WORKERS COMPENSATION COMMISSION

CERTIFICATE OF DETERMINATION

Issued in accordance with section 294 of the *Workplace Injury Management and Workers Compensation Act 1998*

Matter Number: **6169/19**
Applicant: **Donna Carey**
Respondent: **Tim Cook Pty Ltd**
Date of Determination: **10 February 2020**
Citation: **[2020] NSWWCC 38**

The Commission determines:

1. Award for the respondent in respect of the allegation of a frank injury to the right upper extremity (shoulder) on 16 November 2015.

2. Award for the respondent in respect of the allegation of a consequential injury/condition in the right upper extremity (shoulder).

3. The permanent impairment dispute in respect of the left upper extremity (shoulder) and scarring (TEMSKI) resulting from the injury on 16 November 2015 is remitted to the Registrar for referral to an Approved Medical Specialist for assessment of whole person impairment.

A brief statement is attached setting out the Commission's reasons for the determination.

Deborah Moore
Arbitrator

I CERTIFY THAT THIS PAGE AND THE FOLLOWING PAGES IS A TRUE AND ACCURATE RECORD OF THE CERTIFICATE OF DETERMINATION AND REASONS FOR DECISION OF DEBORAH MOORE, ARBITRATOR, WORKERS COMPENSATION COMMISSION.

S Naiker

Sarojini Naiker
Senior Dispute Services Officer
As delegate of the Registrar

STATEMENT OF REASONS

BACKGROUND

1. The applicant, Donna Carey, was employed by the respondent, Tim Cook Pty Ltd as a Business Manager. Her duties generally involved managing the office, looking after payroll and book keeping.

2. By an Application to Resolve a Dispute (the Application) registered in the Commission on 25 November 2019 she claimed that on 16 November 2015 "I was reaching for a box of archived files on a shelf, above head height. As I attempted to bring the box down towards [me], I lost control of it due to its weight, and went to grab the box with both hands to stop it from falling. In the process, I suffered injury to both shoulders."

3. She added, "Further or in the alternative, the worker suffered injury to her right shoulder due to overuse and overcompensating for her injured left shoulder."

4. She sought lump sum compensation in respect of 21% whole person impairment (WPI) in respect of the left upper extremity, 2% WPI in respect of the right upper extremity and 2% for scarring (TEMSKI).

5. Liability for the injury to the left shoulder on that date was accepted by the respondent's insurer, Employers Mutual NSW Limited, but denied in respect of either a frank or consequential injury to the right shoulder.

ISSUES FOR DETERMINATION

6. The parties agree that the issues in dispute were as set out in paragraph 5 above.

PROCEDURE BEFORE THE COMMISSION

7. I am satisfied that the parties to the dispute understand the nature of the application and the legal implications of any assertion made in the information supplied. I have used my best endeavours in attempting to bring the parties to the dispute to a settlement acceptable to all of them. I am satisfied that the parties have had sufficient opportunity to explore settlement and that they have been unable to reach an agreed resolution of the dispute.

EVIDENCE

Documentary Evidence

8. The following documents were in evidence before the Commission and taken into account in making this determination:

    (a) Application to Resolve a Dispute and attached documents;

    (b) Reply and attached documents;

    (c) Late Documents filed by the applicant on 22 January 2020.

Oral Evidence

9. No oral evidence was adduced.

THE EVIDENCE DISCUSSED

10. In her statement dated 7 November 2019 the applicant said:

> "On 16 November 2015… I was downstairs in the storeroom moving boxes… While reaching above shoulder height to move one of these boxes, it was much heavier than anticipated. I lost control of the box and strained as I attempted to stop it from falling. I managed to put the box down safely but was aware of pain in both of my shoulders after that, especially on the left side.
> I thought the pain would go away so I continued working in the office. When I went home that night and over the next few days, I noticed an increase in pain especially at night.
> [I saw] Dr Mahadev at Kogarah Railway Medical Centre on 22 November 2015. He prescribed painkillers and asked me to get an ultrasound and an x-ray of my left shoulder. I was told I had a torn rotator cuff.
> I was referred to Dr George Murrell, Orthopaedic surgeon at St George Hospital on 30th November 2015.

Injections and physiotherapy provided limited benefit but I was still taking strong painkillers and there was no lasting relief.
I continued working, doing suitable duties and my pain did not ease up.
I was eventually referred to another orthopaedic surgeon, Dr Doran Sher.
He recommended surgery and performed an arthroscopy on my left shoulder on 1 September 2016.
I had around 4 weeks off work to recover from that operation and then returned to my normal role.
I am right-handed and I avoided using my left arm when at work and at home. I began to notice an increase in pain in my right arm and shoulder due to overcompensating.
I took care to completely avoid pushing and pulling with the left arm…
Just 8 days before my final meeting with Dr Sher I was still very concerned about the pain…
My left shoulder steadily deteriorated and I was eventually told that the only viable treatment option was a shoulder replacement operation. I went to see Dr Hugh Jones…he suggested a reverse shoulder operation…He performed surgery in September 2018.
I had around 4 weeks off work and then returned to my usual work duties with restrictions.
I cope by taking medication for pain relief, using a TENS machine and I continue to do home based exercises...
I had no issues with my arms or shoulders until my work accident. I was not restricted in any way with any issues with my arms and my shoulders until the work accident...
EML have also relied on a report from Dr Sher dated 13th January 2017 which states that I was, in his words, 'pain free' and 'very happy' after the operation. However, the next sentence in that same report contradicts this by stating that I was still taking Endone and Tramadol for pain relief ongoing. This is because I was still in pain and not 'pain free' as Dr Sher claimed. I do not recall ever telling Dr Sher that I was pain free. He has misstated this completely in his report.
Since the surgery I am still in pain and still have restricted movement so replacing the whole shoulder hasn't helped. I continue to take Endone and Panadol and Nurofen when required...
My right leg was damaged when I was a young girl and I walk with a walking stick and also use a wheelchair occasionally but I can still work and earn my living. Now it is more difficult to use my stick and when I do use my wheelchair it is painful to use.
I do not believe that osteoarthritis is a factor in this situation because I could live my life perfectly normally before the accident and now I can't…"

11. The applicant was seen at the request of her solicitor by Dr Bodel. He prepared a report dated 2 July 2019. He obtained the following history:

> "She was in a back storage room at the workplace and was moving some items including large archive boxes with files…While undertaking this activity, she was reaching above shoulder height to lift up one of these boxes and it was much heavier than anticipated. She lost control of the box and it fell, causing an injury to both shoulders, but particularly the left shoulder. It fell towards her and she strained vigorously to control it and did manage to put it down safety but she was aware of pain in both shoulders after that. The pain spread to the arms."

12. Dr Bodel continued:

> "She was then referred to see Professor Murrell, an orthopaedic surgeon at St George Hospital. He advised conservative care with physiotherapy and an injection of local anaesthetic and hydrocortisone which was done on two or three occasions. There was some temporary benefit but no lasting improvement…
> She was eventually referred to Dr Doron Sher, another orthopaedic surgeon, and she had an arthroscopy on the left shoulder on 01 September 2016, some 10 months after the surgery. There was a minimal improvement in range of motion and pain levels in the left shoulder but only for a temporary period…
> The left shoulder in particular has steadily deteriorated over time and eventually she was told that the only viable treatment option for her was a shoulder replacement. She was sent to see Dr Hugh Jones, another orthopaedic surgeon, about this and she did have the shoulder replacement done in September of 2018, just nine months ago…
> For the right shoulder she has had no surgical intervention."

13. On physical examination, Dr Bodel said:

> "She has a slight restriction of shoulder movement on the right hand side and she has a healed scar over the front of the left shoulder…
> There is generalised wasting in the left shoulder girdle and there is the healed scar, consistent with the total shoulder replacement. This scar is a moderately complicated surgical scar. There is no instability in either shoulder…"

14. Dr Bodel noted various radiological reports, all confined to the left shoulder.

15. He concluded:

> "This lady suffered an injury to both shoulders but the left much worse than the right, in the incident that occurred at work on 16 November 2015…
> The diagnosis was a full thickness tear of the supraspinatus tendon in the region of the left shoulder and also some rotator cuff pathology in the right shoulder as well…"

16. Dr Bodel assessed impairment as set out in the Application.

17. As noted in the evidence referred to above, the applicant was treated initially by Professor Murrell then Dr Sher and Dr Jones.

18. There are numerous reports from these treating specialists contained in the Application. I do not propose to set them out in any detail.

19. In summary, it is clear that the applicant sustained a quite significant injury to her left shoulder.

20. However, nowhere in any of the reports from these doctors is there any reference to any injury to the right shoulder, nor is there any reference to any symptoms in the right shoulder.

21. Some examples of the evidence are as follows.

22. In a report to Dr Sher dated 16 May 2016, the referring doctor, Dr Nabil Janji wrote:

> "She had an injury at work exactly 6 months ago affecting the left shoulder…She has been on conservative treatment with injections and physiotherapy. She has improved but in the last 2 months things have plateaued…"

23. In his initial report dated 19 May 2016 Dr Sher said:

> "As you know she is a 56 year old right handed office worker who in November of last year caught a falling hamper and developed pain in her shoulder. She said it felt like a pulled muscle and over the following few days had increasing pain in the shoulder…"

24. In his pre-operative report of 1 September 2016 Dr Sher diagnosed "Osteoarthritis left shoulder" and performed an arthroscopy.

25. In a final report to the insurer dated 13 January 2017 Dr Sher said:

> "The diagnosis is osteoarthritis of her shoulder with biceps tendonitis. The prognosis is for gradual deterioration of the shoulder over time resulting in a shoulder replacement operation. I would expect that Mrs Carey would be fit for pre-injury duties now…In the long term Mrs Carey may well require a shoulder replacement. At the moment she is still using fairly strong analgesic medications. This will need to be taken into account when applying her workplace duties."

26. There was no reference to any right shoulder injury or symptoms.

27. The same must be said of the various reports of Professor Murrell and Dr Jones.

28. Dr Mowbray referred the applicant to Dr Jones. In her referral letter dated 14 December 2017 she said:

> "Thank you for seeing Mrs Donna Carey, age 57yrs 7mths, for an opinion and management of her 2 year history of pains in her left shoulder. She was at work when she was trying to catch a hamper above her and had pain in her left upper arm…."

29. Dr Jones first saw the applicant on 20 February 2018. He noted:

> "She presents with problems with her left shoulder. She injured the shoulder initially in November 2015 whilst lifting a box down and fell onto her left shoulder following which she had pain and stiffness… this culminated in arthroscopic evaluation by Dr Sher… She continues to work and has a reasonable range of motion but pain continues to be an issue…"

30. Clinical notes from Riverwood Medical Centre add little on this issue.

31. They commence in June 2009. The first entry relevant to this dispute is dated 17 August 2017 and says: “Total confusion re her Workers Comp matter. She has been seeing Dr Janji too for her Workers Comp…” A script was supplied.

32. The next entry on 12 September 2017 states:

> “1. On work cover for injury to L shoulder in late 2015. Ended with surgical repair with Dr D Sher....feels may eventually require shoulder replacement as not expecting full recovery. Still C/O constant pain…
> 2. Pain in R foot Fractured ??5th metatarsal in about April....
> 3. Pain in R bunion. Wants some surgical correction. To Dr Negrine.”

33. Subsequent entries in 2017 refer only to left shoulder symptoms and other complaints unrelated to this claim.

34. It is noted however that the applicant had a fall in about August 2018. She was referred to Dr Ali Ghahreman. In a report dated 18 September 2018 he said:

> “She developed acute neck pain and lower back pain following a fall. Has had no significant radicular symptoms…This is on a background of chronic pain involving the left shoulder for which she is having a shoulder reconstruction. She is also having an ACL reconstruction involving her right knee.”

35. The applicant was seen at that practice by Dr Mowbray on 14 March 2018. The entry reads: “Has seen Dr Jones who is sure she has left shoulder OA and may benefit from a hyaluronic injection…left upper eyelid has swelling. Eye NAD...”

36. In subsequent visits in 2018 an MRI of the left shoulder was arranged, and there are notes relating to the treatment by Dr Jones and the surgery in September 2018.

37. Entries after that relate to pneumonia, Vitamin D deficiency, right knee pain, Wound care, B12 injection, Insomnia, GORD with an occasional reference to the left shoulder until the entries cease on 29 March 2019.

38. There is no reference to any right shoulder complaints.

39. Clinical notes from the Kogarah Railway Medical Centre disclose that the applicant first attended there on 22 November 2015 when she saw Dr Mahadev. The entry reads:

> “L shoulder pain 2 1/2 weeks after pulling cupboard/ compacter at work. L shoulder pain - unable to abduct.”

40. The applicant attended every two or three days for the next few weeks, until she was referred to Professor Murrell in early December 2015.

41. She again attended regularly throughout 2016 up until early July 2016. No other entries are recorded since then.

42. There is no mention whatsoever of any right shoulder symptoms in those notes.

43. The notes also include a number of medical certificates, again, all of which refer to the left shoulder injury on 16 November 2015.

44. Documents from the insurer’s injury management plan also refer only to the left shoulder injury on the nominated date.

45. The applicant saw Dr Machart at the request of the insurer on 30 August 2019.

46. In a report dated 11 September 2019, he obtained the following history:

> “Mrs Carey is 59 years old. She is a full-time office manager employed by ICB Solutions. She suffered injury on 16/11/2015. She was moving boxes full of paper. She was shifting one box. She experienced a sudden onset of pain in the left shoulder and to a lesser degree in the right shoulder. The left shoulder pain was severe. She did not recall going to the doctor about right shoulder pain initially. Medical attention was not paid to the right shoulder.
> The left shoulder pain failed to settle. She came under the care of Dr Sher, orthopaedic surgeon. She had an operation, by description arthroscopy without much in the way of repair. There was minimal improvement…
> She changed doctors. Dr Hugh Jones, orthopaedic surgeon… She underwent shoulder replacement on 21/09/2018, traditional replacement.”

47. Current symptoms were reported as “Pain in both shoulders, left worse than right.”

48. Dr Machart continued:

> “Both shoulders displayed diminished movement, limited by pain and intrinsic stiffness. In the left shoulder there was a standard delta-pectoral scar without additional features.”

49. Dr Machart then proceeded to comment on other medical opinions as follows:

> “IME, Dr Bodel, 02/07/2019. Injury 16/11/2015, moving boxes. Injury to both shoulders. Diminished movement in both shoulders. Full-thickness tear supraspinatus left shoulder, and rotator cuff pathology in the right shoulder.
> Doctor's comments largely underscore the pathology of osteoarthritis which is why the shoulder replacement was conducted. If there was a substantial tear of the rotator cuff causing symptoms, then she would have undergone reverse shoulder replacement. It is possible that rotator cuff tear occurred and was repaired. If so, then shoulder replacement would have been conducted for osteoarthritis rather than for rotator cuff disruption.
> The doctor diagnosed rotator cuff disruption in the right shoulder. This was not supported by diagnostic features. Given that there is osteoarthritis in the left shoulder, and there is globally diminished movement in the right shoulder, the diagnosis of osteoarthritis in the right shoulder is likely to be correct.
> Assessment, Dr Jones, 02/02/2018. Injury in November 2015. The doctor commented on arthroscopic evaluation by Dr Sher. The principal pathology was osteoarthritis. The doctor diagnosed progressive degenerative changes in the glenohumeral joint. He suggested a hyaluronic acid injection.
> Report, left shoulder MRI, 29/06/2018. Osteoarthritis in the glenohumeral joint and a tear of the long head of biceps tendon.
> Assessment by Dr Jones and the MRI casts doubt on the diagnostic features evident to Dr Bodel, and confirmed my clinical impression that this was not rotator cuff pathology or tear, but rather osteoarthritis. No repair was conducted at the time of Dr Sher's Assessment.
> Operation Report, 01/06/2019, Dr Sher. Arthroscopic acromioplasty, biceps tenotomy and synovectomy, and chondral debridement.
> The biceps were not torn as suggested by the MRI. The doctor conducted a tenotomy. The pathology was osteoarthritis. It is possible that Dr Bodel did not have access to the medical documentation records available to me, not therefore in favourable position to diagnose osteoarthritis rather than structural derangement.”

50. Dr Machart’s opinion was as follows:

> “The incident on 16/11/2015 was not a case of structural trauma. There was pre-existing left shoulder osteoarthritis which was asymptomatic. Symptoms were triggered by the soft tissue injury on 16/11/2015. She had a shoulder replacement. Ongoing pain and stiffness were reported.
> She reported injury to the right shoulder concurrently. There is no contemporaneous evidence of medical attention or investigations of the right shoulder. It is likely that there is osteoarthritis. On the balance of probabilities, it is highly unlikely that substantial damage occurred to both shoulders concurrently, especially as both were affected by osteoarthritis.”

51. Dr Machart concluded:

> “Employment was a substantial contributing factor to aggravation of left shoulder osteoarthritis. This is because symptoms date back to the index injury, non-structural injury…
> The pre-existing pathology was substantial and documented on initial MRI…
> The right shoulder injury was reported to be concurrent with the left shoulder injury.
> As outlined above under "Diagnosis", it is unlikely that injury occurred to both shoulders concurrently, pushing a box along a shelf and lifting a box. The right shoulder pathology has not been established. On clinical grounds there appears to be osteoarthritis. It is unlikely that she suffered aggravation of osteoarthritis in both shoulders during the same incident. If so, then this was a very minor exacerbation, that was not going to have impact on the existing pathology, which on clinical grounds is osteoarthritis.
> There was no report of consequential injury. The right shoulder symptoms had not increased, and were not reported to be greatest through overuse. Evidence-based medicine is not in favour of "overuse" as causing symptoms or pathology. There is no medical evidence that the right shoulder was exposed to activities greater than what normal shoulder was expected to withstand..”

52. Dr Machart made the following assessment:

> "Scars from deltopectoral scars 0% WPI.
> Left shoulder: 21% WPI.
> Osteoarthritis was evident at the time of injury. The injury was non-structural, and did not cause osteoarthritis. Osteoarthritic symptoms would have been evident irrespective of the injury, perhaps not to the same degree, and would have inevitably led to shoulder replacement, perhaps not as early as in absence of injury. Two-thirds deduction for non-structural exacerbation through fairly minor injury is applicable.
> WPI as a result of Injury: 7%."

FINDINGS AND REASONS

53. Dealing firstly with the issue of the claimed frank injury to the right shoulder on 16 November 2015, there is absolutely no corroborative let alone contemporaneous evidence that this occurred.

54. I note that the applicant's statement is dated 7 November 2019, almost four years after the incident. It may be that, over time, her memory is distorted or confused.

55. In my view, common sense would suggest that at least some record or complaint of right shoulder problems resulting from the injury would have been mentioned at some stage, but this is simply not the case.

56. Only the two qualified specialists, Dr Bodel and Dr Machart, obtained a history of a frank injury to the right shoulder.

57. Counsel for the applicant urged that I would accept her as a witness of truth. I do not challenge the applicant's credit in this matter: there is insufficient evidence to do so.

58. I simply cannot accept her statement made so very long after the incident as an accurate reflection of the circumstances of the incident.

59. Although Counsel for the respondent suggested that I should not accept the applicant as a witness of truth, this was in the context of her statement to Dr Bodel that she had not sustained any subsequent injuries where the notes from the Riverwood Medical Centre would suggest otherwise, namely the fall in 2018.

60. I do not accept this submission. Dr Bodel was clearly making an assessment of the applicant's shoulders in accordance with the referral. I would not expect him to consider medical issues other than those relevant to the claim unless there was a specific reason to do so.

61. I cannot see such a reason in this case.

62. Counsel for the applicant also submitted that Dr Machart "seems to concede" that the mechanism of the injury was consistent with a frank injury to the right shoulder, because Dr Bodel described it, as did the applicant, as a sudden, forceful event.

63. I do not accept this. Dr Machart gave his opinion in the context of the history he obtained from the applicant, which was that she was moving boxes full of paper, "she was shifting one box. She experienced a sudden onset of pain in the left shoulder and to a lesser degree in the right shoulder."

64. The best that can be said is that the event was "sudden" as is the case in most injurious events.

65. The thrust of the applicant's submissions addressed the consequential shoulder condition, to which I will refer shortly.

66. In summary however, I am not persuaded on all the evidence before me that the applicant sustained a frank injury to her right shoulder in the incident on 16 November 2015.

67. That now brings me to the issue of the 'alternative' claim, namely that "the worker suffered injury to her right shoulder due to overuse and overcompensating for her injured left shoulder."

68. Counsel for the applicant submitted that it is not necessary to have expert medical evidence to establish whether or not a consequential injury occurred: it was "a simple causation issue."

69. Reference was made to the decision of the Court of Appeal in *Guthrie v Spence* (2009) NSWCA 369 at 194 (*Guthrie*) where the Court said:

> "The task of deciding whether a plaintiff was under a disability within the meaning of section 11(3)(b) is not the sort of matter that is capable of being solved by medical evidence alone, and there are limits on the assistance a judge can derive from medical evidence. In performing that task, medical evidence can sometimes be of great assistance in deciding whether a person has been suffering from an impairment of his or her mental condition. However, even that element of the definition could in some circumstances be proved by lay evidence, of enough instances of aberrant or inadequate behaviour. Medical evidence about the way in which a particular mental condition manifested itself could also be of assistance in concluding that it was *by reason of* an impairment of the plaintiff's mental condition that he or she was impeded in management of affairs in relation to the cause of action. Again, however, even that element could in some circumstances be proved by lay evidence, particularly when the impairment of mental condition was gross".

70. The applicant also referred to the decision in *State Transit Authority of New South Wales v El-Achi* [2015] NSWWCCPD (*El-Achi)* where Acting President Roche said at 72 and 73:

> "Though it would have been helpful if Dr Bodel had expressed his opinion in the terms of the legislation, the fact that he did not mean that the Senior Arbitrator erred in accepting his evidence. That a doctor does not address the ultimate legal question to be decided is not fatal (*Guthrie v Spence* [2009] NSWCA 369; 78 NSWLR 225 at [194] to [199] and [203]). In the Commission, an Arbitrator must determine, having regard to the whole of the evidence, the issue of injury, and whether employment is the main contributing factor to the injury. That involves an evaluative process. The Senior Arbitrator properly engaged in that process and the conclusions he reached were open on the evidence.
> The Senior Arbitrator's task was to assess the doctor's evidence, weigh that evidence against the other expert evidence, and determine whether Mr El-Achi had received the injury alleged, that is, a s 4(b)(ii) injury. He did that."

71. Reference was also made to *Murphy v Allity Management Services Pty Ltd* [2015] NSWWCCPD 49 as authority for the proposition that "material contribution [from the work injury] is a relevant test." That case however dealt with the requirements of section 60 of the 1987 Act such that its relevance is minimal.

72. I accept the overall thrust of the applicant's submissions on these decisions but I make several comments about them as follows.

73. Firstly, it is clear that at least *some* evidence should be available, lay or otherwise.

74. In this case, there is simply no evidence, other than that of the applicant in her own statement, that she sustained an injury to her right shoulder "due to overuse and overcompensating for her injured left shoulder."

75. Dr Bodel did not address this issue since he had obtained a history that both shoulders were injured in the event.

76. Dr Machart noted that "There was no report of consequential injury."

77. Not one reference to any right shoulder injury or symptoms is contained in any of the clinical notes or the reports from the numerous treating doctors.

78. This of course is in the context of the applicant attending the Riverwood Medical Centre on numerous occasions with the various complaints of other symptoms to which I have referred above, particularly in paragraph 37.

79. In my view it simply beggar's belief that over a four year period no complaint of right shoulder symptoms was made to anyone.

80. There is no lay or other evidence which may assist me on this issue, although Counsel for the applicant was at pains to point out that the severity of the injury to the left shoulder would inevitably lead to an overuse condition in the non-injured limb because, as he put it, "that's how overuse happens."

81. I accept that the left shoulder injury is significant, particularly following the shoulder replacement surgery which led to some wasting as Dr Bodel described. There are numerous examples in the medical evidence as to the nature and extent of the left shoulder injury to which Counsel for the applicant referred, and since I accept it was a significant injury, I do not propose to set out that evidence any more than I have described above.

82. The second point I make with respect to *Guthrie* is that it was a case dealing with mental health issues, and while the principles have some relevance, in mental health areas it is more likely that other lay evidence, for example, as to behaviour or presentation, or as the Court put it, "aberrant or inadequate behaviour " may be useful.

83. In the present case, if there had been *any* other evidence to support the applicant's claim, my views may well have been different.

84. The third point, as regards *El-Achi* is, as AP Roche said, that "an Arbitrator must determine, having regard to the whole of the evidence, the issue of injury, and whether employment is the main contributing factor to the injury. That involves an evaluative process…"

85. More importantly, "The Senior Arbitrator's task was to assess the doctor's evidence, weigh that evidence against the other expert evidence, and determine whether Mr El-Achi had received the injury alleged…"

86. In other words, there must be evidence upon which the task of 'weight' might be addressed.

87. In the present case, I simply have the applicant's assertion which I might add seems to be an "alternative" explanation for her right shoulder symptoms if I did not accept that she sustained a frank injury.

88. The only evidence addressing this issue is that of Dr Machart. Not only did the applicant not complain of any "consequential" condition, Dr Machart explained why he did not accept this claim as follows:

> "The right shoulder symptoms had not increased, and were not reported to be greatest through overuse. Evidence-based medicine is not in favour of "overuse" as causing symptoms or pathology. There is no medical evidence that the right shoulder was exposed to activities greater than what a normal shoulder was expected to withstand."

89. I note that the applicant is right-handed, and it would be expected that she would use her dominant arm for everyday tasks.

90. In any event, as Dr Machart pointed out, she did not complain that she had been involved in activities "greater than what a normal shoulder was expected to withstand."

91. Finally, although it is accepted that clinical notes should sometimes be treated with some caution, as was submitted, I do not accept that the absence of any reference to right shoulder symptoms over an almost four year period can be excused.

92. For these reasons, I am not persuaded that the applicant has made out her case for an injury by way of a consequential condition to her right shoulder.