which was diagnosed as a muscle strain. He next reported low back pain on March 11, 2003 from remodeling his home. He was seen over the next few weeks periodically for low back pain, including a diagnosis of degenerative joint disease in the lumbrosacral spine (Respondent's Exhibit 8 at Entry of 3/24/03, chronologically arranged), the same diagnosis that Dr. Harms came to in his treatment of the Petitioner. Additionally, despite the Petitioner having minimized these complaints at trial, he was referred to physical therapy, deferred from work, and prescribed muscle relaxants (Skelaxin, Nyproxen) and a narcotic pain relief medication (Tylenol #3) during this same course of treatment. (id.).

Lastly, the Arbitrator notes Respondent's Exhibit 10, the progress notes of the Respondent's plant nurse, Cheryl Wright. Ms. Wright appeared and testified in support of these notes, stating that this is a standard log which is kept for any employee who reports an on or off work injury to assist with medical care and return to work issues. The initial entry of 8/11/05, a day after the Petitioner's injury, states that Ms. Wright spoke to him by telephone and was told he had a problem with "both knees". No mention was made of anything with regard to the back, although he did describe in detail the accident and the injuries to his knees. Between that date and October 4, 2005, Ms. Wright spoke with the Petitioner at least 10 times according to the record, each time concerning his accident and injuries, and no mention was made of low back problems. It wasn't until October 4, 2005 that the Petitioner mentioned he had back pain, nearly two months after his accident.

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The Arbitrator finds that the Petitioner has failed to prove a causal connection between his complaints of low back pain and the incident of August 10, 2005. The Arbitrator finds that the Petitioner has proved a causal connection between the problems with his knees and that specific incident.

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In support of the Arbitrator's decision relating to (K) what amount of compensation is due for temporary total disability, the Arbitrator finds as follows:

The Arbitrator finds the facts as indicated in the sections above.

Petitioner is claiming lost time May 7, 2006 through the date of trial. This lost time is based exclusively on the deferment with regard to the back problems. The Arbitrator has found there is no causal connection for the problems with the back. Additionally, the Arbitrator has found that the Petitioner has been released by at least two physicians to return to work without restrictions, with both of those physicians being specialists. The only physician keeping the Petitioner off work is his family physician, Dr. Ringer.

Additionally, the Arbitrator notes the attendance records contained in the Respondent's Exhibit 13 and 14. From these exhibits, the Arbitrator has concluded that the Petitioner has been working sporadically for the Respondent up and including some time worked in January and February of 2007.

The Arbitrator finds that the Respondent has provided the Petitioner with work at every juncture during which he has produced an off work slip, with the exception of the slip produced by Dr. Ringer beginning in May of 2006. The Arbitrator finds that the following medical and rehabilitation opinions are more probative of the Petitioner's actual abilities:

1. The findings of the functional capacity evaluation of 8/21/06, (Respondent's Exhibit 2);
2. The findings of the functional capacity evaluation of 12/26/06, (Respondent's Exhibit 3);
3. The opinion of Dr. Stephen Weiss, orthopedic surgeon, (Respondent's Exhibit 1 and 5); and
4. The opinion of Dr. James Hensold, (Respondent's Exhibit 6).

The Arbitrator finds that based upon these medical opinions the Petitioner was capable of full duty work without restriction as early as the functional capacity evaluation of August 25, 2006 and certainly no later than Dr. Hensold's release of 3/08/07. All claims for TTD as alleged on the stipulation sheet (AX1) herein are denied.

09IWCC0113

In support of the Arbitrator's decision relating to (J) were the medical services that were provided to petitioner reasonable and necessary the Arbitrator finds as follows:

The Arbitrator finds the facts as indicated in sections above.

The Petitioner submitted medical bills as his Exhibit No. 3. Based on the findings of causal connection above, the Arbitrator disallows all claims for any and all care resulting from complaints of low back pain.

With regard to the specific bills, the Arbitrator finds as follows:

1. Carle Foundation Hospital: this bill is awarded in favor of the Petitioner with full credit for any and all amounts paid by the Respondent either through its group medical program or its workers' compensation agency. The Arbitrator notes this bill is paid in full;
2. Carle Clinic Association: charges for services from f/05 through Dr. Plattnar's visit of 5/19/06 are awarded to the Petitioner; charges for Dr. Plattnar from 10/27/06 to 11/03/06 are awarded to the Petitioner, with full credit for any and all amounts paid by the Respondent either through its group medical program or its workers' compensation agency;
3. Carle RX Express: these charges are denied as they appear to relate solely to the low back;
4. Springfield Clinic: these charges are disallowed as being related to the low back;
5. Arnette Clinic: these bills are disallowed as being related to the low back;
6. Provena United Samaritan's Center: these bills, which appear to relate solely to surgery on the knees, radiology, and lab procedures, are awarded to the Petitioner with the exception of the MRI charge on 12/29/05 in the amount of $1907.28 which relates solely to the lumbar spine. Respondent is given credit for any payment toward these bills whether through its group medical program or its workers' compensation agency. The Arbitrator notes that this bill has been paid in full by the Respondent;
7. SafeWorks Illinois: this bill is awarded to the Petitioner with full credit for any and all amounts paid by the Respondent either through its group medical program or its workers' compensation agency.; and
8. St. Vincent Williamsport Hospital: these bills are disallowed since they relate entirely to the low back.

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