The social security number and dates of birth have been redacted from this opinion.

STATE OF MICHIGAN
MICHIGAN DEPARTMENT OF LABOR AND ECONOMIC OPPORTUNITY
WORKERS' COMPENSATION BOARD OF MAGISTRATES

John Kinney,
SS# XXX-XX-XXXX
Plaintiff,

Vs

Capital Area Transport Authority,
Defendants.
_____/

OPINION

APPEARANCES:

THE PLAINTIFF- Pro Per
THE DEFENDANTS- Lindsay Dangl (P:73231)

TRIAL:

Trial was held on September 19, 2022, in Okemos, Michigan. Trial was continued until October 3, 2022. The record was closed on that date and the matter deemed submitted for Decision.

CLAIM:

Plaintiff filed an Application for Hearing which was received by the Agency on May 9, 2018. Plaintiff claimed that on December 17, 2017, while in the course of his employment he struck his head on a bus shelter and developed a subdural hematoma.

STIPULATIONS:

The parties stipulated that they were both subject to the Act, that the employer was self-insured and carried the risk on the date of the alleged injury and that the defendant employed the plaintiff on the date of injury. The employer denied that a

personal injury arose out of and in the course of employment and denied timely notice. They admitted to an average weekly wage excluding fringe benefits of $1109.38. The appropriate Worker's Compensation rate was listed as $668.38. There was no dual employment alleged. The plaintiff received $362 per week in unemployment benefits from January 6, 2018, through March 10, 2018. Plaintiff has a pension subject to section 354 of the act allowing coordination in the amount of $348.24 per week. There was no stipulation as to IRS tax filing status.

ISSUES:

1. Did plaintiff meet with a personal injury on December 19, 2017?
2. Did a disability arise as a result of the alleged injuries?
3. Did a wage loss occur ?
4. Was plaintiff entitled to medical expenses and treatment?
5. What is the Plaintiff's tax filing status?

LAY WITNESSES:

Plaintiff: John Kinney
Matt Green
Sean Gleason
Allen Wood

Defendant: Marsha Brown
Bradley Funkhouser

WITNESSES TESTIFYING BY DEPOSITION:

Plaintiff: None

Defendant: Brian Kirschner M.D. (Exhibit B)
Firas Mohammad Riyazuddin M.D. (Exhibit F)

EXHIBITS:

Plaintiff:

Plaintiff's Exhibit #1: Medical records from McLaren and Sparrow

Plaintiff's Exhibit #2: Office note from Lansing neurosurgery for date of treatment May 3, 2018. Plaintiff was seen in follow-up by Dr. Charles H. Bill MD, PhD. The office note was contained within the records of Dr. Firas Riyazuddin plaintiff's treating physician which were subpoenaed by the attorney for the employer.

Defendant:

Defendant's Exhibit A: Personnel File.
Plaintiff was among the finalist for the position of shelter and sign\weekend maintenance supervisor. It was noted the plaintiff has supervisory skills in a nonunion environment with college students, has CDL AP snow removal experience, and a school bus driver. Good computer knowledge. A letter dated October 24, 2006, offering the job to the plaintiff at $38,500 per year was made. The plaintiff was disciplined for one rule infraction July 17, 2013. He was sent letters of congratulations from 2012 to 2016. In 2016, he obtained nine years of service and was given an additional week of vacation time. He was given a wage increase October 1, 2016 and was given another wage increase October 2, 2017. Plaintiff would timely acknowledge receipt and implementation of any new rules concerning drugs, alcohol, and work safety.

Defendant's Exhibit B: Deposition testimony of Brian Kirschner, M. D., taken July 29, 2022.
Dr. Kirschner is a board-certified neurologist. He reviewed several medical records and reports and issued his own report May 8, 2019, which was attached as a deposition exhibit. Thereafter he performed an examination of the plaintiff on June 2, 2020, and authored a (4) four-page letter report under the same date which was attached as a deposition exhibit. He testified he reviewed a neurosurgical consult report from Dr. Charles Bill dated March 6, 2018. A CT scan had showed a subdural hematoma. Dr. Bill performed a left craniotomy to evacuate the SDH (subdural hematoma). Unfortunately, a CT scan the next day showed that the fluid continued to accumulate. A repeat craniotomy was performed March 10, 2018. Dr. Kirchner concluded in summary, Mr. Kinney presented with acute headaches and subtle neurologic symptoms in March 2018, and imaging revealed an acute-on-chronic left subdural hematoma that warranted surgical evacuation. He had a very complicated postoperative course including status epilepticus. He continued to report many symptoms in July 2018, though his tremors were not due to seizures. Dr. Kirchner opined that there was no mention of a possible work-related trauma in the 4 inches of medical records he reviewed. He thus concluded that the cause of the chronic subdural hematoma is not identified in these medical records. Based on these records, there's no reason to believe that an alleged work-related trauma caused or contributed to Mr. Kinney's neurologic presentation.

In the June report Dr. Kirchner takes a history that the plaintiff was working in December 2017 when he struck his left forehead while performing maintenance on one of the shelters maintained as a bus stop. The doctor testified, "He turned, and the left side of his forehead struck the bus shelter, caused him to be dazed, but he did not lose consciousness. He was able to continue to work, and he did not report the incident to his supervisor." He told the doctor he was fired in January

2018 and claims Dr. Bill related his head injury to his subdural hematoma. Dr Kirschner commented he would be happy to review Dr. Bill's records if they were furnished to him.

Dr. Kirschner was asked if the term intracranial hemorrhage is synonymous with subdural hematoma. The doctor testified, "so intracranial hemorrhage refers to any type of blood under the skull anywhere in the head, so there's different areas under the skull. There's epidural on top of the dural. There is the thick protective matter around the brain, so there's epidural on top of the dural. There's a sub dural below the dural, and then there's sub arachnoid, so the arachnoid layer is the layer of the meninges that go right over the surface of the brain, so you can have blood under the arachnoid, or you can have blood into the brain proper. All of those together are called intracranial hemorrhage. In the case of Mr. Kinney, he had imaging evidence predominantly of subdural blood, but there was a little bit of subarachnoid blood at least seen on that MRI scan, and that's why I use the term intracranial hemorrhage." The doctor was asked if he could state within a reasonable degree of medical certainty how long the intracranial hemorrhage had existed before the first medical treatment or the outpatient CT scan that prompted the emergency room visit of March 6, 2018. The doctor testified that the cause of Mr. Kinney's presenting symptoms i.e., the headache and sinus symptoms which prompted him to undergo the evaluation showed some new blood presumably which had been present a few days. However, he testified that new blood was on top of old fluid that was there. Furthermore, "The chronic fluid, it's not possible to determine how long that was there." The doctor was asked if there was any way he could tell how long that chronic fluid had been present. He responded not really. You know, there's terms we use sometimes."

By chronic the doctor stated that "is typically longer than a month, but it's really not possible on an imaging-by imaging to determine how long that fluid has been there." Dr. Kirschner testified that he could not state within a reasonable degree of medical certainty whether the hemorrhage Mr. Kinney had occurred with trauma or without trauma. He did testify that as of the date of his evaluation Mr. Kinney would need restrictions and at the time of the surgery in March 2018 and May 2018 Mr. Kinney would have been disabled.

During cross-examination Mr. Kinney asked the doctor if there was a time frame of a slow brain bleed before it became a subdural hematoma. The doctor responded, "it's always a subdural hematoma. Subdural has to do with the location, and even a tiny bit is still subdural, so it's instant. It's subdural. Bleeds can present over the course of weeks to months after trauma." The doctor was also asked if he had ever sent a patient who came in for regular visit, directly from his office to the emergency room for a suspected head trauma. The doctor testified that he sure he would have come across that scenario in his 25+ years of practicing.

Mr. Kinney asked the doctor if there were chronic phases of a subdural hematoma. The doctor asked for clarification and Mr. Kinney stated if the blood breaks down,

does that give it a phase of chronic type? The doctor answered, “Yes. Once the blood—chronic is broken down we consider that a chronic hematoma, that’s correct.

Question,” and you could have a bleed over that chronic. Is that correct? Answer: a bleed into that chronic area fluid that’s correct.”

Defendant’s Exhibit C: Department of Economic Development (Unemployment Agency). The plaintiff applied for unemployment benefits. The defendant disputed the payment of benefits based upon the plaintiff’s discharge from employment. The defendant indicated that the plaintiff was given a warning on October 3, 2017, before discharge. The plaintiff was asked to embrace his new supervisor and do what was asked or instructed of him to do. A request to attach written documentation was made to the employer and there were no records attached. In response to the question” Did the employee violate any company policy? The defendant answered no.” Kristie Bunting the HR manager, signed the document January 16, 2018. Base wages of $61,656.65 was listed. The Agency found that the plaintiff was not disqualified, finding no misconduct of the employee. Plaintiff received $4706.

Defendants Exhibit D: Agency Form 105B with job description. Dates of employment with defendant October 30, 2006, to January 2, 2018. During that time plaintiff was the supervisor of shelter and sign maintenance. Qualifications listed in the essential functions of the job description included: high school degree minimum, with college Associate degree or equivalent experience and education preferred. Must possess a valid Michigan driver’s license with eligible driving status. Able to lift and move parts, some in excess of 50 pounds. Able to perform substantial walking, standing, and bending. Proficient at basic maintenance skills and use of power tools. Must have good carpentry skills. Proficient computer skills including Microsoft office suite and other current computer applications used at CATA.

Defendants Exhibit E: Sparrow Hospital records (approximately 100 pages of 677 pages). Plaintiff was admitted March 6, 2018, with a preop diagnosis of epidural hematoma. Postoperative diagnosis included subdural hematoma. Dr. Charles H. Bill performed a craniotomy and evacuation of a subdural hematoma, on March 7, 2018. The location was the left side of the head. Throughout these records the treatment was directed to the left side of the head.

As part of the records there are notes from McLaren mid-Michigan where the plaintiff was being seen by his treating physician on March 6, 2018, at 9:15 AM. History indicated the plaintiff had had severe headaches for the past three days. He and his wife thought the symptoms began at least a month ago. They thought the symptoms in the head and sinus was related to the flu. From the doctor’s office the plaintiff was sent to Sparrow E.R. where a CT scan was performed at 12:36 PM on March 6, 2018. The impression was “Mixed density extra-axial fluid

collection in the left temporal parietal region, with associated mass effect and midline shift. This is most consistent with subdural hematoma of indeterminate age." In Dr. Bill's consultation notes his assessments on 3/6/18 @ 1503 included Cephalgia, Ataxia, Right-sided paresthesia, Subacute left SDH with mass effect and shift, and Brain compression. He reviewed the outside CT films. He recorded the CT shows "A left acute on chronic subdural hematoma with midline shift. Most of this is chronic."

Unfortunately, because of continued fluid accumulation a subsequent craniotomy had to be performed on the left frontoparietal occipital area with evacuation of the subdural hematoma. This was performed March 10, 2018. On March 14, 2018, Mr. Kinney was seen by several different specialists.

> "Mr. Kinney presents with a moderate oral phase dysphagia and a functional pharyngeal phase swallow. Mr. Kinney's oral phase is characterized by reduced buccal, lingual and labial strength and coordination as evidenced by prolonged mastication of house solids. These deficits are further exacerbated by his overall health status and decreased LOA during intake." (p202)

The speech therapist noted that

> "Mr. Kinney presents with a severe expressive-receptive language impairment and suspected verbal and limb apraxia secondary to a subdural hematoma as evidenced by deficits in verbal expression, written expression, auditory comprehension, and complex reading comprehension. OME revealed bilaterally decreased buccal, lingual and labial strength and coordination with the right-side noted to be slightly weaker than the left. During OME, patient was unable to initiate the task of sticking his tongue out, however after several verbal and visual cues demonstrated the ability to move tongue side to side with noticeably reduced strength and coordination. Informal assessment reveals severe difficulty in verbally expressing basic wants/needs at the single word level. His verbal expression is further characterized by his inability to initiate automatic sequential speech and required maximum verbal, visual and tactile cueing (Melodic Intonation Therapy) to elicit counting (1-21) and singing ("Happy Birthday"). Patient demonstrates ability to comprehend simple yes/no questions with 100% accuracy, however only 50% complex yes/no questions. Patient requires maximum verbal, visual and tactile cueing to comprehend 1 and 2 step commands. Patient is able to identify 0/6 pictures given the name of the object, however, is able to identify 6/6 pictures when given a semantic cue ("what do we sit on?" vs. "show me the chair"). Patient is able to identify 100% of pictures when given a binary written cue via pointing to the correct word. Mr. Kenny's written expression is characterized by his ability

> to legibly write his full name and copy single words upon request, however, is unable to write single letters given a verbal instruction. Patient and family was given a communication board. At this time, Mr. Kinney would benefit from speech-language services to address these deficits." (p202)

The final Summary Impression on March 14, 2018 was:

> "Mr. Kinney presents with a severe expressive-receptive language impairment and suspected verbal and oral apraxia secondary to a subdural hematoma as evidenced by deficits in verbal expression, written expression, auditory comprehension, and complex reading comprehension. OME revealed bilaterally decreased buccal, lingual, and labial strength and coordination with the right-side noted to be slightly weaker than the left." (p213)

An EEG was performed March 15, 2018. The impression was

> "This is an abnormal EEG. The slowing mentioned above is indicative of a moderate encephalopathy with structural and/or physiologic dysfunction of the left hemisphere. Two short rhythmic runs were seen over the frontal region (mainly right) that may increase the chance for seizures" (p226)

Defendant's Exhibit F: Deposition Testimony of Firas Mohammad Riyazuddin, M.D. taken September 1, 2022. The doctor testified that he was the plaintiff's endocrinologist. He is not a neurologist or a neurosurgeon, but he is board certified in internal medicine. He testified he treated the plaintiff October 19, 2017, November 20, 2017, and May 31, 2018. The first two treatments were for diabetes and the second was for serous otitis media. The doctor testified there was no history of a head injury, in October or November during the visits. Dr. Riyazuddin was asked if diagnosing a subdural hematoma or an intracranial hemorrhage was in the realm of his expertise to diagnose. The doctor responded, "not in terms of a—a detailed diagnosis, but a diagnosis such as that is usually best done by a neurosurgeon or a neurologist, and I do know that Dr. Bill was involved at some point in this case. Normally suspicion for this could happen if there were neurological findings. So as internists we do see patients who have sequela of brain bleeds, and we do collaborate in the care of these patients with their colleagues from neurosurgery. So, I do not have special expertise in the management of intracranial bleeds, but I do have sufficient experience to be able to suspect that there is a problem in order the right imaging studies if they are required. Often these are quite evident on imaging studies, which is the first step to diagnose these problems."

Dr. Riyazuddin then testified that he did not refer the plaintiff to Dr. Bill for treatment. He also admitted that he did not treat Mr. Kinney at any point in time for the subdural hematoma or intracranial hemorrhage. When asked if he could give an opinion within a reasonable degree of medical certainty as to what caused Mr. Kinney to have a subdural hematoma or intracranial hemorrhage, the Dr. responded" I cannot provide that opinion. That will be up to Dr. Bill."

Dr. Bills three-page office report marked as Dr. Riyazuddin Exhibit 1 was attached to the deposition transcript and the doctor was asked about the contents of the report. The doctor acknowledged that under chief complaint section the plaintiff did state he had a history this winter of hitting his head. The doctor was asked if he could state within a reasonable degree of medical certainty whether the subdural hematoma was caused by trauma. The doctor testified" subdural hemorrhages are usually caused by trauma. So, if I had to you know, speculate—I can't say., It would just be speculation." Defense counsel then asked the doctor to not speculate but instead inquired as to whether he could state within a reasonable degree of medical certainty based on the doctor's own background and expertise that this was caused by trauma. The doctor responded, "it would be—it would be based on what's evident in Dr. Bill's note, and that is something you have to get from him, not me." The doctor testified that he moved his practice to Canada in October 2018. He was in Windsor Canada when he gave the deposition. He further testified that all prior medical care and treatment is always important in treating his patients.

SUMMARY OF EVIDENCE

The plaintiff had a subdural hematoma on the left side of his head. There is no evidence disputing this finding. He continues to have significant residual findings which are apparent even to a layperson. At issue is the cause.

From the records and the testimony, it appears the plaintiff worked for the defendant from 2006 until he was terminated January 3, 2018. During his entire tenure of employment, he was the supervisor in charge of maintaining the bus stop shelters and signs along the designated routes that the buses would follow.

He testified that sometime in December 2017 while performing maintenance on one of the shelters, he slipped and struck the left side of his head. He recalls feeling dazed but did not lose consciousness. He did not seek medical treatment, nor did he report the injury to his supervisor. The above testimony is supported by medical records, as well as testimony from other witnesses. He testified he called his wife and reported the incident. His wife also confirmed this phone call in her testimony.

The plaintiff called several witnesses on his behalf. Matthew Green was a part-time driver in 2004 when he was hired. He went to full-time status and became a liaison with Michigan State University. Mr. Green provided testimony concerning

the data systems employed on the buses and in company vehicles as well as record-keeping of chargeable offenses. He admitted during cross-examination that he was not working for the defendant in 2017.

Sean Gleason was also called as a witness. He was the IT director from 2015 to October 2019. The plaintiff asked him about the "AVL". Mr. Gleason testified that is an acronym for automatic vehicle locator. There was discussion of a 7-7 file. During cross-examination Mr. Gleason testified that there was no report of injury to him on record.

Alan Wood was also called as a witness for the plaintiff. Mr. Wood commenced his employment with the defendant in 2013. There was never any discussion of an injury. Mr. Wood would call the plaintiff to direct him when repairs to a shelter was required. During cross Mr. Wood confirmed there was no report of injury.

During the plaintiff's questioning of these individuals, it was painfully clear that he had difficulty formulating his thoughts and questions. During questioning of his wife, she stated her husband's activity level had been extremely low, he complained of headaches frequently, and he slept a lot. Although I accept testimony that the plaintiff was married, there was no testimony or proof that his wife was a dependent for purposes of the Worker's Compensation statute.

Marsha Brown was called as a witness by the defendant. She testified that she is the director of human resources and has held that position since 2020. She confirmed the job description contained within exhibit D was accurate.

Bradley Funkhouser was the last witness to be called by the defendant. He is the current Chief CEO. He was named to that position on January 5, 2018. He testified he was not aware of the injury occurring December 2017. There was no report on file. He testified that the plaintiff was having problems with his supervisor and that those records were sent to Kristi Bunting, who was head of human resources at that time. The problems with the supervisor concerned the plaintiff's refusal to take trash out of the administration building.

The plaintiff had testified that he cannot recall the circumstances of his termination. He asked Mr. Funkhouser why he, (the plaintiff) would refuse to take trash out if he could lose a job paying over $60,000 a year.

On March 6, 2018, the plaintiff and his wife were at the McLaren Mid-Michigan clinic where he was seen by his treating physician at 9:15 AM. History indicated that the plaintiff had been experiencing severe headaches for the past three days. He also related that he had had symptoms in his head and sinus for approximately one month which they thought were related to the flu. Fortunately, a CT scan was available in the building where he saw his primary care physician. After the CT scanned was performed and interpreted, he was transported to the emergency room.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The plaintiff has the burden of proof to establish a compensable workers' compensation claim by a preponderance of the evidence for each element of the claim. Aquilina v General Motors, Corp., 403 Mich 206 (1978). Those elements include proving an injury or disease arising out of or in the course of employment and proving that the injury or disease has placed a limitation on the claimant's wage earning capacity in work suitable to his or her qualifications and training. MCL 418.301 (1) & (4).

In June 2008 the Supreme Court issued their Decision in Stokes v Chrysler LLC, 481 Mich 266 (2008). In that case, the Supreme Court noted:

> "The claimant bears the burden of proving a disability by a preponderance of the evidence under MCL 418.301(4), and the burden of persuasion never shifts to the employer. The claimant must show more than a mere inability to perform a previous job. Rather, to establish a disability, the claimant must prove a work-related injury and that such injury caused a reduction of his maximum wage-earning capacity in work suitable to the claimant's qualifications and training. To establish the latter element, the claimant must follow these steps:
>
> (1) The claimant must disclose all his qualifications and training.
> (2) the claimant must consider other jobs that pay his maximum pre-injury wage to which the claimant's qualifications and training translate.
> (3) the claimant must show that the work-related injury prevents him from performing any of the jobs identified as within his qualifications and training; and
> (4) if the claimant is capable of performing some or all of those jobs, the claimant must show that he cannot obtain any of those jobs.
>
> If the claimant establishes all of these factors, then he has made prima facie showing of disability satisfying MCL 418.301(4), and the burden of producing competing evidence then shifts to the employer. The employer is entitled to discovery before the hearing to enable the employer to meet this production burden. While the precise sequence of the presentation of proofs is not rigid, all of the steps must be followed."
> Stokes v. Chrysler LLC, 481 Mich 266 (2008).

The Workers Compensation Appellate Commission recently summarized their Opinion concerning Stokes v. Chrysler LLC, 481 Mich 266 (2008) and the status of the law in the case of Heider-Hagen v. Select Medical Corp, 208 ACO#165 by stating:

> "In *Stokes,* the Supreme Court then reversed the Court of Appeals and provided clear guidelines for future cases. In so doing, the decision specifically states that certain Appellate Commission decisions accurately reflect the *Sington* standard, but criticized the abandonment of the standard when analyzing cases. The Supreme Court *Stokes* decision also mandates discovery, including vocational rehabilitation expert interviews with plaintiff. Finally, the decision outlines plaintiff's obligations when proving disability. It states:
>
> First, the injured claimant must disclose his qualifications and training. This includes education, skills, experience, and training, whether or not they are relevant to the job the claimant was performing at the time of the injury. It is the obligation of the finder of fact to ascertain whether such qualifications and training have been fully disclosed.
>
> Second, the claimant must then prove what jobs, if any, he is qualified and trained to perform within the same salary range as his maximum earning capacity at the time of the injury. *Sington, supra* at 157, 648 N.W.2d 624. The statute does not demand a transferable-skills analysis and we do not require one here, but the claimant must provide some reasonable means to assess employment opportunities to which his qualifications and training might translate. This examination is limited to jobs within the maximum salary range. There may be jobs at an appropriate wage that the claimant is qualified and trained to perform, even if he has never been employed at those particular jobs in the past. *Id.*, p 160, 648 N.W.2d 624. The claimant is not required to hire an expert or present a formal report. For example, the claimant's analysis may simply consist of a statement of his educational attainments, and skills acquired throughout his life, work experience, and training; the job listings for which the claimant could realistically apply given his qualifications and training; and the results of any efforts to secure employment. The claimant could also consult with a job-placement agency or career counselor to consider the full range of available employment options. Again, there are no absolute requirements, and a claimant may choose whatever method he sees fit to prove an entitlement to workers' compensation benefits. A claimant sustains his burden of proof by showing that there are no reasonable employment options available for avoiding a decline in wages.

We are cognizant of the difficulty of placing on the claimant the burden of defining the universe of jobs for which he is qualified and trained, because the claimant has an obvious interest in defining that universe narrowly. Nonetheless, this is required by the statute. Moreover, because the employer always has the opportunity to rebut the claimant's proofs, the claimant would undertake significant risk by failing to reasonably consider the proper array of alternative available jobs because the burden of proving disability always remains with the claimant. The finder of fact, after hearing from both parties, must evaluate whether the claimant has sustained his burden.

Third, the claimant must show that his work-related injury prevents him from performing some or all of the jobs identified as within his qualifications and training that pay his maximum wages. *Id.*, p 158, 648 N.W.2d 624.

Fourth, if the claimant is capable of performing any of the jobs identified, the claimant must show that he cannot obtain any of these jobs. The claimant must make a good-faith attempt to procure post-injury employment if there are jobs at the same salary or higher that he is qualified and trained to perform and the claimant's work-related injury does not preclude performance.

Upon the completion of these four steps, the claimant establishes a prima facie case of disability. The following steps represent how each of the parties may then challenge the evidence presented by the other.

Fifth, once the claimant has made a prima facie case of disability, the burden of production shifts to the employer to come forward with evidence to refute the claimant's showing. At the outset, the employer obviously is in the best position to know what jobs are available within that company and has a financial incentive to rehabilitate and re-employ the claimant.

Sixth, in satisfying its burden of production, the employer has a right to discovery under the reasoning of *Boggetta* if discovery is necessary for the employer to sustain its burden and present a meaningful defense. Pursuant to MCL 418.851 and MCL 418.853, the magistrate has the authority to require discovery when necessary to make a proper determination of the case. The magistrate cannot ordinarily make a proper determination of a case without becoming fully informed of all the relevant facts. If discovery is necessary for the employer to sustain its burden of production and to present a meaningful defense, then the magistrate abuses his discretion in

denying the employer's request for discovery. For example, the employer may choose to hire a vocational expert to challenge the claimant's proofs. That expert must be permitted to interview the claimant and present the employer's own analysis or assessment. The employer may be able to demonstrate that there are actual jobs that fit within the claimant's qualifications, training, and physical restrictions for which the claimant did not apply or refused employment.

Finally, the claimant, on whom the burden of persuasion always rests, may then come forward with additional evidence to challenge the employer's evidence. [*Stokes, supra*, pp 281-284; footnote omitted.]

The Supreme Court also reiterated that plaintiff must prove wage loss. While the Worker's Disability Compensation Act clearly defines wage loss in MCL 418.371, the courts have interpreted wage loss differently. In *Haske, supra*, the Court required plaintiff to prove that he suffered an actual loss of wages after a work injury and that the work injury caused the subsequent wage loss. While the *Sington* Court overruled the *Haske* interpretation of disability, it upheld the need for plaintiff to prove wage loss. Further, the Court in *Sington* failed to offer any different interpretation of the wage loss requirement. In *Stokes* the Court of Appeals did not address wage loss other than expressly vacating the Appellate Commission majority view of wage loss. Finally, the Supreme Court *Stokes* decision mandates that plaintiff prove wage loss, but did not expound further. Thus, we must apply the two-part *Haske* requirement."

As I was reviewing the exhibits and the testimony, my thoughts kept drifting back to the plaintiff's question or statement, why would I risk losing the job paying me over $60,000 a year by refusing to take out some trash? There was no written evidence or disciplinary records entered by the defendant regarding the termination. According to the unemployment agency records (defendants exhibit C) payment of benefits were disputed based upon the plaintiff's discharge from employment. The defendants written response indicated the plaintiff had been given a warning on October 3, 2017, before the discharge. What happened between October 3, 2017, and January 3, 2018? The unemployment agency made a request to attach written documentation to the employer and there were no records attached. In response to the question" Did the employee violate any company policy? Kristi Bunting the HR manager answered no. The agency found that the plaintiff was not disqualified finding no misconduct on the part of the employee. The plaintiff received a total of $4706.

The Court reviewed the entire personnel file (defendants exhibit A). There was only one disciplinary action taken against the plaintiff. In 2013 he was using the defendant's tools to work on his own vehicle. He was given a verbal and written warning advising that if it occurred again, he would be suspended for one to three days. What action or activity was so egregious and contained in the warning on October 3, 2017, leading to the discharge? Especially since it was given a day after a pay raise and an additional week of paid vacation. We have the CEO testifying that the plaintiff failed to follow his supervisor's order. The only order we know of in testimony taken, was failure to take the trash out. Mr. Funkhouser could not recall the last name of the supervisor but testified that his first name was "Norm". Seven individuals testified at the hearing. Supervisor Norm was not one of them. No explanation was offered as to why he would not be testifying. It would not be unreasonable to draw a negative inference from this fact.

According to the prior human resource director, Kristi Bunting, the plaintiff was asked to embrace his new supervisor and do what was asked or instructed of him to do. The warning was given October 3, 2017. Although her request for written records confirming this was made no written documentation was forthcoming. Ms. Bunting also confirmed that the employee did not violate any company policy.

Defendant seems to concentrate on the fact that the plaintiff did not report the injury. This is not unusual, especially in a head trauma. Dr. Kirschner took a history the plaintiff was working in December 2017, "He turned, and the left side of his forehead struck the bus shelter, caused him to be dazed, but he did not lose consciousness." He testified the CT scan dated March 6, 2018, which he reviewed showed an acute-on-chronic left subdural hematoma. He testified you could not tell how long the chronic fluid identified on the CT scan had been present. The doctor testified that if the blood breaks down it would then be described as a chronic type of phase. Once that happens it is considered a chronic hematoma. Dr. Kirschner testified that as of the date of his examination the plaintiff would need restrictions. At the time of surgery in March and May, the plaintiff would have been disabled. Dr. Kirschner was asked about Dr. Bill's consultation report. Dr. Kirschner testified that he would be happy to review Dr. Bill's records if they were furnished to him.

Defendant took the deposition of Dr. Riyazuddin, who was the plaintiff's endocrinologist in 2018 before moving to Canada. The doctor was asked to review the three-page office consultation report from Dr. Bill. When asked about the contents the doctor testified

under the chief complaint section the plaintiff stated he had a history of being hit in the head this past winter. Dr. Riyazuddin was asked if he could state within a reasonable degree of medical certainty whether the subdural hematoma was caused by a trauma. He testified subdural hematomas are usually caused by trauma. He stated he would probably be speculating if he ventured an opinion. The doctor testified that it would be best if that opinion was obtained from Dr. Bill.

Plaintiff's Exhibit 2 is a three-page consultation report from Charles Bill MD. Dr. Bill was the neurosurgeon that was consulted when the plaintiff presented to the hospital. A copy of his consultation report was contained within Dr. Riyazuddin's records. At his deposition, the doctor acknowledged he did not refer his patient to Dr. Bill. That was the reason defense counsel objected to the report of Dr. Bill claiming it was hearsay. However, the purpose of the hearsay rule is to prevent the introduction of evidence that may not be reliable or subject to cross-examination. It is common practice for a hospital to record the patient's treating physicians, whether they are a general practitioner or an endocrinologist. It appears that Dr. Riyazuddin received a copy of Dr. Bill's report because of this relationship. In addition, Dr. Bill's report was part of the records subpoenaed by defense counsel and contained a certification from the record custodian attesting to the authentication of the records which were kept in the normal course of a business.

DISABILITY AND EXPERT CREDIBILITY

Dr. Kirschner testified that based upon the records provided to him he could not find a work relationship. On the other hand, he acknowledged the first objective testing performed March 6, 2018, showed what he termed "chronic". He testified there was no way to date the findings, and some could be present for weeks to months. He testified he was willing to review Dr. Bill's records.

Dr. Riyazuddin is a board-certified internist. He testified he saw the plaintiff October 19, 2017, and November 20, 2017. He was asked if he received any history of an injury to the patient's head. He responded no. The injury was not until December 2017. He did see the plaintiff May 31, 2018, for serous otitis media. He did not receive any history of head injury at that time. He testified as an internist he sees patients who have sequelae of brain bleeds coordinating the care of these patients with their physicians from neurosurgery. It is interesting that he was of the opinion that most subdural hematomas are caused by trauma.

We have several reports from Dr. Bill contained in the Sparrow records as well as his consultation report. In the 2018 report he notes discussing his treatment

plan with the plaintiff and his wife. He opines that most subdural hematomas are caused by trauma and yet there is no history of trauma in this case.

I find that by a preponderance of the evidence the plaintiff has proven a personal injury that occurred on or about December 19, 2017.

WAGE LOSS

Based upon the testimony of Dr. Kirschner I find the plaintiff is totally disabled for the period March 6, 2018, until June 2, 2020 when the doctor opined the plaintiff could work with restrictions. Although plaintiff testified as to his education and training, there was no medical testimony offered to support total disability after June 2, 2020, or testimony as to any job searches the plaintiff may have performed since he last worked.

Defendant to receive credit pursuant to MCL 418.354 and MCL 418.358 for any payments made during the closed period above.

MEDICAL AND RELATED EXPENSES

The Defendant, Capital Area Transport Authority, are found responsible for any and all reasonable and necessary medical expenses associated with the subdural hematoma, its sequelae, and its treatment. This treatment includes Sparrow Hospital and the therapy received at Mary Free Bed.

IT IS HEREBY ORDERED that the defendants shall be responsible for reasonable and necessary medical expenses, pursuant to MCLA 418.315, pursuant to cost containment relative to the treatment for subdural hematoma.

ATTORNEY FEE

IT IS HEREBY ORDERED that no attorney fee is payable. Plaintiff's prior attorney did not assert a lien for a fee and waived all costs at the Motion to Withdraw which was granted.

IT IS HEREBY ORDERED that the defendants shall pay interest in accordance with MCLA 418.801(6) on any unpaid amount.

THE ABOVE FINDINGS ARE INCORPORATED BY REFERENCE INTO AN ORDER ISSUED THIS DATE AND THE ATTACHED ORDER IS ALSO INCORPORATED HEREIN BY REFERENCE. IT IS SO ORDERED.

WORKERS' COMPENSATION
BOARD OF MAGISTRATES

_____
J. WILLIAM HOUSEFIELD, Magistrate (255G)

Signed this 28th day of November, 2022 at Okemos, Michigan.