

W. G. v. S. D. Ireland Concrete

(May 9, 2008)

**STATE OF VERMONT
DEPARTMENT OF LABOR**

W. G.

Opinion No. 15-08WC

v.

By: Jane Gomez Dimotsis
Hearing Officer

S.D. Ireland Concrete,
Liberty Mutual

For: Patricia Moulton Powden
Commissioner

State File No. W-53174

OPINION AND ORDER

APPEARANCES:

Thomas Nuovo, Esq. for Claimant
Eric Johnson, Esq. for Defendant

ISSUES:

1. Are Claimant's alleged injuries to both his shoulders and carpal tunnel syndrome compensable under the Workers' Compensation Act?
2. Is Claimant entitled to Temporary Total Disability Benefits and Permanent Partial Disability Benefits as well as all medical treatment, attorney's fees and costs?

EXHIBITS:

Joint Medical Exhibit

Claimant's Exhibits

- Exhibit 1 – S.D. Ireland Truck Load Register for trucks
- Exhibit 2 - Repair History of Claimant's work truck
- Exhibit 3 - Fee Agreement with Jason Sawyer, Esq.
- Exhibit 4 – Fee Agreement with Thomas Nuovo, Esq.
- Exhibit 5 – Photograph of Sign outside S.D. Ireland stating all loads must be tarped
- Exhibit 7 - Medicare Information
- Exhibit 8 – Picture of Claimant's truck used at work showing crank

Defendant's Exhibits

- Exhibit 1 – Deposition Transcript of Claimant dated May 19, 2005

FINDINGS OF FACT:

1. The Department takes judicial notice of all forms in its file relevant to this case.
2. The Claimant was an employee of S.D. Ireland under the Workers' Compensation Act during the relevant time period of this dispute. S.D. Ireland is found to be an employer under the Workers' Compensation Act at all times relevant to this dispute.
3. The Claimant began work for S.D. Ireland in May of 2001 as a dump truck driver. The Claimant is 53 years old. Claimant is morbidly obese and suffers from a number of medical conditions including diabetes.
4. The Claimant has a high school degree and no further education. He has a CDL license.
5. The Claimant has a long history of medical problems. However, the issue in the instant case is whether he suffered a compensable injury under the statutes on September 9, 2004 while working for S.D. Ireland involving both his shoulders and carpal tunnel syndrome. He has had five surgeries since the alleged injury and is seeking temporary partial disability, permanent partial disability, medical benefits and attorney's fees and costs.
6. The Claimant believes his injuries are the result of his work activities for S.D. Ireland. Specifically, he argues that he was injured by using a hand operated winch to place a tarp over the rear compartment of the dump truck he operated for his employer. He had to "tarp" his loads up to approximately 20 times per day. However, the records submitted show the average day of work to involve significantly less than 20 times of tarping per day. In order to crank the tarp over the back of the truck it took about 20-25 hand cranks according to the Claimant. This would account for less than a maximum of 20 minutes out of an 8 hour day if the Claimant had to use the tarp 20 times.
7. The Claimant testified that he had requested S.D. Ireland to provide an electrical mechanism to "tarp" his truck due to his prior "disability". The Claimant believed he was disabled due to some prior injuries. His employer supplied him with an "electric" tarp for a short time and then gave him a truck with a manually operated tarp.
8. As stated, the Claimant worked for S.D. Ireland beginning in May of 2001 and was laid off from December 2002 until April or late March 2003. In November 2003 he was laid off again and returned to work in May of 2004. The Claimant stated that from July through September of 2004 he did use the manually operated tarp. However, he stated in September of 2004 he began the symptoms of headaches and shoulder aches. He left his employment in November of 2004 due to the fact that he allegedly could not handle the pain anymore. Claimant did have a note from his treating physician, Dr. Eugene Moore, taking him out of work for two weeks but during that period or shortly after, the employer laid him off. The Claimant states he has not worked since the fall of 2004.
9. The Claimant began receiving Social Security Disability in December of 2006 which was dated back to May 2005 due at least in major part to his breathing difficulties which are unrelated to this case.

Prior Medical Work Related Injuries

10. Throughout his adult life, the Claimant has a history of injuries and substantial periods of time for which he has not worked. These include a period in 1981 when Claimant had a back injury while working as a truck driver when he lifted a heavy barrel and hurt his back. He was subsequently “sucker-punched” in the neck by one of the employees that same year. He was out of work and collected workers’ compensation benefits for several months.
11. Next, Claimant injured his back in 1986 during a motor vehicle accident. He was out of work for three years following the accident and collected workers’ compensation benefits. The Claimant conceded, in his hearing testimony, his back injury from this accident never resolved. He also suffered some cracking in his shoulders from the accident which he did not readily admit. On or about March 2, 1987, Claimant complained of left elbow pain, right ankle pain, and left shoulder pain as well as back pain. Claimant was assessed a 5 % whole person permanent impairment for his low back.
12. Claimant returned to work in 1989 as a janitor at St. Michael’s College where he filed another workers’ compensation claim for an injury to his right arm and shoulder from washing blackboards. He was out of work for approximately the next three years collecting Workers’ Compensation benefits based on a diagnosis of tendonitis in his right shoulder. Claimant was also diagnosed with bilateral thoracic outlet syndrome. He received a 5 % whole person impairment for his right shoulder and 2 % whole person impairment for his neck.
13. In 1990 the Claimant saw a rheumatologist and complained of shoulder and neck pain. At that time Claimant stated that his neck pain was disabling.
14. In 1990, Claimant’s orthopedic surgeon, Dr. Nichols, determined the Claimant’s constant shoulder pain as well as burning in his arms and elbows were consistent with an inflammatory process in the shoulders and thoracic outlet syndrome.
15. Throughout 1991 and 1992, medical records show that the Claimant reported to medical doctors that he was experiencing pain in his shoulders, neck and arms and requested medication. He was seen at the Medical Center Hospital for Vermont Occupational Therapy for right shoulder degenerative joint disease in 1992 and it was reported that he could not work at full capacity.
16. Claimant returned to work around 1993 as a truck driver. Claimant hurt his back in 1999 while lifting a wheelbarrow of asphalt. He also reinjured his back when a co-worker bear hugged him. He received workers’ compensation benefits and was again out of work for about six months. He treated with Dr. Verne Backus and Dr. Johansson. There was determined to be a 0 % permanent impairment rating for his injury.
17. Claimant then worked as a truck driver for about six months until he was laid off and collected unemployment insurance for approximately six months.

18. Claimant continued to seek treatment for his neck, back and scapula, rib area and shoulders both before and after 1999. In January of 2000, Claimant was seen at Immediate Care for upper back pain. He again reported right shoulder pain, neck and right scapular pain. He was diagnosed as suffering from a shoulder and cervical strain related to previous issues, including those for which he had received his prior pre-existing permanent impairment ratings.
19. Claimant had an x-ray in January of 2000 for persistent right shoulder pain. The films were read as showing “degenerative changes as seen in both acromioclavicular joints.” Degenerative osteophytes formations were seen throughout his thoracic spine.
20. On February 29, 2000, Dr. Paul Hayes filled out a Workers’ Compensation form which indicated that Claimant was suffering from acute thoracic radiculitis - radicular symptoms in his arms caused by degenerative spinal changes at the T7 through T10 levels.
21. On May 16, 2000, Claimant was offered a vocational rehabilitation assessment. On that date, Claimant stated his workers’ compensation checks were due to end. He stated that he spent his time working around the home, watching videos, fishing and selling cars that he had acquired. Claimant also had a history of riding snowmobiles, ATVs, jet skis, and fixing ATVs and trucks to sell. Claimant also iced fished, spear fished, and had a boat with an engine which he used to fish on Lake Champlain. Claimant told the Vocational Rehabilitation Counselor that he could physically tolerate truck driving although he said he was still in pain and wanted to continue chiropractic care.
22. Claimant began work in the instant case as a truck driver in May of 2001. He worked the entire year and then took a lay off in the fall of 2002 until the spring of 2003. The company had to downsize in the winter and asked employees if they wanted to be laid off. The Claimant always chose to be laid off and collect unemployment.
23. In January of 2003, Claimant went to Fletcher Allen Emergency Health Care for injuries he suffered in a snowmobile accident. He told the hospital he was going 60 miles an hour on his snowmobile. He now says this was not true. He complained after the accident of rib and side pain. A cervical collar was applied to Claimant. He also complained of severe pain on his left side and left chest and shoulder. The doctors considered whether Claimant had a C3-C4 osteophyte fracture. Claimant was noted to have degenerative joint disease as well as left sided oblique neck strain. He did complain at that time of chronic shoulder pain and longstanding intermittent right upper extremity paresthesia and numbness for the past ten years. He told the doctors that he saw a chiropractor for his back and neck.
24. He also informed the doctors that he had suffered a Jet Ski crash the prior year and had been suffering from chronic right shoulder pain. He reported to the staff of Fletcher Allen that he was “disabled.” The Claimant did, however, continue to work as a truck driver after this accident.

25. Claimant's complaints at that time regarding his ribs, spine, back, neck and right shoulder and radicular symptoms continued through August of 2003.
26. In February, 2003, Claimant went to Fletcher Allen Emergency Health Care emergency room to complain that he had slipped on the ice and had fallen on his lower back and right side.
27. Claimant obtained a cross-bow permit in October of 2003 which requires under Vermont law that a doctor find the applicant disabled. Dr. Eugene Moore wrote a doctor's note that stated that the Claimant's condition met the disability requirement for a cross-bow permit.
28. In December of 2003, the Claimant had an incident with the tailgate of his truck. He had forgotten to close his tailgate. He had to reopen the tailgate and clean the dirt out. He had to reach in with his hands and pull the 400 lb. tailgate open. He went to a chiropractor for treatment for this incident.
29. On February 6, 2004, Claimant reported that he had fallen twice and his back pain was worse.
30. The majority of the medical records do not correspond to Claimant's testimony at hearing that he had not had pain complaints or treatment between 1989 and 2004.
31. All of these problems occurred prior to or during his work period with S. D. Ireland.

The Accident/Cause of Claim

32. Claimant, in the instant case, states that shortly after he returned to work at S.D. Ireland in May of 2004 he was injured by using a hand crank to tarp his truck. However, the amount of tarping that Claimant had to do did not increase from other years. Claimant had disclosed to Dr. Verne Backus during an independent medical examination that the regulations regarding tarping had changed in 2004 and thus, he had to increase the amount of times he had to tarp his truck. After Dr. Backus checked with Claimant's employer and found otherwise, the Claimant admitted that he had not been truthful to Dr. Backus.
33. Claimant first sought treatment for his alleged work related injuries with Dr. Timothy Fitzgerald. Claimant had stopped using the hand crank at least approximately two weeks prior to his visit with Dr. Fitzgerald. Dr. Fitzgerald found the injuries not typical of a specific work related injury and stated they could be related to an exacerbation of a prior underlying chronic condition.

34. On September 21, 2004, Claimant reported his chronic neck pain had worsened. The doctor noted that the pain described was similar to previous episodes and that the Claimant had similar symptoms many times before. Claimant was given injections for pain in his shoulders. Claimant went to the emergency department on the same date where he reported his history of tendonitis and his prior impairment ratings.
35. On October 12, 2004, Claimant had an MRI of his right shoulder which revealed severe degenerative arthrosis.
36. On November 2, 2004, Claimant saw Arne Heggen, PA-C at Associates in Orthopedic Care for bilateral shoulder and elbow pain. He described his shoulder pain had developed over the past several years. Claimant reported the use of the hand crank at work had become more frequent which is not corroborated by his employer. PA-C Heggen's exam did not show muscle wasting but stated he did believe the Claimant's MRI films showed severely degenerative AC joint disease with some inferior spurring on the right. He also found left severe degenerative AC joint disease. Dr. Heggen did radiographs of both shoulders which confirmed degenerative AC joint disease. The MRI also revealed the enlarged degenerative AC joint mass negative effect on the Claimant's rotator cuff.
37. The Claimant saw PA-C Heggen again in 2004. At that appointment the doctor's impression was the Claimant had bilateral shoulder pain with AC joint arthrosis and subacromial spur on the right. He was given cortisone injections.
38. During physical therapy in January of 2005, the Claimant complained to his physical therapist that he had been fishing all weekend and now his shoulders were killing him. He again complained of shoulder pain after fishing in July of 2005.
39. The Claimant saw Dr. John Lawlis several times in 2005. When asked by the Claimant to comment on causation, after the Claimant told him that he had not had any previous shoulder pain, the doctor found at first blush he was reasonably medically certain that his symptoms were caused by the work place. However, he also stated that a significant component of his problems were from degeneration. Later, upon hearing of the Claimant's complete medical history he stated he preferred not to comment on causation as he could not be reasonably medically certain as to what caused the Claimant's problems.
40. On April 4, 2005, the Claimant underwent surgery by Dr. Lawlis. Dr. Lawlis did a right shoulder arthroscopy, arthroscopic decompression, distal clavicle excision and rotator cuff repair on the Claimant. The post-operative diagnosis was right shoulder impingement syndrome, acromioclavicular arthrosis and a rotator cuff repair.
41. In September of 2005, the Claimant presented a large stack of paperwork containing load slips from his trucking jobs over his career. The Claimant asked the doctor if this type of work *could* aggravate his degenerative condition and Dr. Lawlis agreed that based on what he saw, the Claimant's degenerative condition *could* have been aggravated by his work. (emphasis added.)

42. Dr. Lawlis operated arthroscopically on Claimant's left shoulder on September 29, 2005. His post-operative diagnosis was left shoulder impingement syndrome, acromioclavicular arthrosis, supraspinatus tear and subscapularis tear. Dr. Lawlis offered the Claimant a TENS Unit but he declined. He also declined physical therapy at this time because he did not want to pay for the gas to drive him back and forth to therapy. Dr. Lawlis had referred the Claimant to Dr. Ciongoli regarding a suggestion of carpal tunnel syndrome or central stenosis of the cervical spine.
43. In September of 2005, Dr. Eugene Moore wrote a letter, at the request of the Claimant, indicating it was more likely than not that claimant's injuries were the result of repetitive use or strain related to his work activities. Dr. Moore did no analysis of the type of work the Claimant did or how repetitive it was. He merely relied on the Claimant's word.
44. In March of 2006, Dr. Moore completed a physical examination on the Claimant for his CDL license. When asked if he had suffered from any illness or injuries the Claimant denied that he had. When asked if he had shortness of breath (for which he received his SSDI) he denied it. Dr. Moore gave the Claimant a good health evaluation for his CDL license. This is in conflict with Dr. Moore's other medical opinions regarding the Claimant.
45. Dr. A. Kenneth Ciongoli, D.O., determined the Claimant was "double crushed" and maybe even "triple crushed." (Double crush syndrome is a compression neuropathy of two areas usually distant from each other as a result of nerves being crushed in the spine.) Dr. Ciongoli again diagnosed the Claimant with thoracic outlet syndrome and mild carpal tunnel syndrome. An MRI had shown spinal stenosis and neuroforaminal narrowing as well as rotator cuff tears. Dr. Ciongoli did find that the carpal tunnel syndrome was likely caused by vibrations from the Claimant's truck driving. It is not known what the Claimant, if anything, revealed regarding his other activities with recreational machines and personal truck driving. Also, Dr. Ciongoli's opinion was not to a degree of medical certainty.
46. On October 13, 2006, Dr. Lawlis performed an endoscopic left carpal tunnel release without complications. On December 4, 2006 the Claimant underwent a right carpal tunnel release without complications. Following this surgery, the Claimant continued to complain of left shoulder pain and lower back pain. Due to the continued pain in the Claimant's left shoulder, Dr. Lawlis performed arthroscopic surgery on his shoulder again on March 8, 2007. However, a new MRI had not shown any changes since the last MRI.
47. Following surgery in May of 2007, the Claimant had just learned he was diabetic. He did not attend physical therapy more than once or twice for his shoulder. He said he couldn't afford it. Dr. Moore continued, as he had for some time, to prescribe narcotics for Claimant's pain. Dr. Lawlis prescribed strengthening exercises.

Independent Medical Examinations

1. Claimant saw Dr. Backus for an Independent Medical Examination on November 19, 2004. The Claimant told Dr. Backus some rather large exaggerations regarding his medical complaints and job duties. He later admitted at the hearing that he had not told Dr. Backus the truth because he was angry with his employer.
2. Dr. Backus noted a callous on Claimant's hand that seemed inconsistent with just driving a truck. Dr. Backus also noted that the Claimant's pain minimized from the beginning of the examination to the end of the examination. He also noted that the neurological examinations of the Claimant's upper extremities were normal.
3. Dr. Backus did find severe symptom magnification. Dr. Backus did not find Claimant's injury causally related to his work noting Claimant had had degenerative joint disease of the right rotator cuff diagnosed by Dr. Nichols in 1992. Dr. Backus did not find the operation of the hand crank on Claimant's truck at S.D. Ireland consistent with Claimant's condition or alleged injuries. Dr. Backus' diagnosis at that time was bilateral shoulder pain caused by A.C. joint arthrosis and subacromial spurring.
4. Dr. Mark Bucksbaum saw the Claimant as an Independent Medical Examiner on behalf of the Claimant on two occasions; November 18, 2005 and July 20, 2007.
5. Dr. Bucksbaum did not have all of the Claimant's medical records when he first examined the Claimant and reviewed medical records for his 2005 Independent Medical Examination.
6. Dr. Bucksbaum did review prior MRIs and x-rays of the Claimant's shoulders which did show degenerative disease. This was noted as early as 1989.
7. Dr. Bucksbaum believed Claimant to be at medical end result for carpal tunnel and his shoulder syndrome in 2005. He provided permanency ratings for those conditions. He assessed an 11 % whole person rating related to the Claimant's upper right extremity. He did not, however, reduce this to take into account the prior 5 % assessed for permanency of the Claimant's right shoulder.
8. Claimant had undergone surgery for his left shoulder and Dr. Bucksbaum saw him only 49 days after surgery. Dr. Bucksbaum found he was not at medical end result for his left shoulder at the time he saw him. Dr. Bucksbaum assumed that the Claimant would have reached medical end result for his left shoulder in approximately March or April of 2006. Dr. Bucksbaum indicated that he would expect the Claimant to be able to work full time, light duty at the point of medical end result in the early spring of 2006.
9. Dr. Mark Bucksbaum next saw Defendant in 2007 for another Independent Medical Examination. He noted the additional surgeries that the Claimant had undergone since his last visit with him which were carpal tunnel surgery and an additional shoulder surgery. He was also made aware that the Claimant was diabetic.

10. Dr. Bucksbaum found the Claimant had reached medical end result for both surgeries. He assessed the same 11% whole person impairment under the AMA Guides, 5th Edition. He did so based on the two carpal tunnel surgeries and the positive electro-diagnostic studies pursuant to the AMA Guides.
11. Defendant takes issue with the fact that although Dr. Bucksbaum admitted the Claimant was morbidly obese he did not take this into account even though he testified that morbid obesity could have been the cause of the carpal tunnel syndrome. He also did not appear to take into account the Claimant's diabetes although this is known to contribute to carpal tunnel syndrome. The same argument is also made regarding the Claimant's thoracic outlet syndrome and its positive relationship with carpal tunnel syndrome. Dr. Bucksbaum did not find that diabetes caused the carpal tunnel in this case because diabetes usually begins with the feet and legs and progresses upwards in the body. This was not the progression in the Claimant's case, in his opinion.
12. Dr. Bucksbaum did find that in his 2007 medical exam that the Claimant was at medical end result for his conditions and required no additional treatment. He found that the Claimant was able to work full-time in at least a light duty capacity.
13. Of note is that in the 2005 conclusions of Dr. Bucksbaum's medical evaluation he noted that he found Claimant credible. In 2007, however, Dr. Bucksbaum gave the Claimant a zero credibility rating. Dr. Bucksbaum explained the many reasons why he did not find the Claimant credible. Most of the factors were related to statements that the Claimant had made to doctors who were later found not to be correct and the Claimant's own resistance to rejoining the work force.
14. Under cross examination at hearing, Dr. Bucksbaum stated that to some extent he had been relying on Claimant's self-reports of his symptoms, condition and work activities.
15. Dr. Ensalada saw the Claimant in 2007 for an Independent Medical Examination. Dr. Backus, Dr. Bucksbaum and Dr. Ensalada all have excellent credentials and frequently testify or write reports for workers' compensation cases. Dr. Ensalada performed a physical examination on the Claimant, including his thoracic spine, lumbar spine and a complete musculoskeletal examination, and a neurological examination. The examination findings were normal except for the Claimant's shoulder's range of motion. Dr. Ensalada diagnosed Claimant with a severe pre-existing degenerative spine condition. He determined the Claimant had 9% whole person impairment under the AMA Guides. He also determined the Claimant had a full work capacity within the medium range.
16. Dr. Ensalada determined that the surgeries undergone were reasonable and necessary. That does not mean he found them causally related to Claimant's work. He also questioned the Claimant's credibility and found extreme symptom magnification. Dr. Ensalada determined that the Claimant had severe degenerative joint disease which progresses with age, as well as becoming more symptomatic with age.

CONCLUSIONS OF LAW:

1. In order for an employer to be liable for workers' compensation benefits to a Claimant, there must be a personal injury or medical condition arising out of and in the course of employment. 21 V.S.A. § 601(11) (A). It is the burden of the Claimant to establish all facts essential to support his claim. *Goodwin v Fairbanks, Morse and Co.*, 123 Vt. 11 (1963).
2. Sufficient competent evidence must be submitted verifying the character and extent of the injury and disability, as well as the causal connection between the injury and the employment. *Egbert v. Book Press*, 144 Vt. 367 (1984). When the causal connection is obscure and a lay-person would have no well-grounded opinion as to causation, there must be expert medical testimony to sustain the burden of proof. *Jackson v True Temper Corporation*, 151 Vt. 592 (1989).
3. When evaluating and choosing between conflicting medical opinions, the Department has considered several factors: (1) the nature of the treatment and the length of time there has been a patient-provider relationship; (2) whether accident, medical and treatment records were available to and considered by the examining physician; (3) whether the report, evaluation and testimony is clear, thorough and included objective support for the opinions expressed; (4) the comprehensiveness of the examinations and (5) the qualifications of the experts including professional training and experience. *Miller v Cornwall Orchards*, Op. No. 20-97 WC (1997). These factors are addressed below.
4. The first doctor to offer an opinion in this case was Dr. Fitzgerald, S.D. Ireland's physician. He determined that the Claimant's condition *may* be related to an exacerbation of a prior underlying chronic condition (emphasis added.)
5. The next doctor the Claimant saw after he complained of severe arm and shoulder pain in 2004 and 2005 was his treating physician, Dr. Moore. Dr. Moore stated that it although it was "impossible to say with certainty how these injuries were caused, it is *very likely* that the injuries are related to repetitive use and strain as the result of his work which involves repetitive use and strain...." (emphasis added.) Dr. Moore, to a large extent relied on what the Claimant told him about his work and the hand crank for the tarp and the extent to which he had to use it, which we now know is not reliable. Dr. Moore approved the Claimant for his CDL license in 2006.

6. Dr. Mark Bucksbaum did two independent medical examinations of the Claimant. The first was in 2005 and the second in 2007. Dr. Bucksbaum practices physical medicine and pain management in Rutland, Vermont. He is board certified in physical medicine and as an independent medical examiner. As part of his practice, he regularly treats patients with carpal tunnel syndrome and shoulder problems, and as is often asked to determine the cause. Dr. Bucksbaum determined, even though the Claimant had very little credibility with him, that his injuries were related to his work.
7. Dr. Verne Backus also conducted an independent medical examination of the Claimant on November 14, 2004. Dr. Backus is also a certified independent medical examiner and has similar credentials as Dr. Bucksbaum. They are both considered highly qualified experts regarding the type of injuries allegedly suffered in the instant case. Dr. Backus's conclusion was that the Claimant simply had more symptoms when doing activities with his arms in 2004, but that the work activities themselves were not worsening the Claimant's underlying conditions, just bringing out the symptoms. Dr. Backus did not find the Claimant's activities at work were responsible for his prior medical conditions or that they were "aggravated" by them.
8. Dr. Leon Ensalada is also a certified independent medical examiner with excellent credentials in the relevant medical fields. Although the Department decided to give little weight to his report because there was a disagreement regarding why he was not present and available for cross examination, his opinions were the same as that of Dr. Backus regarding the fact that the Claimant had a degenerative disease with some increased symptoms while working with S.D. Ireland. He also questioned the credibility of the Claimant and found symptom magnification as other doctors had.
9. The Claimant's credibility has been an issue through out this claim. Even counsel for the Claimant wrote in his proposed findings of fact that the Claimant "tends to elaborate at times, and even tends to make inaccurate statements about his health, these statements are always overstated his problems rather than understatement them.... [sic] The Claimant made "inaccurate statements to get medical treatment or to preserve his driver's license. " The Department must agree that the Claimant overstated his problems when it was beneficial to him and understated his problems to obtain a benefit.
10. It is not disputed that the Claimant has had five surgeries to repair his shoulders and release the nerves for his carpal tunnel syndrome (carpal tunnel syndrome was not diagnosed until almost two years after he left his employment with S.D. Ireland.) However, the relationship between the necessity for surgery and whether the Claimant's work caused his injuries is in dispute.

11. The Department concludes that every doctor admitted to basing his opinion, at least in part, by using the Claimant's statements regarding his work activities and medical history. The Department has concluded, as the Defendant has argued and the Claimant's counsel has conceded in part, that the Claimant has embellished, exaggerated and overstated the facts regarding his medical symptoms and his work activities. If a Claimant fails to make accurate reports to physicians and there is also a disagreement between medical experts regarding the causation of an injury, the conclusions of medical opinions become questionable. In the instant case, the Department finds the Claimant has failed to meet his burden on the causation issue. This is true particularly due to the majority of the Claimant's experts equivocating regarding causation. Thus, when weighed against other medical experts' conclusions that the Claimant's condition and surgeries were not causally related to his work at S.D. Ireland, the Department must find that the burden of proof has not been met.
12. Claimant has not met his burden of proof in this claim. In fact, the evidence indicates that the Claimant was suffering from chronic, degenerative conditions which had plagued him for many years, including degenerative joint and disk disease. Claimant has been found to have a work capacity. The Department DENIES the claim for temporary and permanent benefits as well as medical benefits and attorney's fees and costs.

DATED at Montpelier, Vermont this 9th day of May 2008.

Patricia Moulton Powden
Commissioner

Appeal:

Within 30 days after copies of this opinion have been mailed, either party may appeal questions of fact or mixed questions of law and fact to a superior court or questions of law to the Vermont Supreme Court. 21 V.S.A. §§ 670, 672.