WORKERS COMPENSATION COMMISSION

CERTIFICATE OF DETERMINATION

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

Matter Number: **1335/20**
Applicant: **Joe Meoushy**
Respondent: **Elbex Access & Security Pty Ltd**
Date of Determination: **3 June 2020**
Citation: **[2020] NSWWCC 186**

The Commission finds:

1. The subject event caused injuries to the applicant's right shoulder and neck.

2. The subject injuries were a material contribution to the development of consequential conditions to the applicant's left shoulder, left knee, and upper digestive tract.

3. The low back condition was not caused by the subject event, nor was it a consequential condition thereof.

The Commission orders:

1. I remit this matter to the Registrar for referral to an Approved Medical Specialist for a whole person impairment assessment, to be held in the pending list, on the following bases:

    (a) Date of injury: 15 January 2015

    (b) Matters for assessment:
    - Right upper extremity (shoulder)
    - Cervical spine
    - Left upper extremity (shoulder) - consequential condition
    - Left lower extremity (knee) – consequential condition
    - Upper digestive tract – consequential condition

2. There will be an award for the respondent for the claim for injury/consequential condition to the lumbar spine.

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

John Wynyard
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 JOHN WYNYARD, ARBITRATOR, WORKERS COMPENSATION COMMISSION.

A Sufian

Abu Sufian
Senior Dispute Services Officer
As delegate of the Registrar

STATEMENT OF REASONS

BACKGROUND

1. Joe Meoushy, the applicant, brings an action against Elbex Access & Security Pty Ltd, the respondent for benefits pursuant to s 66 of the *Workers Compensation Act 1987* (the 1987 Act) arising from an injury on 15 January 2015. The claim seeks compensation for whole person impairment (WPI) caused to the both upper extremities, the cervical and lumbar areas of the spine, the left lower extremity and the digestive system.

2. The insurer issued a s 74 notice on 26 April 2017 and a s 78 notice on 18 September 2019.

3. An Application to Resolve a Dispute (ARD) and Reply were duly lodged and served.

PROCEDURAL

4. The ARD described the "Injury Details" in these terms:

> "The worker was involved in an accident on 15 January 2015 when he was attempting to erect a ladder with a colleague. Whilst doing so, the ladder slipped and the worker reached up to stop it from falling on him. He sustained injury to his right shoulder and consequential injuries to his left shoulder, cervical spine, lumbar spine, carpel tunnel and upper digestive track."

5. The s 78 notice admitted liability in respect of the claim for injury to the right shoulder, and for the neck. The authors of the notice said:[1]

> "According to Dr Rimmer you complained generally of pain and reduced range of motion in the neck, back and right shoulder. He accepted that you likely suffered a cervical spine injury and right shoulder complaints due to the accident on 15 January 2015. In a separate report, Dr Rimmer opined that there was a causal link between the right shoulder complaints and the cervical spine injury, but he could not find any relationship between the shoulder condition and the lumbar spine problems.
>
> …..
>
> Considering the available evidence and the fact that GIO has admitted separate liabilities for at least two of these alleged conditions as separate claims, we are satisfied that you suffered injuries to your neck and right shoulder on 15 January 2015 as pleaded, but any injury to the left shoulder occurred or is otherwise related to an incident or accident on 28 July 2016, and separately, due to bilateral carpal tunnel syndrome deemed to have occurred in or about June 2018."

6. Unsurprisingly, at teleconference on 3 April 2020, the applicant sought to amend the nature of its injury description. Mr Meoushy applied to amend the description to plead:

> "The worker was involved in an accident on 15 January 2015 when he was attempting to erect a ladder with a colleague. Whilst doing so, the ladder slipped and the worker reached up to stop it from falling on him. He sustained injury to his right shoulder, neck and low back and consequential conditions to his left shoulder, left knee, low back and upper digestive tract."

[1] ARD page 24.

7. Over the objection of the respondent, I granted leave to the applicant to make that amendment, and issued short reasons.

8. When the matter came on for hearing, Mr Grant indicated that he wished to make an application pursuant to s 289(4) of the 1998 Act. He sought to withdraw the concession made in the s 78 notice in relation to the neck. He argued that the amendment made at the teleconference altered the nature of the case the respondent had to meet. He argued that a "frank" injury (as personal injuries described in s 4(a) of the 1987 Act are commonly called) was not pleaded in the ARD, and the respondent was not prepared to meet such a claim, rather it was ready to face the pleading that the condition of Mr Meoushy's neck was consequential.

9. The application was declined. I found that the admission regarding the neck was clear, and given with reasons. There was no suggestion that it had been an error, or that it was not founded on evidence. I also found that, in any event, such an unannounced late application would cause prejudice to the applicant that could not be cured. I had also given reasons in my decision of 3 April 2010, to the same effect.

ISSUES FOR DETERMINATION

10. The following issues accordingly remain in dispute:

    (a) Was the claim regarding the left shoulder a consequence of the accepted injury to the right shoulder.

    (b) Was the claim regarding the low back a consequence of the accepted injury to the right shoulder.

    (c) Was the claim regarding the upper digestive tract a consequence of the accepted injury to the right shoulder.

PROCEDURE BEFORE THE COMMISSION

11. The matter was heard by way of teleconference conciliation/arbitration on 24 April 2020. The applicant was represented by Ms Nicole Compton of counsel instructed by Matthew Garling of Garling & Co Lawyers. The respondent was represented by Mr Stuart Grant of counsel instructed by Mr Christopher McCourt of Messrs Hicksons Lawyers. 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

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

    (a) ARD and attached documents;

    (b) Application to Admit Late Documents and attached documents dated 14 April 2020;

    (c) Reply and attached documents;

    (d) Supplementary report of Dr Stephen Rimmer dated 17 April 2020.

Oral Evidence

13. No application was made in respect of oral evidence.

FINDINGS AND REASONS

Statement of Mr Meoushy

14. Mr Meoushy made a statement on 14 October 2019[2]. It was a thorough account of the chronology of his work with the respondent, his injuries and treatment. It was particularised by cross-reference to various medical reports and clinical notes, and I infer it was prepared with some assistance.

15. Mr Meoushy is a married man aged 46, with two young children. He commenced employment with the respondent on 23 August 2013. His duties consisted of being on call to attend premises, travelling to and from worksites in the company van, installing, maintaining and repairing security equipment at mainly commercial and government buildings or sites.

16. At the time of his accident on 15 January 2015, whilst at a site in Darling Harbour Mr Meoushy was setting up an A frame platform ladder weighing about 40 kg. Mr Meoushy and a fellow worker were attempting to erect the ladder when the base of the ladder slipped and Mr Meoushy attempted to stop it from hitting his head by reaching up with his right arm. The arm was pushed backwards and he was forced into a squatting position. He heard a clicking noise in his shoulder and felt immediate pain. He was unable to finish the particular job, but he continued working. He did not consult a doctor or report the injury because he thought it would resolve over time.

17. However, the symptoms continued to get worse and he began to notice difficulties in performing particular jobs – particularly changing the batteries of a solar panel device at Darling Harbour. These weighed 38 kg and he needed to use both hands to lift them about 1.2 metres above ground level.

18. Mr Meoushy described another job at the Wollongong Courthouse which required him to carry heavy boxes of cables up and down stairs for about six months. He said:[3]

> "It was because of the accident and tasks such as these, that caused the ongoing pain in my right shoulder, neck and lower back."

19. Eventually, Mr Meoushy consulted Dr Jai Balgovind of the Allcare Carnes Hill Medical Centre on 1 March 2015. Mr Meoushy was sent for x-rays and ultrasound to the right shoulder.

20. Mr Meoushy presented again on 8 March 2016.[4] The clinical notes provided by the medical centre confirm that Mr Meoushy was complaining about his right shoulder symptoms on both occasions, although no history of their cause was noted. No WorkCover certificate was issued at this stage.

21. Mr Meoushy next sought treatment with Dr Ashishkumar Shah of the same practice on 13 April 2015, after a supraspinatus tear had been confirmed by the radiology. He was given pain medication and physiotherapy. He was advised by Dr Shah that he needed to see an orthopaedic surgeon, and the first WorkCover certificate was issued. It certified that Mr Meoushy was fit for normal duties, normal hours, but with lifting restrictions.[5] It covered the period from 4 April 2015 to 27 April 2015.

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[2] ARD pages 1-15.
[3] ARD page 4 [29].
[4] ALD page 11.
[5] ARD page 330.

22. The clinical notes from the medical centre recorded that the next attendance was on 19 April when the right shoulder was again the subject of the entry.[6]

23. On 17 June 2015, the centre noted that Mr Meoushy attended, complaining of a lump on the right side, "shoulder wc still pending" and a painful left foot which made him limp at times.[7] There is no record of any further WorkCover certificate being issued.

24. On 28 July 2015, the entry in the medical centre notes said:

> "Old right shoulder pain flare up again.."

25. The entry showed that Mr Meoushy attended to obtain a medical certificate. It is unclear whether a certificate issued, but no WorkCover certificate was lodged regarding that date.

26. The next attendance on the medical centre was on 19 October 2015. Mr Meoushy said that he told Dr Shah that he was experiencing back symptoms. The entry confirmed that Mr Meoushy complained of "low back pain", which was a "work related injury." No further explanation was given in the notes.

27. The shoulder complaint was listed separately as "2.R shoulder pain. Under WorkCover." A WorkCover certificate was issued, dated 19 October 2015.[8] It again certified that Mr Meoushy was fit for normal hours and normal duties with lifting restrictions.[9]

28. In his statement, Mr Meoushy thought that the lower back problems came about because of "being unbalanced due to the problems in my shoulder".

29. Mr Meoushy said that he reported his injury to his employer in late March 2015, but his claim was apparently not forwarded to the insurer until December 2015. Mr Meoushy stated that was particularly distressing and he had to rely on his own resources for treatment, which limited his options.

30. Mr Meoushy said he was not offered light duties by his employer, and between the date of injury and September 2016, a period of 21 months, was performing his full pre-injury duties, but using "self-imposed modifications to protect my right shoulder". The certification for 2015 in evidence showed Mr Meoushy was certified for normal hours and normal duties, with lifting restrictions between 4 April and 27 April 2015. The next certification lodged showed Mr Meoushy fit for normal duties and normal hours with lifting restrictions from 19 October 2015 and continuously thereafter until January 2017.

31. Because he was expected to continue his normal duties, Mr Meoushy continued to use an A frame ladder with another employee, and he found that he was using his left shoulder more than his right in order to protect the right shoulder. He said the right shoulder was continually symptomatic.

32. The pain in the left shoulder began to be noticeable and Mr Meoushy reported it to his employer, Mr Greg Fulton at the Silverwater office after he had finished working at Darling Harbour. He was not able to give any precise date. Mr Meoushy said he was nonetheless required to do his full duties including the use of the A frame ladder.

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[6] ALD page 13
[7] ALD page 13
[8] ARD page 327
[9] ARD page 326

33. The first record of a complaint about the left shoulder appeared in the clinical notes of the medical centre. On 4 April 2016 Dr Shah recorded:[10]

> "L SHOULDER PAIN
> WORK RELATED INJURY DUE TO OVERCOMPESANTION
> CARRIES HIS LAPTOP WITH HIS L HAND
> OPEN THE VAN DOORS
> OPEN THE HEAVY DOOR L SHOULDER
> DRIVING AS WELL L SHOULDER
> Diagnostic Imaging requested: L SHOUDLER ULTRSAOUND TO CHECK F
> OR ROTATOR CUFF LEISON PLEASE"

34. On 5 May 2016 Dr Shah referred Mr Meoushy to Dr Davé, whom he saw on 2 June 2016. Dr Davé recommended sub-acromial cortisone injections to the right shoulder, which Mr Meoushy declined. Although Dr Davé was asked to report on the right shoulder injury, he also noted:[11]

> "He is starting to get some pain in his left shoulder as well.."

35. Dr Davé managed the treatment of Mr Meoushy's right shoulder, and performed an arthroscopic sub-acromial decompression on 27 September 2016. Eight reports were relied on from Dr Davé, written between 2 June 2016 and 3 May 2017. He did not mention the left shoulder again until his last report of 3 May 2017, when he said:[12]

> "He had other assorted pains in his left shoulder, his left knee and the front of his chest wall and I am not sure as to the origin of these."

36. Mr Meoushy then referred to an incident that occurred on 21 July 2016. He said he was required to work at a site that required him to carry the A frame ladder about 10 – 15 metres. He climbed the ladder and attended to the job. Whilst taking the ladder back to the car he said[13]:

> "I lifted the front of the ladder with my left arm as I couldn't use my right arm, as I was unable to extend it since it had been injured".

37. In manoeuvring the ladder onto the roof of the car, Mr Meoushy felt pain in his left shoulder which was more extensive than the pain he was usually experiencing in that area. He reported the left shoulder injury to Mr Fulton at the end of his shift and after a conversation with Mr Fulton, ceased carrying the ladder at work. He said:[14]

> "89. The pain I experienced at that moment was over and above the usual pain I felt on a daily basis in the left shoulder."

38. When Mr Meoushy reported the injury to his boss, Mr Fulton was alleged to have said:

> "Why are you [expletive deleted] carrying the ladder?".

39. Mr Meoushy said he was off work between 25 and 29 July and consulted Dr Shah on 26 July 2016. The clinical notes of the medical centre show that he presented on 26 July 2016 complaining of a recurrence of his right shoulder complaint; and on 28 July 2016 complaining of the left shoulder injury.[15]

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[10] ALD page 21
[11] ARD page 67
[12] ARD page 81
[13] ARD page 8 [87]
[14] ARD page 8 [89]
[15] ALD pages 23/24

40. On 29 July 2016, an ultrasound x-ray was carried out of the left shoulder. He went back to Dr Davé and agreed to undergo surgery to his right shoulder.

41. He continued to work with "self-imposed restrictions/modifications" until on 27 September 2016 he came to surgery with Dr Davé at Campbelltown Private Hospital. A bi-arthroscopy, an acromioplasty and debridement of the subacromial spur was performed.

42. On 29 September 2016, Mr Meoushy was bathing his young son and daughter. He said[16]:

> "As I was trying to get my son out of the bath, one handed, so as not to interfere with my right shoulder, I slipped on the bathroom tiles and twisted my left knee".

43. Mr Meoushy said that when he fell, he did not attempt to use his right arm to break the fall. He said that the main problem from the fall was the twisted left knee, "however I also felt that my mid and lower back were affected due to the awkward way that I fell."[17]

44. Dr Davé took the following history of the incident in his report of 8 December 2016:[18]

> "Joe has complained of a twisting incident to his left knee whilst looking after his children. He was squatting deeply and twisted his knee and since then has had pain mainly on the medial side of his knee joint...."

45. Mr Meoushy was reviewed by Dr Davé in October and November 2016. He was also certified by Dr Shah as unfit for six weeks following the surgery. He continued to consult Dr Shah.

46. When Dr Davé reported on the right shoulder on 27 January 2017, he commented:[19]

> "[Mr Meoushy] also hasn't got the MRI scan done of the knee as he wants to put it through workers compensation as well."

47. Mr Meoushy ceased his employment around June 2017. He underwent a series of MRI scans in October 2017 to the lumbar spine, right shoulder and cervical spine. He underwent a bone scan on 24 November 2017 and he was referred to Dr Renata Abraszko on 7 December 2017.

48. Mr Meoushy said that since 2015 he had been experiencing some abdominal pain but he did not really think much about it[20]. It became a "pressing problem" in late 2016/2017 and he first reported it in June 2017.

49. On 13 June 2017, Mr Meoushy consulted Dr Shah complaining about stomach problems. He said because of his limited ability to exercise, he had gained weight and put on about 30 kg.

50. On 16 October 2017, an ultrasound of the abdominal area was taken.

51. Mr Meoushy was referred to Dr Ian Turner, Gastroenterologist, and a gastroscopy was performed on 11 April 2018 at Campbelltown Private Hospital. Dr Turner reported on 12 April 2018, saying:[21]

> "Impression and plan-
> 1. Await the gastric biopses as to whether Helicobacter is present but they might be NSAID ulcers.

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[16] ARD page 10
[17] At paragraph 112
[18] ARD page 75
[19] ARD page 76
[20] ARD page 12 paragraph [34]
[21] ARD page 111

2. A trial of ranitidine 300mg daily and see me for review."

52. Further MRI scans were carried out of the lumbar and cervical spines in August/September 2018.

53. I have referred to the clinical notes from Allcare Carnes Hill Medical Centre during this review of Mr Meoushy's evidence. It is pertinent to refer to further entries.

Medical reports

Dr Shah

54. Dr Shah reported to "UHG" in Prahan, Victoria on 20 January 2020. He reported a consistent history of the injury and that he had issued a WorkCover Certificate from 14 April 2015 with lifting restrictions, but was uncertain as to whether they had been followed because there was no improvement in the right shoulder pain by November 2015.

55. Dr Shah then listed the "presenting symptoms" which I assume referred to his symptoms as recorded on 20 January 2020[22]:

> "R SHOULDER PAIN, REST, ANALGIEA, ICE, X RAY, ULTRSOUND, ACUPUNCRE
> UNABLE TO TAKE MOBIC DUE TO STOMACH UPSET
> R SHOULDER ARTHORSCALPY AND ACROMIOPLASTY- POST OPERATIVE
> Need domestic assistance at home
> L KNEE INJURY AS HE SLIPPED WHILE BATHING HIS SON. HE SUPPOSED TO HAVE NANNY ON THAT DAY AFTER
> OPERATION BUT HE DIDNT HAVE NANNY, NEED MRI L KNEE
> HAD CORTISONE INJECITON ON HIS R SHOULDER
> L KNEE MEDIAL COLLATERAL STRAIN
> INFRPATELLAR BURSITIS
> PHYSIOTHEPRY FOR HIS L KNEE PAN AND DR DAVE'S OPINION
> ANXIETY/STRESS/SOCIAL PHOBIA/PANIC ATTACK DUE TO CHRONIC PAIN
> PSYCHOLOGIST kim malone psychologist
> Having pain on his r arm, r foarm , R hand and Neck pain, Headache- Mri Cervical spine and pain speciliast review
> L hand pain , Ultrosund confirmed carpal tunnel sydrnome
> Low back pain. Mid thorasic back pain
> panadol osteo, panadeine forte and voltaren for pain mangement
> acupuncture need approval
> Gord due ? voltaren , can try somac 4 O mg daily
> Both wrist carpal tunnel syndrome
> weight gain due to chronic pain, lack of exercise and side effects of pain medi cation- can try saxendra injection daily for 3 months
> pain medication Lyrica 25 mg(increase dose to 50 mg), palexia and endep newly started by Dr Abrasko
> struggling with chronic pain, disability, side effects of medication , downgrade to unfit for work
> Low back pain, r sided leg pain need to start Physiotherapy for Low back and R leg pain
> Both elbow pain need further investigation"

56. There were a number of diagnoses made by Dr Shah:

> "
> - Right shoulder supraspinatus tear
> - Subscapularis tear
> - Subdeltoid bursitis
> - Low back L4-L5 disc protrusion

[22] AD 159

- Neck pain - multilevel disc degeneration with nerve irritation C3/L4
- Carpal Tunnel Syndrome
- Chronic pain
- Anxiety
- Depression
- NSAIDS induced GORD- erosive gastritis and duodenal ulcer."

57. Dr Shah then answered some questions that were not reproduced. Dr Shah confirmed that Mr Meoushy was working with a restricted right shoulder when he injured his left shoulder in the incident described on 28 July 2016. Dr Shah thought that it was because Mr Meoushy was compensating for the right shoulder that the incident occurred. He did not list the left shoulder as a current complaint, nor did he offer a diagnosis.

58. He confirmed the knee injury whilst Mr Meoushy was bathing his son, noting that Mr Meoushy was "supposed to have a nanny on that day".

59. Dr Shah also gave an opinion that he thought the carpal tunnel syndrome was also connected to the right shoulder injury, and he noted that Mr Meoushy had been taking NSAIDS which included Ibuprofen, Celecoxib and diclofenc.

Dr Davé and Dr Abraszko

60. Multiple reports by Dr Davé were lodged, and I have already referred to those that are relevant. Multiple reports were also lodged by Dr Abraszko. Both sets of reports confirmed the chronology of events given by Mr Meoushy in his statement, which, as I have indicated, appears to have been written by reference to them.

Dr Woo

61. Dr Alexander Woo was retained as Mr Meoushy's medico-legal referee and he reported on 6 February 2019. He had available to him eight reports from Dr Davé, 11 reports from Dr Abraszko and reports from Dr Wallace and Dr Sheridan. He also received the x-rays, MRIs, bone scans and ultrasounds that had been taken during the currency of Mr Meoushy's claim.

62. Dr Woo took a consistent history of Mr Meoushy's original accident on 15 January 2015. He related that the right shoulder was injured. He made no mention of the lower back, or the neck being involved. He noted the surgery on 27 September 2016 and the report by Dr Davé on 8 December 2016 regarding the twisting incident of the left knee.

63. The list of complaints Dr Woo set out were: [23]

(a) Headaches since the workplace incident of 15 January 2015.
(b) Neck pain.
(c) Back pain in the thoracic and lumbar spine.
(d) Right shoulder pain.
(e) Right elbow pain.
(f) Right hand pain and numbness over the 5th and 4th fingers and ulnar half of the 3rd finger.
(g) Left hand numbness.
(h) Left knee pain.
(i) Right leg numbness extending from the thigh down to the 3rd , 4th and 5th toes.

64. Dr Woo also noted complaints of Mr Meoushy dropping things, and a "whispering noise in the left ear." He noted Mr Meoushy's weight at 110 kg.

[23] ARD page 144

65. Dr Woo diagnosed injuries on 15 January 2015 as being to the right shoulder, the cervical spine (with clinical signs of radiculopathy) and lumbar spine. The diagnosis was a soft tissue injury to each of those areas. The lumbar spine was said to have L5 disc herniation.

66. Dr Woo also found that secondary to those injuries were a soft tissue injury to the left shoulder related to overuse, a soft tissue injury to the left knee with meniscal injuries and bilateral carpal tunnel syndrome which had resolved.

67. In a supplementary report of 6 February 2019 Dr Woo gave a WPI assessment of a combined table value of 32%.

Dr Rimmer

68. Dr Stephen Rimmer, Orthopaedic Surgeon, was retained by the respondent as its medico-legal referee. He supplied two reports dated 11 July 2019 and a further report of 3 September 2019.

69. In his report of 11 July 2019, he reviewed the extensive documentation in the case identifying 59 reports and investigations. He took a consistent history of the injury of 16 January 2015 noting a hypertension injury to the right shoulder. He noted that the referral to Dr Ireland on 25 February 2016 resulted in an initial recommendation of conservative management but later for surgical subacromial decompression.

70. Dr Rimmer noted the second opinion sought through Dr Davé and the surgery that ultimately took place on 27 September 2016.

71. Dr Rimmer noted Mr Meoushy's disappointment with the outcome of the surgery and that Mr Meoushy was subsequently referred to pain management.

72. Dr Rimmer said[24]:

> "When asked specifically about his cervical spine and lumbar spine symptoms, Mr Meoushy was very vague as to their onset and cause. He stated due to his right shoulder injury he was supposed to be doing light duties; however, there were none so essentially, he was performing his full duties. As a result, he claims he developed pain and stiffness in his cervical spine and pain in his lumbar spine with right sided sciatica."

73. Dr Rimmer noted that Mr Meoushy denied any previous history of injury to his cervical spine, lumbar spine or right shoulder.

74. Dr Rimmer's diagnosis was as follows[25]:

> "1. He is two and a half years post right shoulder subacromial decompression.
> 2. Minor cervical spine degenerative osteoarthritis which is constitutional.
> 3. Minor degenerative osteoarthritis of the lumbar spine which is constitutional.
> 4. Abnormal illness behaviour; he claims to have numbness throughout the entire extent of his right lower limb which is inconsistent with any known organic pathology. This is also confirmed by the MRI scan of his lumbar spine dated 5/9/2018 which shows no evidence of neural impingement."

[24] ARD page 33.
[25] ARD page 37.

75. In his second report of 11 July 2019, Dr Rimmer asks specific questions from his retaining solicitors. He was asked[26]:

> "j) **Please indicate whether the complaints made by the worker and the resulting incapacity for work is a reasonable** and **direct result of the worker's injury:"**

76. Dr Rimmer accepted that the right shoulder was implicated and that the cervical spine symptoms were consequential to the right shoulder injury. He said:

> "…. With regards to the lumbar spine, I cannot see any relationship with his previous employment."

77. Dr Rimmer was asked whether the left shoulder was consequential or causally related to the subject injury of 15 January 2015, and he answered[27]:

> "After review of this report in conclusion with my assessment in answer to your questions, at no time in my extensive assessment of Mr Meoushy on 1 July 2019 did he mention any symptoms in his left shoulder. Therefore, I do not consider he has a left shoulder condition."

78. When asked about the left knee injury, Dr Rimmer again stated that there had been no mention of the left knee condition during his assessment and he did not believe that any left knee condition arose during the course of his employment. He repeated in answer to a further question regarding the left knee:

> "There is no relationship between the alleged left knee condition and the accepted right shoulder injury on 15/1/2015. He hyperextended his right shoulder and that was the only anatomic site injured on that particular day.

Dr Ruppin

79. Dr David C Ruppin, Gastroenterologist, was retained as Mr Meoushy's medico-legal referee as to the claim regarding the digestive system. He said[28]:

> "He describes his health previously as being good and unblemished. He hadn't sought or received medical advice for any conditions and, in particular, nothing in regard to his digestive tract. He took no regular medication."

80. He took a consistent history and circumstances of the subject injury and the onset of his other physical conditions. He took a history of a fall in 2016 "the details of which had been documented by others elsewhere"[29] and he noted that in late 2017 Mr Meoushy "developed a new back problem."

81. Dr Ruppin also took a history that Mr Meoushy self-medicated, prior to his surgery on 27 September 2016. Dr Ruppin said:

> "In the post-injury phase Mr Meoushy self-medicated with available over the counter preparations, such as ibuprofen containing proprietary drugs (Advil, Nurofen) and paracetamol in different forms. His GP added Celebrex (celecoxib).
>
> After the right shoulder surgery in 2016 he was prescribed Panadeine Forte, Voltaren (diclofenac), Endep (amitriptyline), Lyrica (pregabaHn) and Palexia (tapentadole) and has continued in varying combinations of those drugs. Currently he is self-medicating with Advil (ibuprofen), Lyrica (pregabalin),

[26] ARD page 41.
[27] ARD page 43.
[28] ARD 156.
[29] ARD page 155.

Panadeine Forte (paracetamol+codeine) Panadol Osteo (paracetamol) and Valdoxan (agomelatine)"

82. Dr Ruppin noted further that at the time of his report, 21 May 2019, Mr Meoushy was "self-medicating" with Advil, Lyrica, Panadeine Forte, Panadol Osteo and Valdoxan.

83. Dr Ruppin noted that Mr Meoushy thought that he was "despondent about his circumstances", that he was "physically very disabled, housebound and restricted in his activity because of pain". Dr Ruppin said:

> "His circumstances do not appear to have been helped by any of the rehabilitation offered and he has been offered various temporary placements for work which he feels unable to perform".

84. Dr Ruppin noted "from a gastrointestinal point of view" that Mr Meoushy:

> "..described evolving symptoms from the early months after his event……. Very early on in the months after his injury he started to develop features recognisable as due to gastro-oesophageal reflux disease with evidence of fluid regurgitation, heartburn and a bitter fluid taste· in the mouth."[30]

85. Dr Ruppin noted the endoscopy carried out in April 2018, and the report of Dr Ian Turner that it "might represent Helicobacter infection or NSAID injury".

86. Dr Ruppin noted blood tests that were taken in 2017 and an ultrasound which was consistent with fatty liver disease and liver enlargement. This was not part of Mr Meoushy's complaint, Dr Ruppin said.

87. Dr Ruppin assessed a 2% WPI and gave the following explanation[31]:

> "[Mr Meoushy] has symptoms and signs (endoscopy) consistent with upper gastrointestinal tract injury secondary to exposure to Non-Steroidal Anti-Inflammatory Drugs. I acknowledge that my assessment that Mr Meoushy has achieved Maximum Medical Improvement is based on his history which is a little clouded as to his current use of acid suppression medication. It is a form of therapy that would be well suited to his complaint and I am not clear how much he is regularly taking."

Dr Sethi

88. Dr Siddarth Sethi, Gastroenterologist, reported on 29 July 2019 as Mr Meoushy's medico-legal referee as to the upper digestive tract.[32] He took a history that following arthroscopic repair in September 2016 Mr Meoushy was prescribed several analgesic agents including Panadeine Forte, Voltaren, Endep, Lycia, Palexia, Panadol Osteo and non-steroidal anti-inflammatory agents. He noted a past history of "nil significant."

89. Dr Sethi took a history that the gastro-intestinal symptoms commenced in late 2016. Dr Sethi described the symptoms complained of and noted the gastroscropy/colonoscopy of 11 April 2018.

90. Dr Sethi said that the results showed mild reflux oesophagitis and shallow duodenal ulcers. He noted that Mr Meoushy had said that he had gained 23 kg in weight since the injury. Dr Sethi noted that at the time of consultation Mr Meoushy weighed 113 kg.

[30] ARD page 156.
[31] ARD page 157.
[32] ARD page 45.

91. Dr Sethi found that Mr Meoushy had developed irritable bowel syndrome and gastro-oesophageal reflux disease (GORD). Dr Sethi said that the symptoms described to Dr Sethi were strongly suggestive of irritable bowel syndrome, and the diagnosis was confirmed by the gastroscopy/colonoscopy procedure.

92. Dr Sethi said:

> "This has developed entirely independently of this accident and the medications he took for treatment after it. They would have occurred regardless of whether he suffered the work injury or not."

93. Dr Sethi then outlined his reasons. His reasoning was based on the assumption that Mr Meoushy started taking analgesic medication shortly after the subject injury of January 2015. He noted that the gastro-intestinal symptoms had not developed until 22 months later. He said[33]:

> "Had his medications been responsible, one would reasonably have expected his symptoms to have started soon afterwards i.e. within a few days or weeks. The prolonged delay of 22 months essentially rules out any causative role for his medications in causing his gastro-intestinal symptoms. Given the prolonged delay, it is unreasonable to hold his medications responsible."

94. Dr Sethi noted that irritable bowel syndrome and (GORD) were very common conditions affecting 15 – 20% of the general populations. The medications that Mr Meoushy took, Dr Sethi said, did not cause reflux, bloating or abdominal fullness. He said[34]:

> "It is widespread accepted medical and scientific opinion that GORD is caused by laxity of the gastro-oesophageal sphincter muscle. [IBS] is caused by hypersensitivity of the gastro-intestinal tract. It is extremely unlikely that the medications he took could have caused or contributed to his gastro-intestinal symptoms in any way whatsoever."

95. Dr Sethi noted that Mr Meoushy was significantly obese which likely also played a significant role in aggravating his conditions, obesity being a well-known risk factor for GORD.

SUBMISSIONS

96. Mr Grant first addressed the claim that that the low back symptoms were either part of the event of 15 January 2015, or a consequence thereof.

97. He submitted that a common sense approach to the claim regarding the low back would not establish any nexus between the subject injury to the shoulder on 15 January 2015 and the first recorded complaint of back pain thereafter on 19 October 2015. Mr Grant submitted that there was no attempt by Dr Shah to link the two complaints, nor was there any other contemporaneous mention of the back before that time. I would accept the opinion of Dr Rimmer that there was no relationship between the complaints about the lumbar spine and his previous employment.

98. If the low back had been a source of continual complaint, Mr Grant further argued, it ought reasonably to have appeared in the WorkCover certification. Many complaints were listed by Dr Shah, as has been seen; complaints of right shoulder pain, right arm pain, right forearm pain, right hand and neck pain, but none related to the lower back. I would not therefore accept the opinion of Dr Woo that the lumbar spine diagnosis had been caused as a result of the workplace incident of 15 January 2015.

[33] ARD page 48.
[34] ARD page 48.

99. Mr Grant submitted that not even Dr Shah in his comprehensive report of 20 February 2020 offered any causal explanation for the low back complaint of pain.

100. Mr Grant submitted that there was ample explanation about the low back complaint as it pre-dated the date of the subject injury. Whilst it may have been caused by the heavier light duties Mr Meoushy complained of, there was no suggestion that there was any connection with the subject injury of 15 January 2015.

101. Mr Grant submitted that only one complaint about the low back was made, on 19 October 2015, amongst many attendances which were concerned with the right shoulder. In none of those attendances was there any suggestion that the right shoulder injury was causing any back pain.

102. With regard for the claim that Mr Meoushy developed a consequential condition in his left shoulder, Mr Grant conceded that it was not unknown for a contralateral limb to become symptomatic when favouring the injured limb, but that said, there was clear evidence in this case that there had in fact been a fresh incident on 21 July 2016, in respect of which a separate claim number had been opened by the insurer. This was referred to in the s 78 Notice, which had relied on the opinion of Dr Wallace, dated 18 April 2017, who said that the left shoulder injury had recovered. When seen by Dr Rimmer on 11 July 2019, Mr Meoushy made no complaint about his left shoulder at all. Mr Grant posed the question as to whether the condition of the left shoulder was a result of overuse, or whether it had been caused by specific and unrelated injury.

103. Mr Grant referred to Mr Meoushy's history that he was putting a ladder on top of his car and using his left arm only to do so. This was the injury referred to in the s 78 notice, he submitted.

104. The claim that the condition of Mr Meoushy's upper digestive tract was a consequence of his ingestion of medication was next addressed by Mr Grant. Mr Grant referred to the opinions of Dr Sethi, who took a history of "nil significant" past medical history,[35] and Dr Ruppin, who assumed that Mr Meoushy had a "good and unblemished prior health record."

105. These assumptions were not factually correct, Mr Grant asserted. The pre-existing history of gastric symptoms revealed by Dr Shah's notes was significant, and the expert opinions on both sides were therefore compromised because of the previous history. Mr Grant submitted that had Dr Ruppin been aware of the previous histories he may very well have had a different opinion. He submitted, as I understood him, that the basis of Dr Sethi's conclusions were unaffected by that wrong history.

106. Dr Sethi found that Mr Meoushy's gastrointestinal symptoms commenced in 2016. Dr Sethi noted that Mr Meoushy had started taking analgesic medication immediately after the subject injury and that the symptoms did not develop until some 22 months later.[36] Mr Grant relied on Dr Sethi's opinion that, had the medication been responsible, the symptoms would have begun within a few days or weeks.

107. Mr Grant referred me to a WorkCover Certificate dated 27 January 2016 which noted that Mr Meoushy was unable to take Mobic due to his stomach upset[37].

[35] ARD page 46.
[36] At ARD page 48.
[37] ARD page 302.

108. Mr Grant then considered the claim regarding the left knee. He referred to Dr Shah's note of left knee pain on 6 January 2017,[38] which simply recorded a slip at home, and that it was due to the lack of a nanny. The incident was alleged to have occurred on 29 September 2016, and Mr Grant posed the question as to where the causal link was. Whilst acknowledging that Mr Meoushy made the connection in his statement, he said there was no support for that account from Dr Woo, and that the meaning of the entry in Dr Shah's clinical note was difficult to discern.

109. Mr Grant submitted that it was "a bit hard" to see precisely how the injury to the shoulder had caused the left knee condition. He asked rhetorically "what is it about the shoulder and neck in reality which leads to a slip in a bathroom some years or a couple of years later?"

110. Mr Grant referred to the next entry in Dr Shah's notes, 18 January 2017. The reason for contact on that day was said to be the right shoulder pain and it could be seen from the extensive note that there were a number of other matters that Dr Shah thought sufficiently pertinent to record. However there was no mention of the left knee condition, which had been the reason why Mr Meoushy had seen Dr Shah on his previous visit. There was a difference between having symptoms, which was one thing, and a having an injury, which was quite another, Mr Grant said.

Ms Compton

111. Ms Compton took me to various parts of Mr Meoushy's statement. She referred to Mr Meoushy's account of the subject injury to his right shoulder and his account of the work he was required to do thereafter.

112. She stressed that Mr Meoushy underwent an x-ray and ultrasound of the right shoulder on 2 March 2015 and made a claim in or around late March 2015, but it was not until December 2016 that the employer lodged the claim form.

113. Ms Compton referred to parts of the statement which claimed that Mr Meoushy was not offered any light duties, and that from March 2015 to September 2016 he was performing his full pre-injury duties with "self-imposed modifications to protect my right shoulder".

114. Ms Compton referred to Mr Meoushy's allegation that he was unbalanced by his shoulder problems and that caused his lower back problems.

115. Ms Compton referred to Mr Meoushy's evidence that he continued to use an A frame ladder and found that he was using his left shoulder more than his right. She referred to the instance he described where he immediately felt pain in his left arm and left shoulder whilst lifting a ladder above head height. Ms Compton noted Mr Meoushy's statement that his doctor told him to use his left arm to avoid using the right arm.

116. Ms Compton referred to Mr Meoushy's version of events of 21 July 2016 in which he described an episode lifting a ladder onto the roof of his vehicle when he felt pain in his left shoulder which was "over and above" that which he had been feeling on a daily basis.

117. Ms Compton referred to the report of Dr Wallace of 19 April 2017. She said that his assumption that Mr Meoushy was restricted to full time light duties from July 2016 with a lifting restriction of 2 kg was not correct, and that the assumption that Mr Meoushy was doing office work only was also not correct. The description of the injury to the left shoulder on 21 July 2016 was described by Dr Wallace as being independent of the subject injury, but Dr Wallace did not discuss the right shoulder and did not engage with Dr Shah's notes which recorded complaints in the left shoulder well before the episode of 21 July 2016.

[38] ALD page 33.

118. Dr Davé's observation in his report of 2 June 2016 also established an earlier complaint of pain in the left shoulder and was consistent with Mr Meoushy's evidence.

119. Ms Compton submitted that the effect of this evidence was that the additional injury caused to the left shoulder had been caused by the right shoulder weakness. As I understood her, there was accordingly a material contribution by the right shoulder injury to the development of the left shoulder pathology generally, and the specific injury of 21 July 2016.

120. Ms Compton then referred to Mr Meoushy's evidence that he had contacted the "insurer and rehab provider" to ensure that domestic assistance would be available to him after he had undergone his arthroscopy to the right shoulder on 27 September 2016.

121. The subsequent injury two days later when Mr Meoushy slipped on the bathroom tiles and twisted his knee whilst trying to get his son out of the bath was evidence of the material contribution made by the subject injury to the left knee symptoms. Had it not been for the right shoulder injury, Mr Meoushy would not have had any difficulty in bathing his son and daughter, Ms Compton said.

122. Ms Compton submitted that the opinion of Dr Woo of 6 February 2019 when considered in the light of the evidence to which she had referred, could be accepted on face value. She said that regarding the claim for the lumbar spine, she could not say anything more than what appeared there. She submitted that I would accept Mr Meoushy's complaints on the subject, saying that she could not put her case any higher in view of the evidence.

123. Ms Compton referred to the opinion of Dr Abraszko of 7 December 2017. Ms Compton said that the report also supplied consistent evidence that the injury to the left knee and lower back was consequential.

124. Ms Compton then took me to the evidence contained in Dr Shah's clinical notes that Mr Meoushy had been taking Duramine pills for weight loss but noted that the notes demonstrated that his ingestion of drugs in a combined form did not occur until later. It was not until 2017/2018 that the prescribed medication was increased Ms Compton submitted.

125. With regard to Dr Sethi's opinion that there was no connection between Mr Meoushy's gastrointestinal symptoms and the subject injury, as the symptoms did not develop for 22 months, Ms Compton submitted that the explanation for that delay was because until 2016, Mr Meoushy had been using over the counter medication, and was not prescribed non-steroidal anti-inflammatory drugs until 2016.

126. Ms Compton referred to the opinion of Dr Turner who gave the endoscopy report following a gastroscopy on 11 April 2018. She submitted that his opinion, brief as it was, supported the causal link between the ingestion of NSAIDs and the multiple shallow ulcers seen in the first part of the duodenum. This was further demonstrated by the moderate erosive gastritis in the gastric antrum and the Grade A oesophagitis, Ms Compton claimed.

127. Ms Compton conceded Mr Grant's criticism that the history taken by Dr Ruppin differed from those in the clinical records regarding Mr Meoushy's prior medical history. The assumption that Mr Meoushy had not sought or received medical advice for any condition had been shown to be incorrect. However Dr Ruppin clarified the nature of the self-medication Mr Meoushy took after the injury of 15 January 2015, and she referred to the later prescription medication regime described by Dr Ruppin.

128. Ms Compton submitted that whilst it was open for me to find that Mr Meoushy was taking some medication such as duromine prior to the time of his injury, he was not taking medication to the extent that he currently does. His current condition was "purely" the result of the ingestion of his significant medications. Ms Compton noted that not all the medications taken by Mr Meoushy were prescribed, as the evidence would show, through the clinical notes.

129. Ms Compton asserted that the opinion of Dr Sethi regarding the significance of the 22 month delay between the injury and the first signs of gastric distress could accordingly be distinguished. Dr Sethi made an assumption that Mr Meoushy was taking all of his medications from the time of the subject injury, which was incorrect.

130. Ms Compton took me to the WorkCover Medical Certificates that had been issued during the currency of Mr Meoushy's injuries, and spent some time attempting to analyse the chronology of the prescription of his medication. (Approximately 35 WorkCover certificates were lodged - not in chronological order- covering the period from 13 April 2015 to 30 May 2019).

131. Ms Compton then referred to the entries in the clinical notes in the ALD. She again conceded that they showed that there had been prior gastric difficulties in October and November 2012, but said that Mr Meoushy's then problem had been gastroenteritis, which was a common ailment.

132. She noted that although Mr Meoushy was prescribed Duramine, his weight over the entries did tend to fluctuate. She noted that Mr Meoushy had been prescribed Voltaren in addition to the Duramine he was taking in treatment for a complaint of back pain on 25 November 2014.

133. Ms Compton noted the entry on 12 April 2015 which prescribed Mobic 15 mg per day. Ms Compton submitted that "shortly thereafter" as shown in the WorkCover certificates, Mr Meoushy was unable to tolerate Mobic. Ms Compton said that Mobic was again prescribed in January 2017, but by February 2017 the entries were again advising to avoid Mobic.

134. In summary Ms Compton submitted that the evidence would satisfy me that there had been an increase in gastro oesophageal symptoms since the left shoulder injury occurred in July 2016.

135. Ms Compton referred to the gastroscopy report of Dr Turner and the report of Dr Ruppin in support of her submission, saying that Dr Sethi did not have the clinical notes to assist him. I accordingly would not accept Dr Sethi's opinion.

136. Ms Compton said that although Duramine was a pill that had been prescribed well before the subject injury, there were no non-steroidal anti-inflammatory drugs used by Mr Meoushy until the subject accident.

137. As regards the lumbar spine, Ms Compton submitted, somewhat faintly, that I would accept Dr Woo's opinion.

Mr Grant in response

138. Mr Grant submitted that with regard to the claim for the upper digestive tract injury, it was common ground that Mr Meoushy suffered from a gastro oesophageal condition with GORD and irritable bowel syndrome. Mr Grant said the pertinent question was the cause of his gastric symptoms. Mr Grant submitted that I would not accept that Dr Ruppin's opinion was reliable. He said that the history taken by Dr Ruppin that symptoms occurred soon after the injury did not fit the established facts. Mr Grant submitted that whilst it might be that the later onset of problems was a result of further ingestion of the drugs reviewed so thoroughly by Ms Compton, there was no expert evidence on the subject.

DISCUSSION

139. As the respondent has admitted liability in relation to the right shoulder and the neck, those matters will be remitted to the Registrar for referral to an AMS.

The low back

140. The claim for the low back was claimed as both a frank injury arising from the circumstances of the event on 15 January 2015, and as a consequential condition therefrom. I have a number of reservations regarding this claim.

141. Firstly, there was no contemporaneous record of any complaint regarding the back. I do not accept the histories given by the various medical practitioners who later recorded that the back had been injured at the time of the right shoulder injury. There was only one entry regarding the back in the Allcare Carnes Hill medical Centre notes subsequent to the subject injury, and that was on 19 October 2015, a time too remote from the incident itself to be regarded as contemporaneous.

142. Secondly, the notes did show an attendance for back pain on 23 December 2014 prior to the subject injury. Both the 2014 and 2015 entries noted that the complaints had been as a result of Mr Meoushy's work. In December 2014 it was recorded that he had been lifting and moving boxes of cable rolls, and the October 2015 entry simply remarked that the complaint was "work related." Investigations showed that Mr Meoushy has some pathology in his lumbar spine in the form of a minor bulge at L4/5[39] and it is quite possible that the heavy nature of his work duties may have aggravated that condition from time to time. However, there is no suggestion that the incident of 15 January 2015 contributed to that condition.

143. Thirdly, had the lower back been injured at the time of the 15 January incident, or had it developed as a consequence of it, it would reasonably have appeared in the certification issued by Dr Shah, or at least have been linked by Dr Shah with that incident in either his report of 20 February 2020 or his clinical notes. No such indication was made.

144. Fourthly, the medico-legal referee retained by the applicant, Dr Woo, gave no opinion as to causation of the low back pain. He did not suggest that it had been involved in the history he took of the event of 15 January 2015, and he gave no explanation of his reasons for including it in the diagnoses of injuries caused by that event. His report was devoid of any reference to the facts and circumstances on which he based that diagnosis, and I was not assisted by his opinion.

145. Fifthly, as Ms Compton referred to it, I do not accept that Dr Abraszko's opinion gives any support to Mr Meoushy. The history taken by Dr Abraszko in her report of 7 December 2017 was not consistent with the account given by Mr Meoushy. In the first place she described the subject injury of 16 January 2015 as being a fall off a ladder in which Mr Meoushy tried to stop hitting his head and put his arm out. Her evidence that "he went to see his doctor, had physiotherapy, exercises and surgery" glosses over the fact that he did not see a doctor until 1 March 2015 about his shoulder.

146. Further Dr Abraszko took a history that following the right shoulder operation, Mr Meoushy slipped in the shower and developed neck pain, mid thoracic spine and lower back pain. There is no suggestion in any of the evidence that there was such an occurrence. Mr Meoushy certainly did not mention a slip in the shower. It may be that Dr Abraszko was confused with the history of the onset of the problem with the left knee when the applicant was trying to take his son out of the bath.

147. Accordingly I do not accept that the low back was either a frank injury or a consequence of the injury to the right shoulder and neck on 15 January 2015.

[39] See MRI report of Dr Matthew Lee dated 8 September 2018: ARD page 124.

Left knee and material contribution

148. With regard to the claim that the left knee condition was consequential upon the injury of 15 January 2015, the question arises as to whether that injury materially contributed to that condition.

149. Recent authority has considered the concept of material contribution. DP Wood in *Ozcan v Macarthur Disability Services Limited*[40] gave a comprehensive overview of the relevant authorities. That case concerned the aggregation of WPI following the issue of a Medical Assessment Certificate. DP Wood cited the decision of DP Roche in *Murphy v Allity Management Services Pty Ltd* at [53][41]. She said:

> "The appellant refers to *Murphy* and the principles discussed by Roche DP, who said (omitting citations):
>
> "Moreover, even if the fall at Coles contributed to the need for surgery, that would not necessarily defeat Ms Murphy's claim. That is because a condition can have multiple causes. The work injury does not have to be the only, or even a substantial, cause of the need for the relevant treatment before the cost of that treatment is recoverable under s 60 of the 1987 Act.
>
> Ms Murphy only has to establish, applying the common sense test of causation that the treatment is reasonably necessary 'as a result of' the injury. That is, she has to establish that the injury materially contributed to the need for the surgery."

150. It was not argued in any of the cases DP Wood referred to, that this definition was incorrect. DP Wood, in considering the test, referred to *Le Twins Pty Ltd v Luo*[42] per ADP Parker at [69-73]:

> "I do not regard the Arbitrator's conclusion at [81] of her reasons that a condition may have more than one cause as incorrect. Most conditions are the result of multiple factors. The question is always whether the facts as found satisfy the statutory criterion for causation.
>
> In my view, the Arbitrator was in error in her conclusion that Mr Luo's impairment was caused by the injury to the right arm. That was because the injury to the right arm did not materially contribute to the injury to the left arm. That is because '[t]he law does not accept John Stuart Mill's definition of cause as the sum of the conditions which are jointly sufficient to produce it. ... at law, a person may be responsible for damage when his or her wrongful conduct is one of a number of conditions sufficient to produce that damage': *March v E & M.H Stramare.*"

151. Applying that test, the following is germane. Mr Meoushy had undergone a right shoulder bi-arthroscopy, acromioplasty and debridement of the subacromial spur on 27 September 2016. There was no challenge to the applicant's assertion that he had to look after his children, nor that part of that duty was to bathe them. I accept that there was some discussion with the insurer regarding the provision of a nanny following the surgery, and that it did not eventuate. Mr Meoushy's allegation that he had slipped whilst taking his son out of the bath two days later was corroborated by the entry in Dr Davé's report of 8 December 2016. I agree with Mr Grant that the opinion of Dr Woo was unhelpful, as he did not record this incident, but I accept that the referral in Dr Shah's notes of 7 January 2017 to the slip at home and the absence of a nanny were corroborative of both Mr Meoushy's statement and the account recorded on 5 December 2016 by Dr Davé.

[40] [2020] NSWWCCPD 21.
[41] [2015] NSWWCCPD 49 (*Murphy*).
[42] [2019] NSWWCCPD 52 (*Luo*).

152. I accept the account given by Mr Meoushy as to how he injured his knee. It is entirely plausible that in an accident Mr Meoushy would guard his injured arm only two days after the surgery. Mr Meoushy's account, particularly the detail that he made no attempt to break his fall with the arm has some probative weight. A common sense evaluation of that evidence establishes that the subject injury led to the necessity for shoulder surgery, which in turn led to restrictions in Mr Meoushy's ability to use his right shoulder in the days following. This led to difficulties in his domestic life, including bathing his children. The difficulty in getting his son out of the bath using only one arm led to the slip and twisting injury to the left knee.

Left shoulder

153. With regard to the left shoulder, Mr Grant relied on the report of Dr Wallace that the left shoulder injury had recovered by the time Dr Wallace saw him on 18 April 2017. He submitted that the evidence revealed a frank injury and was not related to the right shoulder injury of January 2015. I accept that the left shoulder may well have recovered. Dr Wallace held that view, and Dr Shah in his report of 20 February 2020 in his long list of complaints and diagnoses, did not mention the left shoulder. He did later in his report advise that overuse had led to a consequential condition in the left shoulder, but his failure to otherwise mention it does indicate that it may have recovered. However, that determination is a matter for the AMS. I accept that the left shoulder condition was consequential. The entries in the clinical notes of Allcare Carnes Hill Medical Centre establish that Mr Meoushy had been complaining of overuse symptoms in his left shoulder since 4 April 2016 to Dr Shah, and to Dr Davé on 5 May 2016. These entries corroborate Mr Meoushy's testimony, and were not known to Dr Wallace, who thought that Mr Meoushy's duties prior to 21 July 2016 had been office work. This corroborative evidence was not available to Dr Wallace and his opinion was fatally compromised thereby.

The upper digestive tract

154. Turning to the claim for the upper digestive tract, Ms Compton placed great reliance on the contents of the WorkCover certification, and the clinical notes contained in the ALD. I agree they are of some relevance, and it is accordingly necessary to approach the notes of health professionals with some caution. In *Qannadian v Bartter Enterprises Pty Ltd*[43] President Judge Keating noted that the appellant relied upon the Court of Appeal authority of *Mason v Demasi*[44]. At [36] he said:

> *"Mason* is from a line of appellate authority dealing with the use of clinical notes in the fact finding process. A number of these authorities are referred to in Winter v New South Wales Police Force [2010] NSWWCCPD 121 (which was reversed on appeal, on a different basis), where Roche DP at [183] said:
>
> > 'It is important to remember that clinical notes are rarely (if ever) a complete record of the exchange between a patient and a busy general practitioner. For this reason, they must be treated with some care (Nominal Defendant v Clancy [2007] NSWCA 349 at [54]; Davis v Council of the City of Wagga Wagga [2004] NSWCA 34 at [35]; King v Collins [2007] NSWCA 122 at [34]–[36]).'
>
> The authorities (including Mason) do not preclude the use of such evidence in the fact finding process, nor do they provide that such evidence should not be relied on, in the absence of evidence from the author of the clinical notes. The authorities require the use of caution by a fact finder, including having regard to the circumstances in which such notes are brought into existence."

[43] [2016] NSWWCC PD 50.
[44]]2009] NSWCA 227.

155. As noted by counsel, neither Dr Ruppin nor Dr Sethi were aware of the prior gastric history recorded in the clinical notes.

156. The applicant in his statement said that up until the surgery on his right shoulder of 27 September 2016, he had been managing his pain with over the counter medications. Post-surgery, he was prescribed Panadeine Forte, Voltaren, Endep, Lyrica and Palexia in varying combinations.

157. The nature of the over the counter medications used by Mr Meoushy between 15 January 2015 and 27 September 2016 were investigated by Dr Ruppin. He took a history that symptoms evolved from the "early months" after "this event".

158. There is some ambiguity to the word "event," but I assume that Dr Ruppin's reference to the early months after "this event" refers to the months following the injury of 15 January 2015. Again, his statement that "very early on in the months after his injury [Mr Meoushy] started to develop features recognisable as due to gastro oesophageal reflux disease…. " was a reference to the injury on 15 January 2015.

159. The over the counter preparations were identified by Dr Ruppin such as Ibuprofen, which he said contained "proprietary drugs (Advil, Nurofen) and paracetamol in different forms. Dr Ruppin said that Mr Meoushy's GP added Celebrex". There is no evidence in the certificates or notes by Dr Shah that Celebrex was specifically prescribed. However, it is clear that Mobic was prescribed on 12 April 2015, and that it was discontinued around 27 January 2016, which appears to be the first indication in the WorkCover certificates lodged of medication intolerance.[45] The entry for that day simply noted that Mr Meoushy had been started on Advil, so it may be that Advil was substituted for Mobic on that day.[46] The same entry noted that Mr Meoushy was prescribed 2 Panadeine Forte tablets 500/30 mg per night.

160. Each of the WorkCover certificates issued from 4 April 2015 recorded that Mr Meoushy was taking analgesia (variously spelt). I think it probable that he took Mobic and Celebrex amongst the other over the counter medication he was receiving, after coming under the management of his GP.

161. Dr Ruppin confirmed Mr Meoushy's statement that after the shoulder surgery of 27 September 2016 he was prescribed Panadeine Forte, Voltaren (diclofenac), Endep (amitriptyline) , Lyrica (pregabaHn) and Palexia (tapentadole) and has continued in varying combinations of those drugs.

162. This history was also confirmed by Dr Sethi, who confirmed the same medication regime following the surgery as was described by Dr Ruppin, and indeed Mr Meoushy. Dr Sethi did not take any history of Mr Meoushy's medication use prior to the shoulder surgery of 27 September 2016. Nonetheless, his opinion was based on a history that Mr Meoushy had started taking analgesic medication shortly after the subject injury of 15 January 2015. Moreover, Dr Sethi found that the "prolonged delay" of 22 months ruled out any causative role for his medications in causing the gastro-intestinal symptoms. Were they responsible, Dr Sethi would have expected the symptoms to have started within a few days or weeks. The 22 months I take to mean a reference to the period from January 2015 to November 2016.

163. Mr Meoushy said in his statement that he had experienced some abdominal pain since 2015. Dr Ruppin took a history that Mr Meoushy first experienced evolving symptoms from the early months after the event, whereas Dr Sethi took a history that they began in late 2016.

[45] ARD page 372.
[46] ADL page 18.

164. I found the statement by Mr Meoushy to be somewhat discursive and concerned with peripheral and minor issues. Mr Meoushy did not make his statement until 14 October 2019, and there is a danger that he may have unconsciously reconstructed his recollection. I note Dr Ruppin's reservation as to Mr Meoushy's "clouded" history. Objective independent evidence I find to be more reliable. There is no contemporaneous evidence of any early complaints of gastric complications. As noted, Mr Meoushy was noted as being unable to tolerate Mobic around 27 January 2016, which is some confirmation for his recollection. However it was not until 13 June 2017 that he complained to his GP, as a result of which an abdominal ultrasound was taken on 16 October 2017. The 13 June 2017 entry was a reference to GORD.[47]

165. Mr Meoushy's statement located the onset of digestive tract problems around June 2017. He described reflux and nausea, recurring upper abdomen pain and a constant sense of bloating. Symptoms later developed of regurgitation, heartburn and mouth ulcers. On 11 April 2018 that he underwent an endoscopy with Dr Ian Turner.

166. Ms Compton submitted that the medication regime steadily increased as Mr Meoushy's management became problematic. He was referred to a pain clinic, he was referred to a psychologist and his gastrointestinal condition deteriorated as the medications increased.

167. I accept that the history showed that Mr Meoushy was using analgesics of some description from the time he came under the care of Dr Shah at the medical centre, as the WorkCover certificates constitute contemporaneous evidence of that fact. However the evidence also demonstrates that Mr Meoushy's gastric condition did not assert itself sufficiently to need treatment until June 2017, which is some nine months after his right shoulder surgery on 27 September 2016.

168. Dr Sethi's finding that the symptoms did not assert themselves for some time may be of some general application, if one reads his opinion that no significant digestive tract symptoms were noticed until after the right shoulder surgery. However, Dr Sethi's opinion is compromised by his failing to realise that the surgery itself was the starting point of the medication regime he described, and not the date of the subject injury in January 2015. The onset of symptoms within a short time of the surgery is not inconsistent with Dr Sethi's opinion.

169. I do not accept the evidence of Dr Sethi, however. As indicated, the assumptions he relied upon were not established by the evidence. Mr Meoushy was taking medication from April 2015, including Mobic, and also over the counter medications, some of which were NSAID in all probability, but there is no objective evidence that they caused any symptoms. I read Dr Sethi to say that if the medication he described Mr Meoushy as taking after his shoulder surgery was responsible for his condition, it would be reasonable to expect those symptoms to occur within days or weeks. To some extent this is what occurred after Mr Meoushy began taking the prescribed medication, as he became intolerant to Mobic on 27 January 2017, and his symptoms increased after that. Whether the nature of that pre-surgery regime caused any digestive condition with Mr Meoushy was not established, however the medication prescribed since has caused his symptoms and signs. Accordingly Dr Sethi's opinion is not accepted. I do not accept that the symptoms experienced by Mr Meoushy would have occurred in any event at that time of his life.

170. I prefer the opinion of Dr Ruppin, although, again, with reservations. Dr Ruppin accepted Mr Meoushy's account that he began to experience features recognisable as due to gastro oesophageal reflux in the "early months." I have reservations regarding that assumption.

171. As indicated, I found Mr Meoushy's statement to be discursive. I found his account of his early months after the injury of 15 January 2015 to be an example of his somewhat discursive style.

[47] ADL page 43.

172. The WorkCover certificates show that Mr Meoushy was always certified to be fit for normal duties for normal hours until January 2017, the light duties being by way of lifting restrictions and driving limitations, both of which varied from time to time.

173. It has not been established that Mr Meoushy was on restricted duties between the date of injury, 15 January 2015 and the issue of the first WorkCover certificate on 4 April 2015. Thereafter he was on restricted duties until 27 April 2015, but there is no evidence that he went back on restricted duties until 19 October 2015, where he remained until January 2017. Dr Shah's letter to UHG suggested that there had been persistent certification since April 2015, but the independent evidence suggests a more patchy certification in the early stages. Be that as it may, the certification was in the terms I described above.

174. Mr Meoushy's protestations that he had been forced to do his normal duties thus lose some force, as he was in fact certified to work his normal duties for his normal hours, with the lifting restrictions. The fact that he worked in a fairly arduous job for over two months before seeking treatment suggests that the right shoulder injury was of a minor nature. It also explains the reaction of his employer who was quoted as saying "why were you carrying the …ladder" when told of the left shoulder injury.

175. Whilst Mr Meoushy said he used "self-imposed modifications" to protect his right shoulder, that appears to have been the import of the certification. Mr Meoushy was certified fit for normal duties for normal hours, but to restrict the weights he had to carry. In any event he was able to work on full duties from 15 January 2015 to 1 March 2015 without the need for treatment. When he did see Dr Balgovind, he remained on full duties until 4 April 2015.

176. It has not been established that Mr Meoushy was on restricted duties between the date of injury, 15 January 2015, and the issue of the first WorkCover certificate on 4 April 2015. Far from complaining of gastric symptoms in the "several months" following the injury, Mr Meoushy did not even seek treatment for around that time. I therefore have strong reservations as to whether Dr Ruppin's assumption as to when the symptoms were first noticed by Mr Meoushy was correct.

177. However, that inaccuracy does not affect the weight of his opinion, which was based on the history of the later medication regime he was put on, and that the endoscopy revealed signs and symptoms that were consistent with upper gastrointestinal tract injury secondary to exposure to NSAIDs.

178. I am accordingly satisfied that the claim for compensation for the condition of the upper digestive tract can be referred. The material contribution of the subject injury is clear. The subject injury created the need for medication regarding not only the right shoulder and cervical spine, but for treatment of the consequential conditions the subject injury caused.

SUMMARY

179. The Commission finds:

    (a) The subject event caused injuries to the applicant's right shoulder and neck.

    (b) The subject injuries were a material contribution to the development of consequential conditions to the applicant's left shoulder, left knee, and upper digestive tract.

    (c) The low back condition was not caused by the subject event, nor was it a consequential condition thereof.

180. The Commission orders:

    (a) I remit this matter to the Registrar for referral to an AMS for a WPI assessment, to be held in the pending list, on the following bases:

(i) Date of injury: 15 January 2015

(ii) Matters for assessment:

- Right upper extremity (shoulder)
- Cervical spine
- Left upper extremity (shoulder) - consequential condition
- Left lower extremity (knee) – consequential condition
- Upper digestive tract – consequential condition

(b) There will be an award for the respondent for the claim for injury/consequential condition to the lumbar spine.