

# WORKERS COMPENSATION COMMISSION

## AMENDED CERTIFICATE OF DETERMINATION

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

**Matter Number:** 855/20  
**Applicant:** Bruce Alan Yell  
**Respondent:** Robert Arnold Holdings Pty Ltd  
**Date of Determination:** 18 May 2020  
**Date of Amendment:** 26 May 2020  
**Citation:** [2020] NSWCC 167

The Commission determines:

1. The applicant sustained an injury to his right upper extremity (shoulder) arising out of and in the course of his employment between February and March 2004.
2. The applicant sustained a consequential injury to his left upper extremity (shoulder) on 15 April 2004.
3. The applicant sustained an injury to his cervical spine as a consequence of the injuries referred to above.
4. In accordance with the Consent Orders dated 8 April 2020, there is an award for the applicant pursuant to section 66 in respect of a 26% whole person impairment of both upper extremities and the cervical spine, and the respondent is to receive credit for the sum of \$24,000.00 in respect of payments made pursuant to a Complying Agreement dated 25 June 2008.

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 background to this complex claim is set out in some detail in a decision of a delegate of the Registrar dated 23 March 2011 as follows:

“On 14 May 2008 the Claimant [the applicant in these proceedings] forwarded to the Defendant [the respondent in these proceedings] two claim forms, one for injury to the right shoulder with a date of injury of 13 May 2004 claiming 11 % whole person impairment (WPI) and a second claim form for injury to the left shoulder with a date of injury of 13 May 2004 claiming 8% WPI.

The claims were both based upon the medical assessment made by Dr Giblin in a report dated 17 March 2008. Despite the claim forms submitted the same date of injury, namely, 13 April 2004, Dr Giblin assessed impairments to the right upper extremity of 11 % WPI due to injury on 26 March 2004 and 8% WPI of the left upper extremity due to injury on 15 April 2004. In addition to making separate assessments for separate injuries occurring on separate dates, Dr Giblin also combined the impairments to provide a combined total WPI of 18%...

On 25 June 2008 agreement was reached between the parties that the Claimant suffers 19% WPI, being 11% WPI for the right upper extremity (right shoulder) and 8% WPI for the left upper extremity (left shoulder)...As it is drafted, the settlement appears to be in relation to two personal Injuries resulting in 11 % WPI and 8% WPI respectively, noting that a single injury has a combined assessment of 18% WPI... A complying agreement pursuant to section 66A...was prepared by the Claimant on 7 July 2008. The report relied on to assess the degree of permanent impairment is stated in the complying agreement to be that of Dr Giblin dated 17 March 2008. Despite the report of Dr Giblin clearly assessing two personal injuries, the first on 26 March 2004 and the second on 15 April 2004, the complying agreement states a single date of injury of 13 May 2004. Again the settlement appears to have been entered into by a claims officer of the insurer without any amendment to the above settlement details.

The date of injury In the complying agreement appears to merely repeat the date stated in each claim form viz. 13 April 2004. The reason for stating the injury as 13 April 2004 is unclear save for it being no more than a clerical error on the part of the Claimant's legal representatives.

I am satisfied that the date of injury pleaded in each claim form was incorrectly stated as 13 April 2004 and this was copied in the complying agreement which was prepared by the Claimant.

On 21 October 2008 the Claimant served on the Defendant and the insurer a Workplace Injury Damages Claim. The injured body parts pleaded were the right and left shoulders with the date of injury as "between February 2004 and March 2004 and 15 April 2004".

On 1 December 2008 the Defendant wrote to the Claimant disputing that either of the alleged injuries resulted in a WPI of at least 15%, as required by section 151 H of the 1987 Act. It was also disputed that the Claimant could aggregate the WPI of the left upper extremity with the WPI of the right upper extremity for the purposes of satisfying the 15% WPI threshold requirement in section 151 H of the 1987 Act.

The Defendant further noted in its correspondence dated 1 December 2008 that the complying agreement contained an incorrect date of injury, being 13 May 2004, and that the Claimant had never alleged injury on that date nor did the evidence suggest injury on that date. The Defendant advised that it would contest the Claimant's work injury damages claim if it was pursued and, if successful in contesting the claim, it would seek a costs order against the Claimant. The Defendant requested confirmation from the Claimant that his damages claim would be withdrawn.

On 27 January 2009 the Claimant wrote to the Defendant serving a supplementary report of Dr Giblin dated 2 October 2008 in which Dr Giblin opined that the right shoulder injury in March 2004 and the left shoulder injury on 15 April 2004 were causatively linked on the basis of assumed facts as outlined in the Claimant's letter dated 29 September 2008. The Claimant requested the Defendant to obtain instructions that its client concede that the injuries were causatively linked. [Thereafter details of correspondence between the parties was set out].

On 26 June 2009 the Claimant lodged in the Commission an 'Application for Assessment by an Approved Medical Specialist' (matter no. 5017/09). The injury details at Part 4 of the application were noted as 'injury to right and left shoulders' with the date of injury being 'February 2004 to March 2004 And 15 April 2004'.

On 10 July 2009 the Defendant lodged in the Commission a 'Response to Application for Assessment by an Approved Medical Specialist'. The Defendant objected to the Claimant's application for assessment...

The Defendant advised that it had no objection to separate assessments being made by an AMS for two separate injuries...

On 11 August 2009 a Registrar's delegate, by email correspondence, wrote to the parties and noted that the parties settled the section 66 and section 67 claims by way of a complying agreement for 18% (sic, 19%) WPI on the basis of Dr Giblin's assessment dated 17 March 2008. The Registrar's delegate concluded: 'As such, the Registrar [Registrar's delegate] considers there is no dispute as to threshold for the work injury damages claim to be referred to an AMS.'

The Commission file was closed and no further action was taken on the 'Application for Assessment by an Approved Medical Specialist'.

[Thereafter correspondence dealt with a pre-filing statement].

The dispute is properly referred to the Registrar for determination under section 347(2) of the 1998 Act.

### **Issues in Dispute**

The two main issues in dispute are

- (1) Whether there are two separate injuries resulting in two separate permanent impairments, namely, WPI of the right upper extremity (right shoulder) and WPI of the left upper extremity left shoulder); or
- (2) Whether there is one injury which has a combined permanent impairment of at least 15%, or any other circumstances by which there is a combined loss permanent impairment of at least 15%, for the purposes of the threshold in section 151H of the 1987 Act.

## Discussion and decision

Prima facie if the assessments the subject of the complying agreement were accepted as resulting from one injury the combined assessments would exceed the 15% threshold for work injury damages required by section 151H of the 1987 Act. However, the Defendant has made no such concession...

Accordingly, I am unable to assume that the combined impairments as contained in the complying agreement satisfy the threshold requirements of section 151H of the 1987 Act.

At the heart of the threshold issue is whether the Claimant suffered .. separate permanent impairments as a result of a personal injury between February 2004 and March 2004 and a personal injury on 15 April 2004, or a single permanent impairment resulting from the combined effects of the first incident between February 2004 and March 2004 and on 15 April 2004. That issue is a legal question for determination by a court of competent jurisdiction.

Having considered the various correspondence and submissions by the parties, and applying the Court of Appeal decision in *JC Equipment*, I am of the view that there is a threshold dispute in respect of the work injury damages claim, pursuant to section 314(1)(a) of the Act.

It is appropriate that the 'Application for Assessment by an Approved Medical Specialist' should be restored and be referred to an Approved Medical Specialist to assess the degree of permanent impairment resulting from the two work incidents separately, and also for the Approved Medical Specialist to provide a combined assessment resulting from the two incidents. Should the combined assessment be at least 15%, the question of whether the two impairments can be aggregated is a matter for a court of competent jurisdiction.(My emphasis). It is not a threshold question for determination by the Commission or by an Approved Medical Specialist.

The matter is remitted to the Registrar's delegate, for referral to an Approved Medical Specialist in accordance with Part 7 of Chapter 7 of the 1998 Act to assess:

- (1) Whole person impairment of the right upper extremity as a result of injury between February 2004 and March 2004 when the Claimant was laying Besser blocks and hurt his right shoulder;
- (2) Whole person impairment of the left- upper extremity as a result of injury on 15 April 2004 when the Claimant was throwing bricks to a co-worker who was standing on scaffolding above him and he hurt his left shoulder; and
- (3) Combined whole person impairment of the right upper extremity and left upper extremity as a result of the incidents described in sub-paragraphs (1) and (2) above....”

2. The matter then proceeded to an Approved Medical Specialist (AMS) for assessment.
3. On 29 August 2011, AMS Dr McGroder issued a Medical Assessment Certificate (MAC) in accordance with the decision of the registrar's delegate dated 23 March 2011.
4. The AMS said:

“Using restriction of range of movement I have assessed whole person impairment for the right upper extremity at 6% and the left at 4%. There is a specific request to combine the impairment for the two dates of injury and this results in 10% whole person impairment.”

5. As the AMS assessed the combined impairment at 10%, the issue of whether there was a single combined impairment was never determined.
6. The matter then seems to have been closed.
7. By way of an Application to Resolve a Dispute (the Application) filed in the Commission on 18 February 2020, the applicant claimed lump sum compensation in respect of a 35% whole person impairment (WPI) in respect of both upper extremities and the cervical spine.
8. The date of injury was pleaded as "26 March 2004." The nature of the injury was described as:

"The applicant was laying besser blocks from scaffolding whilst having to lean forward and suffered an injury to his right shoulder. He returned to work on light duties but was unable to use his right arm. He was required to throw solid house bricks up to the bricklayer using only his left arm. When doing so [he] suffered an injury to his left shoulder as a consequence of the injury to his right shoulder. He has developed an injury to his neck as a consequence of the injury to both his shoulders."

9. In a Section 78 Notice dated 18 December 2019, liability in respect of this claim was denied by the insurer for the following reasons:

"We accept that you suffered injury to your right shoulder between February and March 2004, injury to your left shoulder on 15 April 2004 and a consequential condition in relation to the cervical spine as a result of both causes of injury. We rely on Statement of Reasons and Decision of the Workers Compensation Commission dated 23 March 2011 and the Medical Assessment Certificate dated 29 August 2011 providing an assessment of 6% WPI for right shoulder injury sustained between February and March 2004 and 4% WPI for left shoulder injury sustained on 15 April 2014.

On the basis of the above, we do not accept Dr New's report that the worker suffered injury to the right shoulder on 26 March 2004 and consequential injury to the left shoulder.

We rely on Claim Forms, Complying Agreement dated 25 June 2008, Statement of Reasons and Decision of WCC dated 23 March 2011, Medical Assessment Certificate dated 29 August 2011 and reports of Dr J Bode! dated 18 July 2007, 9 November 2009 and 24 October 2019..."

10. Following an arbitration hearing on 8 April 2020, a Certificate of Determination-Consent Orders was issued in the following terms:

1. Amend the Application to Resolve a Dispute at Part 4 to delete the date of injury of 26 March 2004 and substitute "Between February and March 2004."
2. The parties accept the impairment assessments of Dr Bodel in his report dated 24 October 2019.
3. The parties agree that the cervical spine injury is as a consequence of the injuries to both the right and left upper extremities.
4. Accordingly, the only issue to be determined is whether the injury to the left upper extremity is as a consequence of the injury to the right upper extremity or not."

11. The parties were then directed to file written submissions on this issue which they have now done.

## PROCEDURE BEFORE THE COMMISSION

12. 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

13. 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) Written submissions by the applicant filed on 15 April 2020; and
  - (d) Written submissions filed by the respondent on 27 April 2020.

## THE SUBMISSIONS

14. The thrust of the applicant's submissions is that the issue in dispute was never the subject of any determination.
15. As the applicant submitted, the delegate "expressly declined to determine the issue of whether there are separate impairments or a single impairment saying, 'That issue is a legal question for determination by a court of competent jurisdiction.'"
16. The applicant says: "It follows that the issue of a causal connection between the injury to the right shoulder and the injury to the left shoulder has never been definitively determined."
17. Section 66 of the 1987 Act provides that compensation is to be paid in respect of the impairment that *results from* an injury.
18. The starting point in the applicant's submissions is consideration of the correct interpretation of the phrase "results from" and the issue of "causation" in particular, *Kooragang Cement Pty Ltd v Bates* (1994) 35 NSW LR 452: 10 NSW CCR 796, and the observations of Kirby P as follows:

"461G From the earliest days of compensation legislation, it has been recognised that causation is not always direct and immediate.

462E Since that time, 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.

463-464 The result of the cases is that each case where causation is in issue in a workers' compensation claim, must be determined on its own facts. Whether death or incapacity results from a relevant work injury is a question of fact. The importation of notions of proximate cause by the use the phrase "results from" is not now accepted. By the same token, the mere proof that certain events occurred which predisposed a worker to subsequent injury or death, will not, of itself, be sufficient to establish that such incapacity or death 'results from' a work injury. What is required is a common sense evaluation of the causal chain...

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 evidence, including where applicable expert opinions. Applying the second principle... a point will sometimes be reached where the link in the chain of causation becomes so attenuated that, for legal purposes, it will be held that the causative connection has been snapped. This may be explained in terms of the happening of a novus actus. Or it may be explained in terms of want of sufficient connection. But in each case, the judge deciding the matter, will do well to return, as McHugh JA advised, to the statutory formula and to ask the question whether the disputed incapacity or death 'resulted from' the work injury."

19. The applicant then set out extracts from a number of decisions dealing with the meaning of the term "results from" such as *Sutherland Shire Council v Baltic General Insurance Company Ltd* (1996) 12 NSW CCR 716, the decision of DP Roche in *Murphy v Allity Management Services Pty Ltd* [2015] NSWCCPD 49 *Government Insurance Office of NSW v Aboushadi* [1999] NSW CA 396, and *Secretary, Department of Education v Johnson* [2019] NSWCA 321 (*Johnson*) in support of his argument that an impairment results from an injury whenever the injury has materially contributed to the outcome, and that an injury or incapacity may be attributable, in the legal sense, to more than one cause operating concurrently.

20. I do not propose to set out in detail all the authorities to which the applicant refers. I have considered them all, and I accept the principles espoused.

21. However, of particular relevance to this matter is the comments of Emmett AJA in *Johnson* which the applicant set out as follows:

"There are three possible categories where an earlier injury is followed by a later injury, as follows:

Where the later injury results from a subsequent accident that would not have occurred had the victim not been in the physical condition caused by the earlier accident, the second injury should be treated as having a causal connection with the earlier accident.

Where an earlier injury is exacerbated by a subsequent injury, there will be a causal connection between the original injury and the subsequent damage unless it can be shown that some part of the subsequent damage would have been occasioned even if the original injury had not occurred.

Where a victim, who had previously suffered an injury, suffers a subsequent injury and the subsequent injury would have occurred whether or not the victim had suffered the original injury and the damage sustained by reason of the subsequent injury includes no element of aggravation of the earlier injury, there will be no causal connection between the original injury and the damage subsequently sustained."

22. Following on from those comments, the applicant then set out his view of the facts of this case, as follows:

"a. He injured his right shoulder during the period from February to March 2004. (ARD 3 par 24). He said that he injured his trowel arm. The Applicant is right-handed (ARD 35).

b. He returned to work and could barely use his right arm. Because of his limited ability to use his right arm and shoulder he had to do everything at work by using his left arm only. (ARD 4 par 29 and 33). He was no longer able to lay bricks.

c. The Applicant was assigned to assist another bricklayer passing him bricks. He was only able to use his left arm throwing bricks to the bricklayer (ARD 4 par 34-36).

d. As he was throwing the bricks, he felt a sudden sharp pain in his left shoulder.  
e. The Applicant was only working as an assistant because of his right shoulder injury. Being right-handed he would otherwise [have] been using his right arm or both arms to throw the bricks. Because of the right shoulder injury he was using his left arm only with the result that it was that shoulder which was injured. If he had not injured his right shoulder he would not have been using his left arm with the result that it would not have been injured.

f. The causal connection is supported by Dr New. In his report of 6 August 2019, he opines that the injury to the left shoulder "is regarded as a consequential injury to the left shoulder whilst favouring that shoulder" (ARD 69)."

23. The applicant concluded:

"Dr Bodel does not dispute that analysis. Instead the Doctor considers that all three areas (neck, right upper extremity, left upper extremity) have arisen as a consequence of the nature and conditions of his work over time. That analysis is not inconsistent with the left shoulder condition being a consequence of the right shoulder injury. As explained in the authorities set out above it is immaterial whether the left shoulder injury was also caused by the nature and conditions of employment or can also be categorised as a frank injury. So long as the left shoulder condition results from the right shoulder injury the impairments are to be aggregated pursuant to section 323 because the impairment all results from the same injury."

24. The respondent's submissions focus principally on the facts of this particular case.

25. The respondent commences by adopting the comments of Emmett AJA in *Johnson* as set out above, in particular this:

"Where a victim, who had previously suffered an injury, suffers a subsequent injury and the subsequent injury would have occurred whether or not the victim had suffered the original injury and the damage sustained by reason of the subsequent injury includes no element of aggravation of the earlier injury, there will be no causal connection between the original injury and the damage subsequently sustained."

26. The respondent added that "in order to apply such test close examination is required of the factual situation as contained in the applicant's history" and refers to the following evidence:

"a. The applicant told Dr Bodel in November 2009 (ARD p30) that:- '... He suffered an injury to both shoulders at work in early 2004. He first injured the right shoulder when laying 'besser blocks'... He injured his right shoulder while doing this work in February or March 2004... He did not seek treatment at that time but was put on light duties for a week or so.

He then went back to work and after that was laying bricks...[and] he injured his left shoulder at work on 15 April 2004. He indicates that on that day there were two bricklayers working but there were no labourers available. He was doing some of the labouring work, throwing bricks to his co-worker and he was throwing these a distance of about 4 metres. On one particular occasion he felt sudden sharp pain in the left shoulder and again he reported the problem.'

b. Further, that Doctor was of the opinion in respect of the left shoulder (ARD p38.2) that:- 'Historically, this gentleman suffered a rotator cuff tear in the specific incident that occurred at work on 15 April 2004.'



c. The Applicant told Dr Giblin in his report of March 2008 (ARD p62) that:- 'He was... laying Besser blocks when he hurt his right shoulder. ... He was off work for a week doing light duties and then he went back to normal duties. However he was at work on 15th April 2004 on the same job and he was throwing bricks up to his mate. It was an eight foot throw and he had several hundred to move. These were solid bricks about 4 kilos each. He developed severe left shoulder pain.'

d. the Applicant tells Dr New in August 2019 (ARD p69) that:- 'On 26th March 2004, whilst working on the jobsite laying Besser blocks weighing approximately 10 kg he injured his right shoulder. ... He states he was unable to finish that shift and was on light duties for approximately 1 week. On 15th April 2004 he was on the same jobsite and was required to throw bricks to his colleague who was on some scaffolding. He notes he was throwing these bricks to the height of half a storey when he injured both shoulders, the right shoulder being significant. He notes that he was mainly using his left arm in this process.'

e. Dr McGroder in his Summary (ARD p58.7) was of the opinion that:- 'Mr Yell sustained bilateral rotator cuff injuries [respondent's emphasis] within a short period of time in early 2004 during the course of his work as a bricklayer.'

27. The respondent concludes:

"A close examination of the Applicant's medical histories shows that he was not on light duties at the time he injured his left shoulder and in fact on one version was using both arms...

On close examination of the histories and the factual matrix the Applicant did not suffer a 'consequential injury' but did suffer separate injuries to the right and left shoulders."

## **FINDINGS AND REASONS**

28. Neither party appears to dispute that the issue of whether there are separate impairments or a single impairment was ever determined. As the delegate said: "That issue is a legal question for determination by a court of competent jurisdiction."
29. The background to this claim is indeed complex and in my view completely muddled.
30. The delegate's attempt to resolve the issues in dispute served merely to compound the muddle.
31. Be that as it may, my task now is simply to determine is whether the injury to the left upper extremity is as a consequence of the injury to the right upper extremity or not.
32. As the respondent correctly points out, this involves close scrutiny of the evidence having regard to the principles set out in the various authorities referred to above.
33. To begin with I think it is important to acknowledge that Mr Yell is not a sophisticated witness. He has been a bricklayer all his life, and has limited education.
34. As he said in his statement dated 14 February 2020:

"I left school at about age 15 and went straight into bricklaying. I do not read or write very well and would get assistance from my sisters with the course work that I did through Granville Tech."

35. He continued as follows:

"I do not remember the precise date that I injured my right shoulder but it may have been on 26 March 2004 as was recorded by Dr Giblin. I was leaning forward with one of the Besser blocks in both hands attempting to put it into place... Whilst doing so my right shoulder went and I suddenly lost strength and could no longer hold on to the block and dropped it. I heard the sound of my shoulder going out. It was my trowel arm and I knew at the time that it was potentially a serious injury. I returned to work within a few days but could barely use my right arm.

On my return to work I had a restriction and limited ability to move my right arm or shoulder at all as it would cause a lot of pain.

There was no way I will be able to lay bricks because of this injury.

The second injury occurred on 15 April 2004.

Because of my limited ability to use my right arm and shoulder I had to do everything at work by using my left arm only.

15 April 2004 was a day there where there were no other labourers onsite. I was working with another bricklayer David Mackay who was a few years senior to me as a bricklayer. I was required to throw him house bricks that he was laying. The palette of bricks was approximately 5m away from where he was working.

Because I could not use my right arm or shoulder, I was only picking up bricks with my left hand. In order to pass them to David Mackay I would have to throw the brick to him again just using my non-dominant left arm...

As I was throwing the bricks across to him, I felt a sudden sharp pain in my left shoulder."

36. Although this statement is dated some 14 years after the injuries, it remains broadly consistent with the history the applicant gave to the many doctors he has seen over the years.
37. In addition, in my view it is a perfectly plausible statement as to the circumstances of his injuries.
38. The injury to the left shoulder occurred a very short period after the right shoulder injury. Given the extent of the injury to the right shoulder it seems to me that the applicant would inevitably been required to use his left arm if he was to continue with his work, which I regard as strenuous.
39. To my mind, that scenario reflects a consequential injury to the left shoulder.
40. The applicant completed two separate claim forms in relation to his injuries.
41. Relevantly in the one dated 5 May 2004, when asked how the injury to his left shoulder occurred, he simply stated: "Throwing bricks to Dave Mackie at scaffold height." When asked if he stopped work due to the injury and when, he initially stated on 16 April 2004, ruled through that and said 15 April 2004, and added: "Light duties."

42. It is not clear in what context this statement of “light duties” was made, but it suggests to me that he was indeed performing “light duties” at the time otherwise there would be little point in making such a comment.
43. Having said that, the duties described, that is, throwing bricks some distance with his left arm, could not be described as “light” but the applicant explained the circumstances on that particular day, namely that no labourers were available.
44. That claim form is of course the most contemporaneous evidence of the circumstances surrounding his injury, and as such carries significant weight.
45. Dr Bodel in his report dated 24 October 2019 concluded:
- “In reality, all three areas of injury (neck, right upper extremity, left upper extremity) have arisen as a consequence of the nature and conditions of his work over time and the more appropriate way of assessing this would be by means of a deemed date of injury being the last day that he worked. The pathology is a cumulative pathology which has occurred over years in his work as a bricklayer.”
46. Similarly, Dr McGroder was of the opinion that “Mr Yell sustained bilateral rotator cuff injuries within a short period of time in early 2004 during the course of his work as a bricklayer.”
47. The focus of the respondent’s submissions is that there are some inconsistencies in the applicant’s reporting of the circumstances of his injuries, and examples were provided.
48. However, in my view they do not detract from the consistent expression by the applicant of the circumstances surrounding his left shoulder injury. Even if on occasions he did use both arms to throw the bricks, he still used his left arm to a significant extent, consistent with his claim form.
49. I agree with applicant’s submission that the opinion of Dr Bodel (and to an extent that of Dr McGroder):
- “is not inconsistent with the left shoulder condition being a consequence of the right shoulder injury. As explained in the authorities set out above it is immaterial whether the left shoulder injury was also caused by the nature and conditions of employment or can also be categorised as a frank injury. So long as the left shoulder condition results from the right shoulder injury the impairments are to be aggregated pursuant to section 323 because the impairment all results from the same injury.”
50. For these reasons, I am satisfied that the left shoulder injury resulted from the right shoulder injury such that the applicant is entitled to aggregate the impairment assessments.

