WORKERS COMPENSATION COMMISSION

CERTIFICATE OF DETERMINATION

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

Matter Number: **953/20**
Applicant: **Yaser Kazimi**
Respondent: **Yanni Holdings Pty Ltd**
Date of Determination: **20 May 2020**
Citation: **[2020] NSWWCC 164**

The Commission determines:

1. Award for the respondent in respect of the claim for a consequential injury to the right upper extremity (shoulder).

2. The whole person impairment assessments in respect of the left upper extremity (shoulder) and scarring (TEMSKI) do not reach the relevant statutory threshold.

3. The applicant therefore has no entitlement to lump sum compensation pursuant to section 66 of the *Workers Compensation Act 1987*.

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.

A Reynolds

Antony Reynolds
Senior Dispute Services Officer
As delegate of the Registrar

STATEMENT OF REASONS

BACKGROUND

1. The applicant, Yaser Kazimi, was employed by the respondent, Yanni Holdings Pty Ltd as a bricklayer.

2. On 13 February 2018, whilst at work he slipped on scaffolding, and in order to stop himself from falling, he grabbed onto a brick wall with his left arm and injured his left shoulder.

3. That day, he attended St George Hospital. He eventually came to surgery at the hands of Dr Baba on 10 April 2018.

4. He claimed that subsequently he developed pain in his right shoulder as a consequence of overuse of his right arm.

5. By an Application to Resolve a Dispute (the Application) registered in the Commission on 21 February 2020 he claimed 16% whole person impairment (WPI) lump sum compensation in respect of both upper extremities (shoulders) and scarring (TEMSKI) resulting from an injury on 13 February 2018.

6. The assessments relied upon were those of Dr Bodel who assessed 8% WPI in respect of the left upper extremity, 6% WPI for the right upper extremity and 2% for scarring.

7. Liability in respect of the injury to the left shoulder was accepted by the respondent's insurer, but denied in respect of the consequential right shoulder claim.

ISSUES FOR DETERMINATION

8. The parties agreed that the only issue in dispute was whether the applicant sustained a consequential injury to his right shoulder.

PROCEDURE BEFORE THE COMMISSION

9. 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

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

    (a) The Application and attached documents;

    (b) Reply and attached documents;

    (c) Application to Admit Late Documents filed by the respondent on 29 April 2020.

THE EVIDENCE DISCUSSED

11. In his initial statement dated 8 July 2019, the applicant described in detail the injury to his left shoulder and subsequent treatment.

12. He added:

> "On 10 April 2018 I had left shoulder surgery at Norwest Private Hospital [by] Dr Mohammed Baba.
> On 21 May 2018 I consulted Dr Baba who advised me to come out of the sling and start range of motion exercises.
> On 18 June 2018 I had an x-ray of the left shoulder.
> On 18 June 2018 I consulted Dr Baba as I was still experiencing pain, discomfort and restriction of movement in my left shoulder. Dr Baba advised that I should undergo physiotherapy.
> On 27 September 2018 my GP referred me for physiotherapy and hydrotherapy.
> On 3 December 2018 my GP referred me to Dr V Manoharan as I was having problems with my stomach due to the pain relief medications I was taking including Panadeine Forte and Endone.
> On 22 January 2019 I consulted my GP as I was still experiencing pain and discomfort in my left shoulder. I am also experiencing pain and discomfort in the right shoulder.
>
> On 22 January 2019 I had an MRI of the left shoulder and the right shoulder."

13. In a supplementary statement dated 19 September 2019, the applicant described his situation as regards the scar on his left shoulder.

14. In a further statement dated 19 February 2020 the applicant said:

> "From memory I first experienced symptoms in my right shoulder shortly after my left shoulder surgery. This was gradual pain that became worse as I was using my right arm for everything as I was protecting my left shoulder. I was heavily reliant more on [my] right arm for most tasks and the pain was increasing.
> After undergoing left shoulder surgery on 10 April 2018 my left arm was immobilised for approximately 6 weeks. During this period I was using my right arm for all tasks and began experiencing pain and discomfort in my right shoulder.
> On 22 January 2019 I consulted my GP, complaining of pain and discomfort in my right shoulder.
> On 22 January 2019 I had an MR! of the right shoulder which revealed a tear.
> I find that my right shoulder is extremely weak and I struggle to use it, my right shoulder is often stiff and I find that I cannot move it anywhere near with range I usually could have.
> I found that when I was getting up from the chair I was putting all weight on my right arm because my left arm was too sore.
> I have extreme difficulty with grooming, tasks such as shaving, wiping my bottom, putting on socks, putting shoes on, combing my hair, doing up buttons, fixing a collar, even just washing my hands after struggling to go to the bathroom has become very problematic this as I am not ambidextrous, I found the pain continued to increase due the overuse of my other side.
> Having a shower and going to the bathroom was very difficult and I would mainly use my right arm. I would usually rely on my right arm to cleanse myself.
> I could not brush my teeth or my hair with my right hand due to pain in my right arm.
> I am right-handed and I find it very difficult to write because of pain in my right arm.

> I predominantly use my right arm for all tasks that involve carrying and lifting items that I am able to manage, although most tasks I cannot seem to be able to train my right arm to do and struggle, especially when there is no body around to help me.
> Getting dressed is difficult because of the pain in my right shoulder so it is a struggle for me to get dressed as I also have pain and discomfort in my left shoulder and arm.
> I can only drive short distances due to the pain and discomfort in my shoulders, I am not able to drive a manual car and more often than not struggle with the smallest of tasks such as opening a car door or buckling my belt on…
> I cannot do any maintenance around the house if something breaks, I cannot bear the weight of a hammer in either arm or pick up anything heavy…"

15. Clinical notes from the Berala Medical Clinic document the left shoulder injury and subsequent progress.

16. In April and May 2018, the applicant had physiotherapy.

17. The entry on 11 July 2018 notes "Not much improved".

18. On 27 July 2018, the entry reads: "changed the physiotherapist doing better".

19. On 27 August 2018, the entry reads: "c/o pain in right lower paraspinal region and left side of back of neck. Movements in left shoulder still restricted".

20. On 27 September 2018, the entry reads: "surgery in left shoulder done 5 months ago seen by specialist on 24/09/2018. Specialist stated that he can slowly return to his work."

21. On 31 October 2018, the entry reads: "came for review. was in Hospital with abdominal and back pain .. improved now. left shoulder lot better now, flexion and abduction up to shoulder height."

22. Subsequent consultations in November 2018 were for unrelated matters.

23. On 3 December 2018, the entry reads:

> "Surgery Consultation. came for f/u. Today c/o right shoulder pain, also pain close to scapula. wants to do MRI. Time to check left shoulder too. Also ROM in left shoulder is restricted. seen in Hospital for his pilonidal sinus and advised to get referral to surgeon."

24. Entries thereafter refer to bilateral shoulder pain, although on 25 January 2019 it was noted: "left shoulder ROM is improving, Abduction is up to 130 degrees Flexion and internal rotation improved."

25. In subsequent consultations, the applicant complained of various unrelated symptoms and on occasions when the shoulders were examined, there remained some restrictions.

26. The entries cease on 5 July 2019.

27. Clinical notes from Dr Baba were included in the Application.

28. In a letter to Dr Uddin dated 23 April 2018, Dr Baba wrote:

> "It is 2 weeks since his arthroscopic shoulder stabilisation. I have explained the operative findings to him. The wounds look good, he is neurovascularly intact. He has activation of the deltoid.

Unfortunately he went swimming last week despite post op instructions. I have warned him against this, I have advised him that this will potentially compromise the surgical result.
He can start some gentle physiotherapy…"

29. On 21 May 2018, he wrote:

> "He is keeping his shoulder in a sling. He is a bit stiffer than expected so I have encouraged him to come out of the sling and start active range of motion and strengthening exercises under the instructions of a physiotherapist."

30. On 18 June 2018, he wrote:

> "He is not really progressing as well as expected. He is quite de-conditioned. He has problems with seeing a physiotherapist on a regular basis. He has an irritable shoulder.
> We have taken X-rays today which show the shoulder to be in satisfactory position.
> He continues to smoke which I think is problematic with his rehab. He continues to have bad posture with a protracted shoulder anteriorly and some straining of his periscapular muscles."

31. On 24 September 2018, he wrote:

> "II is 5 months since his shoulder stabilisation procedure. His progress has been delayed by de-conditioning and obvious psychological component to his recovery. He really has not developed the confidence to start using that shoulder much.
> Currently, his active and passive range of motion is actually not too bad but he is obviously weaker and his shoulder feels stable lo examination. I think the going forward from now on, given that ii is 5 months down the track, it is for Yaser to start rehabilitating and returning to his work."

32. On 17 December 2018, Dr Baba wrote:

> "Unfortunately he is suffering from significant disability as a result of his pain. He is getting pain in the periscapular region with some weakness. His shoulder feels stable to examination and he has satisfactory active range of motion.
> I really do not know the cause of his persistent disability and pain. It is starting to be both mentally and physically draining. I think he would benefit from the services of a specialist pain physic who can look at it from a multidisciplinary view point. I have referred him to my colleague."

33. Dr Baba appears to have referred the applicant for other treatment but it is not known to whom any referral was made. The notes cease as at the letter of 17 December 2018.

34. The applicant was referred by his solicitor to Dr Bodel who first saw him on 28 August 2019. In a report of the same date he obtained the following history:

> "This gentleman suffered an injury at work on a building site in Hurstville on 13 February 2018,..
> The injury occurred when he was reaching away to lay a brick on top of the metal lintel.
> He lost his footing on broken brick on the scaffold and began to fall. He reached out with his left arm and supported his weight on the top of the lintel. He then had to push off with that arm and fell back onto the scaffold, not the ground below.

> He was aware of an immediate onset of severe pain in the shoulder, He had dislocated the shoulder…
> The surgery was done in April of 2018 and Mr Kazimi is disappointed with the outcome. He still has pain and a sense of instability in the shoulder and cannot push, pull, lift or use the left arm overhead.
> Approximately three months after the injury to the left shoulder and after the surgery, he noticed increasing pain on the right side because he was favouring that side to protect the injured left side.
> He had an MRI scan or an ultrasound of the right shoulder and has been told that there is a tear in the right shoulder. At this stage he has had no other interventional treatment for the right side."

35. Dr Bodel noted some restrictions on examination, but had no radiological material before him.

36. He added:

> "There is impingement in both shoulders but no instability. There is well healed surgical scarring in the left shoulder. There is no instability in the shoulders that I can detect and there is a negative apprehension test.
> There is no restriction of elbow, wrist or hand movement and grip strength is normal. There is no reflex abnormality and sensory impairment in the upper limbs."

37. He said: "There is minimal scarring on the left shoulder. It is a well healed surgical scar which does not attract a separate rating in this circumstance."

38. He assessed both upper extremities as set out above.

39. In a supplementary report dated 21 September 2019 he said:

> "I note that you have provided colour photographs of this gentleman's scarring on his left shoulder and also a supplementary statement from your client of the same date, At the time of my assessment, I was not asked to assess the scarring. I note the statement which indicates the scarring is itchy and "like a boil". I did observe that at the time of my examination.
> In accordance with the TEMSKI Scale, I would rate this type of scarring as a 2% Whole Person Impairment…"

40. In a final report dated 21 February 2020, Dr Bodel said:

> "This gentleman dislocated his left shoulder in the incident that occurred at work on 13 February 2018.
> At the time of my examination he was a man of only 25 years. I have not had the opportunity to view any x-rays or other tests, but clinically, he had some evidence of rotator cuff pathology in both shoulders. This is not uncommon in a person doing the type of work that he was involved in as a bricklayer.
> The likely pathology which has been aggravated in this circumstance is the rotator cuff pathology in the region of the right shoulder. This comes about by way of aggravation, acceleration, exacerbation and deterioration of that disease process and in pathological terms, the diagnosis is the mild rotator cuff pathology and the clinical signs of bursitis which were seen on testing on 28 August 2019 during my examination.
> I am satisfied that the injury to the left shoulder with the dislocation that occurred at work and the need to favour the right side to protect the left shoulder following that injury and the treatment has led to the aggravation, acceleration, exacerbation and deterioration of the disease process in the region of the right shoulder and that this is a material contribution towards the consequential conditions in this circumstance."

41. The applicant was seen by Dr Machart initially at the request of solicitors acting in other proceedings for the defendant/respondent.

42. In a report dated 31 January 2019, he said:

> "Mr Kazimi was injured on 13 February 2018. He was on the job laying bricks. He was on scaffolding which was apparently poorly supported. He stepped on a piece of brick, slipped and fell. He tried to stop himself from falling by reaching with his left hand on the wall. He sustained dislocation of the shoulder which had self-relocated.
> In March 2018 he suffered a further injury. This time he was assaulted. This caused pain in the left shoulder, chest, neck and face. There was no dislocation of the left shoulder.
> He went through arthroscopic reconstructive surgery in April 2018. Postoperatively, he was in a sling for 4 months. He had physiotherapy for 6 months. Progress was slow. He continued to suffer pain and stiffness in the left shoulder.
> Over the last 5 months, he developed pain in the trapezius muscle at the back close to the base of the neck. He reported this was as a result of "overuse", using the right arm. I took note of the fact that he was not working and that he reported that he was unable to conduct some aspects of house work e.g. cooking. He described "overuse" for example carrying shopping predominantly with the right hand. He is right-handed"

43. Current treatment was described as "Exercises. Exercises in the gym. Endone which apparently causes dyspepsia."

44. Current symptoms were noted as:

> "Left shoulder pain and stiffness, difficulties elevating the arm. He lives in shared accommodation in a house. He reported difficulties doing house work e.g. he reported that he was unable to cook and that he mostly was therefore eating takeaway."

45. On examination, Dr Machart noted:

> "Mr Kazimi was reasonably well muscled. There was mild wasting in the left deltoid and well-healed scars from arthroscopic surgery. There was evidence of substantial pain behaviour, clenching of the teeth and hyperventilating when conducting active ROM including elbow flexion which apparently caused intolerable pain within the latissimus muscle on the left.
> Symmetrical ROM in both shoulders was detected.
> Passive range of movement was not better, in fact worse. Attempted movement was met by withdrawal."

46. Dr Machart also was not provided with any radiological material, but he noted a number of reports he had from Dr Baba.

47. He concluded:

> "Mr Kazimi sustained a dislocation of the left shoulder. He was treated by surgical stabilisation. I did not see evidence of complications. The severity of the pain, the limitation of movement and impact on ADLs appear to be limited by non-physical factors and pain behaviour.
> The prognosis was for reasonable community activities now 1 O months after reconstruction. Reasons for substantial disability, need for Endone or severe limitation of movement are not immediately obvious.

> I did not see corroboration of the claim of overuse in the right shoulder. There was no intrinsic right shoulder pathology. Pain was reported within the trapezius muscle. Careful scrutiny of overuse did not demonstrate that he was doing anything more than he would have been otherwise with the right arm and not in a physical job bricklaying since 13 February 2018. I did not see medical evidence of complications that would contradict the predicted prognosis of being able to return to normal activities within 6 months from the time of surgery.
> The injury on 13 February 2018 caused shoulder dislocation and need for surgery. I did not see objective evidence of disability, or complications. The prognosis after reconstruction was regaining normal function.
> Diminished capacity and disability were reported. I did not see objectively defined evidence supporting the claim of substantial pain and limitation. In the absence of objective evidence of complications and in the presence of pain behaviour, I did not confirm disability."

48. When asked to assess impairment, Dr Machart said:

> "Difficult to assess precisely in the presence of pain behaviour noting however that there was shoulder disability treated by surgery. The prognosis was for there to be minor impairment that could not amount to more than 10% permanent loss of use of the left arm at or above the elbow."

49. In a further report to the solicitors for the respondent in these proceedings dated 15 April 2020, Dr Machart said:

> "Over the 5 months prior to my consultation he developed additional symptoms, pain in trapezius muscle at the back close to the base of the neck reported due to 'overuse' using the right arm. He was not working. He reported inability to do aspects of housework, eg cooking. He described overuse as for example shopping using the right hand. He is right-handed. I found symmetrically diminished movement in both shoulders. He was reasonably well muscled. There was evidence of pain behaviour. I concluded that there was dislocation of the left shoulder at the time of the initial injury. The shoulder was surgically stabilised. There was no evidence of complication. The severity of the pain, limitation of movement impact on ADLs was limited by nonphysical factors evident as pain behaviour."

50. Dr Machart then reviewed the radiological material, general practitioners notes, Dr Bodel's reports and the further statements by the applicant.

51. He concluded:

> "The diagnostic features on the recent MRI of both shoulders indicated that the left injured shoulder was stable. It is noted that symptoms started in the right shoulder in beginning of 2019 without specific injury. Right shoulder MRI suggested prior dislocation.
> I commented on the subject of alleged 'overuse', which was not supported by clinical evidence. If anything there was "underuse" in the right shoulder. I am not in agreement that the right shoulder pathology is rotator cuff pathology. There is instability, which appeared to be traumatic. The symptoms are internal impingement rather [than] rotator cuff disease, internal impingement being secondary to right shoulder instability.
> The diagnostic features have not changed since the time of my IME. The MRI of the left shoulder confirmed that the shoulder is no longer unstable and that the operation succeeded in restoring stability.
> The shoulder is now stable. There was reported pain and stiffness compounded by pain behaviour. I did not see objective evidence of disability. Stabilised shoulder is compatible with normal use including sporting pursuits."

52. When asked his opinion as to impairment, Dr Machart said:

> "My assessment was on 16 January 2019, that is 15 months ago. I noted diminished movement in relation to the injury and reconstructive surgery in April 2018. Improvement in the ROM was expected in the last 15 months. The ROM I found was not reliable at that stage. In presence of expected improvement I cannot comment whether the degree of improvement is currently noting that the WPI should be rated on the basis of ROM.
> To determine WPI, I would need to re-examine the patient.
> I did not find evidence of that was consequential right shoulder condition. This was proposed by Dr Bodel. The doctor did not comment on details of 'overuse'. When I examined Mr Kazimi, I found evidence of underuse rather than overuse. The diagnosis of overuse is not supported in literature. I took into account circumstances of physical exertion that may or may not be considered as overuse. I did not find objective evidence of overuse given the extent of the disability described which led to less activity than what he would have been exposed to in absence of the injury to the left shoulder."

FINDINGS AND REASONS

53. The determination of whether a pathological condition suffered by a worker is as a consequence of a work injury is well summarised by DP Roche in *Moon v Conmah Pty Limited* [2009] NSWWCCPD 134 (*Moon*). In that matter the worker claimed whole person impairment from symptoms experienced in the left shoulder as a consequence of an accepted injury to the right shoulder. DP Roche said at [45-46]:

> "It is therefore not necessary for Mr Moon to establish that he suffered an 'injury' to his left shoulder within the meaning of that term in section 4 of the 1987 Act. All he has to establish is that the symptoms and restrictions in his left shoulder have resulted from his right shoulder injury…
> The test of causation in a claim for lump sum compensation is the same as it is in a claim for weekly compensation, namely, has the loss 'resulted from' the relevant work injury (see Sidiropoulos v Able Placements Pty Limited [1998] NSWCC 7; (1998) 16 NSWCCR 123; Rail Services Australia v Dimovski & Anor [2004] NSWCA 267; (2004) 1 DDCR 648)."

54. Deputy President Roche then proceeded to state that the expression "results from" should be applied using the principles set out by Kirby P in *Kooragang Cement Pty Ltd v Bates* (1994) 35 NSWLR 452; 10 NSWCCR 796 (*Kooragang*). In *Kooragang* Kirby P said at [462]:

> "It has been well recognised in this jurisdiction that an injury can set in train a series of events. If the chain is unbroken and provides the relevant causative explanation of the incapacity or death from which the claim comes, it will be open to the Compensation Court to award compensation under the Act".

55. Kirby P then said at [463-4]:

> "…What is required is a common- sense evaluation of the causal chain.
> As the early cases demonstrate, the mere passage of time between a work incident and subsequent incapacity or death, is not determinative of the entitlement to compensation. In each case, the question whether the incapacity or death 'results from' the impugned work injury… is a question of fact to be determined on the basis of the evidence, including, where applicable, expert opinions".

56. Similar issues were considered in *Munce v Thomson Cool Rooms Pty Ltd* [2017] NSWWCCPD 39 (*Munce*). That case, like the present one, involved a claim for a consequential condition affecting a shoulder from an injury to the opposite upper limb. Keating P said at [101]:

> "The submission that by reason of the serious nature of the injury to the left shoulder, 'overloading' of the right shoulder was 'obvious and compelling' is rejected. For the reasons already given, far from being compelling the evidence in relation to overloading was, as the Arbitrator correctly observed, almost non-existent. It does not necessarily follow that because of a serious injury to the left limb that there must be a resulting overuse of the right limb. The causal relationship must be established on the balance of probabilities from evidence in an acceptable form. It was the lack of such evidence which caused the Arbitrator to conclude that he could not be satisfied on the balance of probabilities of a causal connection between the right shoulder condition and the accepted injury."

57. In the present case, I too am not satisfied that the applicant has established a causal connection between the right shoulder condition and the accepted left shoulder injury for reasons that follow.

58. In his initial statement of 8 July 2019 the applicant merely referred to a consultation on 22 January 2019 with his GP stating: "as I was still experiencing pain and discomfort in my left shoulder. I am also experiencing pain and discomfort in the right shoulder."

59. No explanation was provided as regards the onset of right shoulder complaints.

60. The records from the Berala Medical Clinic make no reference to any right shoulder symptoms or complaints until 3 December 2018 where the entry simply reads: "Today c/o right shoulder pain, also pain close to scapula. wants to do MRI."

61. Again, there is no explanation as to the cause of the right shoulder symptoms, let alone any complaint of "overuse".

62. That entry is some 10 months after the initial injury to the left shoulder.

63. Dr Bodel recorded that:

> "Approximately three months after the injury to the left shoulder and after the surgery, he noticed increasing pain on the right side because he was favouring that side to protect the injured left side."

64. If that was indeed the case, in my view it defies both logic and common sense that the applicant would not have mentioned this either to Dr Uddin or Dr Baba, both of whom he saw fairly regularly throughout 2018.

65. I say this particularly in light of the applicant's supplementary statement of 19 February 2020 where he also states that his right shoulder symptoms arose "shortly after my left shoulder surgery." Even if as he said, the symptoms developed gradually over time, I still would have expected some comment about them to his treating doctors, and particularly when he saw Dr Uddin in December 2018

66. In his statement of 19 February 2020 the applicant documents what I can only describe as an extraordinary list of symptoms and disabilities in his right shoulder, which, if present since shortly after his surgery, even if developing over time, one would have expected him to mention to his treating doctors.

67. These disabilities he describes are also at odds with Dr Baba's assessment of ongoing improvement in the left shoulder, albeit with some continuing symptoms and restrictions.

68. They are also inconsistent with Dr Bodel's findings on examination where he recorded:

> "No instability in the shoulders that I can detect and there is a negative apprehension test.
> There is no restriction of elbow, wrist or hand movement and grip strength is normal."

69. Dr Bodel's opinion in my view is flawed, because the history he obtained was not supported by other compelling and more contemporaneous evidence.

70. In addition, Dr Bodel did not have any radiological investigations, and thus was not able to express any opinion on the findings of the MRI of the right shoulder.

71. Dr Machart opined that the MRI of the right shoulder was consistent with "prior dislocation", the circumstances of which are unknown.

72. Dr Bodel's explanation for the pathology in the right shoulder was really based on an assumption that, where he found some evidence of "rotator cuff pathology in both shoulders" it was likely due to "the type of work that he was involved in as a bricklayer".

73. That assumption is difficult to sustain where clinical findings are not correlated with radiological and other investigative findings.

74. It is also evident that the applicant was regularly attending a gym. Dr Machart described him as "reasonably well muscled" indicating some improvement since he saw Dr Baba in June 2018 who noted that he was "quite de-conditioned."

75. Counsel for the applicant submitted that this was with his "rehabilitation" in mind, but nevertheless, that suggests that the applicant was not as disabled as his statement in February 2020 suggests.

76. This then leaves me with some doubt as to the onset of right shoulder symptoms in light of these activities. That is particularly so given his sudden presentation to Dr Uddin on 3 December 2018.

77. I accept, as Counsel for the applicant submitted, that the applicant does not need to prove that any pathology in the right shoulder was caused by overuse of that limb, but rather that any aggravation of that pathology arose in a causal sense.

78. The difficulty however with that argument is that the evidence simply does not support it for the reasons I have stated.

79. It is simply not enough to state that, because of the seriousness of the left shoulder injury, the prolonged period in a sling, and the rather slow progress with treatment it is inevitable that a consequential injury to the opposing limb will occur.

80. As is often the case, I am faced with two competing expert medical opinions, and it is difficult to reconcile them.

81. I have explained my reservations as to the opinion of Dr Bodel. Dr Machart had an opportunity to analyse the evidence in his supplementary report, and his opinion in my view is consistent with that evidence.

82. Of more importance however are the discrepancies and inconsistencies in the applicant's own evidence.

83. I am guided by the observations of Keating P in *Munce* that: "The causal relationship must be established on the balance of probabilities from *evidence in an acceptable form* (my emphasis)."

84. For the reasons stated, the evidence is not acceptable in establishing a causal relationship between the left shoulder injury and the condition in the right shoulder.

85. For these reasons, the claim in respect of a consequential injury to the right upper extremity must fail.