No. 18-

IN THE

Supreme Court of the United States

SHERYL FAUST,

Petitioner,

v.

ILLINOIS WORKERS COMPENSATION COMMISSION AND CADENCE HEALTH,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF ILLINOIS

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

A person's most fundamental rights are triggered when they are injured at work, the right to protect bodily integrity and the correlative right to a fair mechanism for redress. More than a century ago, Illinois substituted an administrative compensation system for the worker's common law and self-help options. The state monopolized the means for redress and made each worker dependent on the state mechanism for relief when they were injured. The same is true of every workers' compensation system in the nation. But states are methodically carving away at these mechanisms for redress through legislative enactments and reinterpretation of old statutory provisions. In 2015, Illinois courts discovered new thresholds for compensation in a three word clause which had not changed since the start of the system. The state applied the new thresholds to deny Faust's treatment and benefits. However, the state's new threshold scheme is an arbitrary barrier against compensation. This petition presents a question of vital importance to all injured workers and their dependents.

Whether the Due Process and Equal Protection clauses of the Fourteenth Amendment prevent states from using arbitrary barriers to deprive workers of their right to protect bodily integrity and correlative right to a fair mechanism for redress?

PARTIES TO THE PROCEEDING

Petitioner, Sheryl Faust, was Plaintiff-Appellant in the court below.

Respondents, Cadence Health and the Illinois Workers Compensation Commission were Defendants-Appellees in the court below.

CORPORATE DISCLOSURE STATEMENT

Ms. Faust is not a corporation subject to a corporate disclosure statement under Supreme Court Rule 29.6

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JURISDICTION

28 U.S.C. § 1257(a) provides jurisdiction for this petition. The Illinois Supreme Court denied Faust's Petition for Leave to Appeal on 5/30/18. App. 65a.

PERTINENT CONSTITUTIONAL AND STATUTORY PROVISIONS

"No State shall…deprive any person of life, liberty, or property, without due process of law, nor deny any person within its jurisdiction the equal protection of the laws." U.S. Const. amend. XIV.

"To obtain compensation under this Act, an employee bears the burden of showing…that she sustained accidental injuries arising out of and in the course of the employment." 820 ILCS 305/1(d).

STATEMENT OF THE CASE

Ms. Faust ("Faust") claims that she injured her back while bending like a fulcrum for 60% of her work shift, among other work activities. Record pages C86-88 (appellate record). Her employer assigned her to the duties, it supervised her as her condition worsened and the supervisor knew Faust was struggling with the work C151-154, C157-159 (appellate record). Faust's surgeon watched her perform this work, he knew what she did for work before she began the new bending assignment and he explained how the bending led to the injury and need for surgery C182-184, C191-198 (appellate record). The employer's medical expert denied causation, but he had no idea she was bending for the work C1136-1137, C1152 (appellate record). He also related her complaints to the sitting and standing duties of her job. C1170 (appellate record).[1]

The parties proceeded to trial and rested their proofs on 5/20/15. App. 37a. Before the agency ruled on Faust's claim, the appellate court handed down a new interpretation of the "arising out of" clause of the Illinois Workers' Compensation Act (820 ILCS 305/1(d)), demanding that workers meet new thresholds to gain access to compensation for injuries resulting from "everyday activities". The court instructed the agency to "not award benefits for injuries caused by everyday activities like walking, bending or turning, even if the

1. The trial record contains a substantial amount of evidence. However, factual disputes are incidental to Faust's petition, as Faust is asking this Court to strip arbitrary barriers out of the compensation system so she can return to the agency and litigate within a fair mechanism for redress.

employee was ordered or instructed to perform those activities as part of the job duties, unless the employee's job duties required her to perform those activities more frequently than members of the general public or in a manner which increased the risk." *Adcock v. Ill. Work. Comp. Com'n*, 2015 IL App. (2d) 130884WC at *P39, 38 N.E.2d 587, 597. The court's demand for comparisons of a worker's risk against risk faced by the average public are now known as "quantitative" and "qualitative" thresholds. *See Noonan v. Ill. Work. Comp. Com'n*, 2016 Il App (1st) 152300WC at *P19, 65 N.E.2d 530, 536.

The quantitative threshold blocks compensation for workers injured in everyday activities unless the worker proves she performed the movements more than the general population. This threshold doomed Faust's claim and is therefore the focus of this petition. The alternative qualitative threshold blocks workers from compensation unless the worker can prove that "some aspect of the employment contributes to the risk." *Steak n' Shake v. Ill. Work. Comp. Com'n*, 2016 IL App (3d) 150500WC *P36.

The threshold scheme did not exist at the time Faust tried her case, but the agency applied the quantitative threshold to deny Faust's benefits. The agency first determined that "sitting, standing and bending are activities of daily living that are performed equally by workers and non-workers alike and in all aspects of a daily living." App. 35a-36a. The trial record actually contained no evidence of how often the public performed any of these activities. Even so, the finding led the agency to apply the quantitative threshold to deny Faust's claim: "the Commission does not believe [Faust] provided sufficient evidence to support that her work duties and specifically

her excessive standing and bending subjected her to a greater degree of harm than a member of the general public." App. 36a.

Ms. Faust appealed her loss and eventually reached the appellate court which had created the new thresholds. The court had issued multiple decisions on its threshold scheme by that point. Faust asked the court to revisit the scheme for each of the constitutional reasons raised in this petition. The appellate court declined to revisit its scheme after acknowledging that the agency applied the threshold scheme to bar Faust's claim. App. 27a. The court explained that it did not have to revisit its scheme as Faust had also lost her case by failing to prove up a causation issue. App. 27a.

However, the agency never reached a ruling on causation as the agency decided that Faust's claim was blocked by the new thresholds. App. 36a. The agency also never adopted one physician's opinion over the other for its causation ruling, as Faust "failed to provide evidence, other than her own testimony, that there is a sufficient basis in which [the doctors] can conclude that [her] activities of standing and bending were excessive and as a result, [her] pre-existing low back condition was aggravated by her work duties". App. 35a. This language shows us that the agency had also improperly modified its causation analysis to require proof that Faust's movements were excessive before she could access benefits. This search for excessiveness came directly from the appellate court's new threshold scheme.

A proper causation analysis would have asked whether Faust's work duties aggravated or accelerated her pre-

existing disease such that her current condition of ill-being was "causally-connected to the work-related injury, and not simply the result of a normal degenerative process of the pre-existing condition." *Sisbro v. Indust. Com'n,* Ill.2d 193, 204-205 (2003). Work duties do not have to be "the sole causative factor, nor even the primary causative factor in the injury" to establish causation. *Id.* at 205. However, the agency did not apply this causation standard to Faust's claim as it was searching for excessiveness. The court's new quantitative thresholds led to Faust's loss. As explained in the following section, the thresholds are both arbitrary and unconstitutional.

Ms. Faust raised the constitutional issues at the earliest opportunity in her case. The agency applied the thresholds to create the constitutional error. The circuit court had no authority to challenge the appellate court's new doctrine. Faust therefore asked the appellate court to reconsider its new scheme in light of each of the arguments she now presents to this Court. The appellate court refused to revisit its scheme and Faust presented the same arguments to the Illinois Supreme Court without success. Illinois is not willing to correct the constitutional error of its threshold scheme. Faust therefore seeks this Court's assistance to protect the fundamental interests which she and her fellow workers have at stake in their workers' compensation systems.

REASONS FOR GRANTING THE PETITION

The early 20th century saw a nationwide wave of states substituting no-fault workers' compensation systems for common law rights. This Court saw no due process problem with the substitutions as long as states

offered meaningful exchanges for common law rights. *See New York C.R. Co. v. White*, 243 U.S. 188, 205 (1917); *Arizona Employers' Liability Cases*, 250 U.S. 400, 419 (1919) (arbitrary and unreasonable changes are not permissible substitutions).

Illinois followed national trends and replaced common law rights with a no-fault compensation system. *See Grand T.W.R. Co. v. Indust. Com'n*, 291 Ill. 167, 174 (1919). The "primary purpose of Illinois' system was to afford employees and their dependents a measure of financial protection" by imposing liability on employers without regard to fault. *Grasse v. Dealer's Transport Co.*, 412 Ill. 179, 190 (1952). Compensation became available for "injuries arising out of and in the course of the employment." 820 ILCS 305/1(d). Coverage was broadly applied to all manner of work activities, including assigned duties, acts incident to those duties, and activities compelled by common law and statutory obligations. *See Caterpillar Tractor Co. v. Indust. Com'n*, 129 Ill.2d 52, 58 (1989). Fault and affirmative defenses no longer controlled a worker's access to redress.

I llinois Created Arbitrary Barriers Against Compensation

However, starting with the *Adcock* decision in 2015, Illinois reinterpreted the "arising out of" clause of its workers' compensation statute to find the new quantitative and qualitative thresholds for injuries arising from "everyday activities". The text of Illinois' compensation statute mentions nothing about thresholds, proof of excessiveness, comparisons between populations or a

disfavored category of "everyday activities". Thresholds and comparisons had also not surfaced in over a century of practice at the agency before the *Adcock* decision. The Illinois Supreme Court had even recognized at the dawn of the system that benefits would not depend on comparisons with other jobs or comparisons of risk faced by other people. *See Ohio Bldg Safety Vault Co. v. Indust. Bd.*, 277 Ill. 96, 106 (1917). Nevertheless, the appellate court's new thresholds departed from a century of accepted understanding of the "arising out of" clause.[2]

Illinois' new thresholds are also arbitrary in that they have nothing to do with whether the worker suffered an injury at work. The threshold scheme does not even apply to a case until the worker is injured at work. See *Adcock*, 2015 IL App. (2d) 130884WC at *P31 (determine the mechanism of accident and then segregate the risk into one of three risk categories). The quantitative threshold's demand for comparisons with population movements also has nothing to do with a worker's injury from work. The thresholds simply bar workers from compensation even when they have proven they were injured by work duties.

2. The higher court's interpretation of a statute would normally control how the statute was applied. However, Illinois' Supreme Court largely delegated its role in shaping workers' compensation law to an appellate panel in 1984. See *Yellow Cab v. Jones*, 108 Ill.2d 330, 333 (1985). The court also vested the appellate panel with a gatekeeper role, as litigants cannot access the supreme court without permission from the appellate panel. *See Id.* at 338. The significance of this structure is that the appellate panel has largely charted the course for workers' compensation law since 1984, with rare incursions by the supreme court.

There is also no accepted understanding as to what qualifies as an "everyday activity", and thus no principled way to limit application of the threshold scheme. Work is part of the daily routine, so any activity at work logically qualifies as an everyday activity. *See e.g., Adcock*, (chair use); *Mytnik v. Ill. Work. Comp. Com'n*, 2016 IL App (1st) 152116WC (reaching for item on floor); *Dukich v. Ill. Work. Comp. Com'n*, 2017 IL App (2d) 160351WC (slipping on handicap ramp); *Steak n' Shake v. Ill. Work. Comp. Com'n*, 2016 IL App (3d) 150500WC (wiping down tables); and *Faust* (repetitive work movements).

The quantitative threshold is further arbitrary in that it throws half of the population out of the system. Benefits are restricted to those workers who exceed population averages for movements or activities. However, when benefits are limited to the more vigorous half of the population, the below-threshold half of the population finds no redress in the system. Workers of advanced age and those with pre-existing conditions are particularly vulnerable to the quantitative threshold which doomed Faust's claim. Thus, Illinois' new scheme unduly discriminates against the most vulnerable groups of citizens.

The population movement threshold does not even correlate with how often the public itself develops injury from the relevant movement. Thresholds did not arise from a legislative investigation into correlations between movements and injuries. Rather, thresholds sprang into existence when Illinois reinterpreted a century old clause in its statute. There is further no reason to suspect a correlation between injury and average population movements. If it were otherwise, the more vigorous half

of the population would be in varying stages of breakdown from their movements.

A far more insidious problem with the scheme is its demand that we compare the injured worker's movements and activities against the general public. The burden of proving population movement averages lands on the worker who is trying to access benefits. However, the cost to identify population averages exceeds the value of any case in the system. Consider the cost of funding a tiny study to identify population movement averages. If the ergonomist charges $50 an hour and limits observations to a 24 hour period per person, observations will cost $120,000 ($50 x100 subjects x 24 hours) over 2,400 hours of observation time before the expert has even crunched the data to identify the averages. A sample half that size will cost $60,000 to study. However, average indemnity values for claims in the Illinois system was $2,389 in 2013 and $2,346 in 2012. See Illinois Workers Compensation Commission, *Fiscal Year 2014 Annual Report,* page 17 (https://www2.illinois.gov/sites/iwcc/Documents/annualreportFY14.pdf). Case values have significantly dropped since the 2014 report, but Illinois stopped publishing the data. In any event, no worker will ever access a remedy if they are required to fund studies to identify arbitrary population averages.

Workers could alternatively hire experts to opine on population movements (assuming such experts exist), but experts add thousands of dollars in expenses to each case just to show where the worker falls in respect to an arbitrary population baseline. Cost barriers present an unconstitutional denial of access to fair civil recourse, particularly when workers have fundamental rights

at stake and the government has a monopoly over the mechanism for redress. *See Boddie v. Connecticut,* 401 U.S. 371, 380 (1971). Illinois prevents workers from filing common law actions against employers (*See* 820 ILCS 305/5), and an array of criminal and civil laws prevent workers and their dependents from taking justice into their own hands. By substituting the compensation system for common law rights, the state forced workers into a position of complete dependence on the state's administrative mechanism. The state *minimally* owes its injured workforce a fair mechanism for redress. *See DeShaney v. Winnebago County Dept. of Social Services,* 489 U.S. 189 (1989) (duty to provide services where person is in government custody or government creates the danger).

II. Arbitrary Barriers Threaten Fundamental Rights Of Workers

A Right To Bodily Integrity

Workers turn to workers' compensation systems to protect their most fundamental of interests, bodily integrity. States shall not "deprive any person of life, liberty or property without due process of law." U.S. Const. amend. XIV, §1. Bodily integrity finds protection in both the "life" and "liberty" terms of the clause.

Bodily integrity captures the most ancient of our interests, the interest in preserving the body. Bodily integrity impacts survival, and survival is at the core of any living creature's genetic structure. Internal drives and reflexes attempt to protect us from injury while basic cellular mechanisms repair damaged tissue. However,

the jobs we take often present unnatural demands for the body, requiring repetitious or consistent movements and activities. Workers cannot simply walk away from the job activity to avoid further injury and to heal. Workers continue working as their bodies break down from the activity. Internal repair processes have not evolved to restore our bodies back to a pristine state after extended shifts of unnatural movement at work. We know this as injuries manifest from all manner of work duties. The injuries lead to a need for treatment and financial support while healing. Workers' compensation systems were created to address these very issues.

To Faust's knowledge, this Court has never squarely explored the scope of what is protected as "life" under the Fourteenth Amendment. Members of the Court have persuasively explained that "life refers to more than mere animal existence." *Munn v. Illinois*, 94 U.S. 113, 142 (1877) (Fields, J. dissenting). "The inhibition against its deprivation extends to all those limbs and faculties by which life is enjoyed." *Id.* "The provision equally prohibits the mutilation of the body by the amputation of an arm or leg, or the putting out of an eye, or the destruction of any other organ of the body through which the soul communicates with the outer world." *Id.* "The provision equally prohibits the mutilation of the body by the amputation of an arm or leg, or the putting out of an eye, or the destruction of any other organ of the body through which the soul communicates with the outer world." *Id.* Justice Field's explanation was penned shortly after ratification of the fourteenth amendment. However, his expansive view of the protections offered by the Fourteenth Amendment substantially overlaps with modern understanding of the protections. Furthermore, given that bodily integrity and

survival are literal manifestations of one's life, the "life" term would be the logical source of protection for our most paramount of interests.

Bodily integrity also finds support under the liberty term of the Due Process Clause. *See Cruzan v. Missouri Dept. of Health,* 497 U.S. 261 (1990) (right to refuse medical care/life-saving hydration and nutrition); *DeShaney*, 489 U.S. 189 (1989) (right to medical treatment at government's expense while restrained). An individual's liberty rights include the right to maketreatment decisions without government interference. *See* Jessie B. Hill, *The Constitutional Right To Make Medical Treatment Decisions: A Tale Of Two Doctrines,* Texas L. Rev. Vol. 86:277; p.329 (2006).

Limits have obviously been placed on that right where the state has a compelling interest over criminal matters (illicit drugs for treatment), broader public health concerns (vaccines) or forcing professionals to assist in one's suicide. Nevertheless, states must have a compelling reason to interfere with a person's bodily integrity and their correlative right to restore that integrity when it is impaired. "No right is held more sacred, or is more carefully guarded, by the common law, than the right of every individual to the possession and control of his own person, free from all restraint or interference of others, unless by clear and unquestionable authority of law." *Union Pacific R. Co. v. Botsford*, 141 U.S. 250, 251 (1891).

Ms. Faust is not seeking to contravene criminal laws or threaten public health with her claim for workers' compensation benefits. She is not even asking Illinois to provide her with the medical care or to protect her from

workplace injuries. She is simply asking the state to provide a fair playing field within which she can attempt to redress her most fundamental of interests.

A Right To A Fair Mechanism For Redress

"The very essence of civil liberty consists in the right of every individual to claim the protection of the laws, whenever he receives an injury." *Marbury v. Madison*, 5 U.S. 137, 163 (1803). "One of the first duties of government is to afford that protection." *Id.* The right to be heard "lies at the foundation of all well-ordered systems of jurisprudence" and "is founded in the first principles of natural justice." *Windsor v. McVeigh*, 93 U.S. 274, 277, 280 (1876). "[T]he very point of recognizing any access claim is to provide some effective vindication for a separate and distinct right to seek judicial relief for some wrong." *Christopher v. Harbury*, 536 U.S. 403, 415 (2002).

The right to redress has been a core feature of our legal system since the beginning. *See* John C.P. Goldberg, *Tort Law at the Founding*, 39 Fla. St. U.L. Rev. 85-86 (2011). The Declaration of Independence is itself a claim for redress sounding in tort. *See Id.* at 88-95. Recognizing the importance of redress, the country's earliest civil justice system preserved a broad range of tort avenues for citizens and non-citizens alike to redress their wrongs. *See Id.* at 95.

It is further the duty of every state "to provide for the redress of private wrongs." *Missouri Pacific R. Co. v. Humes*, 115 U.S. 512, 521(1885) ("*Humes*"). The state owes this duty as part of the social compact. Individuals possess a natural privilege to respond to mistreatment by

others. Insofar as the state denies individuals the privilege of self-help and self-assertion in the name of civil peace and justice, the state becomes obligated to provide the alternative mechanism for redress. *See* John C.P. Goldberg, Benjamin C. Zipursky, *Civil Recourse Theory Defended: A Reply To Posner, Calabresi, Rustad, Chamallas and Robinette*, 88 Ind. L. J. 572-573 (2013). Blackstone and Locke both recognized the right to fair redress and the right traces back many centuries earlier through the natural law of England. *See* John C.P. Goldberg, *The Constitutional Status Of Tort Law: Due Process And The Right To A Law For The Redress Of Wrongs*, 115 Yale L. J. 532-559 (2005); Robert J. Kaczorowski, *The Common Law Background Of Nineteenth-Century Tort Law*, 51 Ohio St. L. J. 1127, 1131 (1990) (referencing a 1374 claim for negligent treatment by a surgeon).

Redress provided by the state's mechanism must also be fair to satisfy due process concerns. *See New York C. R. Co. v. White*, 243 U.S. 188, 205 (1917) (doubting that insignificant compensation is constitutional); *Humes*, 115 U.S. at 521 (the general rule for redressing private losses is that they should be commensurate with the injury). Fair redress includes a baseline freedom against states using arbitrary barriers to block access to the redress. Due process of law guarantees private rights as well as giving increased security against arbitrary deprivations of life or liberty. *See Humes*, 115 U.S. at 520. "The freedom secured by the Constitution consists, in one of its essential dimensions, of the right of the individual not to be injured by the unlawful exercise of government power." *Obergefell v. Hodges*, 135 S.Ct. 2584, 2605 (2015). "Thus, when the rights of persons are violated, the Constitution requires redress by the courts." *Id.*

III. Due Process And Equal Protection Principles Must Prevent States From Blocking Redress Through Arbitrary Barriers

This Court found no due process prohibition against states swapping meaningful administrative compensation systems for common law rights. Equal protection principles also protect people who are trying to exercise fundamental rights. *See Skinner v. Oklahoma*, 316 U.S. 535, 541 (1942). When fundamental rights hang in the balance, states must be exceptionally careful to avoid depriving citizens of their rights. Under the quantitative threshold, Illinois punishes the below-threshold half of the workforce who suffer injury from common work duties. Many of these workers will never restore their bodily integrity to a serviceable state without a means for treatment. Survival also becomes a paramount concern when workers are denied subsistence support while they recover from injuries. Profound interests are at stake any time a worker suffers injury in the workplace. States have no legitimate role in blocking workers from fair mechanisms for redress.

However, states across the nation are systematically carving away at the diminutive benefits that workers can access through their systems. This push to cut benefits has been comprehensively surveyed by government agencies, academics and investigative journalists. *See e.g.,* U.S. Dep't of Labor, *Does the Workers' Compensation System Fulfill Its Obligations To Injured Workers?* (2016) https://www.do1.gov/asp/WorkersCompensationSystem/WorkersCompensationSystemReport.pdf; Emily A. Spieler, *(Re)assessing the Grand Bargain: Compensation For Work Injuries In The United States, 1900-2017,* 69 Rutgers U.L. Rev. 891 (2017); Michael C. Duff, *Worse Than*

Pirates Or Prussian Chancellors: A State's Authority To Opt-Out Of The Quid Pro Quo, 17 Marquette Benefits & Social Welfare L. Rev., Vol.17 Issue 2 (2016); and Michael Grabell & Howard Berkes, *The Demolition Of Worker's Comp,* ProPublica (Mar. 4, 2015), https://www. propublica. org/article/the-demolition-of-workers-compensation.

Some efforts involve arbitrary limits on benefits for workplace injuries. *See* Price V. Fishbach, *Long-Term Trends Related To The Grand Bargain Of Workers' Compensation*, 69 Rutgers U. L. Rev. 1185, 1196 (2017). Other states, like Illinois, block access to benefits by discovering new barriers in existing statutory provisions. Whether the state's arbitrary barriers are of legislative or judicial origin, the barriers threaten fundamental rights.

This Court never returned to address how generous a compensation system must be to satisfy due process concerns after *New York C. R. Co v. White*. The original grand bargain was struck to provide a mechanism for redressing widespread industrial carnage which the tort system was not redressing. States had a compelling reason to force the swap at that point in history. However the current erosion of benefits is not in response to any crisis. Corporate profits are booming, executive compensation is soaring and financial markets have reached unprecedented heights. The ongoing erosion of worker rights merely transfers wealth from workers and their dependents to employers and insurance carriers. States have no legitimate role in creating windfalls for someone else by blocking an injured worker's access to redress. States possess no ownership interest in the worker's bodily integrity or their right to a fair mechanism for redress. Rather, the states are constitutionally

compelled to provide a fair platform so that workers can protect these rights.

Ms. Faust merely seeks a fair mechanism within which she can litigate her claim. Arbitrary barriers deprive her of that fair mechanism. Illinois refuses to address the constitutional infirmity of its threshold scheme. Faust therefore asks this Court to apply the Fourteenth Amendment to provide baseline protections against states using arbitrary barriers to deprive workers of rights. Faust fully understands that she will still have to win her claim at trial after the arbitrary barriers are stripped from Illinois' workers' compensation system. A fair mechanism for redress must be available to all.

CONCLUSION

Faust prays that this Court grant her Petition for Writ of Certiorari.

Respectfully submitted,

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APPENDIX

APPENDIX A — ORDER OF THE APPELLATE COURT OF ILLINOIS, SECOND DISTRICT, WORKERS' COMPENSATION COMMISSION DIVISION, FILED JANUARY 4, 2018

IN THE APPELLATE COURT OF ILLINOIS
SECOND DISTRICT, WORKERS' COMPENSATION
COMMISSION DIVISION

NO. 2-17-0264WC

SHERYL FAUST,

Plaintiff-Appellant,

v.

THE ILLINOIS WORKERS' COMPENSATION COMMISSION, *et al.*, (Cadence Health, Appellee).

January 4, 2018, Order Filed

Appeal from the Circuit Court of Kane County.
No. 16-MR-703. Honorable David R. Akemann,
Judge, presiding.

JUSTICE OVERSTREET delivered the judgment of the court. Presiding Justice Holdridge and Justices Hoffman, Hudson, and Harris concurred in the judgment.

ORDER

Held: The Illinois Workers' Compensation Commission's finding that the claimant

failed to prove that she sustained an injury to her low back that arose out of and in the course of her employment was not against the manifest weight of the evidence.

The claimant, Sheryl Faust, appeals the decision of the circuit court of Kane County that confirmed the unanimous decision of the Illinois Workers' Compensation Commission (Commission), which denied the claimant benefits based on its finding that she had not sustained an injury to her low back arising out of and in the course of her employment with the employer, Cadence Health. On November 15, 2012, the claimant filed an application for adjustment of claim under the Workers' Compensation Act (Act) (820 ILCS 305/1 *et seq.* (West 2010)), wherein she alleged that on July 1, 2011, while in the course and scope of her employment with the employer, she suffered a bone and soft tissue injury to her low back. An arbitration hearing pursuant to section 19(b) of the Act (820 ILCS 305/19(b) (West 2010)) was conducted on May 20, 2015, in which the claimant was granted leave to amend the application to reflect an accident date of September 1, 2011, after explaining that the claimant's claim was one for repetitive trauma.

On October 20, 2015, the arbitrator issued her decision, in which she found the claimant failed to establish that she sustained a compensable work-related injury. Accordingly, the arbitrator denied all compensation and benefits that the claimant requested. The claimant sought review of the arbitrator's decision before the Commission. On June 8, 2016, the Commission issued a unanimous

decision in which it affirmed the decision of the arbitrator, but modified the arbitrator's decision to include additional analysis. The claimant filed a timely petition for judicial review in the circuit court of Kane County. On March 21, 2017, the circuit court confirmed the Commission's decision. The claimant filed this timely appeal, over which we properly have jurisdiction.

BACKGROUND

The claimant testified that, during the time period at issue, she worked for the employer as an "Epic Credentialed Trainer." Epic was a new electronic medical record system that was being implemented by the employer. The first phase of her job was to become proficient and gain credential as a proficient user of the program. For this part of the job, she sat in front of a computer and learned the system "via lectures, application, studying at home. It was pretty much a 24/7 process to learn all of this in a very, very short period of time." She testified she sat in a chair eight to twelve hours a day, five days a week on site and also on the weekends at home. This phase of the job lasted from July 2011 until the end of August 2011. During this time, she began experiencing the following:

> "Because I was sitting so much I was in increasing pain. Lumbar pain was intense going down my legs. Cervical pain that I had never experienced before was the new pain that I had as a result of the sitting. But I also had lumbar pain from being in one position for an extended period of time."

The claimant acknowledged that she had experienced low back pain in the past, explaining:

> "I had an impingement of L5-S1 due to biking two years before and it was diagnosed at Fox Valley Orthopedic and treated with a spinal injection, well treated, and as long as I was moving and doing the normal things I did in my job prior to Epic I was just fine."

The claimant explained that prior to becoming an Epic trainer, her job involved "a typical administrative up/down, sitting, moving around job."

According to the claimant's testimony, she began training physicians beginning the last week of August 2011. During this phase of the job, she conducted four to six hour classes starting at seven in the morning and ending at eight or nine at night. She was scheduled for a variety of these classes, six days per week, for a maximum of three classes in a day, which would be 12 hours. During these trainings, she would either be standing at a podium lecturing, or walking among the physicians in a computer lab setting, "bending like a fulcrum" to help assist them with any questions or problems they had. The claimant testified that she assumed this fulcrum-like position for an average of 60% of the time she conducted these trainings. She took no breaks and there were no chairs allowed for the trainers to sit at all. The claimant testified that she trained physicians in this manner for eight weeks.

The claimant testified that while she was conducting the trainings described above, she was in agony. She could not feel her legs because she was never sitting and always standing. For this reason, she had numbness and radiating pain down her legs. When she was the secondary trainer walking among the physicians she had "searing pain in [her] lumbar region to the point that [she] was reduced to tears." She sought treatment initially with Dr. Hanna at Central DuPage hospital, which was owned by the employer. She then began treating with her primary care physician, Dr. Cladis, until he referred her to Dr. Popp and Fox Valley Orthopedics. Dr. Popp was one of the physicians that she trained on the Epic software.

The claimant testified that Dr. Popp performed various treatments on her, and eventually recommended a fusion. The employer paid for none of her treatments and did not pay her any benefits. During the entire course of her treatment, she was under various work restrictions. First, Dr. Cladis restricted her to no more than four hours per day of standing, or one class per day. Then, Dr. Cladis restricted her to no more than five hours a day, with no more than 30 minutes of standing, and no lifting, bending, or twisting. Initially, the employer accommodated these restrictions, but in January 2013, the employer terminated her employment, advising that they were no longer able to accommodate her restrictions.

The claimant testified that at the time of the hearing, she had been taking Norco for over two years to manage her back pain. Her then current restrictions, imposed by Dr. Chris Siodlarz, a pain specialist, were no standing for

more than two hours, with no bending, twisting, or heavy lifting. Three weeks prior to the arbitration hearing, she underwent a two-level spinal fusion at L3-L4 and L4-L5, performed by Dr. Ronjon Paul, a physician not affiliated with the employer. The claimant testified that she was in a lot of pain, but that the pain felt "more surgically related" so she was hopeful that it was going to help with her problem. She further testified that she was "on a lot of narcotics right now."

With regard to her treatment with Dr. Paul and the surgery, the claimant testified that her surgery was the same one that was previously recommended by Dr. Popp. She underwent this treatment and put the billing through to her group insurance instead of waiting for her workers' compensation claim to be resolved because she was in agony and she was told by Dr. Popp that she risked permanent nerve damage to her right leg if she waited.

On cross-examination, the claimant was asked to give an estimate as to how often she was assigned twelve-hour shifts. In response, the claimant testified that she would have to look at her training schedule records. When asked how often she was secondary trainer such that she spent about 60% of her time bending, she again stated that she would have to refer to her records. The claimant was then cross-examined regarding her initial application for adjustment of claim, which indicated an accident date of July 1, 2011, which is when she was just beginning her Epic training. In response, she indicated it was actually the middle of June when she began training. Finally, the claimant admitted that she underwent an independent

medical exam (IME) with Dr. Levin and answered his questions truthfully. On re-direct, the claimant testified that she reviewed Dr. Levin's IME report and found that some of what he wrote about what she told him about her complaints or job duties was "quite inaccurate." The claimant testified she identified September 1, 2011, as her date of accident because that is when she started the standing portion of her duties as an Epic trainer for the employer.

Alida Wagner testified, on behalf of the employer, that she is a manager of professional development for the employer. In September 2011 she was principal trainer for the Epic team, a position in which she started in July 2010. She testified that the claimant began her training to be certified in the Epic program in late June or early July 2011. In July and August 2011, she was learning the training materials and how the Epic system worked so as to be able to effectively teach the physicians. This involved mostly sitting, but also "some up and down work as they were also helping to get some materials prepared." Ms. Wagner testified the claimant told her that she had previous back pain, and then once they started the training of the physicians she complained that the standing and teaching was causing some back pain. Ms. Wagner testified this portion of the work started in early September.

Ms. Wagner testified that when the claimant trained the physicians, she was one of two trainers, and would sometimes stand at the podium and teach, and sometimes walk around the room and make sure that the physicians

were following along or "maybe do a little one-on-one with somebody who was falling behind." According to Ms. Wagner, the only physical demand of the job at the podium was standing. At the start of the training, chairs were not available for the trainer at the podium to use, but they did order them "so that was an option too." The job walking around the room "was a stand-up or sit-down type of job depending on what was happening in the class." According to Ms. Wagner, this part of the job would give the claimant the option of sitting and just watching to make sure somebody didn't need help, walking in between the rows to make sure physicians were following along, or sitting next to a physician who needed a little more one-on-one support. She testified that the job involved a typical eight-hour work day, Monday through Friday, 8:00 a.m. to 4:30 p.m., with a break for lunch.

Ms. Wagner testified that there were three classes scheduled per day for the most part, and the trainers would either do two classes back to back for an eight-hour day or work a split-shift where they did the first class of the day, had the afternoon off, and came back in the evening to teach the third class of the day. To her knowledge, the claimant was never scheduled to work for 12 hours straight. There was always a half hour break between back-to-back classes. This portion of the program lasted until October 2011.

On cross-examination, Ms. Wagner testified that they brought chairs into the trainings at the behest of the claimant. Ms. Wagner testified that she observed the claimant in trainings on a couple of occasions, but

could not say how many times she was assigned to the podium versus walking around assisting the physicians or how many hours on average per day she was assigned to either position. She also had no personal knowledge of how much time the claimant spent bending while assisting the physicians.

The evidence deposition of Dr. Craig Popp was admitted into evidence on behalf of the claimant. Dr. Popp testified he is a board certified orthopedic surgeon who has been in private practice for 16 years and specializes in spine surgery. He knows the claimant professionally from the Epic training program at the employer's hospital. During that time, he became familiar with the type of activities she was performing in that program, characterizing it as "a change from her previous more sedentary type job." He first saw the claimant as a patient on November 19, 2013, at which time she presented with low back pain. He was continuing to treat her at the time of his deposition.

Dr. Popp testified his working diagnosis was that the claimant had facette syndrome and spondylolisthesis involving the lumbar spine, as well as a herniated disc at the L5-S1 level. To make this diagnosis, he considered her MRIs. Her treatment up to that point was primarily with the pain management doctor that worked with Dr. Popp in his practice, Dr. Siodlarz. To that end, the claimant had undergone facette injections, and epidural steroid injections. His next treatment recommendations were going to be some additional injections, including selected nerve root blocks, especially at the level of the S1 nerve.

The next treatment recommendation would be to do a decompression at L4-L5 and then a fusion at L4-L5 with a discectomy at L5-S1. However, he was concerned that the L3-L4 level "may wear out relatively soon" due to degeneration, and may necessitate another operation in the future. In other words, Dr. Popp explained the fusion at the lower level could accelerate the degeneration at the higher level.

With regard to work-related etiology, Dr. Popp explained that "this stuff existed prior to her changing of positions." However, Dr. Popp opined that the type of position the claimant had teaching required a significant amount of bending forward "sort of in an awkward position," overlooking people. Dr. Popp explained that because spondylolisthesis is a condition where one bone in the spine shifts in front of the other one, bending forward "into that position" causes an increased stress or an increased "shear force" across those two vertebral bodies. In addition, according to Dr. Popp, bending forward puts load onto the discs at the levels of the claimant's pre-existing spondylolisthesis.

Dr. Popp was asked to assume that the claimant was placed into the Epic training position effective the last week of August 2011 where she was forced to do 8 to 12 hours a day over a two month period, 50% of her time teaching up on her feet and the other 50% bending over at the waist to help on the computer. He was further provided information that the claimant reported to her general practitioner on September 1, 2011, that she had low back pain, numbness and tingling into both legs, and

complained about the training she was doing at that time. Based on this information, Dr. Popp was asked to give an opinion to a reasonable degree of orthopedic certainty as to whether these job tasks are causally related "in some respect" to her current condition. In response, Dr. Popp opined that the activities of bending forward for large amounts of time was related to the onset of pain that she was describing. Dr. Popp further opined that, based on the severity of the pain the claimant was describing, the treatment he recommended was medically necessary.

On cross-examination, Dr. Popp testified that his notes were out of order and his treatment of the claimant actually began on April 4, 2013. The claimant did not disclose to him any information regarding a motor vehicle accident in May 2006. However, she did disclose that she had left buttocks pain in 2010 and Dr. Siodlarz treated her with injections at that time. He had never reviewed DEXA bone scans and was not aware that the claimant had full-blown osteoporosis. He had not reviewed an MRI from June 30, 2010, and testified it would be significant to him if that MRI showed degenerative disc disease and degenerative changes of the facette joints. He was aware that a Dr. Morowski had diagnosed her with an L5 through S1 disc protrusion. He did not know that the claimant had previously been diagnosed with a nonspecific connective tissue disorder. He was not aware that Dr. Mark Hanna had diagnosed the claimant in August 2011 with left sciatica and lumbar joint arthritis, although he was "not surprised." He had no information that Dr. Cladis referred the claimant to a rheumatologist on November 22, 2011, and that she had been diagnosed with osteoarthritis,

also known as degenerative joint disease. Dr. Popp did clarify that he was not opining that the claimant suffered an acute traumatic injury from her work activities, but rather a repetitive injury wherein repetitive bending forward aggravated and accelerated her pre-existing condition. Finally, Dr. Popp testified that he remained of this opinion despite the foregoing omissions in terms of the claimant's history.

The evidence deposition of Dr. Jay Levin was admitted into evidence on behalf of the employer. Dr. Levin is a board certified orthopedic surgeon who has worked in the practice group, Adult and Pediatric Orthopedics, S.C., since 1986. Dr. Levin testified that treating conditions of the spine comprises approximately 50% of his practice. At the request of the employer, Dr. Levin conducted an IME of the claimant on September 25, 2013, and a record review resulting in a report dated January 24, 2014. He also authored a supplemental report dated March 2, 2015. He testified the conclusions he reached in these reports are to a reasonable degree of medical and surgical certainty.

Our review of Dr. Levin's record review report, made concurrently with an independent review of all of the claimant's medical records that were admitted into evidence, reveals that Dr. Levin's record review is both a thorough and accurate depiction of those medical records. Those records reveal that in May 2006, the claimant was involved in an automobile accident in which she injured her right hip and sustained chest contusions. In September 2009, a DEXA bone scan of the claimant revealed osteopenia of the lumbar spine and bilateral

femoral necks. On June 11, 2010, the claimant was seen at her primary care facility complaining of left gluteal pain which she had for three weeks starting after biking several miles for two days in a row. A couple of weeks later, the claimant presented at Delnor Hospital with continued pain in her left buttocks, repeating the history of the prior bicycle trip. The discharge diagnosis for that visit is sciatica and left buttock/low back pain.

On June 30, 2010, the claimant underwent an MRI of the lumbar spine at Delnor Hospital. The history section of the MRI report indicates left buttocks pain. The MRI report indicates degenerative disk disease and degenerative changes of the facet joints. Specifically, there were degenerative disk changes at L1-L2 through L5-S1, most significant at L3-L4, L4-L5, and L5-S1. There was also a right-sided L5-S1 herniated nucleous puposus abutting and displacing the right S1 nerve root. The L4-L5 level also showed bilateral facet arthritis with some foraminal stenosis bilaterally.

There is also evidence in the medical records from Delnor Hospital that the claimant underwent spinal injections in the lumbar region on January 20, 2011, as well as on February 3, 2011. On March 18, 2011, the claimant presented at her primary care facility for, *inter alia*, back pain. On July 13, 2011, the claimant underwent a nerve root block/paraspinous injection with fluoroscopy. The history from the claimant's visit of that date states that the claimant's chief complaint was low back pain that radiates down to the left leg into the buttocks area that has been increasing in severity. Diagnostic

impression from that visit included low back pain, left sciatica, lumbar disc displacement at L4-L5 and L5-S1, and facet joint arthritis. Dr Mark Hanna "continued" her Norco prescription, discussed epidural steroid injections for her sciatica symptoms and disc displacement, and radiofrequency ablation for her degenerative joint disease. He also referred her for physical therapy. She underwent these procedures the same day.

On August 17, 2011, the claimant was seen at Delnor Hospital by Dr. Hanna. Her chief complaint was "low back pain and neck pain (new)." According to the record, she told Dr. Hanna that she had been having low back pain radiating to the left leg, neck pain, and tightness into the neck since she had been working on a computer and sitting in a desk. The note states, "[s]he is worse with sitting and better with standing." The diagnosis was "1. Myofascial pain cervically and to the levator scapular with neck pain (new to examiner). 2. Low back pain with left sciatica. 3. History of lumbar disc displacement. 4. Lumbar facet arthritis." Dr. Hanna recommended additional pain medication and a muscle relaxant, as well as an epidural steroid injection.

On September 1, 2011, which is the date of the manifestation of the claimant's repetitive trauma injury according to the claimant's amended application for adjustment of claim, the claimant presented to her primary care physician, Dr. Cladis. Under "History of Present Illness" for that date, the notes from that visit state that the claimant described recurring back pain. The claimant complained that since she received a pain

shot one week prior, she had been experiencing numbness and tingling in both legs. There is a note that the claimant "[s]tands to train up to 10 hours/day," and that the "[p]ain is definitely worse when up on her feet for prolonged periods." Dr. Cladis' "Assessment" was intervertebral disc degeneration and worsening sciatica. Dr. Cladis restricted the claimant to no standing more than four hours per day with no repetitive bending, lifting, or twisting.

The claimant presented to Delnor Hospital's physical therapy department on September 15, 2011, for an initial evaluation as referred by Dr. Cladis. This record states that the claimant's symptoms initially began in June 2010, following an automobile accident, but have worsened within the last two months.[1] The record then states that, "[l]ast evening at work during an Epic presentation, [claimant] tripped over exposed cords and lurched forward which exacerbated her symptoms. Under "Home Environment," the note states that the claimant is very active and likes to bike. With regard to work activities, the note states:

> "[Claimant] is a credentialed [E]pic trainer and currently is training physicians ***. [Claimant] is working in a stressful environment with tight deadlines. [Claimant] was performing prolonged sitting during training and is now doing a significant amount of standing during the training sessions. [Claimant] is unable to

1. We note that this history is at odds with all other medical records in evidence, which indicate that the claimant was involved in an automobile accident in 2006, and sustained an injury while on a long-distance bike ride in June 2010.

> tolerate back[-]to[-]back training sessions due to increased symptoms."

On September 29, 2011, the claimant returned to Dr. Cladis for a follow-up appointment. In the "History of Present Illness" section of that record, it states "[l]ower back pain starting suddenly. Radicular pain, posterior aspect of lower extremities." Dr. Cladis' assessment of the claimant, as well as his recommendations, remained the same. The claimant underwent physical therapy from September through October 2011. According to records in evidence, the claimant was not seen again for low back pain until October 2012.

An October 4, 2012, record from Dr. Cladis notes that the patient stated that the low back pain "has become more chronic due to physical demands of her job." More specifically, the claimant's stated history as reflected in this note from Dr. Cladis reads:

> "She says her pain is constant. Low back pain aggravated, has been on 12 hour days and severe low back spasms/right hip pain since January 2012 with work requirement of constant standing/walking through [one of the employer's hospitals] during go live process. The pain resolves somewhat more after sedentary job and less standing. Now more severe pain since May 2012 with more standing and walking, then a break and pain lessened, but had right hip pain and saw ortho[pedist]. Now persistent with low back/right hip when on feet for more than two hours."

Dr. Cladis' assessment was bursitis of the right hip, lumbago, intervertebral disk degeneration, herniated intervertebral disk, and sciatica. The claimant continued to treat with Dr. Cladis for these complaints, noting some improvement in her symptoms when off work, until she had a repeat MRI of her lumbar spine on April 7, 2013. The MRI showed advanced degenerative facet joint changes with areas of synovial cyst formation posterior to the thecal sac at L4 level, likely related to the advanced degenerative facet joint changes at the L4-L5 level with degenerative changes also noted at L3-L4.

In his records review, Dr. Levin indicated that he reviewed the MRI films themselves, which he stated revealed degenerative disk changes throughout the lumbar spine, most significant at L3-L4, L4-L5, and L5-S1. Dr. Levin observed that the L5-S1 level shows bilateral facet arthritis, degenerative disk changes, and a right-sided L5-S1 disk protrusion/herniation which was, according to Dr. Levin, somewhat improved in comparison to the MRI dated June 30, 2010. According to Dr. Levin, this abuts the right S1 nerve root without definite displacement. The L4-L5 level indicated to Dr. Levin the presence of bilateral facet arthritis and degenerative disk changes and annular bulging. The L3-L4 level, according to Dr. Levin, shows bilateral facet arthritis and degenerative annular bulging with foraminal stenosis on a bony basis. Dr. Levin found that the L2-L3 level was essentially normal on this MRI, while the L2-L1 level shows a left-sided disk protrusion consistent with the previous June 30, 2010, MRI. Dr. Levin noted no acute changes between the June 30, 2010, and April 7, 2013, MRIs.

Based on his clinical assessment of the claimant on September 25, 2013, as well as his review of the above-referenced records and imaging studies, Dr. Levin concluded the claimant had chronic low back complaints beginning in 2010 and pre-dating the alleged date of manifestation listed on the claimant's original and amended notice of claim. Dr. Levin opined that the claimant's pain complaints from sitting and standing were consistent with the underlying degenerative disk disease. Dr. Levin characterized these pain complaints as being based on activities of daily living rather than an injury. Dr. Levin concluded that there was "no causal connection between an acute aggravation or exacerbation of [the claimant's] complaints referable to the lumbar spine from any industrial occurrence of August 2011/September 14, 2011." Dr. Levin's report then reiterated that rather than suffering a work-related injury, the claimant "developed symptoms consistent with the natural history of [her degenerative disk disease] and would develop those symptoms with activities of daily living."

Dr. Levin issued his March 2, 2015, report in response to a request by the employer to review additional medical records from Dr. Popp and Dr. Siodlarz. In that report, Dr. Levin again presented the opinion that the claimant's pain complaints, beginning in August 2011, "were consistent with the underlying diagnosis of multilevel degenerative disk changes including L3-L4, L4-L5, and L5-S1, chronic right L5-S1 disk herniation[,] and a left-sided L1-L2 disk bulge," which, according to Dr. Levin, "pre[-] dated an acute occurrence of August/September 2011." He also opined that, "there was no acute exacerbation,

aggravation[,] or complaints referable to the lumbar spine from an industrial occurrence of August/September 2011."

With regard to the question of whether the claimant's back condition was aggravated by everyday work activities of an Epic trainer, Dr. Levin submitted information from the American Medical Association (AMA) and contained within its "Guides to the Evaluation of Disease and Causation," which Dr. Levin indicated is an authoritative text on this topic. Within this report, research is outlined which suggests that physical loading specific to occupation and sport plays a relatively minor role in disc degeneration. Dr. Levin indicated in his supplemental report that genetics determines disc degeneration, not physical loading, and that previous interpretation of the effects of heavy physical loading on changes in the disk have been challenged and remains inconclusive. Based on this, Dr. Levin concluded that the claimant's "current condition of ill-being is not related to work as an Epic trainer for the [employer.]" According to Dr. Levin, the claimant's "current condition of ill-being is a progression of a pre-existing condition. The activities of daily living can give symptoms secondary to that underlying condition."

On October 20, 2015, the arbitrator issued her decision, in which she found the claimant failed to establish that she sustained a compensable work injury and denied all the compensation and benefits the claimant requested. The arbitrator began by thoroughly recounting the testimony from the arbitration, as well as the medical evidence and records, both before and after the claimant's alleged injury manifestation date. The arbitrator noted that the

amendment of this date was an effective change in the allegation regarding the mechanism of the claimant's injury from prolonged periods of sitting to prolonged periods of standing and bending over. The arbitrator concluded that this changed called into question when the claimant's symptoms actually started and what may have caused them. The arbitrator also noted that the claimant was "not entirely forthcoming with information regarding her pre-existing back condition," characterizing it as an "impingement" at one level, whereas there was multi-level degenerative disk disease documented as early as 2010. The arbitrator noted that the medical records establish that the claimant has been consistently treating for lumbar back pain since June 2010, and had used "an entire three month supply of Norco between May 2, 2011, and September 1, 2011," indicating her chronic back pain had not resolved prior to beginning work as an Epic trainer for the employer. Finally, the arbitrator noted that the claimant testified sitting caused her back pain in July and August 2011, but that standing caused pain in September 2011, and sitting relieved the pain. The arbitrator characterized these activities as "activities of daily life" and not "work activities."

The claimant sought review of the arbitrator's decision with the Commission. On June 18, 2016, the Commission issued a unanimous decision in which it affirmed the decision of the arbitrator, but modified the arbitrator's decision to include additional analysis. The Commission found that, in addition to the analysis performed by the arbitrator, there was a need to address whether the claimant's alleged excessive standing and bending

"superimposed on [the claimant's] acknowledged pre[] existing degenerative condition[,] was sufficient to prove that her work duties were 'a' cause of her current condition of ill-being." To this end, the Commission pointed out that the claimant, on cross-examination, was unable to specifically show how often she performed the 12 hour shifts she claimed she spent standing and bending, instead referring to the training schedule that she claimed was in the records. No such records were ever produced. In contrast, the Commission pointed out, Ms. Wagner testified that she was unaware of the claimant ever working a 12 hour shift, but rather worked two back-to-back four hour sessions with a minimum half hour break in between. The Commission continued by referencing Dr. Popp's causation opinion, which was contingent on the claimant's attorney's hypothetical that the claimant worked 8 to 12 hour shifts in which she was on her feet 50% of the time and bending over 50% of the time. Based on these observations of the evidence, the Commission found Dr. Levin's opinion more credible than that of Dr. Popp.

The Commission concluded by stating that the alleged mechanisms of the claimant's injury--sitting, standing, and bending--are activities of daily living that are performed equally by workers and non-workers alike and that are performed in all aspects of daily living. As such, the Commission found that the question was whether the claimant was required to perform these activities "in an excessive manner" such that the claimant was subjected to a greater risk of injury than a member of the general public. Because the Commission found the claimant's quantitative evidence in this regard to be lacking, the

Commission concluded the claimant's claim was not compensable.

The claimant filed a timely petition for judicial review in the circuit court of Kane County. On March 21, 2017, the circuit court confirmed the Commission's decision. The claimant filed this timely appeal, over which we properly have jurisdiction.

ANALYSIS

We find the sole issue on appeal is whether the Commission erred in finding the claimant did not sustain an accidental injury to her low back arising out of and in the course of her employment. Generally, the determination of whether an injury is causally related to employment is a question of fact for the Commission and its determination will not be disturbed unless it is against the manifest weight of the evidence. *Brais v. Illinois Workers' Compensation Comm'n*, 2014 IL App (3d) 120820WC, ¶9, 10 N.E.3d 403, 381 Ill. Dec. 318. "In resolving questions of fact, it is within the province of the Commission to assess the credibility of witnesses, resolve conflicts in the evidence, assign weight to be accorded the evidence, and draw reasonable inferences from the evidence." *Hosteny v. Illinois Workers' Compensation Comm'n*, 397 Ill. App. 3d 665, 674, 928 N.E.2d 474, 340 Ill. Dec. 475 (2009). On review, the "court is not to discard the findings of the Commission merely because different inferences could be drawn from the same evidence." *Kishwaukee Community Hospital v. Industrial Comm'n*, 356 Ill. App. 3d 915, 920, 828 N.E.2d 283, 293 Ill. Dec. 313 (2005). "The appropriate

test is whether there is sufficient evidence in the record to support the Commission's finding, not whether this court might have reached the same conclusion." *Metropolitan Water Reclamation District of Greater Chicago v. Illinois Workers' Compensation Comm'n*, 407 Ill. App. 3d 1010, 1013, 944 N.E.2d 800, 348 Ill. Dec. 559 (2011). "For the Commission's decision to be against the manifest weight of the evidence, the record must disclose an opposite conclusion clearly was the proper result." *Land & Lakes Co. v. Industrial Comm'n*, 359 Ill. App. 3d 582, 592, 834 N.E.2d 583, 296 Ill. Dec. 26 (2005). We will affirm the Commission's decision if there is any legal basis in the record which would sustain that decision, regardless of whether the particular reasons or findings contained in the decision are sound. *Comfort Masters v. Workers' Compensation Comm'n*, 382 Ill. App. 3d 1043, 1045-46, 889 N.E.2d 684, 321 Ill. Dec. 419 (2008). With our standard of review in mind, we continue with a statement of the legal standards applicable to the claimant's claim for benefits arising from an alleged work-related repetitive trauma to her low back.

To obtain compensation under the Act, a claimant must prove that some act or phase of her employment was a causative factor in her ensuing injuries. *Land and Lakes Co. v. Industrial Comm'n*, 359 Ill. App. 3d 582, 592, 834 N.E.2d 583, 296 Ill. Dec. 26 (2005). A work-related injury need not be the sole or principal causative factor, as long as it was a causative factor in the resulting condition of ill-being. *Sisbro v. Industrial Comm'n*, 207 Ill. 2d 193, 205, 797 N.E.2d 665, 278 Ill. Dec. 70 (2003). Thus, even if the claimant had a preexisting degenerative condition

which made her more vulnerable to injury, recovery for an accidental injury will not be denied as long as she can show that her employment was also a causative factor. *Id.* at 205. A claimant may establish a causal connection in such cases if she can show that a work-related injury played a role in aggravating her preexisting condition. *Mason & Dixon Lines, Inc. v. Industrial Comm'n*, 99 Ill. 2d 174, 181, 457 N.E.2d 1222, 75 Ill. Dec. 663 (1983).

An employee who alleges injury based on repetitive trauma must "show [] that the injury is work related and not the result of a normal degenerative aging process." *Peoria County Belwood Nursing Home v. Industrial Comm'n*, 115 Ill. 2d 524, 530, 505 N.E.2d 1026, 106 Ill. Dec. 235 (1987). "Cases involving aggravation of a preexisting condition primarily concern medical questions and not legal questions, [citation]" and "[t]his is especially true in repetitive trauma cases." *Nunn v. Industrial Comm'n*, 157 Ill. App. 3d 470, 478, 510 N.E.2d 502, 109 Ill. Dec. 634 (1987). Thus, repetitive trauma claims involving the alleged aggravation of a preexisting condition, like the claim asserted here, cannot succeed unless the claimant presents medical testimony suggesting that: (1) she had a preexisting condition that was aggravated by her repetitive work activities; and (2) her current condition of ill-being was caused, at least in part, by this work-related repetitive trauma and not simply the result of a normal, degenerative aging process.

Applying these principles to the case at bar, we cannot say that the Commission's conclusion that the claimant failed to establish causation is against the manifest weight

of the evidence. After examining and interviewing the claimant and reviewing all of the medical records including the MRI films from 2010 and 2013, Dr. Levin opined that the claimant's lower back problems were unrelated to her job and her work activities did not aggravate or accelerate her preexisting degenerative disk disease and bilateral facet arthritis. Dr. Levin noted that the medical records established that the claimant had these conditions and associated pain symptomology long before, and also soon before, she began work as an Epic trainer for the employer. Even if we assume that the claimant is credible in her complaints of pain in the performance of her job duties, Dr. Levin's opinion is that the claimant would also experience pain due to this preexisting condition while performing non-work-related daily activities. In other words, there is a distinction between a work-related activity triggering pain due to a preexisting condition, and a work-related activity aggravating or accelerating a preexisting pathological condition. The fact that the claimant felt pain when performing her work activities because her preexisting degenerative disk disease and bilateral facet arthritis had already progressed to a certain level would not establish that the work activities themselves somehow contributed to the progression of the disk disease or arthritis itself or even made it more painful than it would have otherwise been.

We find the Commission was fully within its province when it determined that Dr. Levin's opinion is more credible than that of Dr. Popp. Dr. Popp's causation opinion was based upon a hypothetical, presented by the claimant's counsel, which required Dr. Popp to assume facts about

the claimant's work activities and medical history that were not borne out by the claimant's testimony or other evidence in the record. Dr. Popp clearly did not have the benefit of all of the claimant's prior medical history in rendering his opinions. In fact, Dr. Popp gave his opinion based upon counsel's assertion that she presented to her primary care doctor on September 1, 2011, complaining of low back pain. While this is true, the records show that the claimant presented with low back pain earlier in 2011, including visits in January, February, March, July, and August 2011. Dr. Popp was also unaware of the claimant's 2010 MRI, which essentially mirrored the pathology of the MRI of 2013. The claimant clearly minimized her history of low back problems in her testimony, which compromised her credibility with the Commission.

Moreover, although Dr. Popp observed the claimant in her job duties, it was on one to two isolated occasions. Dr. Popp was asked to assume that the claimant stood on her feet for four to six hours a day and stood bending over at the waist helping physicians on the computer for another four to six hours a day. In fact, the claimant testified that she would need to refer to records to determine how often she did these activities, and those records are not in evidence. From counsel's hypothetical, Dr. Popp opined that the claimant's repetitive job duties were related to the claimant's "onset of pain," thereby aggravating or accelerating the claimant's preexisting condition. This opinion is contrary to that of Dr. Levin, who compared MRIs showing no change in the pathology of the claimant's condition after the claimant's alleged injury manifestation date, and who conducted an extensive review of the

claimant's medical history, which clearly showed that the claimant's condition was symptomatic well before she became an Epic trainer for the employer.

Finally, we note that Dr. Popp's opinion was that the claimant's repetitive bending is the mechanism that aggravated her preexisting disk disease. However, the claimant's alleged manifestation is September 1, 2011. The claimant testified that she didn't begin the training portion of the program until the end of August 2011, while Mrs. Wagner testified these duties did not begin until early September. The short period of time between the commencement of the duties requiring the claimant to bend forward for large amounts of time and the alleged manifestation of the work-related repetitive injury is further reason to find that a conclusion opposite that reached by the Commission is not clearly apparent. The Commission's decision to give Dr. Levin's opinion greater weight, and accordingly find no causation, is not against the manifest weight of the evidence.

We recognize that the Commission included some language in its decision that would indicate that it partially based its decision on a determination that the alleged mechanism of injury, standing, bending, and sitting, were activities of daily living, implying preclusion of the claimant's claim based on the neutral risk doctrine. However, because we find that the Commission's decision regarding a lack of causation is not against the manifest weight of the evidence, we decline to address issues involving the applicability of the neutral risk doctrine to the facts of this case.

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CONCLUSION

For the foregoing reasons, we affirm the judgment of the circuit court of Kane County confirming the Commission's decision.

APPENDIX B — ORDER OF THE CIRCUIT COURT OF THE SIXTEENTH JUDICIAL CIRCUIT, KANE COUNTY, ILLINOIS, DATED MARCH 21, 2017

IN THE CIRCUIT COURT OF THE SIXTEENTH JUDICIAL CIRCUIT, KANE COUNTY, ILLINOIS
Case No. 16 MR 703

SHERYL FAUST,

Plaintiff-Petitioner,

v.

ILLINOIS WORKERS' COMPENSATION COMMISSION, AND CADENCE HEALTH,

Defendant-Respondent.

ORDER

THIS MATTER coming on to be heard upon the Complaint seeking Judicial Review of the decision of the Illinois Workers Compensation Commission decision dated June 8, 2016 in its case 16IWCC0381, and the Court having considered the record and the briefs and arguments of counsel, now finds and orders as follows:

1. The function of a reviewing court is not to find the facts but to determine whether the findings of the Commission arc against the manifest weight of the evidence. This rule applies to the finding of whether there was an accidental injury arising out of and in the course

of the employment, whether timely notice was given, causation, and the nature and the extent of disability suffered.

2. The Commission determines the facts and draws whatever reasonable inferences and conclusions warranted by the evidence. If the evidence is conflicting or of a nature permitting different inferences, a reviewing court does not set aside an award solely because the court might have made a different finding on the evidence or drawn inferences other than those reasonably drawn by the Commission.

3. The circuit court may not substitute its judgment for that of the Commission on questions of credibility, conflicting medical testimony, fact-finding, or evidence-weighing. However, the inferences drawn by the Commission must be reasonable, and an award cannot be based on imagination, speculation, or conjecture. If an award is contrary to the manifest weight of the evidence, it is the duty of the reviewing court to set it aside. Although the Commission exercises original jurisdiction on review and is not bound by an arbitrator's decision, such decision is not without legal effect and may be relied on by the circuit court when the Commission's decision is against the manifest weight of the evidence.

4. When the facts are not in dispute and are susceptible to only a single inference, the question becomes one of law, review is de novo, and the Commission's decision is not binding on the reviewing court. However, if undisputed facts permit more than one reasonable inference, then a factual question is presented.

5. After considering the record applying the standard or standards above set forth, this Court finds that the decision of the Commission is not against the manifest weight of the evidence and accordingly will be confirmed.

IT IS THEREFORE ORDERED AND ADJUDGED THAT the decision of the Illinois Workers Compensation Commission decision dated June 8, 2016 in its case 161WCC038, is CONFIRMED.

Entered this 21st day of March, 2017

/s/_____

Circuit Judge

APPENDIX C — DECISION AND OPINION OF THE ILLINOIS WORKERS' COMPENSATION COMMISSION, DATED JUNE 8, 2016

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

NO: 12 WC 39900

SHERYL FAUST,

Petitioner,

vs.

CADENCE HEALTH,

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 issues of accident, causation, medical expenses, temporary total disability benefits and additional compensation and attorneys' fees and being advised of the facts and law, modifies the Decision of the Arbitrator as stated below and otherwise affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.

The Commission finds that in addition to the analysis performed by the Arbitrator, there is a need to address

whether Petitioner's alleged excessive standing and bending superimposed on Petitioner's acknowledged pre-existing degenerative condition was sufficient to prove that her work duties were "a" cause of her current condition of ill-being.

As the Arbitrator indicated in her decision Petitioner initially signed an Application for Adjustment of claim on November 2, 2012 in which she alleged an accident date of July 1, 2011. Petitioner then at the start of the arbitration hearing amended her Application for Adjustment of Claim alleging an accident date of September 1, 2011. The Commission finds that while Petitioner's attorney is correct in stating that they have a right to amend an Application of Adjustment of Claim at any time prior to and during the Arbitration hearing, conversely Respondent has a right to point out that Petitioner did at one point claim an earlier manifestation date with a different theory of the claim ie. excessive sitting than was ultimately presented ie: excessive standing/bending and furthermore has the right to place Petitioner's credibility at issue.

Currently before the Commission is Petitioner's amended claim with an alleged September 1, 2011 manifestation date. Petitioner is claiming that she had to stand up/bend over up to 12 hours a day and this caused her low back to be symptomatic. The Commission notes that when Petitioner was asked to produce a schedule showing her work hours and how often she performed her work duties 12 hours a day Petitioner responded that she would have to look at the training schedule which she does not have in front of her but which is in the records.

When she was asked to estimate how many 12 hour shifts she was assigned, Petitioner again said she would have to look at the record. She further stated it was a long time ago and without looking at the training schedule she could not give an estimate of how many days a week she was assigned the 12 hour shift. While Petitioner further testified that she was bent over 60% of the time, again, Petitioner could not recall how may days she was placed in this position. What Petitioner did testify to was that there were two trainers in the room. One trainer was in front and one trainer in the back of the room. Petitioner never provided any evidence in terms of the ratio of how often she was the primary trainer in front of the room and how often she was the secondary trainer in back of the room. At most, she again testified that she could not recall and the records would indicate whether she was the primary or secondary trainer.

Ms. Wagner, the principle trainer for the program, testified that during the demonstration portion of Petitioner's job the typical hours for trainers spanned from 8 a.m. to 4:30 p.m. and a typical work day was 8 hours long and took place between Monday and Friday with a break for lunch. Ms. Wagner testified that the trainer was either assigned two 4 hour classes back to back with breaks in between or worked a split shift where the trainer worked in the morning and then worked again in the evening with down time in between in the afternoon. While Petitioner claims she was scheduled for 12 hour shifts and she submitted PXl, an e-mail to that effect, Ms. Wagner said she was not aware of Petitioner being scheduled for 12 hours straight. She said there were breaks of at least a 1/2 an hour between the 4 hour sessions. Ms. Wagner

further indicated that per Petitioner's request chairs were brought in and the two trainers divvied up what role they performed in the training sessions. Furthermore, the CHD job description entered as Respondent's RX5 said Epic trainers would sit 0-35% of the day and stand 36-55% of the day.

While Dr. Popp expressed a positive causal connection opinion that increased standing and bending forward placed stress on Petitioner's back, he replied as such to Petitioner's attorney's hypothetical containing unsubstantiated facts that Petitioner was forced to do 8-12 hour shifts over a two month period during which she was on her feet 50% of the time and was bending over 50% of the time. Conversely, Dr. Levin, opined that there was no aggravation referable to the lumbar spine from Petitioner's work in August/September of 2011. Given the evidence submitted as a whole, the Commission finds that Petitioner both failed to provide evidence, other than her own testimony, that there is a sufficient basis in which they can conclude that Petitioner's activities of standing and bending were excessive and as a result Petitioner's pre-existing low back condition was aggravated by her work duties.

In terms of the mechanics of the injury itself, the Commission questions whether Petitioner's sitting, standing and bending were part and parcel of Petitioner's work activities such that they subjected her to greater harm than a member of the general public. The Commission finds that sitting, standing and bending are activities of daily living that are performed equally by workers and non-workers alike and that are performed in

all aspects of a daily living. As such the question became one of whether or not these activities were required to be performed in an excessive manner in which Respondent subjected Petitioner to a greater harm of injury than a member of the general public. As indicated above, the Commission does not believe Petitioner provided sufficient evidence to support that her work duties and specifically her alleged excessive standing and bending subjected her. to a greater harm of injury than a member of the general public. Thus, the Commission finds that Petitioner's claim is not substantiated by the evidence contained in the record and as such is not compensable under the Act.

IT IS THEREFORE ORDERED BY THE COMMISSION that since Petitioner failed to prove she sustained any accidental injury as a result of the September 1, 2011 accident her claim for compensation is hereby denied.

The party Commission the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

DATED: June 8, 2016

/s/_____
Mario Basurto

/s/_____
David I. Gore

/s/_____
Stephen Mathis

Appendix C

STATE OF ILLINOIS, COUNTY OF DUPAGE

ILLINOIS WORKERS' COMPENSATION
COMMISSION ARBITRATION DECISION 19(b)

Case # 12 WC 39900

SHERYL FAUST,

Employee/Petitioner,

v.

CADENCE HEALTH,

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 Hegarty, Arbitrator of the Commission, in the city of Wheaton, on 5/20/15. 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?

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N. ☒ Is Repsondent due any credit?

O. ☐ Other ____

FINDINGS

On the date of accident, **9/1/2011,** 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 not*** sustain an accident that arose out of and in the course of employment.

Timely notice of this accident ***was not*** given to Respondent.

Petitioner's current condition of ill-being ***is not*** causally related to the accident.

In the year preceding the injury, Petitioner earned **$70,000.00;** the average weekly wage was **$1,346.15.**

On the date of accident, Petitioner was **57** 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 **$0** for TTD, **$0** for TPD, **$0** for maintenance, and **$0** for other benefits, for a total credit of **$0.**

Respondent is entitled to a credit of **$21,160.6**8 under Section 8(j) of the Act.

ORDER

The Arbitrator finds that the Petitioner failed to establish that the sustained a compensable work accident.

All other issues are rendered moot and all requested compensation and benefits are denied.

In no instance shall this award be a bar to subsequent hearing and determination of an additional amount of medical benefits or compensation for a temporary or permanent disability, if any.

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 any employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

/s/	10/20/15
Signature of Arbitrator	Date

Appendix C

BEFORE THE WORKERS' COMPENSATION COMMISSION OF THE STATE OF ILLINOIS

No. 12 WC 39900

SHERYL FAUST,

Petitioner,

vs.

CADENCE HEALTH,

Respondent.

This matter was heard before Arbitrator Jessica A. Hegarty on May 20, 2015, in Wheaton Illinois. Respondent disputes accident, notice, causal connection, liability for medical bills and TTD. (Arb. 1).

On November 15, 2012, Petition filed an application for adjustment of claim pursuant to the Illinois Workers' Compensation Act ("Act") seeking benefits from the Employer, Cadence Health ("Respondent"). Petitioner alleges a low back repetitive trauma injury from prolonged periods of sitting, standing, and bending over. Att he beginning of the arbitration hearing, Petitioner's council asked the Arbitrator for leave to amend the manifestation date on the application from July 1, 2011, to September 1, 2011. (T. 7). Petitioner was granted leave to amend over Respondent's objection. (T. 10).

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STATEMENT OF FACTS

Petitioner's Testimony

Petitioner testified she began working in an admnistrative capacity for Delnor Hospital in 2001. In April of 2011, Cadence Health and Delnor Hospital merged as business entities, Petitioner continued working for Respondent. (T. 13).

At the end of June 2011, Petitioner transitioned into a new role for Respondent as an EPIC credentialed physician trainer which required Petitioner to become knowledgeable and adept in the use of EPIC, electronic medical record software that was being instituted at two of Respondent's facilities. Petitioner testifed that the initial, training phase required her to sit in a chair, in a classroom environment, five days a week, listening to lectures nad working on EPIC software program. Petitioner further testified that she worked at home on the weekends. (T. 15-16) Petitioner testified she sat for 8-12 hours per day, 7 days a week as the trianing "was indeed a 24/7 emersion" process. (Id.).

With respect to the alleged onset of pain, Petitioner testified to the following

Q: Before you went into training the physicians did you notice anything unusual about your body while you were performing the sitting work training yourself for this program?

A: I was in pain .... Because I was sitting so much I was in increasing pain. Lumbar pain was intense going down my legs. Cervical pain that I had never experienced before was the new pain that I had as a result of the sitting. But I also had lumbar pain from being in one position for an extended period of time. (T. 17-18)

The second phase of the EPIC job began the last week of August, 2011. (T.17) required Petitioner to train groups of physicians on the use of the EPIC software program in an auditorium, classroom setting. (T. 17) Each training session had two trainers: the lead trainer stood at a podium in front of the class while the secondary trainer walked around the classroom assisting physicians who with the database. (T.21-23) Petitioner testified that she spent six days per week performing the secondary trainer role which required her to bend over in a "fulcrum position" to assist the seated physicians on the database. (T. 24) She estimated that 60% or more of her time as the secondary trainer was spent in this position. (Id.)

Petitioner testified that the trainers were not allowed breaks during a training session (which lasted four to six hours) nor were the trainers allowed to sit in chairs. (T.25) This phase of the EPIC job lasted for 8 weeks. She worked anywhere from four to twelve hour days, 6 days a week. (T. 22, 25, 31)

Petitioner testified to experiencing agonizing pain during this period of time at work;

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> *I could not feel my legs because I was never sitting, I was always standing. So I had the continued - I had numbness and radiating pain down my legs when I would be the person standing. When I was the trainer who was assigned second position in the back, bending I would have searing pain in my lumbar region to the point I was reduced to tears.* (T. 26)

On direct exam, Petitioner testified that she had prior low back pain involving "an impingement" at L5-S1 resulting from a biking incident two years prior to the alleged injury manifestation date. She was treated with "a spinal injection" which, according to her, was "well treated". Petitioner further testified that she was "just fine" as long as she was "moving and doing the normal things" she did in her job prior to the Epic position. (T. 20) Petitioner testified that her job prior to the Epic position did not require sitting for entire shifts. (Id.).

When questioned on cross-exam about her prior back condition, Petitioner testified that she had "couple injections" prior to July 2011. (T. 64).

Respondent's Exhibit 1 is Petitioner's original Application for Adjustment of Claim. Petitioner testified on cross that the date of accident is July 1, 2011 and that she signed the document.

Petitioner testified that she sought initial care at the Delnor pain clinic with her primary care physician, Dr. Cladis who instituted work restrictions of no standing

for more than four hours which was accommodated by Respondent. (T. 31-32)

Respondent eventually terminated Petitioner in January of 2013 after Petitioner's work was further restricted by Dr. Cladis. (T. 32-33)

Petitioner testified that she treated with Dr. Popp, an orthopedic physician, whom she had trained on the Epic medical records system. (T. 26-27)

Thereafter, Petitioner sought care with Dr. Ronjon Paul after she "lost all confidence in Delnor Hospital" where Dr. Popp practices. (T. 40) Dr. Paul performed a two-level spinal fusion on April 27, 2015. (T. 40). The arbitration hearing was held three weeks after Petitioner's surgery.

According to her testimony, Petitioner has been taking Norco for over two years for her pain. (T. 38)

Other than a three week stint at the DuPage Medical Group, Petitioner has not worked since she was terminated by Respondent because she cannot find a position that will accomodate her current restrictions. (T. 38)

With respect to notice, Petitioner testified she e-mailed Alida Wagner, Principal Epic Trainer, on September 27, 2011. (PX. 9) Petitioner further testified to providing notice to supervisors Gina Reid and Alida Wagner.

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Alida Wagner Testimony

Respondent called Alida Wagner, currently employed by Respondent as a Manager of Professional Development for the Cadence Physicians Group. (T. 84) Ms. Wagner was the Principal Trainer for the Epic team during the majority of Petitioner's tenure as an Epic trainee/ physician trainer. Ms. Wagner testified that during July and August of 2011, she was training and preparing the team, which included Petitioner, for their role as EPIC physician trainers. (T. 85) The training sessions were held 5 days per week between 8 am and 4:30 pm with a break for lunch. The EPIC trainees, according to Ms. Wagner, were not expected to do any further trianing outside of those hours. (T. 91).

Physically, the majority of the trianee role according to Ms. Wagner, was sitting down with "some up and down" when the trainees used the copy machine and performed other administrative tasks. (T. 87).

Once the second phase of EPIC began, Petitioner was required to fulfill one of two roles, either as the primary trainer who stood in front of the class or as the secondary trainer who was in the back of the class making sure the physicians were following along. (T. 88). The class size consisted of a maximum of 12 physicians, who all had computers. (T. 88) The secondary trainer could stand, sit next to a physician who required assistance, or walk around the calss. Ms. Wagner testified that sitting in chairs were not an option for trainers at the beginning of the physician training, but "we did order" some chairs "so that was an option too." (T. 89)

The trainers were scheduled to work 2, 4-hour long shifts with a 30 minute break for lunch. Ms. Wagner did not know of any trainer being scheduled to work 12 hour long shifts. (T. 92)

Ms. Wagner testified that Petitioner complained of job related back pain, shortly after the physician training began, in early September 2011. (T. 87-88)

On cross, Ms. Wagner testified that it was Petitioner who requested that chairs be furnished for the trainers.

Medical Records Prior to the Alleged Injury Manifestation Date

On May 31, 2006, Petitioner was examined by a physicians' assistant, reporting that she felt sharp pain in right hip and felt something "pop" three days after the car accident. She reported pain running down the hip and leg and the PA identified bruises on the bilateral hip area. Exam of the back was normal and the hips showed no weakness and a full range of motion. A "hip flexor strain" was the assessment. (RX 5)

On June 18, 2007, Petitioner underwent a DEXA scan at Delnor Community Hospital which revealed osteopenia in Petitioner's hip and lumbar spine. (Id.).

On September 9, 2009, Petitioner underwent another DEXA scan. (Id.) Petitioner was diagnosed with osteopenia of the lumbar spine and bilateral femoral necks. (RX 5). On June 16, 2010, Petitioner presented to

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Dr. Cladis at Greater Valley Medicine (Internal Medicine and Chiropractic) with complaints of intermittent hip pain, radiating into the buttock that began one month ago. Petitioner was diagnosed with pirformis syndrome. Various chiropractic manipulations were performed. (Id.)

On June 26, 2010, Petitioner presented to Delnor hospital with a history of left glute pain for the last month after riding her bicycle for approximately 20 miles in Wisconsin. Petitioner reported consulting with her family doctor within a couple of days after the biking episode who gave her a Medrol Dosepack. (RX5) Petitioner reported treating with a chiropractor approximately two weeks ago who administered various forms of treatment that helped for a limited time. (Id.) Petitioner reported increasing pain in her buttocks over the past 2-3 days that caused difficulty walking. Petitioner reported radiation of pain to the anterior aspect of her left thigh since the initial onset of pain. (Id.) Petitioner was diagnosed with sciatica and left buttock/low back pain and prescribed Toradol 60 mg and Norco 10mg.

On June 30, 2010, Petitioner underwent a lumbar MRI at Delnor Community Hospital. (RX 4) The MRI report noted a history of left buttock pain. The MRI findings note the following:

1. Degenerative disk changes at L1-L2 through 15-S1, most significant at L3-L4, L4-L5 and L5-S1;

2. A right sided L5-S1 herniated nucleus pulposus abutted and displaced the right S1 nerve root;

3. The L4-L5 level had bilateral facet arthritis with some foraminal stenosis bilaterally and degenerative disk changes;

4. The L3-L4 level had right greater than left facet arthritis, lateral recess stenosis, foraminal stenosis on a bony basis and degenerative disk changes.

5. The L2-L3 level showed mild degenerative changes.

The impression noted was "degenerative disk disease and degenerative changes of facet joints."

On October 28, 2010, Petitioner presented to Dr. Cladis who noted a history of a herniated intravertebral disk. (RX 5) Dr. Cladis recommended epidural injections.

On January 20, 2011, Petitioner received an epidural steroid injection in her lumbar back at Delnor Community Hospital. (Id.)

On February 3, 2011, Delnor Community Hospital records note that an epidural steroid injection was administered to Petitioner's lumbar region. (Id.).

On March 18, 2011, Petitioner presented to Stacey Brown, PA, at Fox Valley Family Physicians for a recheck on a bout sinusitis. (Id.) It was also noted that Petitioner requested a refill of Norco for back pain for which a 30 day prescription of 5-325 mg tabs was furnished. (Id.)

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On May 2, 2011, Petitioner was given an additional prescription for 90 days' worth of Norco 5/325 mg. (Id.).

On July 13, 2011, Petitioner presented to Dr. Mark Hanna at Delnor Hospital pain clinic with complaints of pain radiating into her buttocks area. Petitioner reported that her pain increased with sitting and decreased when lying down with her legs up. She reported undergoing an epidural injection in July of 2010 with some relief as well as medial branch nerve blocks and cooled radiofrequency ablation on January 20, 2011. Dr. Hanna read the June 2010 MRI as showing an L4-5 bulge and a desiccation and facet arthropathy. At L5-S1, the doctor noted a bulging disc effaced the bilateral nerve roots with disc material approaching the left S1 nerve root. Dr. Hanna's diagnoses included low back pain, left sciatica, lumbar disc displacement at the two levels and facet joint arthritis. Petitioner underwent a nerve root block/paraspinous injection. Dr. Hanna prescribed Norco, epidural steroid injections and radiofrequency ablation. (Id.).

On August 17, 2011, Dr. Hanna performed an epidural steroid injection at L5-S1. (Id.). Petitioner reported that she was having low back pain radiating to the left leg, and neck pain and tightness since she had been working on a computer and sitting at a desk. The pain was 5/10 and her and was worse with sitting and better with standing. She denied paresthesias or new symptons down her legs. Dr. Hanna's diagnoses included "new" myofascial cervical pain, left sciatica, a history of lumbar disk displacement and lumbar facet arthritis. Dr. Hanna recommended Mobic 7.5 twice a day and Flexeril at night. It was also noted that Petitioner currently takes Norco. (Id.)

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Medical Records after the Alleged Manifestation Date

On September 1, 2011, Dr. Cladis noted Petitioner's complaints of back pain, numbness and tingling in both legs. (PX4) Petitioner reported that she stood to train up to 10 hours a day and that her pain was worse when up on feet for prolonged periods. (Id.). On exam, she exhibited spasms in the paraspinal lower thoracic and lumbar muscles bilaterally. The straight leg raise test was positive on the right side at 60 degrees. (Id.).

Her lumbosacral spine exhibited no tenderness on palpitation and her left sided straight leg raise was negative. Dr. Cladis noted that her sciatica was worse. The doctor placed work restrictions of standing no more than four hours a day and no repetitive bending, lifting or twisting. He also recommended therapy but noted that her work schedule would not accommodate the therapy. Petitioner was instructed to do home exercises. Another epidural steroid injection was ordered. (Id.)

On September 15, 2011, a physical therapy evaluation summary noted that Petitioner "is a 57-year-old female referred with a diagnosis of sciatica/degenerative disc disease. Symptoms initially began in June, 2010 however have worsened in the past 2 months. Patient was in a motor vehicle accident in June, 2010 at which time she had left hip/low back invo1vement with pinching-type sensation. MRI showed L5-S1 involvement with impingement. Patient also had a nerve conduction velocity test and radiofrequency test. Last evening at work during an Epic presentation

at CDH on 9/14/11, patient tripped over exposed cords and lurched forward which exasperated her symptoms". (RX5) Petitioner was prescribed physical therapy twice weekly for 6 weeks. (Id.)

Petitioner underwent a right hip MRI on August 15, 2012, which demonstrated findings consistent with right greater trochanteric bursitis with partial tear of insertion of the tight gluteus minimus tendon.

On October 4, 2012, Petitioner presented to Dr. Cladis, with low back pain complaints which were noted to have become more chronic due to the physical demands of her job. (PX4) Petitioner reported her pain as constant and aggravated by 12 hour days at work. She reported severe low back spasms/right hip pain since January of 2012 with constant standing and walking during the "go live" process for the EPIC program. Petitioner noted an improvement in her pain when she did a sedentary job with less standing. On exam, her lumbar spine was tender to palpation and she had lumbar pain and right sciatic notch pain. She also exhibited spasms of the bilateral lumbar paraspinal muscles. A straight leg raise test on the right was positive at 45 degrees and the left side remained negative. The diagnoses at that time included bursitis of the right hip, lumbago, intervertebral disk degeneration, herniated intervertebral disk and sciatica. Dr. Cladis recommended that she reduce physical therapy and that she use 10 mg of Flexeril three times a day. She was also restricted to sedentary activity at work, with limited standing, limited walking, and five hour days. Dr. Cladis further restricted her to sit down jobs and limited her walking and standing to 30 minutes per shift.

Petitioner consulted with Dr. Craig Popp on April 4, 2013. (PX2) Dr. Popp ordered flexion/extension lumbar X-rays on that date that showed grade 1 degenerative spondylolisthesis at L4-LS and degenerative disk changes at L3-L4. The films also revealed anterior 5 mm of slippage between the posterior aspect of the L4 vertebral body and the posterior aspect of the L5 vertebral body.

On April 7, 2013, a lumbar spine MRI showed advanced degenerative facet joint changes with areas of synovial cysts formation posterior to the thecal sac at L4 level, likely related to the advanced degenerative facet joint changes at the L4-LS level with degenerative changes also noted at L3-L4. (PX4)

Petitioner returned to Dr. Popp on April 9, 2013 with continued complaints of back and buttock pain. (PX2) The doctor recommended steroid injections into the lumbar facet joints.

Petitioner engaged inconservative treatment thereafter that included bilateral facet injections at L3-L4, L4-L5, and L5-S1, intra-articular facet injections as well as a steroid injection in the greater trochanteric bursa. (PX2)

Petitioner's low back complaints persisted and she returned for consultation with Popp on October 19, 2013. (Id.) Dr. Popp noted that pain management had failed to alleviate the lumbar pain. He recommended a discogram to determine where the pain was being generated, noting that L4-5 was unstable and would likely benefit from a fusion. (Id.)

On February 6, 2015, Petitioner sought a second opinion from Dr. Ronjon Paul at Dupage Medical Clinic. (PX6) Petitioner testified that Dr. Popp only operated out of Delnor Hospital and she had lost all faith in Delnor over the way the Respondent was mishandling her workers compensation claim. (T. 40) Dr. Paul noted that most of Petitioner's pain came from standing and walking and that it was quite debilitating. The doctor further noted that non-operative treatment had failed and the scans revealed grade 2 to 3 spondylolisthesis at L4-5 and grade 2 spondylolisthesis in full forward flexion at L3-4. Dr. Paul recommended a L3 to L5 reconstruction.

On April 27, 2015, Dr. Paul performed an L3-4, L4-5 lumbar decompression with interbody fusion and reconstruction with intraoperative nuromonitoring. (PX7).

Dr. Popp Evidence Deposition

The parties took the deposition of Petitioner's treating physician Dr. Craig Popp, orthopedic surgeon, on September 15, 2014. (Px1). Petitioner had trained Dr. Popp on how to use Respondent's EPIC system. (PX1 p.6) Dr. Popp had observed Petitioner while performing her duties in the EPIC job. (PX1 p.6) Dr. Popp knew that the EPIC job was a change from Petitioner's previous sedentary type of job. (PX1 p.6) During his initial visit with Petitioner, she presented with low back pain which made it difficult for her to do her daily activities. (PX1 p.7) She had been treating with a pain management specialist with a working diagnosis of spondylolisthesis. (PX1 p.7)

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Dr. Popp diagnosed Petitioner with facet syndrome and spondylolisthesis involving the lumbar spine as well as L5-S1 disc herniation. (PX1 p.8) Dr. Popp relied on MRI's and her progress to pain management techniques to reach the diagnosis. (PX1 p.8) As of Dr. Popp's August 26, 2014 visit with Petitioner, they were going to try some selective nerve root blocks, especially at the S1 root, to see if that relieved her pain. (PX1 p.9). The purpose of the block was to see how much the disc herniation at L5-S1 was contributing to the pain. (PX1 p.9) The plan was to move forward to a surgical decompression at L4-5, involving a disectomy and fusion at L4-5 and potentially the L5-S1 level depending on how much material he removed from that level during the surgery. (PX1 p.8-9, 10) Dr. Popp was concerned about the L3-4 disc wearing out relatively soon leading to an additional surgery in the future. (PX1 p.10) This might happen as a result of fusing an adjacent spinal segment, as the motion from the fused segment is transferred to the adjacent levels which can lead to an accelerated breakdown at those levels. (PX1 p.11)

Even so, Dr. Popp thought the surgery would provide good pain relief to Petitioner. (PX1 p.12)

Dr. Popp testified that in the event that Petitioner did not receive the fusion, her condition would continue to degenerate and she would probably be limited to sedentary work. (PX1 p.12)

Dr. Popp noted that Petitioner's job required her to spend a significant amount of time bending forward in an awkward position looking over people who were learning the EPIC

program. (PX1 p.13) Spondylolisthesis is a condition where one vertebral level is already shifting in front of the next level, and bending forward creates an increased shear force across the two vertebral bodies. (PX1 p.14) Dr. Popp opined that Petitioner's training activity exacerbated this pre-existing condition. (PX1 p.14) He testified that the change in Petitioner's work activity levels was related to the onset of the pain which he was treating. (PX1 p.20) Dr. Popp was personally familiar with Petitioner's pre-EPIC work activities through his own observation and her description of the duties. (PX1 p.20-21) Dr. Popp noted that he had been documenting in his notes that Petitioner's condition was work related throughout the treatment. (PX1 p.22) Dr. Popp also referenced a July 21, 2014 note from Dr. Siodlarz who had been managing Petitioner's pain. (PX1 p.22-23) Dr. Siodlarz similarly repo1ted that Petitioner was experiencing low back pain due to repetitive work injury. (PX1 p.23-24) Dr. Popp agreed with that assessment, noting that Petitioner's pre-existing low back conditions became aggravated by the change in her work activities. (PX1 p.24)

Dr. Popp testified a synovial cyst in the spine is a sign of degeneration in the spine. (PX1, p. 44-45). Additionally, he testified that he based his conclusions as to the cause of her back pain on statements made by the Petitioner and not any observations of her work activities, specifically Petitioner's statement that she was asymptomatic prior to working as an EPIC trainer. (PX 1, p. 48, 52).

On cross-examination, counsel for Respondent challenged Dr. Popp on Petitioner's pre-accident treatment history.

Dr. Popp noted that he was aware that Dr. Morowski had treated her previously for low back pain and some leg pain with epidural steroid injections from Siodlarz. (PX1 p.26) Respondent asked whether Petitiner told him about a car accident from 2006, her DEXA scan results, osteopenia, a nonspecific autoimmune connective tissue condition, arthritis, sciatica, osteoarthritis, Reynaud's disease or the lumbar MRI spine from 2010. Dr. Popp noted that none of the comorbidities which Respondent asked him about changed his opinion on causation. (PX1 p.51-52) The Reynaud's was a circulatory condition which had nothing to do with her condition. (PX1 p.36) The MRI images between 2010 and 2014 revealed a worsening of Petitioner's condition during the interim, supporting the idea that Petitioner injured herself with the EPIC work. The 2014 lumbar MRI showed a worsening of Petitioner's condition from the 2010 MRI, with the later MRI revealing a pseudo-disc protrusion at L4-5 superimposed upon and slightly displacing the right neuroforaminal area, worsening of the spondylolisthesis and a larger disc herniation to the right at L5-S1. (PX1 p.30)

Dr. Jay Levin conducted a Section 12 exam on Petitioner on September 25, 2013. (RX2, Ex.2) Dr. Levin noted Petitioner's report of "a non-work-related issue in 2010: where she was siagnosed with L5-S1 impingement." (Id.). Petitioner reported to Dr. LEvin that she was given a cortisone injection and she was "100% recovered after injection." (Id.). The doctor testified that Petitioner's low back complaints were related to a chronic underlying condition and she did not sustain an acute injury, but developed complaints based upon activities of daily living

or with sitting or standing in her regular job duties. (RX3 Ex3 p.15) Dr. Levin found "no causal connection between an acute aggravation or exacerbation of her complaints referable to the lumbar spine from any industrial occurrence of August 2011/September 14, 2011." (RX3 Ex3 p.15) Dr. Levin went on to deny a causal relationship between treatment, work restrictions and disability to acute work accidents from August 2011 or September 14, 2011. On cross examination, Dr. LEvin admitted that if Petitioner's duties were actually different than what was in his report, he had no idea what those duties would have entailed. (RX1 p.17-18)

After this deposition, Respondent obtained a follow up report from Dr. Levin dated March 2, 2015. (RX2) Respondent was now asking him whether Petitioner's condition of ill-being was causally related to the EPIC duties which Petitioner performed for Respondent. (RX2 p.2) Dr. Levin denied that the condition was related to work as an acute injury, or exacerbation or aggravation. (RX2 p.2) To support his denial of causation, Dr. Levin relied on pages 197-242 of the AMA Guides to the Evaluation of Disease and Injury Causation 2nd Edition. (RX2 p.3)

Admitted into evidence as Respondent's Exhibit 2 was a report prepared by Respondent's Section 12 examiner, Dr. Jay Levin. Dr. Levin examined the Petitioner on September 25, 2013 and was provided records documenting her treatment for this claim. (RX2). In Respondent's Exhibit 2, Dr. Levin notes that Petitioner's back condition is a result of the progression of her pre-existing degenerative back condition due to activities of

daily living and was not permanently aggravated by the Petitioner's work for Respondent.

Conclusions of Law

With regard to (C) did an accident occur that arose out of and in the course of Petitioner's employment by Respondent? The Arbitrator finds the following:

As indicated in Respondent's Exhibit 1, on November 2, 2012, Petitioner signed an application for Adjustment of Claim in this case alleging an accident date of July 1, 2011. However, at the state of arbitration Petitioner's attorney made a motion to amend the Application to reflect an accident date of September 1, 2011. Although the Arbitrator allowed the amendment of the accident date, the Arbitrator notes that Petitioner's job duties on July 1, of 2011 involved prolonged periods of sitting at a desk while her job as of September 1, 2011 involved sitting, standing and bending over. Alleging a different mechanism of injury at the start of Arbitration, nearly four years after the alleged injury, calls into question when Petitioner's symptons actually started and what may have caused them.

The Arbitrator notes that Petitioner was not entirely forthcoming with information regarding her pre-existing back condition.

Petitioner testified that prior to her role in the Epic program:

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> *I had an impingement of L5-S1 due to biking two years before and it was diagnosed by physicians at Fox Valley Orthopedic and treated with a spinal injection, well treated; and as long as I was moving and doing the normal things I did in my job prior to Epic I was just fine.* (PX.1, p.20)

Dr. Levin noted Petitioner's report of "a non-work-related issue in 2010: where she was diagnosed with L5-S1 impingement". (Id.). Petitioner reported to Dr. Levin that she was given a cortisone injection and she was "100% recovered after the injection."

While Petitioner emphasized throughout her testimony that she only suffered a L5-S1 nerve impingement in 2009 due to a biking accident, her medical records indicate a more extensive pre-existing condition. The levels at which the fusion was performed in April 2015 were the same levels noted to have been afflicted with degenerative disc disease.

The Arbitrator finds it disconcerting that Petitioner failed to provide for the Arbitrator's review medical records relating to her prior back complaints. Petitioner's medical records exhibits do not contain records prior to July 2011 and do not document Petitioner's pre-existing degenerative back condition. Respondent's Exhibits 4 and 5 do provide documentation of Petitioner's pre-existing degenerative back condition.

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The Arbitrator finds Petitioner's medical history to be inconsistent with her testimony that she was "just fine" and her statement to Dr. Levin that she was "100% recovered" prior to her alleged manifestation date

The medical records demonstrate:

1. That Petitioner suffered a biking accident sometime in May of 2010;

2. On June 26, 2010, Petitioner presented to Delnor hospital with a history of left glute pain for the last month after riding her bicycle for approximately 20 miles in Wisconsin. Petitioner reported increasing pain in her buttocks over the past 2-3 days with pain so intense that she had difficulty walking;

3. On June 30, 2010, Petitioner underwent a lumbar MRI at Delnor Community Hospital. (RX 4) The MRI report noted a history of left buttock pain. The MRI findings note degenerative disk changes at L1-L2 through L5-S1, most significant at L3-L4, L4-L5 and L5-S1; a right sided L5-S1 herniated nucleus pulposus abutted and displaced the right S1 nerve root; L4-L5 bilateral facet arthritis with some foraminal stenosis bilaterally and degenerative disk changes:

4. On October 28, 2010, Petitioner presented to Dr. Cladis who noted a history of a herniated intravertebral disk. (RXs)

5. On January 20, 2011, Petitioner received an epidural steroid injection in her lumbar back.

6. On February 3, 2011, Delnor Community Hospital records note that an epidural steroid injection was administered to Petitioner's lumbar region. (RX5);

7. On March 18, 2011, Petitioner requested a refill of Norco for back pain for which a 30 day prescription of 5-325 mg tabs was furnished (Id.)

8. On May 2, 2011, Petitioner was given an additional prescription for 90 days' worth of Norco 5/325 mg. (RX5).

9. On July 13, 2011, Petitioner presented to Dr. Mark Hanna with complaints of pain radiating into her buttocks area. Petitioner reported that her pain increased with sitting and decreased when lying down with her legs up. Dr. Hanna read the June 2010 MRI as showing an L4-5 bulge and desiccation and bilateral nerve roots with disc material approaching the left S1 nerve root. Dr. Hanna's diagnoses included low back pain, left sciatica, disc displacement at the two levels and facet joint arthritis. Petitioner underwent a nerve root block/paraspinous injection. Dr. Hanna prescribed Norco, epidural steroid injections and radiofrequency ablation;

10. On August 17, 2011, Dr. Hanna performed an epidural steroid injection at L5-S1. (RX5) Petitioner reported that she was having low back pain radiating to the left leg, and neck pain and tightness since she had been working on a computer and sitting at a desk.

The medical records establish that Petitioner has been consistently treating for lumbar back pain since June of 2010. Petitioner suffered from pre-existing degerative disc disease as of June 2010 that affected 6 spinal joints and caused lumbar pain and pain to Petitioner's left buttock region. (RX4). Additionally, on September 9, 2009 Petitioner was diagnosed with osteopenia of the lumbar spine purusant to a bone scan. (RX5). In March 2011 and again in May of 2011 Petitioner requested from her treating physician Norco presicriptions to trent back pain. Between May 2, 2011 and September 1, 2011 Petitioner had used the entire 3-month supply of prescribed Norco indicating her chronic back pain had not resolved prior to beginning work as an EPIC trainer as she testified.

Petitioner testified that sitting caused her back pain in July and August 2011. She then testified that standing caused her back pain in September 2011 and that sitting relieved her back pain. The actifvities described by Petitioner are activities of daily life and cannot be construed as "work activities." Based on a preponderance of the evidence contained in the record, Petitioner has failed to prove that a repetitive traumatic injury manifested itself on the alleged date of September 1, 2011.

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With regard to all other issues, the Arbitrator finds the following:

Based upon the above, the Arbitrator finds that Petitioner failed to established that she sustained a compensable accident or that her current condition of ill-being is causally related to her work with Respondent. By extension all other issues are rendered moot and all other requested for compensation are denied.

APPENDIX D — DENIAL OF THE SUPREME COURT OF ILLINOIS, DATED MAY 30, 2018

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May 30, 2018

In re: Sheryl Faust, petitioner, v. The Illinois Workers' Compensation Commission *et al.* (Cadence Health, respondent). Leave to appeal, Appellate Court, Second District. 123359

The Supreme Court today DENIED the Petition for Appeal as a Matter of Right in the above entitled cause.

The mandate of this Court will issue to the Appellate Court on 07/05/2018.

Very truly yours,

/s/

Clerk of the Supreme Court