STATE OF ILLINOIS)
) SS.
COUNTY OF WILLIAMSON)

☐ Affirm and adopt	☐ Injured Workers' Benefit Fund (§4(d))
☒ Affirm with changes	☐ Rate Adjustment Fund (§8(g))
☐ Reverse	☐ Second Injury Fund (§8(e)18)
	☐ PTD/Fatal denied
☐ Modify	☒ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Lucas Mennerich,

Petitioner,

12IWCC0272

vs.

NO: 10 WC 17937

State of Illinois/Menard Correctional Center,

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by the Respondent herein and notice given to all parties, the Commission, after considering the issues of nature and extent, and penalties and fees, 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.

On page two, paragraph three, sentence three of the Decision of the Arbitrator, the Commission strikes "were an aggravating factor" and inserts "the job activities of a correctional officer at Menard would not serve as a primary etiologic factor in the development of upper extremity 'repetitive trauma injuries' however I feel that these work activities could be a possible aggravating factor in the development and/or progression of these conditions."

With respect to the issues of penalties and fees, the Commission affirms the Arbitrator's denial of penalties and fees herein. The Commission finds that the Petitioner is not entitled to Penalties and Attorney's Fees pursuant to Sections 19(k) and 19(l) and Section 16 of the Workers' Compensation Act.

With respect to the denial of Section 19(k) penalties, the Commission notes the record contains no evidence of unreasonable or vexatious delay of payment or intentional underpayment of compensation, or that proceedings have been instituted or carried on by the Respondent herein. The record indicates Petitioner was paid temporary total disability benefits for his lost time, as evidenced by the stipulation entered into by the parties on the request of hearing (ARB EX1). The record further indicates that while Petitioner submitted the medical bills of DMB Hand, Dr. Daniel Phillips, Timberlake Surgery Center, Premier Anesthesia, and APEX PT, at the time of hearing, there was no testimony or evidence tendered to indicate the medical bills were submitted to Respondent for payment or that the medical bills remain unpaid as of the date of hearing.

With respect to the denial of Section 19(l) penalties, the Commission finds the record contains no evidence of a written demand for payment of benefits as required under Section 19(l) of the Act.

Finally, with respect to Petitioner's request for Section 16 Attorney fees, the Commission concludes no attorney fees are appropriate herein as the record fails to indicate delay or unfairness under Sec 4(c), or unreasonable or vexatious delay, intentional underpayment, or frivolous defense within the purview of Section 19(k).

In light of the foregoing the Commission affirms the Arbitrator's denial of Petitioner's Petition for Penalties and Attorney's Fees pursuant to Sections 19(k) and 19(l) and Section 16 of the Workers' Compensation Act.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed July 12, 2011, as corrected herein, is hereby affirmed and adopted.

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.

DATED: MAR 15 2012
KWL/kmt
O-01/24/12
42

Kevin W. Lamborn

Daniel R. Donohoo

Thomas J. Tyrrell

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION

12IWCC0272

MENNERICH, LUCAS
Employee/Petitioner

Case# 10WC017937

ST OF IL/MENARD CORRECTIONAL CENTER
Employer/Respondent

On 7/12/2011, 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 0.06% 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:

0969 THOMAS C RICH PC
6 EXECUTIVE DR
SUITE 3
FAIRVIEW HTS, IL 62208

0502 ST EMPLOYMENT RETIREMENT SYSTEMS
2101 S VETERANS PARKWAY*
PO BOX 19255
SPRINGFIELD, IL 62794-9255

0558 ASSISTANT ATTORNEY GENERAL
GILBERT, ROY A
1001 E MAIN ST BLDG #1
CARBONDALE, IL 62901

0498 STATE OF ILLINOIS
ATTORNEY GENERAL
100 W RANDOLPH ST
13TH FLOOR
CHICAGO, IL 60601-3227

1350 CENTRAL MGMT SERVICES RISK MGMT
WORKERS' COMPENSATION CLAIMS
201 E MADISON ST SUITE 3C
PO BOX 19208
SPRINGFIELD, IL 62794-9208

CERTIFIED as a true and correct copy
pursuant to 820 ILCS 305/14

JUL 12 2011

AMY MASTERS, Secretary
Illinois Workers' Compensation Commission

STATE OF ILLINOIS)
)SS.
COUNTY OF **Williamson**)

☐ Injured Workers' Benefit Fund (§4(d))
☐ Rate Adjustment Fund (§8(g))
☐ Second Injury Fund (§8(e)18)
☒ None of the above

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

12IWCC0272

Lucas Mennerich
Employee/Petitioner

Case # **10** WC **17937**

v.

Consolidated cases: _____

State of Illinois/Menard Correctional 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 **Andrew Nalefski**, Arbitrator of the Commission, in the city of **Herrin**, on **6/16/11**. 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 _____

12IWCC0272

FINDINGS

On **4/28/10**, Respondent ***was*** operating under and subject to the provisions of the Act.

On this date, an employee-employer relationship ***did*** exist between Petitioner and Respondent.

On this date, Petitioner ***did*** sustain an accident that arose out of and in the course of employment.

Timely notice of this accident ***was*** given to Respondent.

Petitioner's current condition of ill-being ***is*** causally related to the accident.

In the year preceding the injury, Petitioner earned **$55,776.50**; the average weekly wage was **$1,072.63**.

On the date of accident, Petitioner was **30** years of age, ***single*** with **0** dependent children.

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

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

Respondent shall be given a credit of **$all TTD paid** for TTD, **$0** for TPD, **$0** for maintenance, and **$0** for other benefits, for a total credit of **$all TTD paid**.

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

ORDER

Respondent shall pay Petitioner permanent partial disability benefits of **$643.58**/week for **71.75** weeks, because the injuries sustained caused the **17.5% loss of each hand**, as provided in Section 8(e) of the Act.

Respondent shall pay Petitioner permanent partial disability benefits of **$643.58**/week for **101.2** weeks, because the injuries sustained caused the **20% loss of each arm**, as provided in Section 8(e) of the Act.

Respondent shall pay reasonable and necessary medical services of **$86,730.98**, as provided in Sections 8(a) and 8.2 of the Act. Respondent shall be given a credit for medical benefits that have been paid, and Respondent shall hold petitioner harmless from any claims by any providers of the services for which Respondent is receiving this credit, as provided in Section 8(j) of the Act.

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

7/9/11
Date

ICArbDec p. 2

JUL 12 2011

Lucas Mennerich v. State of IL/ Menard C.C.
4/28/10
10 WC 17937

The Arbitrator finds the following facts:

Petitioner, a 30 year old Correctional Officer, has worked at its Menard facility for the past 6 ½ years. Petitioner prepared a job description which included locking and unlocking doors, loading and unloading ammunition, rapping bars, pulling on cell doors, carrying laundry bags weighing approximately 80 pounds, carrying ice buckets weighing approximately 100 plus pounds.

Employee's Notice of Injury form represented that the job duties were turning keys, pulling/cranking cell doors, and carrying weapons. A Supervisor's Report of Injury stated that the activity causing his accident/incident was turning keys and cranking/pulling cell doors on a daily basis. The cause of the accident was identified as prolonged use of his hands and elbows.

On 4/28/10 Petitioner sought treatment with Dr. David Brown, a hand specialist, for progressive pain, numbness, and tingling in both hands. Dr. Brown noted that Petitioner's job entailed turning Folger Adams keys up to 50 times an hour, rapping bars, cranking boxes to open cells, pulling on cell doors to check their integrity, and cuffing and uncuffing inmates. Dr. Brown's examination showed positive Tinel signs over the ulnar nerve at the right and left cubital tunnel, positive direct compression tests, and positive elbow flexion tests. Dr. Brown believed that Petitioner had symptoms and findings consistent with carpal tunnel syndrome and cubital tunnel syndrome. EMG/NCS revealed mild to moderate bilateral cubital tunnel syndrome and mild bilateral carpal tunnel syndrome. Dr. Brown recommended wrist splints, non-steroidal anti-inflammatory medication. He stated that given Petitioner's young age and his lack of any other contributing factors, his work at Menard would be considered a contributing or aggravating factor in the development of peripheral compression neuropathy such as carpal tunnel syndrome and/or cubital tunnel syndrome.

Petitioner returned to see Dr. Brown on 6/9/10 with no improvement. Dr. Brown noted that Petitioner had failed conservative treatment. Surgery was performed on 9/9/10 consisting of a left cubital tunnel release with an anterior sub-muscular transposition of the ulnar nerve and a left carpal tunnel release. Objective findings were a slightly flattened and narrow appearance of the nerve within the carpal tunnel, enlargement and epineural thickening around the nerve at the level of the cubital tunnel. He had a similar surgery on 9/30/10 in the form of a right cubital tunnel release with anterior sub-muscular transposition of the ulnar nerve and a left carpal tunnel release. After surgery, Petitioner improved with home exercises and therapy. Petitioner was released to return to full duty work 12/2/10.

Petitioner reported his injury to Respondent and related it to turning keys, pulling/cranking cell doors, and carrying weapons. Petitioner's supervisor also completed an accident report stating that his condition was due to prolonged use of hands and elbows. Respondent's Demands of the Job document describes that Petitioner's job as a Correctional Officer requires him to use his hands for gross manipulation (including

grasping, twisting, and handling) for up to 4 hours a day and fine manipulation (including typing and good finger dexterity) for up to 2 hours a day.

Respondent's Job Site Analysis classified the strength demand of the job as frequent lifting and/or carrying up to 25 pounds. Petitioner was required to frequently pull open doors from 2 ½ hours to 5 ½ a day, up to 66% of the time, or up to 200 times per day. This included pulling open chuckhole doors as needed during lockdowns for dining and cuffing and uncuffing residents. Wrist turning was categorized at 34-66% of the time, 2 ½ to 5 hours per day, or 33 to 300 times per day.

Respondent's retained expert, Dr. Anthony Sudekum, reviewed written and videotaped job descriptions and job analyses provided by Respondent for the position of Correctional Officer at Menard Correctional Center. He visited Menard Correctional Center where he observed many of the job sites and experienced many of the tasks and manual activities performed by Correctional Officers. Dr. Sudekum opined that the job activities of a Correctional Officer were an aggravating factor in the development and/or progression of upper extremity repetitive trauma injuries. Dr. Sudekum did not evaluate any employee or provide any medical opinion regarding any specific cases.

Respondent's DVD purported to depict the duties of a Correctional Officer at Menard. The Arbitrator watched the DVD and notes that it briefly depicts various job tasks, assignments, areas, equipment and mechanisms and features some demonstrations by a variety of correctional officers. Depictions included the armory, shakedown officer, bar rapping, double gate door, double gate walkway, opening cell doors, turning gallery cranks, receiving control house, control room, receiving door, shower door segregation, shower door, segregation unit, segregation door, chuckholes, double gate, and tower. Each area required opening and closing multiple doors and using multiple keys, mostly Folgers Adams keys. Bar rapping was simulated in the DVD and the officer explained that, depending upon the shift, all open bars will be rapped for security purposes. Officers are to listen to the sound to ensure that the bar is solid and that inmates have not tampered with the integrity of the cell doors. The officer held the bar with his right hand and struck the bars approximately 60 times to demonstrate bar rapping on one cell (5-6 bars vertically in 12 separate sections, each bar struck one time). Bar rapping is conducted on the 7-3 and 3-11 shifts. Officers perform bar rapping at the beginning of each shift on the gallery where they are assigned. There are 55 cells per gallery. While some galleries have half solid doors and half open bars, correctional officers will also be assigned more than one gallery per shift. The correctional officers demonstrating these areas and job duties on the DVD used both hands to complete these tasks. In fact, when the videographer asked a Correctional Officer if he always turned keys with his left hand, the officer switched hands and stated, "You learn to use both hands in here because you need about four of them." On another occasion, when the videographer requested a correctional officer to demonstrate the unlocking maneuver in slow motion, the officer tried to do so and the lock stuck. He had to turn it multiple times to get it to work and explained that the locks were difficult to turn in slow motion. The DVD was stopped when a correctional officer struggled to open a cell door and yanked on it repeatedly with

both hands. There appeared to be a mechanical problem. The DVD does not depict Petitioner in this case, or his specific job duties. When questioned about the accuracy of the DVD, Petitioner stated that it did now show the intensity or the frequency of times he performs the tasks depicted.

Respondent initially accepted this claim as compensable, authorized medical care and surgery and paid TTD benefits. However, after Petitioner received his medical treatment, his medical bills remained unpaid and his claim was "placed in pending status" according to Respondent.

Petitioner testified that after surgery, his condition improved. However, despite the improvement, his grip strength had decreased. The flexibility in his elbows has decreased due to tightness at the scar area, and his elbows become sore when pulling on cell doors at work. His hobbies of playing catch with his nephew and riding ATVs have been curtailed because of hand and elbow pain. For this, he takes over the counter medication.

Respondent elected not to exercise its Section 12 rights to a medical exam.

Respondent disputed accident, permanency and penalties. It did not dispute medical bills, however, they remain unpaid. Respondent did not dispute causation.

Therefore, the Arbitrator concludes:

1. Petitioner sustained repetitive trauma injuries that arose out of and in the course and scope of his arm/hand intensive job duties with Respondent. This is based on Petitioner's testimony of his job duties, which were confirmed by Respondent's Demands of the Job form, Respondent's Job Sight Analysis, Respondent's DVD, Petitioner's supervisor's report and the report of Respondent's retained witness, Dr. Sudekum. Respondent did not dispute causation. On repetitive trauama claims, the issues of accident and causation are so intertwined, that they are inseparable. There is no genuine dispute as to accident.

2. Respondent is ordered to pay medical bills of $86,730.98, pursuant to the medical feel schedule. Respondent shall receive credit for any and all amounts previously paid as provided in Section 8(j). However, if Petitioner's group health carrier requests reimbursement, Respondent shall indemnify and hold Petitioner harmless for those amounts.

3. As a result of his injuries Petitioner has sustained the loss of 17 ½% of each hand and 20% loss of each arm, as provided in Section 8(e) of the Act.

4. It is apparent that there is no factual or legal basis upon which Respondent bases its accident dispute. It initially accepted this claim as compensable, authorized medical care, including surgeries, paid TTD benefits, to only later, without explanation, change its mind. This is an on-going practice of the State of unfairness and delay on repetitive trauma claims. To dispute accident and not causation without legal or factual justification is disingenuous, vexatious, unreasonable and constitutes bad faith. Days after proofs were closed Respondent attempted to withdraw its dispute of causation. Petitioner objected. This is a continuation of Respondent's bad faith and disrespect of the work comp system. However, awarding penalties against the State is futile as it falls on deaf ears and Respondent continues these unfair practices. To award penalties only punishes the taxpayer. Penalties denied.