

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

QUAN LE,  
Claimant,

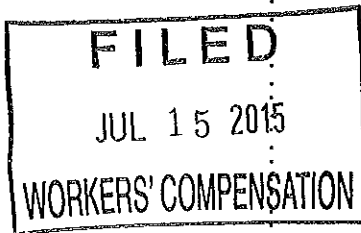
vs.

TITAN TIRE,  
Employer,

and

ZURICH AMERICAN INSURANCE  
COMPANY,

Insurance Carrier,  
Defendants.



File Nos. 5043160, 5043161

ARBITRATION  
DECISION

Head Note Nos.: 1108; 1400; 1801; 2700

STATEMENT OF THE CASE

These are proceedings in arbitration. The contested cases were initiated when claimant, Quan Le, filed his original notices and petitions with the Iowa Division of Workers' Compensation. The petitions were filed on February 19, 2014. In File No. 5043160, claimant alleged he sustained an injury to his right shoulder and neck on May 26, 2011. (Original notice and petition) In File No. 5043161, claimant alleged he injured his left shoulder and his neck on September 24, 2012. (Original notice and petition)

Defendant, Titan Tire is insured for purposes of workers' compensation by Zurich American Insurance. Defendants filed answers in both contested cases. They admitted the occurrence of the work injuries.

The hearing administrator scheduled the cases for hearing on February 23, 2015 at 8:30 a.m. The hearing took place in Des Moines, Iowa at the Iowa Department of Workforce Development. The undersigned appointed Ms. Buffy Nelson, as the certified shorthand reporter. She is the official custodian of the records and notes.

Mr. Phung Nguyen was sworn in as the interpreter in the hearing. He is the program director of the Vietnamese Mutual Association, Inc.

Claimant testified on his own behalf. He was the sole witness to testify.

The parties offered exhibits. Claimant offered exhibits marked 1 through 13. Defendants offered exhibits marked A through G. All proffered exhibits were admitted as evidence in the case. Post-hearing briefs were filed on March 31, 2015. The cases were deemed fully submitted on that date.

FILE NO. 5043160 STIPULATIONS

The parties completed the designated hearing report. The various stipulations are:

1. There was the existence of an employer-employee relationship at the time of the alleged injury.
2. Claimant sustained an injury on May 26, 2011, which arose out of and in the course of his employment;
3. The alleged work injury is a cause of both temporary and permanent disability;
4. Temporary benefits are no longer in dispute;
5. The commencement date for the payment of any permanency benefits is July 2, 2012;
6. At the time of the work injury; the weekly benefit rate was \$721.14;
7. Defendants are waiving any affirmative defenses they may have had available to them; and
8. Defendants are entitled to a credit for benefits paid prior to the date of the hearing.

FILE NO. 5043160 ISSUES

The issues presented are:

1. The parties are in disagreement as to the extent of permanency involved in the case;
2. Claimant seeks payment of certain medical benefits as detailed in exhibit 12; and
3. Certain costs are at issue.

FILE NO. 5043161 STIPULATIONS

1. There was the existence of an employer-employee relationship at the time of the alleged injury;

2. Claimant sustained an injury on September 24, 2012, which arose out of and in the course of employment;
3. The injury is a cause of both temporary and permanent disability;
4. The commencement date for any permanency benefits is September 8, 2014;
5. At the time of the work injury, the weekly benefit rate was \$721.14;
6. All affirmative defenses available to defendants have been withdrawn; and
7. The parties are able to agree that defendants are entitled to a credit for benefits previously made.

#### FILE NO. 5043161 ISSUES

1. Whether claimant is entitled to healing period benefits for the period from October 23, 2012 through September 7, 2014;
2. There is a disagreement as to the extent of permanency to which claimant is entitled;
3. Whether claimant is entitled to medical expenses as detailed in exhibit 12; and
4. There is a dispute as to the payment of certain costs.

#### FINDINGS OF FACT

This deputy, after listening to the testimony of claimant at hearing, after judging his credibility, and after reading the evidence, and the post-hearing briefs makes the following findings of fact and conclusions of law:

The party who would suffer loss if an issue were not established has the burden of proving the issue by a preponderance of the evidence. Iowa R. App. P. 6.14(6)

Claimant is a 56 year old married father of three minor children. He is slightly built. He is 5 feet 7 inches tall and weighs approximately 130 pounds. He is right hand dominant.

Claimant was born in Vietnam and attended school into the twelfth grade but he did not receive a high school diploma. Claimant has minimal English-language competency, although his three children speak English in the home when they communicate with one another. Claimant successfully passed all tests necessary to become a United States citizen. Consequently, he has some understanding of oral and written English. Claimant holds a valid Iowa license to drive a motor vehicle.

When claimant lived in Vietnam he worked for his brother in a home-based business where they sold electronics. Then claimant escaped Vietnam and lived in a refugee camp in Malaysia for six years. He was not actively employed during that time frame. In 1998, claimant moved to the United States. His first job was sewing vests in Davenport, Iowa. He held the job for several months only.

Next, claimant commenced employment with Titan Tire on March 16, 1999. He was hired as a tire builder and remained working as a tire builder for the duration of his employment with the company. Claimant operated a tire building machine. There is no question the work was physically demanding.

After claimant's injury to the right shoulder, he presented to Duane V. Wilkins, M.D., at Safeworks of Iowa, PLLC. (Exhibit 6, page 145) Claimant felt a sharp acute pain in the area of the right shoulder. He denied any neck pain, peripheral pain or paresthesias into the forearm, hands, fingers or thumb. (Ex. 6, p. 145) Dr. Wilkins diagnosed claimant with:

DIAGNOSIS: Acute trauma to the right shoulder, and suspected rotator cuff and/or labral tear, but cannot completely exclude a partial subluxation or dislocation with spontaneous reduction of the right shoulder.

(Ex. 6, p. 146)

Dr. Wilkins ordered x-rays of the right shoulder. On June 3, 2011, claimant underwent MRI testing of the right shoulder. (Ex. 8, p. 153) Todd S. Klausner, M.D., a radiologist, interpreted the results as:

Impression:

1. Supra-and infraspinatus tendinosis with small focal full thickness tear anterior supraspinatus measuring 2.3 mm.
2. Superior glenoid labral tear.
3. Anterior and posterior glenoid labral degeneration.
4. AC DJD with subacromial/subdeltoid bursitis.

(Ex. 8, p. 153)

Claimant was referred to Stephen Ash, M.D., at Iowa Ortho. The initial consultation occurred on June 16, 2011. (Ex. 3, p. 120) Claimant reported right shoulder pain, some trapezial area pain but no neck pain. (Ex. 3, p. 120) Claimant reported no numbness or tingling in the right upper extremity. (Ex. 3, p. 120) Dr. Ash reviewed the MRI. He agreed with the opinion of the radiologist. "There appears to be a very small supraspinatus tear that is likely full-thickness anteriorly." (Ex. 3, p. 120) Dr. Ash diagnosed claimant with a "Probable right rotator cuff tear." (Ex. 3, p. 120)

On July 18, 2011, Dr. Ash performed a right arthroscopic subacromial decompression and arthroscopic rotator cuff repair. (Ex. 3, p. 117) Claimant engaged in follow up care with Dr. Ash on July 21, 2011. Dr. Ash ordered physical therapy. Claimant was advised he could return to light duty work on July 25, 2011. The surgeon placed claimant on work restrictions. Claimant was restricted from lifting anything with the right upper extremity and he could only lift 10 pounds with the left upper extremity. Dr. Ash anticipated claimant would be on restricted duty for approximately 6 months. (Ex. 3, p. 116) Claimant did return to light duty work and he worked 40 hours per week.

Claimant presented to Dr. Ash on November 17, 2011. Claimant's symptoms had improved. The surgeon noted claimant's wounds were well healed above the right shoulder. Claimant was able to elevate his right arm to 140 degrees and to rotate it 45 degrees in adduction. Dr. Ash modified claimant's work restrictions. Claimant could lift 5 pounds with his right upper extremity next to his body so long as the lift was below shoulder level. Claimant was advised to engage in stretching throughout the day. (Ex. 3, p. 115)

On December 15, 2011, claimant returned to Dr. Ash. Claimant reported his right shoulder had improved. (Ex. 3, p. 114) However, claimant complained of left shoulder pain of one month duration. (Ex. 3, p. 114) Dr. Ash restricted claimant to lifting 10 pounds with the right upper extremity so long as he held the object close to his body and below shoulder level. (Ex. 3, p. 114) Dr. Ash opined additional physical therapy and work hardening were important treatment modalities. (Ex. 3, p. 114) Dr. Ash ordered another MRI of the right shoulder. (Ex. 3, p. 113)

On March 15, 2012, claimant underwent MRI testing of the right shoulder. Kraig Kirkpatrick, M.D., a radiologist, interpreted the results as:

Prior operative intervention with no full-thickness retear of the cuff. There is a mild articular sided tear in the mid portion of the supraspinatus tendon with intra-articular contrast imbibed into the inferior one-half of the tendon. A full-thickness component is not present. There is no gadolinium extravasation into the subacromial-subdeltoid bursa.

(Ex. 9, p. 157)

Claimant returned to Dr. Ash on March 30, 2012. The orthopedist did not recommend any additional surgical procedures. Claimant reported numbness, swelling and tingling in the arms. Dr. Ash recommended a functional capacity evaluation (FCE). (Ex. 3, p. 110)

The FCE occurred on May 23, 2012. The test was valid and claimant gave maximum, consistent effort. It was determined claimant could work in the medium category of work. Claimant could lift up to 40 pounds on a rare basis and up to 30 pounds on an occasional basis with the front carry task. Claimant had deficits in

lifting/carrying; positional tasks; elevated work and crawling; step ladder climbing; and right upper extremity grip and pinch strength. (Ex. 1, p. 9)

On August 8, 2012, Dr. Ash rated claimant as having a 4 percent permanent impairment to the right upper extremity according to the AMA Guides to the Evaluation of Permanent Impairment, Fifth Edition. A 4 percent impairment rating to the upper extremity equates to a 2 percent rating to the body as a whole permanent impairment. Claimant returned to fully duty work at Titan Tire.

Claimant also treated with Michael D. Jackson, M.D., a specialist in occupational and physical medicine. On September 24, 2012, claimant complained of bilateral shoulder pain and consistent neck pain. (Ex. 5, p. 140) Dr. Jackson diagnosed claimant with:

**IMPRESSION:**

1. Bilateral rotator cuff impingement, worse on the right than left.
2. Mild right biceps tenosynovitis.
3. Cervical degenerative disc disease.

(Ex. 5, p. 140) Dr. Jackson continued claimant's permanent work restrictions for the right shoulder. (Ex. 5, p. 140)

Dr. Jackson wrote in his report of September 24, 2012:

Due to the fact that he has to use his left upper extremity forcefully secondary to pain in the right upper extremity, he is now experiencing significant left shoulder pain as well. The pain is in the anterolateral aspect of the bilateral shoulders and radiates up into the neck bilaterally. He denies any loss of sensation, radiation of the pain from the neck into the extremities, or significant weakness in the upper extremities.

(Ex. 5, p. 142)

Claimant testified he was laid off from Titan Tire on October 22, 2012. There was no work available that met claimant's work restrictions. Claimant has not worked since the day he was laid off from work. He is not physically capable of building tires. Nor has claimant sought other employment. He said he is unable to perform any work because of neck pain, numbness and weakness in both hands and arms; he experiences headaches, and dizziness.

In November of 2012, Daniel C. Miller at Occupational Medicine Plus, P.C., diagnosed claimant with work-related left shoulder and cervical pain. Claimant was released for modified duty. (Ex. 5, p. 136) He was not able to lift with his left upper

extremity more than 30 pounds or push and pull in excess of 40 pounds. Claimant was to avoid any overhead work. (Ex. 5, p. 136)

On November 19, 2012, claimant underwent a M R left shoulder arthrogram. Dr. Kirkpatrick interpreted the results as:

Impression: Irregular articular sided tearing of the supraspinatus tendon with contrast imbibed into the tendon substance. Contrast extends through over 90 percent of the total tendon thickness along the posterior aspect of the supraspinatus tendon. There is no full thickness component or muscle atrophy.

(Ex. 9, p. 155)

On January 3, 2013, claimant presented to Dr. Miller again for follow up of the left shoulder and neck. (Ex. 5, p. 133) Claimant complained of occasional numbness of the left second, third, fourth, and fifth digits. The numbness had been occurring for approximately one month. (Ex. 3, p. 133) Dr. Miller ordered full duty work and physical therapy.

Claimant engaged in follow up care with Dr. Miller on January 21, 2013. There was tenderness in the trapezius muscles with the left side greater than the right. Dr. Miller opined most of claimant's complaints were radicular symptoms stemming from the cervical spine. (Ex. 3, p. 132) Dr. Miller requested MRI testing of the cervical spine. (Ex. C, p. 132)

Mitchell R. Erickson, M.D., interpreted the results of the cervical MRI as:

1. Straightening of normal cervical lordosis.
2. Image quality limited by patient motion.
3. No focal disc herniation or significant central canal compromise.
4. Mild neural foraminal narrowing suggested on axial imaging at C5-C6, greater on the right.

(Ex. 8, p. 152)

Dr. Miller discharged claimant from his care in January 2013. Claimant sought treatment from his family physicians at East Des Moines Family Care Center. (Ex. 4) Erika Levis, M.D., opined claimant's neck pain:

[I]s a secondary effect of his left shoulder pain/injury, which was sustained at work; however, the neck pain has improved with physical therapy. Workman's [sic] Compensation is responsible for the treatment of his left shoulder (90% tear in rotator cuff musculature by MRI). His ongoing

shoulder and arm pain are functionally limiting at this time, and I recommend no lifting greater than 10 pounds until his left shoulder is fully treated and rehabilitated. As this treatment is the responsibility of the Workman's [sic] Compensation physician, I will defer treatment plan to him/her.

(Ex. 4, p. 123)

Stacey K. Neu, M.D., also at the East Des Moines Family Care Center, opined the following with respect to the treatment of claimant's left shoulder and neck condition:

Plan/Discussion

I am very pleased that his neck pain has improved with PT. At this point, it is very important that the Workmans [sic] Comp team addresses his left shoulder to prevent re-worsening of the neck pain. I am also concerned that if his shoulder is not appropriately addressed he will develop a frozen shoulder syndrome. Given the MRI results showing 90% tear of the rotator cuff surgery may be necessary. I will continue to attempt to contact Dr. Miller (Workman's Comp physician).

(Ex. 4, p. 125)

Glenace B. Shank, D.O., also examined claimant at the same family clinic. Dr. Shank opined, "The neck pain seems directly related to the left shoulder pain and tension, which is triggering neighboring muscle spasms." (Ex. 4, p. 128) Dr. Shank decided to contact the physicians who had been treating claimant for the work-related injuries. (Ex. 4, p. 128)

On February 28, 2013, claimant returned to Dr. Ash with continued pain in the left shoulder. (Ex. 3, p. 106) Dr. Ash reviewed the medical notes from the other physicians who had been treating claimant. Claimant told Dr. Ash the pain had been caused by work activities. (Ex. 3, p.106) Some conservative treatment modalities were ordered. They were ineffectual.

On May 8, 2013, Dr. Ash performed a left partial rotator cuff tear. Claimant engaged in post-surgical physical therapy. On September 12, 2013, Dr. Ash imposed restrictions of no lifting with the left arm greater than 2 pounds and the lifting had to be close to the body and below shoulder level. (Ex. 3, p.97) The restrictions were modified to 5 pounds on December 23, 2013. (Ex.3, p. 96) Claimant was advised to engage in stretching exercises. (Ex. 3, p. 92) Dr. Ash determined claimant reached maximum medical improvement with respect to his left shoulder on August 14, 2014. Because claimant felt he was unable to perform his job at Titan Tire, Dr. Ash opined a functional capacity examination was in order. (Ex. 3, p. 86) Dr. Ash restricted claimant's lifting ability to 10 pounds. (Ex. 3, p. 86)



The functional capacity evaluation was invalid. Claimant had to discontinue the exam before he completed it. He became ill and had to be transported to the emergency room for treatment.

On October 7, 2014, Dr. Ash provided a permanent impairment rating for claimant's left shoulder. Dr. Ash rated claimant as having a 3 percent permanent impairment rating to the left upper extremity according to the AMA Guides to the Evaluation of Permanent Impairment, Fifth Edition. A 3 percent permanent impairment rating to the left upper extremity equates to a 2 percent permanent impairment rating to the body as a whole. (Ex. 3, p. 82)

Jacqueline M. Stoken, D.O., conducted an independent medical examination on October 24, 2013. Dr. Stoken opined:

The lifting and repetitive trauma caused or aggravated the patient's injury to his right shoulder, left shoulder, neck, and body as a whole occurring on or about May of 2011 (right shoulder and neck) and September of 2012 (left shoulder and neck).

(Ex. 1, p. 13)

Dr. Stoken opined claimant had a combined permanent impairment rating of 26 percent to the body as a whole. The evaluating physician placed claimant in the sedentary category of work. (Ex. 1, p. 13) Dr. Stoken opined claimant could lift occasionally from 1 to 10 pounds but claimant could not engage in any frequent or constant lifting. (Ex. 1, p. 13)

Dr. Ash examined claimant on November 6, 2014. (Ex. 3, p. 80) Claimant complained of continued neck pain and tingling in the left hand. (Ex. 3, p. 80) Dr. Ash referred claimant to a spine specialist, Cassim M. Igram, M.D., also at Iowa Ortho. (Ex. 3, p. 81)

Dr. Igram reviewed claimant's previous MRI test results. The surgeon examined claimant on December 1, 2014. (Ex. A) Dr. Igram wrote the following history about claimant's neck pain:

This is a 56-year-old man who comes in today with some complaints of neck pain. He does have an interpreter available today. He does state that his neck has been going on for quite a long period of time. I did not get a specific history of injury from him. He has had prior shoulder surgery through this office. He is currently not working. He does take Vicodin and a muscle relaxer for pain. Predominantly left-sided neck symptoms. He did have a magnetic resonance imaging but was unable to successfully complete the study.

Onset 2 years ago. The severity of the problem is mild. The problem has not changed. The frequency of pain is constant. Location of pain is left lateral neck, left posterior neck and left shoulder. The patient describes the pain as aching. The event(s) surrounding the occurrence of the symptom include repetitive motion. Aggravating factors include lifting, turning head, twisting, and carrying. Relieving factors include rest.

(Ex. A, p. 1)

Dr. Igram examined claimant's neck. The physician found left sided neck pain. Dr. Igram noted tenderness to the touch but no specific motor or sensory deficit noted in the upper extremities. (Ex. A, p.2) Dr. Igram did not specifically relate the neck pain to a work injury. The spine specialist opined work restrictions were not warranted for the cervical spine. (Ex. A, p. 2)

During cross examination, it was learned; claimant had been treating on his own with his personal physician, Brandon, Madson, M.D. Dr. Madson had been treating claimant for shoulder pain, neck pain and headaches. The treatments had been on-going for the prior two to three months, (2015). The personal physician had prescribed medication and physical therapy for one month. Claimant thought he would be referred to an orthopedic specialist for care of the cervical spine.

Claimant also testified he presented to the emergency room two weeks prior to the date of the hearing because of severe pain. No records were produced. Claimant had been submitting the new medical bills to his private health insurance carrier. Defendants were totally unaware of claimant's medical care.

Claimant testified he still needs medical treatment and the authorized treating physicians did not recommend anything else in the form of medical treatment. Claimant testified he wants to improve his condition as he has 3 minor children to support. He wants to look for another job but he must be able to use both hands to work. Claimant testified he has not filed for Social Security disability benefits.

#### RATIONALE AND CONCLUSIONS OF LAW

In File No. 5043160, claimant was paid temporary/healing period benefits until July 2, 2012. Then some permanency benefits were paid and claimant returned to work. Claimant sustained his second injury on September 24, 2012. (File No. 5043161) He was paid some temporary/healing period benefits and claimant performed light duty work following his second surgery. However, management at Titan Tire terminated claimant on October 21, 2014. (Ex. 11, p. 165) Since that time, claimant has been in a period where he has been trying to recuperate. He has not reached maximum medical improvement.

There is sufficient evidence from at least four physicians to establish claimant's cervical spine is at least temporarily aggravated by the two injuries to his shoulders. Four physicians have related claimant's neck pain to his work injuries. More medical treatment is needed to ease claimant's cervical pain.

Maximum medical recovery is achieved when healing is complete and the extent of permanent disability can be determined. Armstrong Tire & Rubber Co. v. Kubli, Iowa App., 312 N.W.2d 60 (Iowa 1981). Neither maintenance medical care nor an employee's continuing to have pain or other symptoms necessarily prolongs the healing period. Additionally, even though a claimant may have been placed at maximum medical improvement, the Iowa Supreme Court has recognized a claimant may be entitled to multiple healing periods even when placed at maximum medical improvement. Waldinger Corp. v. Mettler, 817 N.W.2d 1 (Iowa 2012).

Claimant's bilateral shoulder condition appears to have deteriorated to the point where he requires additional treatment to reach the goal of maximum medical improvement. Dr. Ash admitted claimant was slow to heal. (Ex. 3) The authorized treating physician found claimant to be extremely stiff in his body. By his own admission, claimant stated he had to go out and seek more treatment because the authorized treating physicians had nothing to offer him in the form of rehabilitation. Dr. Ash advised claimant to see his own family doctors. That is exactly the advice claimant followed. Claimant was a totally credible individual when he testified he wanted to improve so he could find work to support his family.

It is the determination of this deputy; claimant is entitled to a running award from October 23, 2012 until such time as claimant has reached maximum medical improvement. Claimant shall be paid at the weekly benefit rate of \$721.14 per week. One half of the weekly benefit rate shall be charged to File No. 5043160. The other half of the weekly benefit rate shall be charged to File No. 5043161.

Accrued benefits shall be paid in a lump sum, together with interest paid according to law.

In arbitration proceedings, interest accrues on unpaid permanent disability benefits from the onset of permanent disability. Farmers Elevator Co., Kingsley v. Manning, 286 N.W.2d 174 (Iowa 1979); Benson v. Good Samaritan Ctr., File No. 765734 (Ruling on Rehearing, October 18, 1989).

Claimant is requesting the payment of medical costs as detailed in exhibit 12. Defendants are liable for the same, including any costs to treat the cervical spine that are included in exhibit 12.

ORDER

THEREFORE, IT IS ORDERED:

Defendant shall pay unto claimant a running award until such time as claimant shall reach maximum medical improvement commencing from October 23, 2012 and payable at the weekly benefit rate of seven hundred twenty-one and 14/100 dollars (\$721.14) per week. One half of the weekly benefit rate shall be assessed to File No. 5043160, and the other half of the weekly benefit rate shall be assessed to File No. 5043161.

Accrued benefits shall be paid in a lump sum, together with interest, according to law.

Defendants shall take credit for all benefits previously paid prior to the filing of this decision.

Defendants shall pay medical benefits and medical mileage as detailed in exhibit 12.

The following costs are assessed to defendants at this time:

Filing Fees

Service Fees

No other determinations on fees are made at this time.

Defendant shall file all subsequent reports as required by law.

Signed and filed this 15<sup>th</sup> day of July, 2015.



MICHELLE A. MCGOVERN  
DEPUTY WORKERS'  
COMPENSATION COMMISSIONER

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MAM/kjw

**Right to Appeal:** This decision shall become final unless you or another interested party appeals within 20 days from the date above, pursuant to rule 876-4.27 (17A, 86) of the Iowa Administrative Code. The notice of appeal must be in writing and received by the commissioner's office within 20 days from the date of the decision. The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday. The notice of appeal must be filed at the following address: Workers' Compensation Commissioner, Iowa Division of Workers' Compensation, 1000 E. Grand Avenue, Des Moines, Iowa 50319-0209.