State of Wisconsin

Labor and Industry Review Commission

Karen Duran Applicant **Ralph Bronner** Employer **Society Insurance, A Mutual Co.** Insurer Claim No. 2014-025833	**Worker's Compensation Decision**[1] **Dated and Mailed:** August 30, 2024 duranka_wsd.docx:190

Order

The commission **affirms** the decision of the administrative law judge. Accordingly, the application for benefits is dismissed with prejudice.

By the Commission:

/s/
Michael H. Gillick, Chairperson

/s/
Georgia E. Maxwell, Commissioner

/s/
Marilyn Townsend, Commissioner

[1] **Appeal Rights**: See the yellow enclosure for the time limit and procedures for obtaining judicial review of this decision. If you seek judicial review, you **must** name the following as defendants in the summons and the complaint: the Labor and Industry Review Commission, and all other parties in the caption of this decision or order (the boxed section above). Appeal rights and answers to frequently asked questions about appealing a worker's compensation decision to circuit court are also available on the commission's website, http://lirc.wisconsin.gov.

Procedural Posture

This case is before the commission to consider the applicant's eligibility for worker's compensation benefits. The applicant filed a hearing application alleging that she sustained back, neck, and head injuries from pushing and pulling a wheelchair on grass when she fell backwards and passed out on September 5, 2014. The employer and insurer (collectively, the respondent) conceded jurisdictional facts and an average weekly wage of $999.00. The respondent also conceded that the applicant sustained a work-related injury on September 5, 2014, in the form of a minor sprain/strain to the lumbar spine that reached an end of healing on October 22, 2014, with no permanent disability. An administrative law judge for the Department of Administration, Division of Hearings and Appeals (Division), Office of Worker's Compensation Hearings, held hearings in the matter on March 29, 2023, and June 13, 2023, and issued a decision dated July 26, 2023, finding that the applicant reached an end of healing as of October 22, 2014, with no permanent disability or work restrictions, and dismissing the hearing application. The applicant then filed a timely petition for commission review.

The issues are the nature and extent of the applicant's disability from the conceded work injury and the respondent's liability for medical expenses. The commission has considered the petition and the positions of the parties and has independently reviewed the evidence submitted at the hearing. Based on its *de novo* review, the commission affirms the decision of the administrative law judge and makes the following:

Findings of Fact and Conclusions of Law

As supplemented by the commission's memorandum opinion,[2] the commission makes the same findings of fact and conclusions of law as stated in the decision of the administrative law judge and incorporates them by reference.

Memorandum Opinion

The applicant, who was born in 1967 and originally from Bolivia, worked as a caregiver for the employer, Ralph Bronner (Bronner), for about 4 years. The applicant was *pro se* at the hearing, where she testified through a Spanish interpreter. She alleges that she fell when she was pushing Bronner in a wheelchair on grass, and had to pull hard and fell backwards, hitting her back and head. She seeks temporary disability from September 5, 2014, through March 29, 2023, permanent disability of 60% to the body as a whole (neck and back), and payment of medical expenses. The respondent conceded a work injury in the nature of a minor sprain/strain to the lumbar spine that resolved by October 22, 2014, with no permanent disability, and paid temporary total disability from October 2 to 22, 2014, and medical expenses for that period. The administrative law judge agreed with the respondent and dismissed the hearing application, and the applicant filed a timely appeal *pro se*.

[2] The commission's memorandum opinion may be the basis for more formal findings of fact. *Manitowoc Boiler Works v. Indus. Comm'n,* 165 Wis. 592, 594-95, 163 N.W. 172 (1917).

The Applicant's Prior Medical Treatment

In addition to neck and low back injuries, the applicant claims that she sustained a traumatic brain injury in the work incident, and that as a result, she has headaches, decreased function, and dizziness. However the medical records show that she had some of these symptoms prior to the September 5, 2014, work injury. For instance, as far back as November 26, 2003, the applicant went to the emergency room with complaints of **dizziness**, at which time she was given Tylenol for "body aches."[3] According to the applicant, however, before the work incident, she did not have back pain or problems with her head or neck,[4] and there are no medical records showing neck or low back pain prior to the work incident.

In the year prior to the work injury, the applicant was also treated for headaches and dizziness. On February 21, 2013, the applicant treated with Dr. Nancy T. Nguyen, M.D., for depression with anxiety, hoarseness, **headaches for the past 2 months**, and fatigue. Dr. Nguyen noted the applicant continued to hear a beating in her right ear and a whistle, recalling she had this in the past and was diagnosed with anemia. She had talked with a doctor in Bolivia who indicated that she might have ingested a chemical that was causing her to feel like her organs were failing. She thought this might have been from using a peppermint soap. The applicant also cried a lot. "She feels like her mind isn't working." She **felt dizzy and weak at times.** Dr. Nguyen diagnosed depression with anxiety, but noted that the applicant was in denial. The applicant denied depression and stated that her symptoms were due to soap intoxication. She had multiple complaints of different organ systems. On June 6, 2013, Dr. Nguyen noted the applicant was always hearing a beating or buzzing in her ears. She indicated this was due to a strong wind going into her ear the last fall. "To get the wind out, she rolled a newspaper into her ear and use fire to drive it out." She had also bought pork for the first time and wondered if it had caused the right ear pain or itching on her head. She was assessed with an earache and depression with anxiety. On June 28, 2013, Dr. Nguyen noted the applicant had pain in her head of 4/10. She wanted something to sleep. "She can see and hear ghosts and they keep her up at night." Dr. Nguyen diagnosed primary insomnia ?schizophrenia with auditory and visual hallucinations.[5]

On June 19, 2014, shortly before the claimed work injury, Dr. Nguyen listed active problems, including depression with anxiety, which the applicant denied; and schizotypal personality disorder, "hearing voices ever since a child, visual hallucinations ever since a child, but pt does not think she has schizophrenia. Has been seen by [Behavioral Health] in the past, she declines therapy as she does not see this as a psychiatric illness and does NOT want this on her problem list." The history of the present illness included earache, for which she had gone to an ear, nose, and throat doctor, and her hearing test was normal; **intermittent dizziness**; and insomnia. The applicant was upset that "schizo" was in her chart. "it's not her, it's the evilness brought into her life from when she is a child. She believes in God. Her daughter was possessed before, that is why she doesn't go to Bolivia. Continues to see things that

[3] Exhibit (Ex.) 4.
[4] Transcript of Proceedings dated March 29, 2023 (Tr. I), pp. 42-43.
[5] Ex. 5.

others don't, but it's not her, it's the evilness. Her dad associated with evil things. …He later became a Christian and this helped keep evil things away… She doesn't have a psychiatric illness. It's not her, all her family have see/hear similar things." Dr. Nguyen did not think the applicant was a threat to herself or others.[6]

The Work Incident

The applicant provided personal care to Bronner, including companionship, cooking, meal prepping, and feeding, as well as bathroom duties, showering, incontinence, and other personal cares. She also did light housekeeping, laundry, and grocery shopping, and took Bronner to medical appointments, acted as his chauffer to various events, and even took him on vacations. She lived with Bronner and worked 16 hours per day on Mondays, Tuesdays, and Wednesdays. He had another caregiver for the other days.[7]

The applicant testified that on September 5, 2014, (a Friday)[8], Bronner asked her to take him to a field or camp where there were going to be games. She had to take him in the wheelchair, and she noted that they were fixing the roads, and chunks of rocks or concrete were on the grass. According to the applicant, at one point, she pulled really hard on the wheelchair, using all of her strength, and was able to pull him. "So I ended up falling on my back, and I hit my head with one of the rocks that was there."[9] This happened around 3:00 p.m., and when she opened her eyes, it was getting dark out. She indicated that she woke up with a lot of pain. She indicated that she took Bronner to the car, and then went back and grabbed the wheelchair. She testified that she had hit the back of her head, and she had pain in her lower butt area whether sitting down or standing up. She was able to drive with difficulty and took Bronner home. The applicant did not fill out an injury report.[10]

According to the applicant, she had had previous accidents in Bronner's home, and in 2-3 weeks, the pain went away from those accidents. She was hopeful that the pain would go away from this injury. She did continue to work for Bronner after the incident, but she indicated that Bronner stayed in bed more so she could rest. She testified that she felt pain in her lower back and right side of her neck, and she was dizzy and felt like her head was not in a place where she was supposed to be. One time, Bronner sent her to Wal-Mart to get groceries, and she went and paid for groceries but did not bring them home. On October 1, 2014, when she was driving Bronner, she also ran red lights. She indicated that she was not able to see them, and Bronner screamed very loudly. He then told her to drive to her house and that she needed a doctor. Bronner told his son that he needed another caregiver and told the applicant that she was making a lot of mistakes and forgetting to give him his medications and forgot his medical appointments.[11]

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[6] Ex. 5.
[7] Tr. I, pp. 11-12.
[8] The applicant did not explain why she was working for Bronner on a Friday, not one of her regular days.
[9] Tr. I, p. 13.
[10] Tr. I, pp. 13-15.
[11] Tr. I, pp. 15-20.

The applicant later contacted Bronner again to see if he would re-hire her, but he declined. She waited 2 weeks and asked him again, asking if she could work one day per week, "Or otherwise I had go to the police, to the police station to see what I was going to be – what I was going to have to do." Then Bronner agreed to hire her one day per week. She did go back to work for Bronner, but shortly thereafter, he passed away (in February 2015). According to the applicant, she then sent out a lot of applications, but no one hired her, so she then started bed rest. Her lower abdomen started to hurt and she was feeling burning sensations and could not sleep well, and she had incontinence.[12]

The Applicant's Medical Treatment

The applicant first sought medical treatment almost a month after the work injury when she reported to the emergency department at Froedtert Hospital on October 3, 2014. The history noted, **"Pt reports several yrs of chronic back pain. States pain has been increased for past 3 months after pushing a client in a wheelchair thru the grass."** The applicant denied numbness or weakness. There was **no loss of bowel or bladder control**. "Pt states she believes she has a 'hole' in her lower spine causing the pain." A nurse note also indicated that the applicant reported she had chronic back problems. An x-ray of the lumbar spine showed levoscoliosis of the mid lumbar spine, mild multilevel posterior facet arthropathy (facet joint osteoarthritis), and no significant degenerative disc disease. The applicant was diagnosed with chronic back pain.[13]

The applicant testified that she could not remember what she told the doctor in the emergency room, but she was primarily complaining about lower back pain.[14] According to the applicant, when she got x-rays, the specialist told her that the back of her muscles from her lower abdomen were ripped or torn, and she should talk to her primary doctor or internal doctor about it. She asked him if he could tell the emergency room doctor, but he told her, no, because all he was responsible for was the lower back. The applicant disagreed with the medical record and thought she told them that she fell on her back, but her English was very broken, and she believed it was a miscommunication. The applicant also indicated that she did not remember anything from the ER visit. What she remembered was the x-ray part of it a year later.[15]

The applicant also indicated that when she made her medical appointment in 2014, she only reported her back because she did not want to say much. "**And I hadn't even noticed I hit my head, and I just felt pain. And, again, I thought it was maybe because of the pillow and how I was sleeping**." She indicated that the priority was her back. But she also testified that she did tell everyone that she was injured, "and obviously, by me falling on my back, I had to have hit my head." She also testified that she remembered saying that she hit her head, but the doctors did not take the head part of it into consideration. She thought they focused on where she was screaming in pain, which was her lower back.[16]

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[12] Tr. I, pp. 28-32.
[13] Ex. 4; emphasis added.
[14] Tr. I, pp. 21-22.
[15] Tr. I, pp. 21, 47-49.
[16] Tr. I, pp. 58-59; emphasis added.

Three days later, on October 6, 2014, Dr. Kimberly A. Dettloff, M.D., saw the applicant for her back "which was injured on 9/5/2014." The patient statement was **"hurt back, right leg pushing a patients wheel chair with 200 lbs backwards."** Dr. Dettloff noted that a translator was present. The applicant had **back pain radiating into the right leg.** "She reports that **she slipped on a wet floor in March 2014 from a leaky roof. She fell onto her buttocks. She did not report this. About 4 months ago, she noted gradual onset of increased pain in the sacral and perineal area. One month ago on 9-5-14, she was pushing her client in a wheel chair on some grass. She felt sudden severe back pain that radiated into her right and caused her to fall. She has been having urinary incontinence since this.** She has lumbar spasms when she bends forward and she cannot move her right leg when she bends forward." Dr. Dettloff assessed lumbar radiculopathy, lumbar strain, and urinary incontinence, as well as a buttock contusion. Dr. Dettloff noted the applicant was incontinent during the exam, and that she was medically unable to work.[17] An MRI of the lumbar spine showed mild degenerative disc disease at the L3-S1 levels.[18]

On October 27, 2014, the applicant saw Dr. Clay J. Frank, M.D. for **diffuse low back pain, and posterior sacral and thoracic pain** on referral from Concentra. He noted that the applicant claimed that her pain began in March of 2014, "when she fell on her buttock, but did not report the injury and then, aggravated the injury on September 5, 2014, while she was taking care of a patient in the course of her employment for Ralph Bronner. **The patient reports that she was pulling a wheelchair across a grassy field to a soccer game and developed pain in the aforementioned distribution**."[19] Dr. Frank noted that the MRI and radiographs showed no significant abnormalities and that the applicant had some moderate, normal, age-related, wear-and-tear changes at L4-5 and L5-S1, but otherwise had normal discs in the upper lumbar and thoracic spine. Dr. Frank examined the applicant and found that her exam showed multiple inorganic findings of superficial light touch tenderness in the midline and paraspinal musculature, with no demonstrable paraspinal hypertonicity or spasm and a "marked exaggeration of pain response." He found her range of motion limited, but inorganically so. His impression was that the applicant had "Subjective symptoms in excess of any objective findings on radiographic examination or physical examination." **He explained to the applicant that her symptoms were disproportionate to any physical exam findings and that he questioned the authenticity of her complaints.** He could not justify ongoing treatment for a work-related injury and **recommended the applicant be returned to full-duty work without restrictions.**

According to the applicant, she gave the nurse a lot of information before seeing Dr. Frank, and so her head was not functioning correctly when Dr. Frank started asking her questions. She started to feel dizzy. The nurse from Society Insurance took Dr. Frank outside, and when he came back, he told her to lay on the bed and did not let her take off her coat. He sounded very angry to the applicant. According to the applicant, after he examined her back he screamed at her, "You are going to go back

[17] Exs. D, L.
[18] Ex. 4.
[19] Exs. C, 7.

to work. You are going to go back to work." The applicant then got up and left the room. She thought the nurse was trying not to laugh. The nurse tried to take her blood pressure, and the applicant told her to leave her alone, so she ripped off the device and started walking toward the door. The applicant told the nurse, "I need some tranquilizers – painkillers. I'm sorry. And they don't want to give them to me. And he's yelling at me." The applicant told the nurse she would go to Froedtert for assistance, and according to the applicant, the nurse told her not to tell them that she had a preexisting condition or an accident. The applicant told her that she did not need anyone yelling at her, and that the nurse provoked the situation by playing a game with her.[20]

Subsequent Medical Treatment

After the medical exam by Dr. Frank in October 2014, the applicant did not seek further medical treatment in the U.S. **until 2016,** and that treatment was not for her head or back. On January 21, 2016, Dr. Laura H. Jacques, M.D., saw the applicant for abdominal pain and an annual exam. For the abdominal pain, Dr. Jacques noted the applicant was from Bolivia and had been home in December. "She had been wanting to have what sounds like a[n] abdominoplasty and rectus plication for many years. She saw a plastic surgeon in New Hampshire – but she could not afford the cost. She therefore had the surgery performed in December while she was there." There was a complication, and she had since had fairly significant abdominal pain and swelling. The applicant was treated with an antibiotic.[21] According to the applicant, this was a surgery in Bolivia was to tie the muscles back together, including the "veils" that cover the muscles. There are no medical records in the record for this procedure, but the applicant later described this as a "tummy tuck."[22] In Exhibit K, a document entitled, "Motion to Pay my Medical Bills, and Some Compensation," the applicant is asking for payment of all of her medical bills, including $10,150 for doctors, hospital, airline tickets, food, medicine, and tests for the Bolivia surgery.

On February 9, 2016, the applicant was treated at the emergency room for swelling and pain in her legs after the recent abdominal surgery. "Ms. Duran states that she went to Bolivia in December for a tummy tuck. She had returned and subsequently developed pain and swelling. The doctor diagnosed a blood clot.[23]

The applicant first treated again for *back pain* on July 13, 2016, when she went to the **emergency room,** "Started 2 years ago with a gradual onset and course has been a same." A nurse note indicated that the applicant requested a wheelchair because "I'm not getting what I want here." She was making frequent requests for pain medication and demanding more than Tylenol.[24]

On September 29, 2016, the applicant treated with Dr. John Lubing, M.D., **for leg pain**. Dr. Lubing noted the applicant continued to complain of severe pain in her legs after her accident. She was using yoga. She **complained of low back pain as well**. He

[20] Tr. I, pp. 24-27.
[21] Ex. 8.
[22] Tr. I, pp. 33, 53-54.
[23] Ex. 4.
[24] Ex. 4.

diagnosed low back pain and indicated the applicant could benefit from physical therapy. On October 31, 2016, Dr. Lubing noted the applicant still had right gluteal pain, right back and thigh pain. He increased her gabapentin and referred her to spine care for a more comprehensive evaluation.[25] The applicant indicated that she was scared of telling Dr. Lubing about her back because the nurse had previously told her not to say anything about that, and that he told her to take more Tylenol and get used to the pain.[26]

On November 21, 2016, the applicant treated with Elizabeth M. Gantenbein, PA-C, on referral from Dr. Lubing, for diffuse pain. "The patient has been dealing with chronic pain since 2014. She was working as a personal caregiver in the **spring of 2014 when she slipped on a puddle of water and fell on her back. Following the fall, she saw a doctor who told her she could go back to work. She continued to work (with some difficulty) until her patient died** in 2/2015." The applicant's whole body hurt; she complained of **migraines, neck pain, intermittent bilateral arm pain, low back pain, and intermittent bilateral leg pain.** The pain was burning and pinching, 6-10+/10. PA-C Gantenbein assessed mild degenerative disc disease but no critical degenerative spinal canal or foraminal stenosis. Differential diagnoses included chronic pain syndrome, myofascial pain, mechanical neck/low back pain, spondylosis, cervicogenic headaches v. migraines, etc. The applicant declined referral to pain management. She discussed urinary issues and stated, **"I explained that there is not severe stenosis on her MRI L-spine to account for her urinary issues."**[27]

On March 6, 2017, Dr. Lubing noted the applicant had heart flip-flops and felt faint. He diagnosed palpitations and **chronic tension-type headache** and noted a recent stress test was normal. On June 13, 2017, Dr. Lubing saw the applicant for a rash and diffuse pain. She had pain in the head and multiple other areas. Her main complaint was right foot discomfort. The rash was from the venous insufficiency. On October 26, **2017,** Dr. Mario N. **Montalbo, M.D., saw the applicant for headaches and dizziness.** The applicant had eye pressure and thought she might have a tumor. Dr. Montalbo reassured the applicant it was not likely an eye tumor. On February 14, 2018, Dr. Lubing noted the applicant had pain in her legs with and without movement, which could extend up her back. He diagnosed **chronic low back pain with sciatica. Her anxiety was associated with depression, as she was anxious over multiple family issues and her work status.** On February 28, 2018, Dr. Lubing noted the applicant felt better on the duloxetine. She had no suicidal ideology. The anxiety appeared to be better, and she was sleeping better. Dr. Lubing noted that the applicant wanted to apply for disability. "She is unable to work now due to her inability to stand for prolonged time." On May 11, 2018, Dr. Lubing noted the applicant's back was still the same. The applicant had pain all over at times. She had **pain in her arms, back, and both legs, as well as her head.** Dr. Lubing diagnosed chronic low back pain with sciatica "where she injured herself at work" and diffuse pain with an uncertain etiology. He noted that she was functioning well despite this and taking classes at MATC.[28]

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[25] Ex. F.
[26] Tr. I, pp. 35, 55.
[27] Ex. 3; emphasis added.
[28] Ex. F.

On July 13, 2018, Dr. Heather M. Curtiss, M.D., treated the applicant for low back and neck pain. "Had some house flooding. 2014 fall, with LOC, has had significant issues since." The applicant was very limited in her abilities due to pain. **Dr. Curtiss diagnosed cervical spondylosis with torticollis, lumbar spondylosis, diffuse myofascial pain, significant fear of avoidance of movement, and "possible head injury from fall 2014." X-rays of the cervical spine showed no acute abnormality, but mild multilevel degenerative disc disease.** Dr. Curtiss recommended physical therapy and medications.[29]

The applicant treated with Dr. Montalbo in 2018 and 2019 for depression, anxiety, and pain. On August 1, 2018, Dr. Montalbo noted that in 2014, the applicant **"fell on back few times."** She continued to have pain, and he increased Gabapentin.[30] On August 24, 2018, Dr. Gwynne Kirchen, M.D., in pain management, examined the applicant. Dr. Kirchen noted the applicant had widespread pain, worst in the right neck. She noted, **"Pain history and exam is not entirely consistent with a clear etiology for her pain."** Dr. Kirchen noted the applicant stated she had no pain prior to a series of 3 falls in 2014 **"where she slipped on water and fell flat onto her back, was pulled down to the rocky ground while trying to help a man get up in the park &, lastly, slipped on water and fell on to her upper back and side."** The applicant denied episodes of incontinence. Dr. Kirchen found that the **primary source of the applicant's neck pain was myofascial, exacerbated by certain movements.** There was an additional component of cervical spondylosis. Dr. Kirchen recommended conservative management with physical therapy and pain psychology in hopes that the pain complaints and etiology became more clear in the future for further management.[31]

On August 29, 2018, Dr. Montalbo saw the applicant for pain and depression follow up. He noted the conditions started in 2014. **"She fell she says."** Per the emergency room records, the applicant and back pains. **"She states she didn't tell them about head injury, headache. Now she recalls the injury. Slippery floor at work. Fell down and hit back of head and back."** Following the exam, the applicant started feeling faint and had a worsening headache and chest pain, so the applicant was triaged and an MRI and EKG were ordered. The applicant was transferred to the emergency room. The MRI of the brain showed no convincing evidence of acute intracranial abnormality. There was no evidence of an acute infarct, acute intracranial hemorrhage, focal mass, or significant mass effect.[32] In the emergency room, the applicant acknowledged that she had multiple syncopal episodes over the past 3-4 months. She loses consciousness for up to 5 minutes with each episode. A CT of the head showed no acute intracranial findings.[33]

On September 1, 2018, Dr. Montalbo noted the applicant was there for worker's compensation paperwork for the injury in 2014. He noted that pain and weakness in the legs started in 2014, and shoulder pain started in 2014. Dr. Montalbo noted one

[29] Exs. 3, 4; emphasis added.
[30] Ex. F; emphasis added.
[31] Ex. 3; emphasis added.
[32] Exs. F, 6.
[33] Ex. 4.

medical note after the injury stated the applicant's symptoms were not connected with the injury. The applicant argued that she was not given a chance to improve because she had no insurance. **Dr. Montalbo responded that the "upper back and diffuse pains unlikely related to injury either."** The applicant was pleading for the form to be completed, but Dr. Montalbo told her **he would complete it "but with pessimism that she will obtain coverage."** An **MRI of the brain on September 20, 2018, showed no convincing evidence of acute intracranial abnormality. There was no evidence of acute infarct, acute intracranial hemorrhage, focal mass, or significant mass effect**.[34]

On October 4, 2018, the applicant first treated with Dr. Frederick G. Freitag, D.O., for her **headaches.** Dr. Freitag described the history of the illness as "**fell while helping someone. Struck her right occiput. It spreads and is inside her head over her entire head, she also gets neck pain on the right side, she has occasional memory issues."** Dr. Freitag diagnosed **a traumatic brain injury with loss of consciousness of 30 minutes or less** and a current episode of major depressive disorder. He continued her medications and ordered an MRI of the cervical spine. He also referred her to otolaryngology, neuropsychology, and ophthalmology.[35] On October 25, 2018, the applicant had a neuro-ophthalmology consult with Dr. Ryan D. Walsh, M.D., for blurred vision "in the setting of a traumatic brain injury." The applicant sometimes felt like she had sand in her eyes. She reported getting migraines every day. She saw dark spots over her vision in the right eye and saw stars in her right eye when she was tired. **The applicant reported 4 head injuries in 2014, "she's not sure with which head injury the various symptoms started."** Dr. Walsh noted this was a complex case. He opined that the sensation of sand in the eyes and **intermittent blurred vision was likely related to dry eyes. He also had concern for glaucoma**.[36]

On October 29, 2018, Dr. Montalbo saw the applicant again for depression and pain. He noted the applicant wanted him to fill out worker's compensation paperwork for the injury in 2014.[37] The applicant also had physical therapy, starting in August 2018. At the initial evaluation, the applicant reported that in all of 2015 she was in bed. **"She reports she 'loses time' where she doesn't know where she is or what happened for several hours."**[38]

On December 20, 2018, the applicant had a neuropsychological evaluation by Dr. Laura Umfleet, Psy.D.[39] Dr. Umfleet noted the applicant was referred by her neurologist, Dr. Freitag, due to concerns about memory loss. The applicant stated that she mostly thinks in Spanish but was fluent in English and was comfortable with the testing being done in English. The onset of symptoms was described as:

> …following her fall and hitting her head on the right side on the floor. Her fall was in 2014 and she reported [loss of consciousness]. She stated that she recalls water on the kitchen floor and recalls seeing that it was

[34] Ex. 4.
[35] Ex. 4.
[36] Ex. 4; emphasis added.
[37] Ex. F.
[38] Ex. 6; emphasis added.
[39] Ex. 3.

> 6:00 am on her cell phone and recalls seeing water on the floor but does not remember slipping. Her first memory after the fall was of looking up at the clock and seeing that it was 9:00 am. This was an unwitnessed fall, per patient. This was in the house of a man she was taking care of. She did not go to the hospital. After this fall, she started having problems with her memory (e.g., forgetting if she turned off stove and forget where she was going while driving). Memory did not get improve [sic], rather it continues to decline. She recalled a situation where she was supposed to watch her grandson and she got distracted by a fly or something and he ran off, and her daughter had to chase after him. She is no longer taking care of grandchildren and is no longer cooking.
>
> **She stated she fell 1 more time in the house of the elderly man she takes are of (he was in a wheelchair) and fell in the park when she was with this man. With this last fall she reportedly hit the right side of her head again.** Regarding her second fall, she has no recall of duration of being out. She did not go to the hospital for a work-up after second fall. At the park, **she suspects that she was out for possibly 30 minutes. She stated after this fall, 'I could not see' and noticed increased back pain. She drove her client home after this fall and noticed that she could not see the red light and then she decided to go to the emergency room** where they told her not to lift more than 10 lbs. …[40]

Dr. Umfleet noted that the applicant reported having pain in her head and back. She had recently applied for disability. Regarding her memory, the applicant indicated that **she forgets things she has to do, like appointments, and she does not remember things from the past either.** Dr. Umfleet observed that the applicant's speech was accented but fluent and articulate, and there were no word-finding difficulties during casual conversation. She was able to comprehend and respond appropriately to questions. Due to the language and cultural differences, Dr. Umfleet noted that the test results likely underrepresented her true cognitive abilities. Dr. Umfleet noted that the reported injuries were mild in severity and may represent concussions, but noted, **"These injuries would not account for her reported cognitive decline over time."** She was most concerned with her mood, pain, and sleep issues. The applicant's reported **symptoms were "not commonly experienced by persons with organic neurological impairment and amnestic disorders."** Given evidence of variable test engagement, Dr. Umfleet could not make a diagnosis of neurobehavioral syndrome at the time.[41]

On February 28, 2019, APNP Rebecca S. Esser saw the applicant for generalized body aches. The applicant continued to have **diffuse pain complaints, ranging from her legs to low back and into the head.** The applicant just wanted to lay in bed all day. She also complained of **dizziness over the past 2 weeks, which she attributed to the blood thinners**. APNP Esser diagnosed cervicalgia, chronic back pain, and headaches consistent with myofascial pain and fibromyalgia. On March 3, 2019, PA-C Jenna

[40] Ex. 3; emphasis added.
[41] Exs. J, 3; emphasis added.

Spaeth saw the applicant for chest pain, headache, and fatigue. The applicant had previously called the office describing symptoms of imbalance and headache, concluding that she may have suffered a stroke. The applicant also had chest discomfort and stomach pain. An ECG was within normal limits. She was to continue her medications.[42]

On April 9, 2019, Dr. Montalbo saw the applicant for pain, depression, and anxiety. He diagnosed fibromyalgia, nasal congestion, venous ulcer of the ankle, palpitations, and anxiety. On May 3, 2019, Dr. David R. Friedland, M.D., did eye testing because of the applicant's dizziness. The vestibular function tests were normal. There was no evidence of peripheral vestibular abnormality. Audiological diagnostic testing also showed normal hearing and excellent word recognition. The applicant was noted as reporting constant **bilateral tinnitus and right aural pressure that began 5 years ago**, **as well as dizziness that began 5 years ago**. The applicant also had a balance assessment in physical therapy. In the physical therapy note, the therapist noted that the applicant reported she **had not worked since the work accident due to dizziness and cognitive impairments, "she reports that she would get lost frequently.**" The therapist noted, **"In Spring of 2014 she was working as a personal caregiver when she slipped on a puddle and fell on her back. She developed back pain, headaches, and fatigue following."** The therapist noted there was not any mention in the medical records of dizziness and imbalance until she saw Dr. Freitag in October 2018, but determined the applicant's performance reflected a high level of anxiety overlap in conjunction with impaired balance, and that she would benefit from vestibular rehab.[43]

On May 8, 2019, the applicant treated with APNP Helen H. Kim in the Vestibular Disorders Clinic for **dizziness** and nasal blockage. APNP Kim noted:

> Pt reports **she had 4 accidents involving falls, hitting her head and LOC in 2014.** First 3 episodes occurred same scenario slipping, falling backward and hitting her head on a wet floor of a kitchen in the home of a disabled client while working as a caregiver. **Had LOC for up to 3 hours with each episode over a 2 month time span. With each episode she did not seek medical help or evaluation d/t need to remain w/her client**. **Had 4th fall in Sept 2014 at the park pulling the client's wheelchair up a parking lot bump causing her to lose balance and fell back onto concrete blocks striking her head on a bucket nearby resulting in LOC again.**
>
> Again **did not seek medical attention after the episodes as she stayed w/her client unable to seek help and rationalized she'd be okay**. **Eventually sought help after the 4th time d/t severe [headache], dizziness, weakness, back pain**.[44]

APNP Kim noted the **dizziness started after the first fall onto her head**. The applicant also complained of a **hearing problem on the right**. In the assessment, Dr. Kim noted,

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[42] Ex. J.
[43] Ex. J.
[44] Exs. J, 4; emphasis added.

"No otologic cause for her vestibular symptoms." The applicant was referred for vestibular therapy. She was to follow up with her primary care provider for consideration of additional psych therapy and with a neurologist for dizziness.[45] On May 28, 2019, APNP Kathryn Egan saw the applicant in pain management. Her pain stayed the same, and she was depressed since her mother passed away. The applicant was to continue her medications.[46]

On June 24, 2019, Dr. Montalbo saw the applicant to complete paperwork for delineation of disability. Dr. Montalbo noted the applicant **fell 3 times in 2014 "over a period of helping taking care of client. Sept 2014 or shortly thereafter, she feel [sic] striking back of head on rock. She was pushing pulling a client in a wheelchair. She thinks she lost consciousness."** Dr. Montalbo noted that **since then, the applicant has had falls, chronic pains, headaches, and problems with depression.** Dr. Montalbo noted that he did not know the applicant during the accidents or shortly thereafter, as he became her physician in 2017. He reviewed Dr. Lubing's records and paperwork from Concentra, and noted, **"I informed her I cannot say she is completely disabled related to the initial injuries."** Dr. Montalbo noted the applicant would **follow up in neurology and ask that doctor to complete the paperwork**.[47]

The applicant's dizziness seemed to progress in 2019. On July 15, 2019, the applicant was treated in the emergency room for dizziness. Symptoms were severe, but the doctor noted the applicant had a history of similar dizziness, most recently 2 months ago. The applicant was vomiting the previous evening and in the waiting room. "Yesterday she was talking to someone and she passed out." She called Dr. Montalbo who told her to go to urgent care. An EKG was normal. "Doubt that dizziness today is due to central cause with normal neuro exam and hx of similar symptoms."[48] On July 19, 2019, PA-C Spaeth saw the applicant for dizziness. She noted that the applicant's son had turned 18, so the applicant lost some coverage for insurance. **"Admits to not taking some anxiety medications as directed, then states she is taking them normally."**[49]

On July 29, 2019, Dr. Freitag treated the applicant for a headache. He noted that she **"fell while helping someone. Struck her right occiput. It spreads and is inside her head over her entire head, she also gets neck pain on the right side, she has occasional memory issues."** He noted that **her story "just sort of rambles,"** and that she was afraid she was going to die for her pains. Dr. Freitag assessed the applicant as **presenting with a diagnosis of a traumatic brain injury resulting in gait deviation, pain, decreased function, balance deficit, postural faults, dizziness, and vertigo.** He incorporated the neuropsychological diagnostic impressions of Dr. Umfleet and the neuro-ophthalmologic exam."[50]

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[45] Ex. 4.
[46] Ex. J.
[47] Exs. F, J, 3, 6; emphasis added.
[48] Ex. J.
[49] Ex. J; emphasis added.
[50] Exs. E, J, 4; emphasis added.

On July 30, 2019, the applicant was seen by APNP Sasha Lechner for **dizziness and headache. The applicant attributed this to the 2014 work injury**. She had been referred to vestibular rehab but only completed 2 sessions, and she was not doing any exercises at home. She had pain in **multiple areas, including the neck, low back, and various joints**. She denied radiation into her upper or lower extremities. She had been referred to physical therapy and did 2 sessions, but she felt the therapy was making her pain worse. The applicant "lays in bed the majority of the day and will occasionally cook for her family." The applicant was encouraged to make an appointment for psychology and to increase her activity on a daily basis. In her exam, APNP Lechner noted the applicant was unable to walk on her toes or heels due to balance, and the remainder of the exam was deferred because of dizziness.[51]

On August 19, 2019, the applicant treated at the family medical clinic and had difficulty walking. She noted she had been using an electric chair when at the grocery store. APNP Kristina Copeland **felt the applicant's low back pain with sciatica was likely worsened by the change in medications**. The applicant was given Lidoderm patches.

On October 1, 2019, the applicant went to the **emergency room for back pain**. The emergency transport record indicated the applicant could not walk. She had not taken her meds because she needed to drive today. Pain was 10/10.[52] The applicant had bent over to pick up garbage and developed pain in the lower back into the legs. She denied any fall or direct injury. A lumbar x-ray was unremarkable. The emergency room doctor explained that it was unlikely that she had a serious injury, and that this was **likely an exacerbation of her chronic pain**. She was offered a walker but she initially refused; she later agreed to take the walker home.[53] On October 4, 2019, the applicant was using a walker to ambulate when she saw PA-C Spaeth for her anxiety and chronic low back pain with sciatica.[54]

On October 10, 2019, Dr. Montalbo saw the applicant to complete worker's compensation paperwork. Dr. Montalbo indicated that the applicant had chronic back pains, headaches, diffuse muscle aches, and depression. **"She feels everything started after a fall backward while pushing a client in a wheelchair."** The paperwork was completed.[55]

On December 13, 2019, PA-C Sonia Neuberger noted the applicant was very depressed and had pain all over. She did not get much joy out of doing things. She wanted the applicant to see psych, ordered a cervical MRI, and thought the applicant should proceed with an occipital nerve block. On December 27, 2019, PA-C Neuberger noted the applicant continued to have right occipital pain that followed the right occipital nerve. She noted that the **MRI of the cervical spine done on December 18, 2019, did not demonstrate any reason for the applicant's right sided occipital pain.** The MRI showed no focal cervical disc herniation, cord deformity, canal stenosis, foraminal

[51] Ex. J.
[52] Ex. K.
[53] Ex. 11.
[54] Ex. J.
[55] Exs. F, J.

compromise, or intramedullary signal abnormality. There was minimal diffuse bulging at C5-6 and mild bilateral joint hypertrophy at C5-6 and C7-T1.[56]

On May 19, 2020, Dr. Montalbo treated the applicant for chronic pain, sudden right lower back pain. Dr. Montalbo indicated that he would provide a letter stating history of past trauma and debilitation. **"I explained I cannot sanction impairment when I became her physician few years ago. She was impaired many years ago."**[57]

On July 15, 2020, the applicant saw Dr. Ali H. Siddiqui, M.D., to establish care after the departure of Dr. Montalbo. The applicant talked at length of her accident that caused her chronic back pain and neck pain. For her fibromyalgia and pain, Dr. Siddiqui indicated management should be multifaceted with both medication and behavioral techniques. On August 4, 2020, the applicant had an annual exam for optometry. She reported that her vision was blurred and difficult to focus in both eyes. She also had eye pain, burning, itching, photophobia, and tearing. The diagnosis was **suspected glaucoma in both eyes**. It also noted a history of a traumatic brain injury.[58] On August 10, 2020, the applicant treated with PA-C Neuberger for right occipital pain. PA-C Neuberger again assessed that the applicant would benefit from an occipital nerve block.[59] On October 15, 2020, Dr. Siddiqui diagnosed chronic low back pain with sciatica, chronic neck pain, and anxiety and depression. On February 2, 2021, Dr. Siddiqui noted the applicant had **lumbar pain of 7/10 and neck pain of 4/10.** She had been recommended occipital nerve blocks, but she had not yet gone through with them. The applicant wanted to see if there was a surgery that could help her and wanted a referral to Dr. Pannu. He provided the surgical referral.[60]

The applicant treated with Dr. Emily R. Davidson, M.D., in the spring of 2021 for her incontinence and vaginal vault prolapse. On March 25, 2021, Dr. Davidson assessed the applicant with vaginal wall prolapse and mixed urinary incontinence, and that she desired surgical management of an anti-incontinence procedure at the same time as her prolapse surgery. On April 5, 2021, Dr. Siddiqui noted the applicant still had lower back and neck pain and noted she was anticipating a bladder procedure.[61] In April 2021, the applicant was hospitalized for surgery for her pelvic organ prolapse, and she was discharged on April 14, 2021. On May 24, 2021, Dr. Davidson noted that the applicant would like her to comment on whether her surgery was due to the accident she had in the past. Dr. Davison noted, **"I do not believe that her prolapse is related to her accident nor is her urinary incontinence. Stress urinary incontinence is a structural issue, most likely related to previous pregnancy and childbirth."**[62]

On May 26, 2021, Dr. Siddiqui noted the applicant's lumbar back pain was a chronic problem that occurred daily and had been gradually worsening since onset; it was reported at 8/10. Neck pain was also chronic pain that occurred constantly and was at

[56] Ex. J.
[57] Exs. J, 3.
[58] Exs. J, 9.
[59] Ex. 9.
[60] Ex. J.
[61] Ex. J.
[62] Exs. J, 8; emphasis added.

7/10. The applicant reported a poor quality of life because of the pain and that it significantly affected her mental health. He decided to repeat the MRI to see if there was any other abnormality.[63] The lumbar spine MRI on June 7, 2021, showed an enlarged uterus with multiple fibroids and mild degenerative findings without significant chance compared to 2014. There was no focal disc herniation, significant stenosis or spinal cord or nerve root impingement.[64] On August 11, 2021, Dr. Siddiqui drafted a letter to whom it may concern indicating that the applicant's pain was debilitating and she was currently seeking treatment.[65]

On August 31, 2021, Dr. Siddiqui noted the applicant had a form from the DWD that needed to be filled out. He described the work incident as **"Patient reportedly had her back injury at age 46, when she was pushing a client patient at the facility where she worked in a wheelchair. The wheelchair reportedly had gotten stuck, and the patient tried to pull the wheelchair, she fell falling on her back, with the impact being on her buttock region, her lower back and head."** He noted that **since then, she had experienced multiple symptoms, including chronic lower back pain and lumbar spasms**. She also developed urinary incontinence and had pelvic surgery for that. Dr. Siddiqui noted that the **imaging performed in June 2021 confirmed degenerative findings without significant change compared to imaging from 6 years ago**. He also noted that the applicant had a history of **anxiety and depression, which had progressively worsened because of the chronic pain**. Dr. Siddiqui diagnosed chronic lower back pain with bilateral sciatica, history of deep vein thrombosis, chronic anticoagulation, anxiety and depression, fibromyalgia, and mixed incontinence. Regarding causation, Dr. Siddiqui noted that **"The patient's current symptoms have started since her initial injury, and it is reasonable to [p]resume that the present long-term sequelae are from the initial injury."** He opined that the applicant could return to light duty work with a 10-pound lifting restriction.[66]

On September 9, 2021, PA-C Neuberger noted the applicant now wanted to proceed with the nerve block. A subsequent CT of the head and neck on September 26, 2021, was negative. Finally, on October 20, 2021, the applicant had a right greater occipital nerve block.[67]

On November 22, 2021, Dr. Davison noted the applicant still had an overactive bladder after her prolapse and urinary incontinence surgery and she adjusted medications. On February 1, 2022, Dr. Siddiqui saw the applicant for chronic pain and to discuss sleep issues and mental health. Dr. Siddiqui noted the applicant had been evaluated by Dr. Pannu from neurosurgery and was advised there was no current interventional procedures that may help with her pain. Her main concern was her sleep. The applicant had been told she might be schizophrenic, but she disagreed with this and wanted a different evaluation. Dr. Siddiqui referred her to behavioral health for

[63] Ex. J.
[64] Exs. J, 6.
[65] Exs. D, J.
[66] Exs. A, J; emphasis added.
[67] Exs. J, 9.

evaluation. He diagnosed occipital neuralgia of the right side and chronic low back pain with sciatica.[68]

On March 3, 2022, Dr. Siddiqui saw the applicant following an emergency room visit. She had presented to the emergency room for a **new onset of right-sided back pain that radiated towards the abdomen.** She wanted testing because she was told she may have gallstones.[69]

On May 3, 2022, PA-C Neuberger noted that the applicant had had an injection in her greater right occipital nerve in October, which had helped for about 3 months. She again presented with pain. The applicant was to have a follow-up injection.[70] On June 27, 2022, Dr. Siddiqui saw the applicant for an annual physical and right upper quadrant abdominal pain. He suspected gallstones.[71] On June 28, 2022, the applicant presented to the emergency room complaining of right upper quadrant pain. A CT scan showed gallstones, and she was referred for surgery and was hospitalized and treated for removal of the gallbladder.[72]

Regarding the various versions of falls in the medical records, the applicant testified that she told all the doctors the same thing with the wheelchair and that she had fallen on her back. She indicated that she did not report the 3 falls and did not seek medical treatment for those falls because "I always got better."[73] For the first fall, it was in January 2014 at 6:00 a.m., and she was walking to the kitchen. There was water on the floor, and she slipped and fell. She testified that she fell on her back and hit her head. She passed out, and it was late morning when she awoke. She did not seek medical attention because she was fine and feeling ok. She told Bronner about the fall, and he called a company to fix it, but they did not do it correctly. She then fell again, and they put a complaint into the company that fixed the roof.[74]

As of the date of the hearing, the applicant takes Baclofen and Tramadol daily, but she still has a little pain in her back. If she is washing dishes, for instance, she will feel pain in her back. Then she has to sit and take more medication. She is still experiencing pain in her neck and headaches. She is not working, except for caring for her son.[75] The applicant showers her son, makes him sandwiches, and does personal cares.[76] She does not do much in her home. She takes medications, and indicated, "those medications cause a lot of dizziness, a lot of drowsiness, and some of the side effects also from the medication can be like I can become fearful of my surroundings, that it has been causing me to fall lately."[77] Her kids help her when she is cooking. She indicated at the second hearing that she tries to drive, and that she had been in a car

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[68] Ex. J.
[69] Ex. J.
[70] Exs. J, 9.
[71] Ex. 8.
[72] Exs. J, 9.
[73] Tr. I, pp. 46-47, 51.
[74] Tr. I, pp. 43-44.
[75] Tr. I, pp. 40-41; Transcript of Proceedings dated June 13, 2023 (Tr. II), p. 9.
[76] Tr. II, p. 13.
[77] Tr. I, pp. 65-66.

accident, but she keeps going forward. She sleeps 2 or 3 hours at night.[78] The applicant does her own shopping and yard work and snow removal. Her biggest problem is when she has to bend down to pick something up. She also has incontinence issues.[79] The applicant also started taking English language and math classes at MATC in 2018.[80]

Video Evidence

The respondent presented a surveillance video and testimony of Andrew Willmas, the field investigator who took the video. He estimated that he surveilled the applicant over about 10 days over several months. He prepared a highlights video about 28 minutes long.[81] The video highlights show the applicant walking back and forth to her car and carrying items from the car, sorting items in the car, and taking a basket to the house, driving and parking, etc. The applicant testified about the video as well. She indicated that she was moving groceries out of the van and coats that she leaves in the car for winter. It took her a long to time remove all those things. She indicated that she is a single mother and has to do the lawn and remove snow, and it is very hard for her. She had put her house up for sale because it was too big for her.[82]

The Applicant's Medical Opinions

The applicant submitted 5 WKC-16-Bs in support of her claims. In a WKC-16-B dated September 9, 2021, Dr. Siddiqui identified the date of the traumatic event as September 5, 2014, and referred to his office notes for a description of the work incident.[83] The attached note was from August 31, 2021, and described the work incident as "Patient reportedly had her back injury at age 46, when she was pushing a client patient at the facility where she worked in a wheelchair. The wheelchair reportedly had gotten stuck, and the patient tried to pull the wheelchair, she fell falling on her back, with the impact being on her buttock region, her lower back and head." He diagnosed chronic low back pain with sciatica, lumbar radiculopathy, chronic neck pain, and situational anxiety and depression. He opined that the applicant could return to work as of August 31, 2021, to light duty work with limitations not to lift, pull, or push objects greater than 10 pounds; avoid bending, prolonged standing/sitting; and taking brief rest periods throughout the day. He opined that the work incident directly caused the applicant's condition, but noted that he was unable to determine any percentage of permanent disability. Nevertheless, he did note the applicant had elements for permanent disability of limited range of motion of neck, *voluntary* limitation of motion for the back of around 50-60%; and pain reproduced on palpation and passive motion. He opined that the applicant would need further treatment and that she did not have any prior disability. Dr. Siddiqui prepared an addendum dated June 27, 2022, in which he opined that the applicant did sustain permanent disability and assessed 60% disability of movement with limited *voluntary* range of motion for the neck and lower back.[84]

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[78] Tr. II, pp. 10-11.
[79] Tr. II, pp. 26-27.
[80] Tr. I, pp. 35-36.
[81] Ex. 13; Tr. II, pp. 16-17. Exhibits 14, 15, and 16 contain still shots from the video with narrations about the surveillance.
[82] Tr. II, pp. 25-26.
[83] Ex. A.
[84] Ex. G.

The applicant also submitted a WKC-16-B from Dr. Freitag dated September 4, 2019.[85] Dr. Freitag referred to his attached office notes for a description of the work injury and diagnoses. In his attached medical note from July 29, 2019, Dr. Freitag noted that she "fell while helping someone. Struck her right occiput. It spreads and is inside her head over her entire head, she also gets neck pain on the right side, she has occasional memory issues." He noted that her story "just sort of rambles," and that she was afraid she was going to die for her pains. Dr. Freitag assessed the applicant as presenting with a diagnosis of a traumatic brain injury resulting in gait deviation, pain, decreased function, balance deficit, postural faults, dizziness, and vertigo. He diagnosed cervicalgia, chronic back pain, bilateral deep vein thrombosis, and headache with generalized pain consistent with fibromyalgia. He noted that she had a reported history of 3 head injuries, but also noted that the neuroimaging on September 20, 2018, was unremarkable. He also diagnosed severe depression. He noted that the reported injuries were mild in severity and may reflect concussions. He also stated, however, that "These injuries would not account for her reported cognitive decline over time," and that her symptoms were "not commonly experienced by persons with organic neurologic impairment and amnestic disorders." Dr. Freitag opined that the work incident directly caused the applicant's condition, but he was unable to determine any work limitations or when the applicant would be able to return to work. He indicated that any permanent disability was "not determined" and did not assess any permanent disability, but he did opine that the applicant would need additional medical treatment.

The applicant also submitted a WKC-16-B from Dr. Montalbo dated October 23, 2019.[86] Dr. Montalbo described the work incident as the applicant "Fell on grass while pushing client. Fell backward and hit back of head and back. She passed out. No one around other than client." He diagnosed headaches, chronic back pain, and depression due to chronic problems. He was unsure when she could return to work, but he opined that the work incident directly caused the applicant's conditions. He was "unsure" if the applicant had sustained any permanent disability, but he did note she had severe headaches, pain, depression, chronic back pain, and that she was seeing specialists and taking medications. He opined that she would need further medical treatment.

The applicant also submitted a WKC-16-B from PA-C Neuberger dated October 1, 2024.[87] In the space provided to describe the work incident, PA-C Neuberger diagnosed chronic headache pain, chronic neck pain, chronic lower back pain, and traumatic brain injury. She opined that the applicant would need further treatment to continue vestibular therapy and at the pain clinic.

The Respondent's Medical Opinion

The respondent submitted an Independent Medical Evaluation and WKC-16-B from Dr. Richard K. Karr, M.D., dated December 20, 2021.[88] Dr. Karr examined the

[85] Ex. E.
[86] Ex. F.
[87] Ex. B. Certified reports by physician assistants are admissible as evidence of the diagnosis and necessity of treatment, but *not* of the cause and extent of disability. Wis. Stat. § 102.17(1)(d)1.
[88] Ex. 2.

applicant and reviewed her medical records. While he was conducting the examination, Dr. Karr noted the applicant' accompanying relative picked up an iPad and appeared to be videoing him. He said nothing about it "as by this time the psychological comorbidity being displayed was so unmistakable …" The applicant described the work incident on September 5, 2014, as she had been manually moving a wheelchair-bound patient weighing 200 pounds outdoors over grass that had a lot of holes. The wheelchair got stuck and she pulled hard and fell backwards to the ground and lost consciousness. Upon regaining consciousness, she was able to resume working that day and finished her work shift. She indicated that she injured her low back and all of her back felt sore from her neck to her tailbone. She attributed current pain on the front and right side of her head, including her right-sided eye and ear; the right side of her nose; neck pain; upper back pain; sciatic nerve symptoms; dizziness; and memory problems to the injury. Dr. Karr diagnosed mild L3-S1 degenerative lumbar spondylosis (disc disease/arthritis) without evidence of superimposed trauma, significant stenosis, or any other worrisome finding. He opined this was a personal condition causally unrelated to the September 5, 2014, work incident or prior falls. He also diagnosed multilevel mild degenerative cervical spondylosis without evidence of superimposed trauma that was a personal condition unrelated to the work incident or prior falls. In addition, he diagnosed personal psychological and social factors fostering somatization. If the applicant had genuinely felt pain while manipulating the wheelchair that caused her to fall, Dr. Karr opined that at most it caused minor low back and pelvic contusions and/or strains and no structural spinal or neurological damage resulted. No head or brain injuries resulted, and the applicant reached an end of healing no later than October 22, 2014, with no permanent disability or alteration in working capability. Regardless of cause, Dr. Karr felt the applicant's current perceived disability principally required psychiatric and social services management. If her providers believed she needed ongoing healthcare, it had no causal relationship to the work incident. Dr. Karr opined that orthopedic surgery had nothing to offer her because the psychological and social component of her disability-presentation dominated.

Dr. Karr listed several facts supporting his conclusion that the applicant did not sustain any spinal or neurological damage or significant musculoskeletal damage, including health records from 2013 and 2014 showing the applicant was symptomatic of depression and anxiety, and possibly schizophrenia; she had not told her employer of any work-related falls and loss of consciousness and had not sought formal healthcare regarding loss of consciousness in 2014; when she sought emergency care, she reported several years of chronic back pain and did not mention a fall; when she treated with Dr. Dettloff, she did not mention any head injury; the 2014 lumbar MRI did not show any trauma; Dr. Frank noted the applicant exhibited multiple inorganic findings and could not justify ongoing treatment for a work-related injury; after Dr. Frank's evaluation, the applicant did not seek further treatment until approximately 21 months later; by May 2018, the applicant's complaints had expanded to involve her head, neck, upper back, both arms and legs, and her back pain; a cervical spine MRI showed nothing to explain the applicant's expanded complaints; in 2018, Dr. Montalbo noted the applicant had confusion that began with a 2014 injury that the applicant did not report but she now recalled a head injury; Dr. Freitag noted the applicant had full cervical range of motion, normal muscle tone,

no sensory deficits, etc.; no objective abnormalities were identified via sophisticated otolaryngology testing; the applicant reported various version of the falls to her medical providers; APNP Kim noted there was no otologic cause for the applicant's vestibular symptoms; none of the applicant's claims of a head injury were corroborated by her 2014 medical records; the 2021 lumbar MRI showed no changes from 2014, only mild age-appropriate degenerative changes; and the unremarkable strength and gait, etc., noted by Dr. Freitag and Dr. Siddiqui were consistent with the applicant's benign spinal imaging.

The Vocational Expert Report

The respondent submitted a Vocational Expert Report from John M. Meltzer, MS, CRC, CDMS, LPC, dated March 10, 2023.[89] Mr. Meltzer interviewed the applicant regarding her education, social/economic background, and work history. He noted that she did not remember if she had applied for any work since 2015. He encouraged her to seek services with DVR. The applicant had only done personal care aide work, which was medium level work, and he opined that the applicant had not acquired any transferable skills. Given the work restrictions provided by Dr. Siddiqui, with a limit of lifting 10 pounds and needing to take breaks, Mr. Meltzer opined that a reasonably stable labor market did not exist. Given Dr. Frank's return of the applicant to work without restrictions, and Dr. Karr's opinion that the applicant had no permanent disability or need for restrictions, the applicant would have no loss of earning capacity. He did not think the applicant had made a reasonable or diligent effort to return to work.

Analysis

The issues are the nature and extent of the applicant's disability from the conceded work injury and the respondent's liability for medical expenses. The applicant has the burden of proving beyond a legitimate doubt all the facts necessary to establish a claim for compensation.[90] The commission must deny compensation if it has a legitimate doubt regarding the facts necessary to establish a claim, but not every doubt is automatically legitimate or sufficient to deny compensation.[91] Legitimate doubt must arise from contradictions and inconsistencies in the evidence, not simply from intuition.[92]

The Parties' Arguments

The *pro se* applicant argues that she had 3 accidents at Bronner's house in 2014. The first accident was because the refrigerator broke down and released water. She slipped on the water and fell on her back. The second accident was also caused by water falling into the kitchen, but this was from the ceiling. She asserts that she again fell and hit her back and head. Bronner had the ceiling fixed, but the company did not do a good job, and the applicant again fell on her back in the kitchen. She asserts that this time she was on the floor unconscious for at least 3 hours. In her brief, the applicant asserted that in September 2014, she was pushing Bronner in his wheelchair on the

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[89] Ex. 10.

[90] *Leist v. LIRC,* 183 Wis. 2d 450, 457, 515 N.W.2d 268 (1994); *Erickson v. DILHR*, 49 Wis. 2d 114, 118, 181 N.W.2d 495 (1970).

[91] *Erickson, supra,* at 119*; Leist, supra*, at 457.

[92] *Erickson, supra; Richardson v. Indus. Comm'n,* 1 Wis. 2d 393, 396-97, 84 N.W.2d 98 (1957).

grass when it became stuck and she pulled on it and fell on her buttocks, hitting her lower back and the right side of her head. She asserts that on this occasion she was unconscious for a long time. "It was 3 in the afternoon when we arrived at the park and when I woke up after the accident it was getting dark."[93] In her reply brief, the applicant asserted that in this incident she fell on some pieces of concrete and the pain in her back did not go away and her head was not working as it should. She was forgetting to give Bronner his medications and forgetting groceries in the supermarket for which she had paid. Her employment was terminated in October 2014 when she was driving and Bronner was "screaming in fear" because she could not see the red traffic lights, and he decided he would no longer employ her as a caregiver. The applicant thereafter sought medical treatment in the emergency room because Bronner told her to check out her back. According to the applicant, she did not report the 3 prior accidents because she did not know that Bronner had worker's compensation insurance. Also, she did not tell the emergency room doctor that she had 3 prior accidents, though she did indicate that she had back pain prior to the incident.

The applicant was released to return to work, but she was displeased with the denial of her claim by the insurance carrier. She decided to take more valium and sleep, and after 2 weeks called Bronner and asked for her job back. Eventually, Bronner rehired her for one day per week. According to the applicant, he did so because she threatened to go to the police. He hired her, but he died shortly thereafter. After she got health insurance through the state, she contacted Froedtert for treatment, but she was not able to get in right away. According to the applicant, she developed symptoms of abdominal pain and urinating, and she decided to go to Bolivia, where she had a belt abdominoplasty. She returned to the United States and developed swelling complications from that surgery. She was eventually able to treat with Dr. Lubing in January 2016, and thereafter continued treatment. According to the applicant, she did not tell Dr. Lubing about her accident right away because the insurance carrier told her not to or Froedtert would not treat her. Her doctors later told her that since she did not treat in time, her pains would remain forever. In 2018, the applicant was contacted by Medicaid and asked if her treatment was work-related. They explained she could be entitled to compensation, so she filed her claim for benefits.

Regarding the hearings in this matter, the applicant asserts that the administrative law judge took inappropriate actions.[94] For instance, she asserts that the administrative law judge asked her to give yes or no answers to the questions from the insurance carrier's attorney, from which she realized that the attorney and administrative law judge already had everything premeditated before the hearing, and they made signs, gestures, and glances at each other. According to the applicant, the judge was a little upset because the applicant did not fall into their trap. She noted that every time she looked at the administrative law judge, the judge showed her teeth as if she were smiling, but she was not smiling. This made the applicant very nervous,

[93] Brief, p. 1.

[94] Based on its review of the transcripts and exhibits in this matter, the commission does not find that the administrative law judge acted with bias or favor, and her behavior was not unfair or inappropriate. The administrative law judge conducted the hearings appropriately, protecting the *pro se* applicant's rights during the hearing and allowing her to make her case and submit her evidence in both writing and testimony.

and she could not pass the information from her brain to her mouth. According to the applicant, the administrative law judge realized the applicant's brain was not working well and was very sarcastic. The applicant also claimed that the administrative law judge ordered her not to speak English, and she also claimed the administrative law judge stopped the recording at various times to record only what was convenient for the insurance carrier. The applicant had had prior hearings with administrative law judges, and they allowed her to speak English and use a translator in case she did not understand something. She indicated that when she speaks in Spanish, she forgets things more because her brain has to think twice. The applicant also indicated that she knows that she does not speak English very well. The applicant asserted that the administrative law judge acted with treachery and advantage, and it was a shameless situation between the administrative law judge and the insurance carrier's attorney.

Regarding the video, the applicant asserted that she knew she was being followed by the insurance carrier. In the video, she was coming from Sam's Club and it took her a long time to get her groceries in the house. She also had to lie down on her belly while standing in the back seat on the left side of the car. She found the strength to take clothes out because they smelled very bad. The basket and clothes weighed no more than 10 pounds. She asserted that she does not go shopping, lift things, or do chores every day. She takes medications to calm the pain, and sometimes she does more than she should, but then she has to rest for several days. The videos do not show recordings every day. The applicant also made various claims about cars that had come after her, intending to kill her. It is not clear from her brief, but the applicant may be asserting that these incidents were instigated by the insurance carrier.

Finally, the applicant asserts that this is a case of discrimination, abuse, and negligence by the insurance carrier. She will have to take medication for the rest of her life, and she asserts that she is 50-60% permanently disabled. The commission should not credit Dr. Karr, according to the applicant, because he never treated her. The applicant attached a copy the October 6, 2014, medical note from Dr. Dettloff to her reply brief, as well as a document she asserted was a report of the injury from Bronner to the insurance carrier, which indicated that the injury was "spine-back went out pushing wheelchair over grass. Things kept getting worse." The medical note from Dr. Dettloff was marked as Exhibit L at the hearing. The alleged report of injury document was not an exhibit at the hearing.[95]

The respondent responds and argues that the medical records are clear that nothing more than a sprain or strain occurred on September 5, 2014. The applicant's account of what happened changed many times since 2014, but it is undisputed that she waited almost one month before seeking medical treatment. When she did seek treatment, the medical records closest to the alleged incident highlight that there was no traumatic, acute injury. She denied any numbness or weakness to her back, despite having back pain. Imaging of the lumbar spine was unremarkable, and there was no evidence of acute issues with her lower back. Dr. Frank reviewed the lumbar MRI and

[95] The commission's review is based solely on the record, including the evidence previously submitted at the hearing. Wis. Admin. Code § LIRC 1.071. The commission has not considered other extraneous information submitted that was not evidence at the hearing.

found no significant abnormality that would explain her complaints. He opined there was only age-related wear and tear at L4-S1. Dr. Frank found there was no need for work restrictions and cleared the applicant to return to full duty work. In less than two months from the incident, the applicant had been cleared to return to work without restrictions. She then did not treat for back pain until almost two years later. According to the respondent, this supports its position that the injury was nothing more than a sprain or strain. In addition, in December 2018, Dr. Umfleet reviewed the neurological imaging and concluded the results were unremarkable. Her opinion that the reported injuries did not explain the applicant's worsening physical condition provide further evidence that the medical records do not support the applicant's theory of injury.

The respondent also argues that Dr. Siddiqui and PA-C Neuberger are not credible experts. Dr. Siddiqui did not begin treating the applicant until July 2020, almost 6 years after the alleged injuries, and there is no indication that he had access to or reviewed her prior medical records. He initially refused to assign permanent disability, but later provided 60% permanent partial disability to the neck and lower back. The WKC-16-B from PA-C Neuberger cannot be used to establish causation because she is not a medical doctor. Even if PA-C Neuberger could render an opinion, she did not start treating the applicant until 2020, which renders her knowledge of the claim questionable.

The commission should credit Dr. Karr, according to the respondent, because he reviewed a complete set of medical records over the prior seven years and highlighted the importance of using the objective evidence to evaluate the claim. He reviewed the 2014 lumbar MRI, which he confirmed showed no acute injury; and he reviewed the 2021 lumbar MRI and noted that nothing had changed. Dr. Karr's opinion confirms that nothing more than a sprain or strain occurred in the work incident. Since there is no evidence of acute trauma, Dr. Karr provides the most credible opinion.

The respondent also argues that medical record inconsistencies create legitimate doubt that the applicant has a credible account of the work incident. According to the respondent, the applicant was not able to keep her story straight regarding the September 2014 incident from one medical visit to the next, and her account of what happened snowballed over time. In October 2014, at the first medical visit, the applicant noted she had several years of chronic back pain, and indicated that her back pain had increased for the previous 3 months (not one month) due to an incident when she was pushing a wheelchair through grass. She denied any falls and reported no other injuries; she made no complaints about her head or neck. At her second medical visit in October 2014, she insisted that her lower back symptoms began in March 2014 when she fell on her back, and that they worsened in September after pulling a wheelchair. Dr. Frank identified multiple inorganic findings of superficial light touch tenderness to the applicant's lower back, which were accompanied by exaggerated pain responses. Dr. Frank questioned the authenticity of the applicant's complaints and he opined the examination findings did not match her alleged symptoms. After 1.5 years of no medical treatment within the U.S., the applicant presented with a blood clot in February 2016. She made no mention of a back or head injury in her medical history.

In July 2016, the applicant was again asked about her medical history. She referenced an incident in September 2014, and indicated that it was ongoing for 2 years, but this was the first time the applicant ever mentioned falling in September 2014. In November 2014, the applicant indicated that the origin of her chronic back pain was a slip and fall in the spring of 2014. In October 2017, when the applicant was treating for nasal congestion and facial pain, she indicated that she had headaches, but did not mention any prior head injuries. In July 2018, the applicant first mentioned that a fall in 2014 resulted in a loss of consciousness. In August 2018, she told a completely new story, now reporting 3 separate falls in 2014, with two falls resulting from slipping on water and falling on her back, and the third fall being the September 2014 incident. She did not report any loss of consciousness with any fall. At a physical therapy session, the applicant indicated that she spent "all of 2015" in bed, but this was obviously untrue, because she flew to Bolivia for a tummy tuck in December and returned for Christmas. At the neuropsychological evaluation with Dr. Umfleet in December 2018, the applicant again provided a different account, this time asserting that her fall in the park left her unconscious for 30 minutes. In May 2019, she claimed she was pulling Bronner's wheelchair up a parking lot bump when she fell onto the bump and struck a nearby bucket with her head. She claimed a loss of consciousness, but this time she claimed the unconsciousness lasted multiple hours. These years of inconsistencies show that the applicant cannot be considered credible in regards to reporting her own medical history. According to the respondent, the applicant could not keep reality separate from fiction in her medical records, and the records show that she was not truthful with her medical providers.

The respondent also argues the applicant is not credible, and her claim that she loses time at random is not supported by any medical records but appears to be an attempt to make her story "make sense." The respondent points out that the applicant does not seem to be having memory issues now when detailing what supposedly happened 8-10 years ago. She also exhibited drug-seeking behavior in July 2016, which is further evidence that she cannot be considered reliable. Though the applicant attempts to assert that her abdominal surgery in Bolivia was to tie her muscles together, the respondent argues that the medical records show this was a "tummy tuck" procedure. It asserts that there is no situation in which her cosmetic surgery was related to the work incident, and the medical records do not contain any evidence that the surgery was work-related. Given the applicant's lack of credibility, the respondent argues that her account of the work incident cannot be taken at face value. Finally, regarding the applicant's assertion that the respondent is responsible for attacks on her car, the respondent argues that this is beyond absurd and extremely irresponsible to make without proof. The respondent asserts that it has no knowledge of those incidents.

What is the extent of the applicant's disability from the work injury?

For the applicant's head and neck claims, though the applicant claims these injuries from the September 5, 2014, work incident, her claims are not supported by the medical records. First, it is significant that when the applicant first sought medical treatment nearly a month after the incident, she did not mention any head or neck injury. She reported only several years of chronic back pain after pushing a client in a wheelchair through the grass. There was no report of any fall, much less a fall that caused the applicant to strike her head and lose consciousness. There were not even any reports of head pain or contusions. The emergency room sought only an x-ray of the lumbar spine, not the cervical spine, and no MRIs were ordered. She was diagnosed with only chronic back pain. Though the applicant asserted that her English was very broken, and that she believed it was a miscommunication, that would not explain why, just 3 days later, when speaking to Dr. Dettloff with a translator, she reported that she had fallen onto her buttocks in March of 2014, but still did not report falling or hitting her head in the September 2014 incident. At that time, Dr. Dettloff noted the applicant was pushing her client in a wheelchair on some grass and felt sudden severe back pain that caused her to fall. Again, the medical provider sought an MRI of the lumbar spine, but not of the cervical spine or head, which shows that a head or neck injury was not raised with the initial medical providers.

The applicant also testified that she did not mention a head injury because she had not noticed that she hit her head; she felt pain and thought it might be the pillow and how she was sleeping. She speculated that obviously by falling on her back, she must have hit her head. However, it is not true that someone falling on their back must have hit their head. Also, if it is true that the applicant had fallen 2 or 3 previous times and hit her head and lost consciousness in 2014, it is not credible that she would sustain another fall and not consider whether she had hit her head. Her testimony was also contradictory that she told the doctor about a head injury and the doctor ignored it, and that she did not realize she had hit her head. The commission finds that the applicant did not mention that she hit her head when she first sought treatment after the work incident because she did not do so. Her various versions of what happened in 2014 with several falls changed, and the applicant seemed to conflate different falls and injuries with the work injury. She indicated at times that her injuries related to earlier falls with loss of consciousness, but also testified that she did not report 3 prior falls and did not seek medical treatment for those falls because she always got better. She also testified that the pain had gone away from the prior accidents and she was hopeful the pain would go away from the work injury. Given the applicant's confusing and conflicting versions of the various falls, the commission does not find her credible that she injured her head and lost consciousness for several hours on September 5, 2014.

Even at the end of October, when she treated with Dr. Frank, the applicant did not report a head or neck injury, though she did report thoracic pain at this time. The version of the incident that the applicant related to Dr. Frank was similar to what she related to Dr. Dettloff, i.e., that she developed pain when pulling a wheelchair across a grassy field. There was no medical report showing the applicant alleged that she fell and hit her head or neck. Even when she next sought medical treatment for her back nearly 2 years later, in 2016, the applicant did not mention falling or hitting her head.

Though she mentioned pain in her head at times thereafter, she did not relate to a medical provider a version of the September 5, 2014, work incident that involved a fall with a loss of consciousness until July 2018, almost 4 years after the work incident. The only evidence of a head injury is from the applicant's various and inconsistent versions of what happened in 2014. Finally, even if the applicant had shown that she hit her head in the work incident, the applicant has not shown that her symptoms were different than those she had prior to the September 2014 work incident; the various testing that she had done was essentially normal, and Dr. Umfleet specifically stated that the injuries she alleged would not account for her reported cognitive decline over time. Therefore, the commission affirms the administrative law judge's decision as to these alleged injuries.

For the applicant's low back injury claim, though it took her a while to seek medical attention, she did report back pain to the emergency room, to Dr. Dettloff, and to Dr. Frank, and the respondent has conceded that she sustained a back injury in the work incident. The issue for the lower back claim is the nature and extent of the injury. After reviewing the records carefully, the commission finds that the evidence still raises legitimate doubts that the applicant sustained anything more than low back and pelvic contusions/strains in the work incident.

First, though the applicant claimed she had had no prior problems with her back before the work incident on September 5, 2014, this was contradicted by the applicant when she indicated that she had had 2 or 3 prior falls onto her back in 2014. She also reportedly told the emergency room when she first sought treatment that she had several years of chronic back pain. There are no records from Bolivia in the record, so the records are not complete as to her prior medical history to be able to confirm that she had no problems with back pain prior to the work incident. Second, the October 2014 MRI showed mild age-related degenerative changes and no acute injury. Dr. Frank found that the applicant's range of motion was limited, but inorganically so, which is consistent with what Dr. Siddiqui ultimately noted in his WKC-16-B that the applicant had limited voluntary range of motion. Dr. Frank thereafter found the applicant's symptoms were disproportionate to any physical exam findings and questioned the authenticity of the applicant's complaints. It is significant that he returned her to full duty work without restrictions as of October 2014. Third, the applicant did not seek medical treatment for back pain for almost 2 years after being returned to full duty work. Even then, the x-rays showed no acute abnormality and only mild multilevel degenerative disc disease; and the 2021 lumbar MRI showed no changes from 2014. Fourth, the applicant's treating doctors after this had not treated the applicant right after the injury and had only the applicant's erroneous versions of what happened to rely upon in her treatment, so their causation opinions are not credible. The commission finds Dr. Karr credible that the applicant sustained minor injuries that resolved without permanent disability, and that her perceived disability principally requires psychiatric and social services management. Based on these considerations, there are significant legitimate doubts that the applicant sustained anything more than work-related low back and pelvic contusions and/or strains in the work incident and the commission affirms the administrative law judge's decision.

The commission notes that the applicant also tries to claim in her various documents that her bladder issues and need for the tummy tuck surgery were necessitated by the fall and back injury. The applicant did have treatment for a vaginal wall prolapse and mixed urinary incontinence, but no doctor provided a WKC-16-B supporting causation for these conditions, and the medical records show that Dr. Davison opined that she did not believe the prolapse or incontinence were related to the work injury, but they were structural and related to previous pregnancy and childbirth. For the tummy tuck surgery, the only support for this claim is the applicant's assertion that someone told her that the back of her muscles from her lower abdomen were ripped or torn, and she should talk to her primary doctor or internal doctor about it. This is what she claims the surgery was for, but there is no WKC-16-B that this condition was caused by the work incident, and there are no medical records from Bolivia in support of this. Therefore, the applicant also failed to prove that any of these other conditions were caused by the work-related injury. Accordingly, the administrative law judge's decision is affirmed and the hearing application is dismissed with prejudice.

cc: Atty. Hayley Clark