WORKERS COMPENSATION COMMISSION

CERTIFICATE OF DETERMINATION

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

Matter Number: **1378/19**
Applicant: **Mona Saade**
Respondent: **Scribbles & Giggles Childcare Centre Pty Limited**
Date of Determination: **1 August 2019**
Citation: **[2019] NSWWCC 262**

The Commission determines:

1. The applicant suffered injuries to her right upper extremity (shoulder) and cervical spine in the course of her employment with the respondent on 28 April 2017.

2. Remit the matter to the Registrar for referral to an Approved Medical Specialist for determination of the permanent impairment arising from the following:

    Date of injury: 28 April 2017
    Body systems referred: cervical spine, right upper extremity (shoulder)
    Method of assessment: whole person impairment.

3. The documents to be referred to the Approved Medical Specialist for consideration are to include the following:

    (a) This Certificate of Determination;
    (b) The Application to Resolve a Dispute and attached documents;
    (c) The Reply and attached documents;
    (d) The respondent's Application to Admit Late Documents dated 25 June 2019 and attached documents.

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

Cameron Burge
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 CAMERON BURGE, ARBITRATOR, WORKERS COMPENSATION COMMISSION.

A Jackson

Ann Jackson
A/Senior Dispute Services Officer
As delegate of the Registrar

STATEMENT OF REASONS

BACKGROUND

1. Mona Saade (the applicant) commenced employment with Scribbles and Giggles Childcare Centre Pty Limited (the respondent) in July 2015 as a child care worker. The applicant brought these proceedings against the respondent, initially seeking weekly compensation, medical and treatment expenses and lump sum compensation. At the hearing of this matter on 2 July 2019, the claims for weekly compensation and medical and treatment expenses were discontinued.

2. On 28 April 2017, the applicant suffered a fall at work when a child crawled behind her as she filled a water bottle at the sink in the child care centre. As the applicant stepped back from the sink, she felt the child behind her, stumbled and lost her footing in what she described as an attempt to avoid stepping on, hurting or falling on the child. The fact of the applicant having suffered this fall is not in issue in the proceedings.

3. The applicant states that she continued working, however, her symptoms worsened until mid-May 2017, when she underwent radiological investigation and obtained a medical certificate stating she was unfit for work from 20 May 2017 to 23 May 2017. She states she had some further time away from work, however, she returned to the respondent's premises on or about 31 May 2017 on suitable duties.

4. By section 74 notice dated 25 August 2017, the respondent's insurer denied liability. In doing so, the insurer relevantly alleged the applicant did not suffer an injury within the meaning of section 4 of the *Workers Compensation Act 1987* (the 1987 Act) and that her employment was neither a substantial nor the main contributing factor to any alleged injury.

5. On 22 May 2018, the applicant's solicitors made a claim for lump sum compensation in respect of a 19% whole person impairment and relied on the report of Dr Jonathon Herald dated 2 November 2017. In his report, Dr Herald assessed the applicant as suffering from 17% whole person impairment to her cervical spine, and a 2% whole person impairment to her right upper extremity (shoulder).

6. On 25 July 2018, the respondent's insurer issued a further section74 notice with respect to the claim for lump sum compensation. That notice relied on the same grounds as that contained in the notice of 25 August 2017, and additionally alleged the applicant had not suffered a whole person impairment of greater than 10%. In support of that contention, the respondent relied on the report of Dr Harbison dated 20 June 2018.

7. The applicant then commenced these proceedings by Application to Resolve a Dispute (the Application) dated 20 March 2019.

8. On 11 April 2019, the respondent's solicitors lodged a Reply. In Part 3 of the Reply, under the heading "Matters in Dispute", the respondent's solicitors wrote:

> "The respondent submits:
>
> 1. Liability is not accepted with respect to any injury to any body parts but for the neck (neck strain) and right shoulder (shoulder strain)."

9. The matter was unable to resolve, and proceeded to arbitration hearing before me on 2 July 2019.

ISSUES FOR DETERMINATION

10. The parties agree the following issues remain in dispute:

    (a) whether the respondent admitted liability for the injuries to the cervical spine and the right upper extremity at paragraph one of the Reply;

    (b) whether the applicant suffered an injury pursuant to section 4 of the 1987 Act to her cervical spine and/ or right upper extremity (shoulder) in the fall on 28 April 2017.

PROCEDURE BEFORE THE COMMISSION

11. As previously noted, the parties attended a hearing on 2 July 2019. 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.

12. At the hearing of this matter, Mr J Dodd of counsel appeared for the applicant, and Ms L Goodman of counsel appeared for the respondent.

EVIDENCE

Documentary evidence

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

    (a) Application and attached documents;

    (b) Reply and attached documents;

    (c) Respondent's Application to Admit Late Documents (AALD) and attached documents.

Oral evidence

14. No oral evidence was called at the hearing.

EVIDENCE

The applicant's evidence

The applicant's lay evidence

15. The applicant provided two statements, attached to the Application and dated 29 June 2017 and 27 July 2017 respectively. In her first statement, the applicant describes the incident giving rise to her alleged injuries as follows:

    "43. In relation to the activities I performed between the time of having arrived at work and the time of the injury, I first approached the children to say hello and to see how they were going. I then spent some time sitting on the floor with them and playing with them. After this I remember getting up and tidying the toys because they were scattered around from the kids having played with them.

44. I then made my way to the sink in the room where we keep the babies because I wanted to re-fill my water bottle as I like to stay hydrated while I work. As I approached the sink the area was clear and there were no children in the close vicinity of the sink. I proceeded to fill up the bottle. Once I was finished I then turned around and was shocked to discover that there was a child of approximately two years crawling between my legs. I don't know how he got there so quickly, it was quite sudden and I did not see or hear him coming.

45. Upon feeling the child, I was startled and lost my footing. In the process of trying to avoid stepping on, hurting, or falling on the child, I lost my balance and fell backwards on my back. I recall having landed on the back of my neck, shoulders, and upper back but moreso [sic] on the right side of my body. As such, the impact would have been more towards the back of my right shoulder, head, and neck.

46. I landed straight on the floor and did not strike or hit any objects in the process of the fall. The floor, I recall, seemed to be linoleum or faux tiles. It was not carpet or wood.

47. This occurred at approximately 1 0.30am or sometime between 10.00am and 11.00am.

48. The floor was not slippery nor were there any obstacles that might have contributed to the fall. I fell solely due to trying to avoid the child.

49. After I fell, I sat on the floor for a few seconds to find my bearings. I remember the child was crying and I started to worry that I might have hurt him. However, I then remembered that I made no contact with him and that he was probably crying because he was frightened."

16. Before making her second statement, the applicant viewed the CCTV footage of the incident at issue. In her second statement, she said:

"11. I refer to my previous statement dated 29 June 2017, and would like to make some additional comments after having viewed the CCTV footage of my incident and fall of 28 Aril 2017.

12. I acknowledge the CCTV footage of the incident is inconsistent in some respects with my recollection of the incident as recounted in my previous statement.

13. At point #44 of the statement I stated that as I approached the sink area in the moments before the incident it was largely vacant with no children present in the immediate vicinity.

14. Upon reviewing the CCTV footage, I acknowledge that there were in fact children in the immediate vicinity of the sink, sitting down at the table. However, at the same time, I note that there were not any children directly in front of the sink such that they would have been an identifiable hazard. I did not mention in my previous statement that there were children seated at the table because I did not think it was relevant. I was referring strictly to the area in front of the sink when I said the area was vacant.

15. At Point #45 I stated that I lost my footing and fell landing on the back of my neck, shoulders and upper back, although more towards the right side of my body.

16. Upon viewing the CCTV footage, I acknowledge that the manner in which I fell was in fact half forwards and half sideways, that is, towards the right side of my body. My first contact with the floor was with my right knee and right hand. I also landed with my left hand on a nearby table to my left before impacting the ground with my right upper leg and right upper body, that is, my right arm and right shoulder. I acknowledge that neither my head nor neck impacted the floor according to the footage.

17. My response to this inconsistency is simply that I recounted the incident in my previous statement to the best of my recollection. I was in a state of panic and shock at the time and I can only assume this affected my memory of the event. When you're falling you are not in the right state of mind to pay attention to every detail and it all happened quite fast. Any inconsistencies between the CCTV footage and my recount of the incident in my previous statement were not intentional."

17. The applicant stated that after the incident at issue, her symptoms persisted and worsened until 18 May 2019, when she "decided I had to do something about it." At paragraph 59 of her first statement, the applicant said:

> "What I mean by that Is, since the fall, my headaches, neck pain, and shoulder pain has been getting worse day by day. This applies to both the left and right side of my shoulders and neck, however, the worst pain has been confined to my left trapezius muscle."

18. The applicant set out her medical treatment from paragraph 65 of her first statement. In summary, she stated that in early May 2017, she attended Wentworthville Medical and Dental Centre. She said she saw a doctor there whose name she cannot recall, who she felt "wasn't giving me the attention I required so I left."

19. The applicant states that on 20 May 2017, she returned to the same practice and consulted Dr Yusuf, general practitioner. The applicant was dissatisfied with that consultation, however, Dr Yusuf referred her for an ultrasound and a CT scan, together with providing her with a certificate saying she was unfit for work from 20 May 2017 to 23 May 2017.

20. On 22 May 2017, the applicant said she had an ultrasound on her left shoulder and upper arm. On the same date and at the same practice, she also underwent a CT scan of her cervical spine. According to the applicant, she took the results of those scans to Dr Elham Nashed, general practitioner, who told her she had inflammation in her cervical spine, and recommended treatment by way of anti-inflammatories, pain killers and physiotherapy. The applicant attended for physiotherapy on a number of occasions throughout May and June 2017, and continued to consult Dr Nashed.

21. Dr Nashed then referred the applicant to Dr Jordan, rheumatologist who in turn referred the applicant for a bone scan of her cervical and upper thoracic spines, together with an MRI.

22. The applicant described ongoing pain and restriction of movement as a result of her alleged injuries. At the time of making her first statement in late June 2017, the applicant said she felt pain and tension in her trapezius muscles on both side, and mild headaches. She described severe neck pain on movement and said her neck hurt when she lay in bed, and said she had difficulty performing even simple tasks like reversing her car, owing to her neck pain.

23. In her second statement, the applicant confirmed that before the fall at issue, she had no ongoing issues with her neck or with either upper extremity.

The applicant's medical evidence

24. The applicant relied on the reports of Dr Herald, IME dated 2 November 2017 and 30 November 2017. Dr Herald took a history from the applicant in which she recounted the fall as follows:

> "As she turned to walk away she noticed the child behind her and rather than hit the child, fell heavily, awkwardly twisting and landed on the tiled floor. Her injury was predominantly on the right side and affected her neck, back, both shoulders, right arm and right leg. The impact was predominantly on the right side, however she did use her left arm to try and hold on to a table as she twisted and fell."

25. Dr Herald noted the applicant's physiotherapy had been cut short owing to lack of payment. He referred to the applicant having had approximately 10 sessions of physiotherapy, and to her referral to Dr Jordan, rheumatologist. He noted Dr Jordan's treatment regime as follows:

> "She was referred to Rheumatologist, Dr Jordan, who performed an MRI scan and a bone scan which identified that the majority of her problem was coming from her neck and referred down to her shoulders. She underwent a C6 perineural cortisone injection with local anaesthetic which seems to have gradually given her some relief after about 10 days although she still has to maintain a modified lifestyle both at work and at home or suitable duties. She has gradually had this upgraded to 5 kg but she is uncertain if she will be able to manage 5 kg as she has not had any work given to her and has been told that there are no shifts available for her on 25 September 2017."

26. Upon examination, Dr Herald noted the applicant's right shoulder had positive impingement signs and tenderness with associated restrictions to the power in the joint. In relation to the applicant's left shoulder, it was stable with negative impingement signs. The applicant's cervical spine:

> "… she has marked tenderness in the mid cervical region and a positive Spurling's test predominantly down the right side. To some degree she also gets some referred pain down the left shoulder region from her neck with a Spurling's test on the left. Neurologically her upper limb appears grossly intact, however she does have some muscle wasting around the shoulder girdle in the right shoulder region."

27. Dr Herald reported on the radiological investigations as follows:

> "A bone scan dated 06 July 2017 shows C5/6 increased uptake and was performed at PRP.
>
> On 08 August 2017, she underwent a C5/6 perineural injection of cortisone and local anaesthetic to the right side.
>
> On 18 July 2017 she underwent an MRI scan of the cervical spine which showed essentially C5/6 disc prolapse and right sided C6 nerve compression but facet joint arthritis on both sides on that level.
>
> A CT scan dated 29 May 2017 shows annular bulging of a C5/6 disc although it was difficult to determine the degree of nerve impingement and an MRI scan was recommended."

Dr Herald assessed the applicant as suffering from right shoulder impingement syndrome; resolved left shoulder impingement syndrome; resolved injury to back and right leg; cervical disc prolapse at C5/6 level with right sided C6 nerve compression, and aggravation of underlying depression.

28. When specifically asked as to whether the applicant's injuries are causally linked to the incident at issue, Dr Herald stated, "The disc prolapse at the C5/6 level and nerve compression occurred as a result of her accident or fall on 20th April 2017 as did her right shoulder impingement syndrome." In a separate impairment assessment report, Dr Herald found the applicant's left shoulder symptoms were largely referred from her neck and therefore received a 0% whole person impairment assessment. He assessed the applicant as having a 17% whole person impairment relating to her cervical spine and pain radiating down her right arm, while the applicant's right shoulder attracted a 2% whole person impairment.

29. In a supplementary report dated 30 November 2017, Dr Herald noted he had seen the CCTV footage of the applicant's fall and said:

> "After viewing the footage, I can confirm that the injuries sustained by Mona Saade, that being a workplace injury to her cervical spine resulting in a right-sided C6 nerve compression and C5/6 disc prolapse, a back injury with pain radiating down the right leg and bilateral shoulder injuries, are consistent with the fall that she sustained. Her fall was quite significant and falling backwards she had no visual cues to help her protect from her impact.
>
> Of note Mona did well to avoid significant injury to the child which may have resulted in her essentially high jumping over the child rather than stepping on the child itself. This could have further impacted on the injuries to her neck and shoulders which would have borne the brunt of the majority of her impact as she fell backwards."

30. Dr Nashed also provided a report dated 31 January 2018, found at page 15 of the Application. Dr Nashed's history of the fall was the applicant landing on the left side of her body, and since the fall complaining of neck pain and bilateral shoulder pain. She noted the applicant had been in chronic pain since the fall, and that the injuries complained of are consistent with the history of the incident as supplied by the applicant. Dr Nashed noted that over time, the applicant's right shoulder developed worse symptoms than her left, while her cervical spine pain improved for a time, however, it had recurred in and since November 2017.

31. An x ray of the applicant's cervical spine was carried out on 21 May 2017. It showed C5/6 mild degenerative disc disease with early disc space narrowing. On 22 May 2017, the applicant underwent an ultrasound of her left shoulder, which was negative for pathology at that time.

32. On 29 May 2017, the applicant underwent a CT scan of her cervical spine, the report of which is attached at page 21 of the Application. The report states:

> "The cervical vertebral bodies are intact. A little bony spurring is noted from the posterosuperior margin of C6. There is reduction in disc space height between C5 and 6.
>
> Annular bulging of the C5/6 disc is demonstrated.
>
> There is perhaps very mild annular bulging of the C3/4 disc.
>
> Facet arthropathy is noted on the tight side at the C3/ 4 and C6/7 levels and on the left side at the C2/3 and C5/6 segments.
>
> Some bony spurring is noted around the region of the right C5/6 neurocentral joint with resulting bony encroachment upon the adjacent exit foramen.

Conclusion: Annular bulging of the C5/6 disc is demonstrated. It is difficult to identify obvious compression of the adjacent thecal sac in the CT study but given the relevant clinical history an MRI scan ls suggested for further evaluation, facet joint arthropathy is noted at several of the cervical segments and is most marked at the left C2/3 facet joint."

33. In keeping with the recommendations of the CT scan report, the applicant underwent an MRI scan on her cervical spine on 18 July 2017. The report of that scan is found at page 23 of the Application. It found:

> "Findings: The cervical spine is normal in alignment. No destructive bony lesion or fracture is demonstrated. Visualised spinal cord and posterior fossa demonstrate normal signal and morphology. No evidence of paravertebral ligament injury.
>
> Occipitocervical junction and atlanto-axial joint unremarkable.
>
> C2/3: Disc unremarkable. Moderate left facet joint degeneration with mild osteophytic lipping. No associated synovitis.
>
> C3/4: Disc dehydration with mild disc bulging. No annular tear or focal disc protrusion. No canal or foraminal stenosis. Mild right facet joint degeneration.
>
> C4/5: Mild disc dehydration and disc bulging. No annular tear or focal disc protrusion. Mild bilateral facet joint degeneration. No foraminal or canal stenosis.
>
> C5/6: There is a right foraminal disc protrusion with mild osteophytic lipping. This demonstrates low signal without discrete annular tear suggesting chronicity. Moderate/high-grade right C6 foraminal stenosis with mild flattening and displacement of the nerve root. No significant canal stenosis. Left neural exit foramen capacious. Moderate left facet joint degeneration with osteophytic lipping. No facet joint synovitis is demonstrated.
>
> C6/7: Disc dehydration with minor disc bulging. Mild right facet joint degeneration. No facet joint synovitis. No annular tear or disc protrusion.
>
> No mechanical neural impingement.
>
> C7/T1: Unremarkable.
>
> There is mild increased T2 signal associated with the left T2 and T5 posterior elements; only visualised on the sagittal sequences. No associated fracture or bony lesion is associated. This is nonspecific and may represent persistent red marrow or bone stress response, uncertain in current clinical significance. The location would be atypical for vertebral body haemangiomas.
>
> Paravertebral soft tissues unremarkable.
>
> CONCLUSION: There is mild disc degeneration within the upper and mid cervical spine, most notably at C5/6. A right paracentral disc protrusion at C5/6 results in impingement of the right C6 nerve root. The protrusion demonstrates osteophytic lipping and low signal suggesting chronic aetiology. No acute annular tear or disc protrusion is demonstrated. There is no evidence of mechanical neural impingement to account for left-sided symptoms.

> There is mild/moderate facet joint degeneration demonstrated at multiple levels. On the left side, this is most notable at the left C2/3 and left C5/6 levels, however, no definite synovitis is associated.
>
> There is mild increased signal within the left T2 and T5 posterior elements only visualised on the sagittal sequences. No specific cause is identified. Clinical correlation to assess the significance is essential."

34. A SPEC regional bone scan taken on 6 July 2017 also confirmed increased uptake in the C5/6 disc, and to a lesser degree in other cervical discs. The changes were described as degenerative in nature.

35. Dr Jordan, treating rheumatologist provided a report to Dr Nashed dated 28 June 2017. He recorded the history of the fall as provided by the applicant at that time, which I note was before she had the benefit of viewing the CCTV footage of the incident. He described the applicant's ongoing symptoms as follows:

> "She had immediate head and neck pain and this has persisted and worsened. She initially went to a GP Centre and was told take Nurofen and hot packs. The pain has worsened and involves all her neck going to her trapezius and sometimes will go down her left arm to the elbow region. She is sleeping extremely poorly, waking multiple times due to pain in her neck when she moves. She went back to work a week afterward but then stopped work and has only worked from 19 to 30 May and more recently for five hours per day doing light duties from 14 June. She is currently taking Voltaren and heat packs and has had four physiotherapy sessions. The heat packs and physiotherapy sessions have helped the most. She improves a lot with rest. Her past history is remarkable for gastric irritation from some medications. ln July 2016 she had left shoulder pain for a short period time, bursitis was documented and there was impingement and she completely recovered from this.
>
> Examination shows tenderness through the cervical spine muscles, trapezius muscles and upper thoracic region. Thoracic spine movements were reduced in both directions with associated pain. Neck movements were restricted in all directions with pain. This pain would radiate down to the trapezius region. The shoulders had abduction to 160 degrees, external rotation to 40 degrees and internal rotation to T10. Upper limb strength was normal, reflexes were normal in both upper and lower limbs and there is no clonus. Straight leg raise was negative and her lumbar spine moved well."

Dr Jordan noted he reviewed the imaging, and concluded as follows:

> "Her injury is like a whiplash type injury. There may be some underlying mild cervical spondylosis. She is clearly struggling quite a lot so I suggested we try Endep 10 mg at night which can be increased to 20 mg at night if tolerated. This is to help both pain and improve her sleep. She should continue physiotherapy and hot packs. Given the CT scan findings I suggest we do an MRI scan to exclude any significant neural impingement, especially given the left arm symptoms. I have also asked her to do a bone scan as this is helpful to identify if there is any particular facet or discovertebral uptake."

36. The applicant also annexed to the Application the report of Dr Harbison, IME for the respondent, dated 20 June 2018. Given that report is one of a sequence from Dr Harbsion, all of which are attached to the Reply, I will deal with that report along with the balance of the respondent's medical evidence below.

The respondent's evidence

The respondent's lay evidence

37. The respondent placed into evidence without objection the CCTV footage of the applicant's fall.

38. The respondent provided a factual report. It attached the applicant's statement which has been dealt with above. The report also set out a number of matters relating to the nature and extent of the applicant's duties and her reporting of post-fall symptoms. The report attaches a statement of Joumana Atie, co-worker who was present at the time of the applicant's fall, but who did not witness it. Ms Atie stated she was the applicant's direct supervisor. She summarized the circumstances of the applicant's fall as follows:

> "45. Between the time Mona arrived to work and the time of the incident, which from my recollection was at 10.00am, she spent the entire time supervising children. To my knowledge, she did not engage in any other tasks or activities.
>
> 46. My knowledge of how the incident occurred is based largely on the CCTV footage which I viewed. At the time of the incident, whilst I was in the same room as Mona, I did not witness her fall because I was busy talking to a parent of one of the children.
>
> 47. The CCTV footage revealed that at approximately 10.00am Mona made her way to the sink in the baby room (where we keep kids up to 2 years of age) to place a bottle of water in the sink. As she turned away from the sink she realised there was a child of approximately two years that had crawled up to her and was positioned sort of between her legs. Based on the footage, it seems she was startled by this and lost her footing, causing her to fall forwards over the child and impact the ground with her right hand and leg. The footage also reveals that in the process of the fall before landing on the floor, she impacted a table on her left side with her left hand.
>
> 48. Following the fall, she can be seen holding the child and making sure that it was not hurt
>
> 49. In relation to what I saw or heard at the time of the incident, to be honest, I wasn't looking in Mona's direction and I heard and saw nothing. lt was only moments later that she revealed to me that she had fallen. I asked her if she was okay on a number of occasions after the fall or if she wanted to go home or have a rest. She said that she was fine and she continued to finish the work for the day as per usual.
>
> 50. Once we had finished meal time, approximately 30 minutes after the incident, Mona asked me to file an incident report because she had not brought her reading glasses."

39. Ms Atie stated the applicant made no complaints concerning her alleged injuries until 19 May 2019. She said the applicant continued to work as normal, and "did not appear to be in any pain or discomfort."

The respondent's medical evidence

40. The respondent relies on the opinion of Dr Harbison, orthopaedic surgeon IME. In his first report dated 20 June 2017, Dr Harbison recorded a history of the fall of the applicant landing on her right shoulder as a result of the fall, and that the applicant said she had neck and left shoulder pain straight after the accident. The applicant apparently told Dr Harbison she went home on the evening of the fall and took anti-inflammatory medication despite not being in a great deal of pain at that time. The accident having occurred on Friday, the applicant rested over the weekend and returned to work on Monday, although she was in pain. According to Dr Harbsion:

> "She first consulted a general practitioner two weeks after the accident. She was advised to apply heat and take anti-inflammatory medication. About a week after that when she felt no better, she consulted another doctor, Dr Yusef, on 20 May 2017. She was certified unfit to work for three days and was referred for ultrasound and x-ray examinations. Mrs Saade then returned to see Dr Nashed on 22 May 2017. She was referred for physiotherapy and she said that she had one session of treatment which helped her. She continued to take anti-inflammatory medication.
>
> Since then she has improved. She had a second physiotherapy treatment last week and that also helped her."

41. Dr Harbison undertook an examination of the applicant, at the conclusion of which he diagnosed a soft tissue strain of the neck. He said there was "no evidence of any specific shoulder injury."

42. Dr Harbison provided a supplementary report dated 20 September 2017. In that report, he reviewed the CCTV footage and provided a summary of the mechanism of the applicant's fall. He noted some contradictions between the CCTV footage and the applicant's history to him regarding the mechanism of the fall, and her reactions straight afterwards. Having reviewed the CCTV footage, Dr Harbison opined that it:

> "… suggests that the injury was minor. Nevertheless, it is possible that she may have developed some symptoms later that day. Based on the footage, I do not think that she strained her neck and I do not think she injured her shoulder directly.
>
> The footage does make me alter my views as I have expressed above. I think that any injury was minor. There was possibly an indirect injury to the right shoulder from the fall on the outstretched hand but I do not believe that there was any injury to the neck or direct injury to the shoulder. The clinical presentation at the time I saw her, with the significant restriction of movement in the neck, does seem inconsistent with the nature of the injury.
>
> The CCTV footage did not show any injury to the left shoulder and, given the fact that the range of motion was the same in both shoulders when I examined her, I think that any injury to the right shoulder indirectly has recovered."

43. The respondent attached the final report of Dr Harbison dated 20 June 2018. That document is also attached to the Application at page 10. Dr Harbison noted the applicant had an injection to her neck in August 2017. He noted she originally obtained some relief, however, the symptoms had recurred. After carrying out an examination, Dr Harbison opined:

"DIAGNOSIS

In the subject fall Mrs Saade sustained a strain at her right shoulder as a result of falling onto her outstretched hand. There is no evidence of any specific pathology so caused. The matter of a neck strain is a vexed question. There was no direct blow to the head or neck and any strain must have been at the minor end of a spectrum of severity. I previously stated that there was no injury to the neck but l accept now that a very minor strain was possible although there is no evidence of any specific pathology due to the fall. There is evidence of long-standing degenerative change in the neck but no evidence of change due to the injury. Her current symptoms are consistent with the degenerative change and any effect of the injury could be considered to have resolved."

44. At page 105 of the Application, Dr Harbison states that any ongoing problems which the applicant has are caused by her pre-existing degenerative conditions. However, in answer to the specific question "Does the worker have the injury/ condition claimed?", Dr Harbison answered "She did have the injuries as described", and later stated "She is no longer suffering from any physical work-related injury." Dr Harbison assessed the applicant's whole person impairment for her neck and right upper extremity injuries at zero.

SUBMISSIONS

The applicant's submissions

45. For the applicant, Mr Dodd submitted the question of injury had been decided, because in the Reply the respondent conceded liability with respect to injuries to the cervical spine and right upper extremity. Mr Dodd relied on the decision of Roche DP in *Jaffarie v Quality Casting Pty Limited* [2014] NSWWCCPD 79 from [251], where the Deputy President said:

> "251. However, it is accepted, as Emmett JA expressly acknowledged (at [111] [in *Bindah v Carter Holt Harvey Wood Products Australia Pty Ltd* [2014] NSWCA 264]), that it is for the Commission to determine whether a worker has received an injury within the meaning of s 4 of the 1987 Act (the one exception to this statement relates to loss of hearing claims, discussed below). It is also accepted, though it was not expressly considered in *Bindah*, that "injury" in s 4 includes an injurious event and the pathology caused by that event.
>
> 252. The authority for the statement in the last sentence of the preceding paragraph is *Lyons v Master Builders Association of NSW Pty Ltd* (2003) 25 NSWCCR 422. The correctness of that statement has never been challenged and the Commission has consistently applied it in several decisions (see, for example, *Bouchmouni v Bakhos Matta t/as Western Red Services* [2013] NSWWCCPD 4 at [31]). Consistent with this approach, Giles JA (Hodgson JA and Brownie AJA agreeing) said in *Wyong Shire Council v Paterson* [2005] NSWCA 74 where his Honour explained (at [38]) that "[i]n general, a frank injury means a specific occasion of injury while a nature and conditions claim relies on the accumulated effect of a worker's activities. These, however, are descriptions of mechanisms for suffering an injury".

253. In other words, an "incident" (an injurious event) is only a mechanism for suffering an injury and is not itself a s 4 injury. The relevant "injury" in s 4 is the pathology that has arisen out of or in the course of the employment. As explained by Gleeson CJ and Kirby J in *Kennedy Cleaning Services Pty Ltd v Petkoska* [2000] HCA 45; 200 CLR 286 a "personal injury" is "a sudden and ascertainable or dramatic physiological change or disturbance of the normal physiological state". The cause of the injury (the injurious event) is "not the important matter" (Latham CJ in *Ward v Corrimal-Balgownie Collieries Ltd* [1938] HCA 70; 61 CLR 120 at 129) in determining the compensation payable. (Obviously, the cause of the injury, and the circumstances in which it is received, will be important in determining if the injury was received in circumstances giving rise to an entitlement to compensation under the legislation. His Honour was saying that the important matter is the consequence of the injury, both in terms of pathology and in terms of the economic consequences.)"

46. Mr Dodd submitted that in conceding the cervical spine and right shoulder injuries in the Reply, the respondent was admitting not only the fact of the injurious fall, but the pathology caused by it.

47. The applicant's case is that, injury having been admitted, the matter is a medical dispute and pursuant to section 319 of the *Workplace Injury management and Workers Compensation Act 1998* (the 1998 Act), should be remitted to the Registrar for referral to an Approved Medical Specialist (AMS). Mr Dodd submitted the admission in the Reply and the fact Dr Herald assesses a 19% whole person impairment and Dr Harbison zero whole person impairment, means the proper provenance for adjudication of the dispute is an AMS.

48. Mr Dodd referred the Commission to [249] of *Jaffarie*, and the statement of principle set out by Roche DP as follows:

> "Notwithstanding the different approach by Emmett JA and Meagher JA, it is my view that the following principles apply to proceedings in the Commission:
>
> (a) questions of causation are not foreign to medical disputes within the meaning of that term when used in the 1998 Act. Assessing the degree of permanent impairment "as a result of an injury", and whether any proportion of permanent impairment is "due" to any previous injury or pre-existing condition or abnormality, both call for a determination of a causal connection (Bindah at [110]);
>
> (b) it is for the Commission to determine whether a worker has received an injury within the meaning of s 4 of the 1987 Act and whether there are any disentitling provisions, such that compensation is not payable for that injury (*Bindah* at [111] and s 105 of the 1998 Act);
>
> (c) the Commission's jurisdiction is restricted by s 65(3) of the 1987 Act, which precludes the Commission (an Arbitrator or a Presidential member) from awarding permanent impairment compensation if there is a dispute about the degree of permanent impairment, unless the degree of impairment has been assessed by an AMS (*Bindah* at [111]);
>
> (d) the determination of the degree of permanent impairment that results from an injury is a matter wholly within the jurisdiction of the AMS or, on appeal, the Appeal Panel and is not a matter for determination by an Arbitrator (*Bindah* at [112]);

(e) a finding made by a person without jurisdiction cannot bind a person or persons who have jurisdiction (*Haroun* at [16] and [19]–[21]), and

(f) it is desirable to avoid drawing a rigid distinction between jurisdiction to decide issues of liability and jurisdiction to decide medical issues (*Bindah* at [110]; *Tolevski* at [35]).”

49. Mr Dodd submitted that in applying the above line of authority, and taking into account both the matters pleaded by the respondent in the Reply and the substantive medical evidence in the case, the matter should be referred to an AMS for determination. He also noted that any attempt on the part of the Commission to examine the CCTV footage to determine whether the mechanism of fall could give rise to the alleged injuries would be inappropriate, as it is not a matter for an arbitrator to draw anything from the footage with regards to whether it could give rise to the claimed injuries.

50. Mr Dodd submitted that there was plainly an unexpected fall over a child, and that the applicant fell back from a vertical position to her right side and came to rest on the floor, with her right hand and arm at or adjacent to another child’s seat. He adopted the position of the applicant’s treating rheumatologist, Dr Jordan that the applicant had a whiplash type injury overlaying some pre-existing cervical spondylosis, and also relied on the views of Dr Herald in relation to the cervical spine and right shoulder.

51. In relation to the views of Dr Harbison, Mr Dodd noted the initial view was that the applicant’s condition was more indicative of a neck problem than a shoulder one. Having earlier viewed the CCTV footage, Mr Dodd noted Dr Harbison changed his view in his final report of June 2018, when he said the applicant had suffered a right shoulder strain, and that a minor neck strain is possible, against a background of degenerative problems which had not previously caused the applicant problems.

52. Mr Dodd submitted that in light of the concession on the face of the Reply and on the medical evidence including Dr Harbison’s views in his final report, there can be no doubt the applicant suffered injuries to her cervical spine and right upper extremity. He then submitted that the degree of permanent impairment arising from those injuries should be determined by an AMS.

The respondent’s submissions

53. Ms Goodman submitted it was appropriate for the Commission to look at the CCTV footage and come to a determination in relation to injury in reliance upon it. She submitted that coming to a conclusion on injury requires more than just a finding of injurious event, but also a determination of pathology.

54. Ms Goodman took the Commission to [25] in *Bindah*, where the Court of Appeal said:

> “The dispute was whether the injury to the applicant's eye, which undoubtedly occurred on 28 January 2009, also involved a material exacerbation of the cataract condition necessitating the surgery which occurred in June 2009. That dispute was as to the pathology of the injury which the applicant had sustained.”

Ms Goodman said a distinguishing feature of cases such as *Bindah* was the making of an order for referral by an arbitrator by consent. She submitted that it was against that background the Court of Appeal found the matters left in dispute should be decided by an AMS.

55. The respondent then contrasted those authorities to the decision of Roche DP in *Trustees of the Roman Catholic Church for the Diocese of Parramatta v Barnes* [2015] NSWWCCPD 35 (*Barnes*). At [44] and following, the Deputy President said:

> "44. The fact that "injury" can, in some circumstances, also refer to an injurious event does not assist the appellant. The word "injury", as used in the 1987 Act, can have two, possibly three meanings: the injurious event, the pathology and, possibly, injury meaning "condition" (*Holdlen Pty Ltd v Walsh* [2000] NSWCA 87 at [33]). The sense in which the term "injury" is used will depend on its context (*Georgopoulos v Silaforts Painting Pty* Ltd [2012] VSCA 179 at [73]). In a claim for lump sum compensation under s 66, the context is a claim for lump sum compensation for the whole person impairment that has resulted from the relevant pathology that has resulted from the particular work incident upon which the worker has sued. The authorities are clear that, in context, the relevant "injury" in s 66 is the pathology.
>
> 45. As was explained by Giles JA (Hodgson JA and Brownie AJA agreeing) in *Wyong Shire Council v Paterson* [2005] NSWCA 74 at [38], the description of how the injury was received, for example, due to a frank injury or due to repetitive activities (often, though unhelpfully, referred to as a "nature and conditions claim") "are descriptions of mechanisms for suffering an injury". In other words, an "incident" (an injurious event) is only a mechanism for suffering an injury and is not itself a s 4 injury. The relevant "injury" in s 4 is therefore the pathology that has arisen out of or been received in the course of the employment.
>
> 46. Gleeson CJ and Kirby J in *Kennedy Cleaning Services Pty Ltd v Petkoska* [2000] HCA 45; 200 CLR 286 held that a "personal injury" is "a sudden and ascertainable or dramatic physiological change or disturbance of the normal physiological state". The cause of the injury (the injurious event) is "not the important matter" (Latham CJ in *Ward v Corrimal-Balgownie Collieries Ltd* [1938] HCA 70; 61 CLR 120 at 129) in determining the compensation payable. (Obviously, however, the cause of the injury, and the circumstances in which it is received, will be important in determining if the injury was received in circumstances giving rise to an entitlement to compensation under the legislation. His Honour was saying that the important matter is the consequence of the injury, both in terms of pathology and in terms of the economic consequences.)
>
> 47. It follows that, on this approach, assuming (without deciding) that Ms Barnes suffered the same pathology in each incident, it would have been open to the Arbitrator to make the remittal to the Registrar in the terms she made it and she did not misinterpret *Jaffarie. Jaffarie* made it clear, by reference to the authorities quoted in the preceding paragraphs that, in the context of a claim for permanent impairment compensation, the relevant "injury" is the pathology, even though, in other contexts, injury may also include the injurious event."

Ms Goodman emphasized that an incident is only a mechanism for suffering an injury, and is not an injury in and of itself, which is constituted by the relevant change in pathology.

56. The respondent's position is, Ms Goodman submitted, that an incident took place on the date in question, and this is what is conceded in the Reply. She noted the section 74 notices clearly placed the relevant injuries in dispute. She said there is a concession in the report of Dr Harbison that the applicant could have, because of the manner in which she fell, suffered a strain to her right shoulder and to her neck.

57. With respect, Dr Harbison puts it higher than that. In his last report, Dr Harbsion concedes the right shoulder strain as an established consequence of the fall, and is only equivocal about the possibility of a neck strain.

58. Ms Goodman noted Dr Harbison's finding that the applicant did not strike her head in the fall. She said the concession made is that the incident may have resulted in a minor strain to both body parts.

59. Ms Goodman referred the Commission to Ms Atie's statement, and said it was relevant the applicant complained about her neck and left shoulder rather than the right, which is not mentioned in any medical certificates until 17 May 2018. Ms Goodman did not take that issue any further, as she noted there had been a concession by the respondent in relation to an injurious event involving the right upper extremity. Rather, Ms Goodman noted the applicant continued to work as normal after the incident at issue until August 2017.

60. The respondent sought to rely on Ms Atie's recollections relating to the fall, however, on her own admission those recollections come from viewing the CCTV footage, not from any direct observation. Ms Goodman relied on the evidence at paragraph 49 of Ms Atie's statement, where she asked if the applicant wanted to go home after the fall. The applicant declined.

61. Ms Goodman noted Ms Atie's statement to the effect the applicant's first complaint of injury from the fall came on 19 May 2017, and that the pain complained of was to her left shoulder, rather than her right.

62. Ms Goodman submitted the preponderance of the medical evidence supported the applicant's cervical disc prolapse being chronic in nature, rather than caused by the fall at issue.

63. In summary, the respondent's position was put by Ms Goodman as follows:

    (a) It is a matter for the Commission "to determine the pathology" rather than an AMS, in accordance with the decision in *Barnes*;

    (b) This matter differs from *Haroun* and *Bindah* because there is no consent finding that section 4 is satisfied. In this matter, Ms Goodman said the respondent is conceding "yes, something did happen to the neck and the right shoulder, the respondent is prepared to concede that, but not the pathology as found by Dr Herald."

    (c) The pathology is in fact that as found by Dr Harbison. That is, very minor pathology;

    (d) The Commission must find pathology in order to satisfy section 4.

64. Ms Goodman also referred to [251]-[254] in *Jaffarie*, and noted "injury" in section 4 refers to both the injurious event and to the change in pathology stemming from it.

65. When the parties were directly asked whether the pleading at paragraph one of the Reply did more than simply concede the relevant fall had taken place and admitted liability in relation to the claimed injuries, Ms Goodman submitted that in light of the section 74 notices, the pleading should not be read that broadly.

The applicant's submissions in reply

66. Mr Dodd submitted that despite the respondent's submissions, the CCTV footage showed the applicant landed on the floor following the fall, which was sudden in nature. He said it was all very well for the respondent to rely on certain extracts from *Jaffarie*, but noted that no reference was made to [250] of that decision, which says:

> "… in a claim for lump sum compensation, the physical consequences of the injury (in relation to the assessment of whole person impairment as a result of the injury) are not within the exclusive jurisdiction of the Commission. They are within the exclusive jurisdiction of the AMS. That is so even if the matter also involves a disputed claim for weekly compensation and disputes about causation, which the Commission has determined."

67. Mr Dodd submitted the respondent's submissions are completely contrary to the principles set out in *Bindah* and *Haroun*. He submitted the respondent was effectively asking the Commission to act as an AMS and to go so far as to determine the nature of the pathology (the respondent suggesting in this instance it is "a minor strain") or to make a deduction of pre-existing conditions pursuant to section 323 of the 1998 Act. Mr Dodd said that were the Commission to do so, it would plainly fall into error and act outside its jurisdiction.

68. Mr Dodd then took the Commission to *Haroun* at [19], and noted that the matter was a medical dispute which should be referred to an AMS. He said the respondent was asking for a course of action which is totally contrary to Court of Appeal authority, and to find the pathology was only a minor strain by interpreting a CT scan to suggest chronicity and also by reference to the mechanism of fall as seen in the CCTV footage.

69. Mr Dodd conceded that there needs to be pathology for an injury to be present within the meaning of section 4. However, he noted (correctly in my view) that one can suffer a workplace injury without there being any whole person impairment. Mr Dodd submitted the relevant question is who gets to determine the level of whole person impairment, and the authorities are abundantly clear that it should be determined by an AMS.

DISCUSSION AND REASONS

The pleadings

70. In my opinion, paragraph one of Part 3 of the Reply is unequivocal. Despite Ms Goodman's submissions, I do not accept that the concession contained within the paragraph relates only to the event of the applicant's fall. As previously noted, the paragraph states "Liability is not accepted with respect to any injury to any body parts but for the neck (neck strain) and right shoulder (shoulder strain)."

71. The relevant paragraph is contained in a document which was prepared by the respondent's solicitors. It makes no mention of admitting only the fact of a fall. Instead, the pleading on its face indicates an acceptance *of liability* in relation to injuries to the neck and right shoulder. That being so, in my opinion, the respondent is bound by its admission to accept liability with respect to the alleged injuries to the neck and right shoulder.

72. Whilst Ms Goodman impressed on the Commission the need for pathology to be present before a finding of injury can be made, a submission accepted by Mr Dodd, in my view the respondent's acceptance of liability in relation to the cervical spine and right shoulder injuries includes an acceptance of pathology being present in those body parts as a result of the applicant's fall on 28 April 2017. In order to accept liability, a respondent must in my view necessarily be accepting that the requirements of establishing the injury in issue have been met. That includes the necessary pathological change.

73. Had the respondent wished to maintain a dispute as to whether the applicant had sustained injuries to her cervical spine and right shoulder in the fall, it should have at the telephone conference stage sought leave to withdraw the statement in Part 3 of the Reply.

74. However, given the manner the matter proceeded at the Arbitration Hearing, I consider it prudent to determine the matter not just upon the basis that an admission had been made in Part 3 of the Reply, but to consider the substantive issue regarding section 4 of the 1987 Act.

Injury

75. In this matter, there is no issue the event of the alleged fall took place. Ms Goodman quite properly admitted that was the case. Moreover, I accept from having viewed the CCTV footage and from the applicant's statements that she suffered what Mr Dodd described as a sudden fall, which led her to falling from a vertical position predominantly onto her right side.

76. I accept the applicant as truthful when she states that any discrepancy between her original description of the fall and what is shown on the CCTV footage is caused by her own recollections originally being affected by panic. I note Ms Goodman suggested during the course of the hearing that there were significant inaccuracies of the applicant's version of the mechanism of the fall when compared with the film of the incident, however, to the extent it is relevant, I respectfully disagree.

77. The CCTV footage in my opinion shows the applicant faced with a sudden, unexpected emergency caused by a child having crawled right behind her in what appears to be an attempt to pick up a toy which had fallen on the floor. When faced with the child being effectively under her feet, the applicant lost her footing and fell towards the ground, which she struck primarily on her right side, while her left arm may have struck a desk on her way down.

78. Furthermore, before the applicant provided her first statement, she advised that she did not have a clear memory of the mechanism of her injury. In the rehabilitation report of WorkFocus Australia dated 23 June 2017 at page 13 of the Reply, it is noted the applicant said "… she felt she was in shock during the fall and in panic whilst trying to avoid falling on a baby during the fall."

79. For the following reasons, I accept that not only the lay evidence but also the medical material, supports a finding that the requirements of s4 of the 1987 Act were met in relation to the claimed injuries to the right shoulder and cervical spine.

80. The applicant states her condition worsened over time following the fall, until she sought medical attention in May 2017. I accept that evidence. It is supported by the clinical records and the report of the applicant's general practitioner Dr Nashed. There is little doubt that by May 2017, the applicant had reached a point where she was referred for radiological investigations for symptoms arising from the fall at issue. Over time, she was also referred to a treating rheumatologist, Dr Jordan.

81. As previously noted, Dr Jordan took a history from the applicant that she had neck pain and also pain in both trapezius areas. He concluded the applicant suffered a whiplash type injury. For his part, Dr Herald, the applicant's IME noted Dr Jordan's treatment regime, examined the radiological investigations and assessed the applicant as suffering from right shoulder impingement syndrome; resolved left shoulder impingement syndrome; resolved injury to back and right leg; cervical disc prolapse at C5/6 level with right sided C6 nerve compression, and aggravation of underlying depression.

82. Dr Herald's assessment of the pathology behind the right shoulder and cervical spine injuries varies to that found by Dr Harbison, the respondent's IME. For his part, Dr Harbison arrives in his third report at his final diagnosis, given as it is after two examinations of the applicant and following a review of the CCTV footage. I take Dr Harbison's final view to be that there was an injury as defined under section 4 of the 1987 Act to the applicant's right upper extremity by way of a shoulder strain, however, the effect of that injury has resolved. In my view, once it is accepted that an injury in the relevant sense took place, the requirements under section 4 of the 1987 Act are met, and the question of the ongoing extent of that injury and whether it has ceased is one for an AMS, rather than an arbitrator. Thus, in my view there is agreement between the IMEs as to the applicant having suffered an injury to her right upper extremity.

83. Dr Harbison described the question of the applicant having suffered a neck strain as "vexed". He did not rule out a neck strain, but said if one was present, it must have been at the low end of the spectrum. He found,

> "I previously stated that there was no injury to the neck but I accept now that a very minor strain was possible although there is no evidence of any specific pathology due to the fall. There is evidence of long-standing degenerative change in the neck but no evidence of change due to the injury. Her current symptoms are consistent with the degenerative change and any effect of the injury could be considered to have resolved."

84. I note Ms Goodman's submissions as to the alleged chronicity of the applicant's cervical disc protrusion.

85. However, I am of the view that the preponderance of the medical evidence supports a finding of injury to the applicant's neck. At its highest, Dr Harbison's evidence is equivocal as to whether a neck injury took place. By contrast, the contemporaneous evidence from the applicant's general practitioner's notes and report, the report of treating rheumatologist Dr Jordan and the opinion of Dr Herald, all support a finding of injury. It is noteworthy that the uncontested evidence is the applicant presented to her general practitioner within a few weeks of the fall, complaining of neck symptoms. Those symptoms were sufficiently serious to warrant radiological investigation and specialist referral, together with treatment by way of guided injection. There is no suggestion the applicant suffered significant ongoing symptoms in her neck before the fall, and I accept her evidence as to the onset of them.

86. In addition, I prefer the opinions of Dr Herald and Dr Jordan to that of Dr Harbison, because both doctors have considered the mechanism of injury in a more detailed manner than that of Dr Harbison. Dr Jordan likened it to a whiplash type injury and Dr Herald found the fall was quite significant, with the applicant falling backwards with no visual cues to help her protect from her impact. Dr Harbison seemed to particularly focus on there being no impact to the head or neck, and did not really consider the forces involved in such a sudden fall.

87. On balance, taking into consideration the lay and medical evidence, and having regard to the line of authorities including *Bindah* and *Jaffarie*, I am satisfied the evidence demonstrates on the balance of probabilities that the applicant sustained an injury to her cervical spine in the fall on 28 April 2017. Accordingly, the injury to the applicant's cervical spine will also be remitted to the Registrar for referral to an AMS for determination of the whole person impairment together with the right shoulder.

88. I do not accept Ms Goodman's submissions, the tenor of which seemed to suggest that an arbitrator has to make findings about the precise extent of the "pathology" in order to make a finding of injury under section 4 of the 1987 Act. I have found injury to the cervical spine and right shoulder and it is a matter for an AMS to assess the degree of permanent impairment to those body parts from the work-related injury on 28 April 2017.

89. Having found the respondent is bound by the admission found on the face of its pleading, it follows that the Commission will make findings that the applicant suffered injuries to her cervical spine and right upper extremity (shoulder) in the fall on 28 April 2017.

90. Additionally, regardless of the effect of the respondent's admission in the Reply, I am satisfied for the above reasons the applicant in fact suffered injury to her cervical spine and right shoulder in the subject fall.

SUMMARY

91. In accordance with the above reasons, the Commission will make the following findings and orders:

(a) The claims for weekly compensation and medical and treatment expenses are discontinued.

(b) The applicant suffered injuries to her right upper extremity (shoulder) and cervical spine in the course of her employment with the respondent on 28 April 2017.

(c) Remit the matter to the Registrar for referral to an AMS for determination of the permanent impairment arising from the following:

Date of injury:	28 April 2017
Body systems referred:	cervical spine, right upper extremity (shoulder)
Method of assessment:	whole person impairment.

(d) The documents to be referred to the AMS for consideration are to include the following:

(i) This Certificate of Determination;
(ii) The Application to Resolve a Dispute and attached documents;
(iii) The Reply and attached documents;
(iv) The respondent's Application to Admit Late Documents dated 25 June 2019 and attached documents.