STATE OF ILLINOIS	)	☐ Affirm and adopt (no changes)	☐ Injured Workers' Benefit Fund (§4(d))
	) SS.	☐ Affirm with changes	☐ Rate Adjustment Fund (§8(g))
COUNTY OF MCHENRY	)	☒ Reverse	☐ Second Injury Fund (§8(e)18)
			☐ PTD/Fatal denied
		☐ Modify	☒ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

GARY STEGAN,

Petitioner,

vs. NO: 17 WC 07749

RELADYNE, LLC,

Respondent.

19IWCC0174

DECISION AND OPINION ON REVIEW

Timely Petition for Review under §19(b) having been filed by Respondent herein and notice given to all parties, the Commission, after considering the issue of temporary total disability and being advised of the facts and law, reverses the Decision of the Arbitrator, which is attached hereto and made a part hereof, as stated below. 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).

The Decision of the Arbitrator addressed only the question of whether Petitioner was entitled to temporary total disability benefits after refusing the assignment of his employment to an entity that would allow him to work within his light-duty work restrictions. In this case, it is not disputed that Petitioner sustained a compensable injury to his left shoulder and precluded him from performing his normal and usual tasks as a forklift operator. Petitioner's treating physician, Dr. Matthew Bernstein of Barrington Orthopedic Specialists, eventually allowed Petitioner to work albeit in a light duty capacity.

Lacking a position that accommodated Petitioner's medically-prescribed restrictions, Respondent engaged Transitional Work Solutions to enroll Petitioner in its Transitional Work Program, a program that matches and places injured workers in positions with their restrictions. In this case, Transitional Work Solutions placed Petitioner with Northern Fox Valley Habitat for

Humanity Restore where his work activities were to include "light sorting" of incoming donations and customer service. Petitioner chose not to participate in the Transitional Work Program arranged for him by Transitional Work Solutions and did not present to Northern Fox Valley Habitat for Humanity Restore on the day he was supposed to be being working there, July 6, 2017, or any day thereafter.

Petitioner, testifying at his arbitration hearing on August 3, 2017, acknowledged that he did not work in the position with Northern Fox Valley Habitat for Humanity Restore that Transitional Work Solutions arranged for him and offered no explanation as to why he refused the work in that position. He noted it was Respondent, and not Northern Fox Valley Habitat for Humanity Restore, that was his employer.

In stating that Respondent, and not Northern Fox Valley Habitat for Humanity Restore, was his employer, Petitioner advances a distinction without a difference. Neither Respondent nor Northern Fox Valley Habitat for Humanity Restore claimed otherwise. The letter sent by Respondent to Petitioner, dated June 26, 2017, explicitly stated as much. Not only did Petitioner remain Respondent's employee, per this letter, Petitioner was to be paid his regular salary and remain subject to Respondent's human resources and attendance policies. No inference can be reasonably made from the letter of any changes to Petitioner's employment with Respondent other than where he was to report to work and what work activities he would perform. No claim or evidence was advanced by Petitioner that he understood his employer to be any entity other than Respondent.

Petitioner takes the position that the Act does not empower the Commission to compel him to accept a position with an entity other than his employer. Respondent makes the counterargument that nothing in the Act precludes the arrangement Respondent made on Petitioner's behalf.

"Once an injured employee's physical condition stabilizes, he is no longer entitled to TTD." Mobile Oil Corp. v. Industrial Comm'n, 327 Ill.App.3d 778, 788, 261 Ill. Dec. 924, 934, 764 N.E.2d 539, 549 (3rd Dist. 2002). Petitioner does not claim that his condition has not stabilized. He, nevertheless, claims entitlement to TTD benefits because the work being offered him is not with Respondent but with Northern Fox Valley Habitat for Humanity Restore. The Commission finds nothing in Mobile Oil or any precedential case involving TTD that holds or suggests that an injured employee remains entitled to TTD benefits if work within the prescribed restrictions can be found regardless of with whom and is not otherwise shown to be unreasonable.

The Decision of the Arbitrator noted in Saineghi v. Demar Logistics, 14 IWCC 1093, "[T]he volunteer position at an organization different than that of the employer is not the equivalent of an offer of accommodated duty as the position is unpaid and not offered by the employer." Contrary to Saineghi, and as noted above, the position with Northern Fox Valley Habitat for Humanity Restore was not an unpaid position as Petitioner was to receive his regular pay from Respondent, not from Northern Fox Valley Habitat for Humanity Restore. With respect to who offered Petitioner this position, the Commission concludes the June 26, 2017 letter from Respondent to Petitioner makes it clear that it was Respondent who offered the position to

Petitioner. Respondent undoubtedly worked in conjunction with Transitional Work Solutions to coordinate and arrange for Petitioner to be placed with Northern Fox Valley Habitat for Humanity Restore, but, again, it is evident that Respondent made the offer for Petitioner to work with Northern Fox Valley Habitat for Humanity Restore.

The Decision of the Arbitrator also cites two other Commission decisions, Kilduff v. TriCounty Coal (12 WC 38843) and Lee v. Fluid Mgmt. (11 WC 48656), to stand for the prospect that "it is the obligation of the Respondent during the period of temporary total disability to provide light-duty work for Petitioner within its own company where the Petitioner is under the control and supervision of the employer rather than an individual other than the employer." Differentiating the current case from both Kilduff and Lee, Respondent's aforementioned letter to Petitioner explicitly indicates that Petitioner was to remain Respondent's employee and subject to all of Respondent's human resources and attendance policies. Furthermore, any issue that may have arisen during Petitioner's participation in the Transitional Work Program would be addressed through Respondent as testified to by Dina Snyder, the founder and president of Transitional Work Solutions. So unlike in Kilduff and Lee where authority over the injured employee was delegated to a third-party, Respondent retained control over Petitioner.

"The Act is meant to compensate a claimant for economic disabilities that diminish his value in the labor market . . .." Chlada v. Ill. Workers' Comp. Comm'n, 58 N.E.3d 848, 856, 405 Ill. Dec. 587, 595 (1st Dist 2016). Ironically, Petitioner's prefence to collect temporary total disability benefits, therefore, cuts against the purpose of the Act as pronounced in Chlada as Petitioner is diminishing his own value in the labor market by accepting compensation that is only two-thirds of what he would earn if he participated in the Transitional Work Program.

It is axiomatic, when considering temporary total disability, that a claimant must show not only that he did not work but also that he was unable to work. The position argued by Petitioner seeks to expand entitlement to temporary total disability benefits despite being found capable of working to include the circumstances by which he would return to work. In this case, it is who he returns to work for that he objects to.

The Act is said to be remedial in nature. Petitioner's claim to be entitled to continued temporary total disability benefits simply because the offered light duty work is not with Respondent does not comport with the remedial purpose of the Act. Absent an argument that Northern Fox Valley Habitat for Humanity Restore is objectively too far from his residence to make the endeavor cost-effective or that the work asked of him there is outside the prescribed work restrictions, the Commission is not particularly sympathetic to Petitioner's position. In the vacuum of the evidence presented, the Commission can only conclude Petitioner would rather trade earning his usual wage for the opportunity not to work and receive two-thirds of his usual wage.

The Commission finds Petitioner has no credible justification for declining to participate in the Transitional Work Program under the terms Respondent offered and, accordingly, finds Respondent to be within its rights to terminate temporary total disability benefits effective the day Petitioner failed to present to Northern Fox Valley Habitat for Humanity Restore to begin

participation in the Transitional Work Program. The Commission recognizes that day to be July 6, 2017.

IT IS THEREFORE ORDERED BY THE COMMISSION that the award of ongoing temporary total disability benefits commencing March 8, 2017 as was bestowed in the October 4, 2017 Decision of the Arbitrator is vacated;

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $603.08 per week for a period of 17-2/7 weeks, commencing March 8, 2017 and terminating on July 6, 2017that being the period of temporary total incapacity for work under §8(b) of the Act;

IT IS FURTHER ORDERED BY THE COMMISSION that this case be remanded to the Arbitrator for further proceedings consistent with this Decision, but only after the latter 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; and

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.

Bond for the removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of $10,600.00. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

MAR 21 2019

DATED:
KWL/mav
O: 01/29/19
42

Kevin W. Lamborn

Thomas J. Tyrrell

Michael J. Brennan

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

STAGEN, GARY
Employee/Petitioner

Case# 17WC007749

RELADYNE LLC
Employer/Respondent

19IWCC0174

On 10/4/2017, 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 1.19% 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:

5625 GRAUER & KRIEGEL LLC
ANDREW KRIEGEL
1300 E WOODFIELD RD SUITE 205
SCHAUMBURG, IL 60173

0766 HENNESSY & ROACH PC
JASON D KOLECKE
140 S DEARBORN ST 7TH FL
CHICAGO, IL 60603

STATE OF ILLINOIS)
)SS.
COUNTY OF LAKE)

☐ 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
19(b)

GARY STAGEN
Employee/Petitioner

v.

RELADYNE LLC
Employer/Respondent

Case # 17 WC 7749

Consolidated cases:

19IWCC0174

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 JESSICA HEGARTY, Arbitrator of the Commission, in the city of Woodstock, on August 3, 2017. 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. ☐ Is Petitioner entitled to any prospective medical care?
L. ☐ What temporary benefits are in dispute?
☐ TPD ☐ Maintenance ☒ TTD
M. ☐ Should penalties or fees be imposed upon Respondent?
N. ☐ Is Respondent due any credit?
O. ☒ Other **The only disputed issue for the purposes of this hearing is whether Petitioner is entitled to continued TTD benefits.**

FINDINGS

On the date of accident, 11/3/2016, 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 $TBD; the average weekly wage was $TBD.

On the date of accident, Petitioner was 34 years of age, *single* with 0 dependent children.

Respondent *has* paid all reasonable and necessary charges for all reasonable and necessary medical services.

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

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

ORDER

Petitioner is entitled to TTD benefits in accordance with §8(a) of the Illinois Workers' Compensation Act based on his current work restrictions that his employer is unable or unwilling to accommodate.

Petitioner's average weekly wage will be determined at a later date.

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

10/3/17

Date

ICArbDec19(b)

OCT 4 - 2017

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION 19(b)/8(a) DECISION

GARY STAGEN,	)	
Petitioner,	)	
v.	)	17 WC 07749
RELADYNE, LLC.	)	19IWCC0174
Respondent.	)	

ADDENDUM TO THE DECISION OF THE ARBITRATOR

The only contested issue at this hearing is Petitioner's entitlement to ongoing TTD benefits (Arb. Ex. 1). The attorneys have reserved the right to address all other issues at a later date (Tr. pp. 4-5).

Petitioner's current work restrictions are not disputed. Petitioner's treating orthopedic surgeon, Dr. Matthew Bernstein of Barrington Orthopedic Specialists, has restricted Petitioner to lifting with the elbow away from the left side up to five (5) pounds frequently and up to ten (10) pounds occasionally. Petitioner has further restrictions of no left-handed overhead lifting and no left-handed pushing, pulling or climbing, and no writing or typing with the left arm. (Rx. 1).

At the time of hearing, the Arbitrator heard testimony from Petitioner and from Dina Snyder on behalf of Respondent.

Petitioner testified he currently has work restrictions of limiting his left side lifting with the elbow away from the side up to five (5) pounds frequently and up to ten (10) pounds occasionally. He has further restrictions of no left-handed overhead lifting and no left-handed pushing, pulling or climbing and no writing or typing with the left arm (Tr. pp. 7-8). Petitioner is currently unable to work at his former job at Reladyne, LLC due to these restrictions. He testified he was offered a position at the Northern Fox Valley Habitat for Humanity Restore, which was not his employer at the time of his alleged work-related accident, nor at any time after. (Tr. p. 9).

Dina Snyder, the president of Transitional Work Solutions, (Tr. pp. 10-11) testified concerning the transitional volunteer position offered to Petitioner with the Northern Fox Valley Habitat for Humanity Restore, an entity that is not affiliated with Reladyne, LLC. Ms. Snyder testified she had no personal knowledge of the job requirements associated with the volunteer position (Tr. p. 23). Despite finding Petitioner a volunteer position within his work restrictions, Ms. Snyder has not reviewed any doctor's notes documenting Petitioner's work restrictions. Her only knowledge of Petitioner's work restrictions is based on information she received from Petitioner's employer (Tr. p 27).

CONCLUSIONS OF LAW

Section 8(b) of the Illinois Workers' Compensation Act provides for the payment of temporary total disability ("TTD") to workers who are temporarily unable to work as a result of a work-related injury. An injured employee is entitled to TTD from the time an injury incapacitates him from working until the time the

employee is recovered to the point the permanent character of the injury will permit. *Mobil Oil Corp. v Industrial Comm'n* 327 Ill.App.3d 778, 261 Ill.Dec. 924, 764 N.E.2d 539 (3d Dist. 2002).

The Arbitrator notes Petitioner is employed by Reladyne, LLC. Petitioner was offered a volunteer position at the Northern Fox Valley Habitat for Humanity. The Northern Fox Valley Habitat for Humanity is not Petitioner's employer. The proffered position does not fall within the category of light duty work yielding temporary partial disability payment in lieu of TTD payments under the Act as the position is unpaid. Additionally, the volunteer position at an organization different than that of the employer is not the equivalent of an offer of accommodated duty as the position is unpaid and not offered by the employer.

The Arbitrator finds no authority in the Act requiring Petitioner to accept an unpaid position for an entity other than his employer. Petitioner's refusal to accept a volunteer position for a company other than his employer does not obviate the need for TTD benefits during a period of restricted duty unaccommodated by Respondent.

The decision the Arbitrator relies upon in support of her decision is *Saineghi v. Demar Logistics*, No. 12 WC 39022. There the Commission confirmed a Petitioner's entitlement to TTD despite his refusal to accept accommodated work at a position with an entity other than his employer. The Commission noted that this type of position was not equivalent to an offer of accommodated duty as the position was unpaid and not offered by the Respondent.

Furthermore, other decisions have ruled similarly on this issue; holding that it is the obligation of the Respondent during a period of temporary total disability to provide light duty work for Petitioner with its own company where the Petitioner remains under the control and supervision of the employer and not under the direction and supervision of an individual at another employer. See *Kilduff v. Tri-County Coal*, No. 12 WC 38843 and *Lee v. Fluid Mgmt.*, No. 11 WC 48656.

The Respondent's obligation to pay Petitioner's TTD benefits is ongoing and shall continue so long as Petitioner has work restrictions which his employer is unable to accommodate. The Arbitrator finds that Petitioner has work restrictions which Respondent is unable or unwilling to accommodate. Therefore, under the Act, Petitioner is entitled to continued TTD benefits so long as he has work restrictions that his employer is unable to accommodate.