COMMONWEALTH OF MASSACHUSETTS

DEPARTMENT OF INDUSTRIAL ACCIDENTS **BOARD NO. 014026-15**

David P. Pollard	Employee
M.B.T.A.	Employer
M.B.T.A.	Self-Insurer

REVIEWING BOARD DECISION
(Judges Calliotte, Fabricant, and Long)

This case was heard by Administrative Judge Spinale.

APPEARANCES
George N. Keches, Esq., for the employee at hearing and on appeal
Griffin F. Hanrahan, Esq., for the employee on appeal
Laura E. Caron, Esq., for the self-insurer

CALLIOTTE, J. The self-insurer appeals from a judge's decision ordering it to pay the employee § 34A permanent and total incapacity benefits for injuries to the employee's left shoulder and back, from June 16, 2018, to date and continuing. The self-insurer's first arguments center on its contention that the employee failed to defeat the self-insurer's § 1(7A) affirmative defense by proving the employee's 2010 back injury was compensable or that the 2015 industrial accident remains a major cause of his disability or need for treatment. In addition, the self-insurer argues that the medical evidence does not support the judge's finding of permanent and total incapacity. For the following reasons, we vacate the decision, insofar as it holds the employee successfully defeated the applicability of § 1(7A), and recommit the case for further findings on extent of incapacity based solely on the employee's left shoulder injury.

The employee, who was sixty-two years old at the time of hearing, worked as an ironworker and foreman for the employer for twenty-seven years. (Dec. 3.) For approximately eleven years before that, he worked as an ironworker for other employers. His jobs required heavy lifting and overhead work. (Dec. 4.) On February 27, 2015, while working for the employer, the employee slipped and fell backwards while carrying

a chain link fence on his left shoulder, injuring his left shoulder and low back. He continued to work until June 2015, when he left work due to pain. Id. On September 15, 2015, the employee underwent left shoulder surgery, followed by physical therapy, with little relief. He also received, and continues to receive, injections to his low back. On September 27, 2017, the employee had a lumbar MRI, which showed L4-5 Grade 1 anterolisthesis with a central disc protrusion and bilateral facet hypertrophy. At the time of hearing, he had constant back pain. (Dec. 4-5.)

The self-insurer paid § 34 temporary total incapacity benefits from June 2015 through exhaustion in June 2018. Rizzo v. M.B.T.A., 16 Mass. Workers' Comp. Rep. 160, 161 n. 3 (2002)(reviewing board may take judicial notice of board file). On October 24, 2017, the self-insurer filed a complaint to modify or discontinue benefits, to which the employee later moved to join a claim for § 34A permanent and total incapacity benefits. Following a § 10A conference on April 6, 2018, an order issued denying the self-insurer's complaint, and requiring the self-insurer to pay maximum § 35 benefits upon exhaustion of § 34 benefits. In addition, the self-insurer was ordered to pay for physical therapy for the left shoulder and for two epidural blocks for the back. The employee's motion to join a § 34A claim was allowed and reserved for hearing. Both parties appealed. (Dec. 2.)

Prior to hearing, Dr. Kenneth D. Polivy, a Board-certified orthopedic surgeon, examined the employee pursuant to § 11A. The judge found his report of July 16, 2018, adequate and the medical issues not complex. Neither party chose to depose the impartial physician, thus making his prima facie written report the only medical evidence in the record. (Dec. 3.) At hearing, the parties stipulated that the employee injured his left shoulder and low back in the work accident of February 27, 2015. Id. The insurer raised disability and extent thereof, and causal relationship, including § 1(7A). (Dec. 2.)

The judge adopted Dr. Polivy's opinion with respect to the employee's left shoulder, finding that he " 'sustained a left shoulder partial rotator cuff tear causally related to the work injury;' " (Dec. 5, quoting Ex. 1, § 11A report), and that he continues,

after surgery, to have decreased range of motion consistent with adhesive capsulitis. Dr. Polivy opined that he cannot return to full, unrestricted work as an ironworker, but is capable of full-time light duty work with a 20-pound lifting restriction from floor to waist, with no overhead lifting. Further surgery would not be helpful, and he has reached maximum medical improvement. (Dec. 5.) The judge credited the employee's testimony that he still experiences a lot of pain in his shoulder, which limits his ability to perform everyday activities, such as housework, and leisure activities like bowling and swimming. (Dec. 6.)

With respect to the employee's lumbar spine injury, the judge adopted Dr. Polivy's opinion that,

> The Employee "aggravated his pre-existing lumbar degenerative spondylolistheses as a result of the work injury." (Ex. 1) Furthermore, the treatment to the Employee's lumbar spine, "is reasonable, medically necessary and causally related to the work injury" and the Employee "remains stable" and "is currently being controlled with lumbar epidural injections." (Id.) In addition, Dr. Polivy opined the Employee, "should be capable of full time light duty work activity with a 20-pound lifting restriction from floor to waist." (Id.)

(Dec. 6.) The judge further adopted Dr. Polivy's opinion that treatment with lumbar blocks, three times a year for the next two years, is reasonable, necessary and causally related to the work injury. Id.

The judge credited the employee's testimony that he had previously injured his back at work in 2010, causing him to miss three months of work. He was paid a closed period of workers' compensation benefits, and had injections and physical therapy. He returned to work without incident until February 27, 2015, the date of the injury at issue here. The judge also credited the employee's testimony that he had injured his back before 2010, and had undergone injections, but it was "nothing that kept him out of work." (Dec. 6.) The judge made no findings as to whether the back injuries prior to 2010 were work-related or non-work-related or the nature of those injuries. (Dec. 2.)

The judge found that the self-insurer had raised the affirmative defense of

§ 1(7A),[1] but that it did not apply, because "the pre-existing condition resulted from an injury compensable under c. 152, as I have credited the Employee's testimony regarding the 2010 incident." (Dec. 7.) The judge reiterated that he had adopted Dr. Polivy's causal relationship opinion with respect to the left shoulder, and his opinion that "the work incident aggravated the Employee's pre-existing lumbar degenerative spondylolistheses." (Dec. 7-8.)

The judge adopted Dr. Polivy's restrictions "for both the Employee's left shoulder and lumbar spine that the Employee is capable of full time light duty work activity with a 20-pound lifting restriction from floor to waist," and that he should avoid overhead lifting and should not work above ground level. (Dec. 8.) However considering the employee's high school education, his work history of heavy, physically demanding jobs as an ironworker for 37 years prior to his injury, his very limited, if any, computer skills and knowledge, and his pain, the judge found the employee was severely limited in his ability to perform work activities of a non-trifling nature, or to be hired for such jobs. Accordingly, the judge ordered the self-insurer to pay § 34A benefits beginning on June 16, 2018, as well as reasonable and appropriate medical treatment for the employee's left shoulder and low back. (Dec. 8-9.)

The self-insurer appeals, arguing primarily that the judge erred by finding the employee's pre-existing lower back injury was compensable, thus defeating the application of § 1(7A). The self-insurer maintains that the employee had a long-standing pre-existing chronic degenerative back condition, and the employee thus had the burden to prove that his 2015 work injury was a major cause of his ongoing disability and need for treatment, which he failed to do. The employee maintains that the judge was correct

[1] General Laws c. 152, § 1(7A), states, in relevant part:

> If a compensable injury or disease combines with a pre-existing condition, which resulted from an injury or disease not compensable under this chapter, to cause or prolong disability or a need for treatment, the resultant condition shall be compensable only to the extent such compensable injury or disease is a major but not necessarily predominant cause of disability or need for treatment.

to find § 1(7A) did not apply because the employee had suffered a compensable injury to his back in 2010.

Although the self-insurer's arguments are somewhat off the mark, we hold that, while the self-insurer met its burden of production, the employee failed to meet his burden of proof that § 1(7A) did not apply. Contrary to the self-insurer's argument, the judge permissibly found the employee's 2010 injury was compensable. However, there was no *medical* evidence to support the finding that the pre-existing condition of lumbar degenerative spondylolistheses ever had, or continued to have, any connection to that prior compensable injury, because Dr. Polivy did not address the nature and effect of the 2010 compensable injury, or, indeed, even mention that injury in his report. See Dorsey v. Boston Globe, 20 Mass. Workers' Comp. Rep. 391, 395-396 (2006)(where " 'no expert has definitively addressed the nature or extent of the pre-existing degenerative conditions and whether they did or do retain any connection to the earlier compensable injury,' " the employee was required to prove his industrial accident was "a major cause" of his disability or need for treatment under § 1[7A]).

We long ago set out the analysis in cases involving § 1(7A):

> [T]he administrative judge must first address the nature of the pre-existing condition: whether it stems from an injury or disease, see Vasquez v. Sweetheart Co., 19 Mass. Workers' Comp. Rep. 17, 9 n. 4 (2005) and cases cited[,] and if so, whether it is appropriately characterized as "not compensable under [c. 152]." As to the latter inquiry, "[i]f there is *medical* evidence that the *pre-existing condition continues to retain any connection to an earlier compensable injury* or injuries, then that *pre-existing condition cannot* properly *be characterized as 'non-compensable'* for the purposes of applying the § 1(7A) requirement that the claimed injury remain 'a major' cause of disability." Lawson v. M.B.T.A., 15 Mass. Workers' Comp. Rep. 433, 437 (2001). See also Powers v. Teledyne Rodney Metals, 16 Mass. Workers' Comp. Rep. 229, 231-232 & n.2 (2001). It is the *employee's burden to prove the compensable nature of the pre-existing condition* in order to invalidate a § 1(7A) defense. See LaGrasso v. Olympic Delivery, 18 Mass. Workers' Comp. Rep. 48, 54-55 (2004). If the *pre-existing condition* is not compensable, the judge must then address the effect of its combination with the subject work injury. See Resendes v. Meredith Home Fashions, 17 Mass. Workers' Comp. Rep. 490 (2003). If the employee has not defeated § 1(7A) by successfully attacking either of these first two elements of the

> statute, the judge must then make findings on the last element: whether the work injury remains a major but not necessarily predominant cause of the resultant disability or need for treatment. See, e.g., Myers v. M.B.T.A., 19 Mass. Workers' Comp. Rep. 22 (2005) and cases cited.

Vieira v. D'Agostino Assocs., 19 Mass. Workers' Comp. Rep. 50, 53 (2005)(emphases added). We have consistently adhered to the analysis set forth in Vieira. See, e.g., Wiinikanen v. Epoch Senior Living, Inc., 32 Mass. Workers' Comp. Rep. 15, 20-22 (2018); Noel v. Faulkner Hosp., 31 Mass. Workers' Comp. Rep. 139 (2017).

For § 1(7A)'s "a major cause" standard to apply with respect to the employee's back injury, the self-insurer must first raise it as an affirmative defense and produce evidence to trigger its application. MacDonald's Case, 73 Mass. App. Ct. 657, 659 (2009). Here, the self-insurer clearly raised § 1(7A) with respect to the employee's back injury both in its conference and hearing memoranda, Rizzo, supra, and at the hearing itself. (Tr. 7-8.) To meet its burden of production, the self-insurer must produce evidence of a noncompensable pre-existing condition that combines with the industrial injury. MacDonald, supra. The self-insurer may rely on the § 11A report to meet its burden of production.[2] See Dyan v S&F Concrete, 25 Mass. Workers' Comp. Rep. 405, 409 (2011), citing Motherway v. City of Westfield, 23 Mass. Workers' Comp. Rep. 28, 27 and n.6 (2009)(insurer may rely on § 11A report to support a § 1(7A) defense). Thus, Dr. Polivy's opinion that the employee "aggravated his pre-existing lumbar degenerative spondylolistheses as a result of the [2015] work injury" is sufficient to show the

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[2] We note that, when asked at hearing to make an offer of proof pursuant to 452 Code Mass. Regs. 1.11(1)(d), the self-insurer's counsel stated,

> [T]he medical records will reflect that the employee has had chronic low back problems for many years now. . . . [H]e had epidural injections to the lumbar spine in 2007 and 2008 and . . . x-rays have showed severe degenerative disc disease in the lumbar spine. And we also have an IME with Doctor Nicoletta dated September 30, 2017, which addresses his chronic low back issues and feels he has issues related to these chronic preexisting degenerative changes in the spine.

(Tr. 4-5.) No medical evidence was submitted to support these allegations.

preexisting condition combined with the 2015 industrial injury. See Blanchette's Case, 77 Mass. App. Ct. 1111 (2010)(Memorandum & Order Pursuant to Rule 1:28)(evidence of combination presented at hearing through impartial report); and Aleman v. City of Boston, 29 Mass. Workers' Comp. Rep. 89, 92 (2015)(evidence of aggravation satisfies the "combination injury" prong of § 1(7A). The employee's contention that the self-insurer did not meet its burden of production because it did not produce evidence that the employee's prior 2010 injury was *noncompensable* is without merit. (Employee br. 11.) Although Dr. Polivy's report said nothing about whether that pre-existing condition was caused by a compensable or noncompensable injury, once he identified a pre-existing condition and opined it was aggravated by the 2015 injury, the insurer's burden of production was, in effect, satisfied. It then fell to the employee, as part of his burden of proof, (rather than merely of production), to show, through "*medical evidence* that the *pre-existing condition continues to retain any connection to an earlier compensable injury* or injuries." Vieira, supra. Regardless, as discussed below, Dr. Polivy did not opine in his report that the 2010 compensable injury played any role in his pre-existing condition.

We turn now to the self-insurer's primary argument – that the judge erred in finding the 2010 back injury "compensable" because it never accepted liability for that injury, which was outside the four-year statute of limitations. In Doherty v. Union Hospital, 31 Mass. Workers' Comp. Rep. 195 (2017), we addressed this issue, explaining,

> In Saab v. Massachusetts Pharmacy, LLC, 452 Mass. 564, 566 (2008), the court construed the words "compensable under this chapter" as they appear in § 24 to mean that, "whether an employee's injury is compensable under the act . . . does not turn on whether a claimant is entitled to or actually receives compensation under the act." In other words, "if an employee suffers a personal injury that arises out of and in the course of her employment, her 'injury is . . . "compensable" irrespective of whether compensation for [her] injury is available under the act.' " Richards v. US Bancorp, 28 Mass. Workers' Comp. Rep. 115, 120 (2014), quoting from Saab, supra at 569-570. The judge found, "[T]he employee injured her neck in 2007 while performing her duties as a registered nurse with the employer. The employee's neck injuries relating to the 2007

> incident would be compensable. The work-related neck surgery does not trigger the application of § 1(7A)." (Dec. 6-7.) Furthermore, to the extent the judge's finding the employee suffered a 2007 "compensable personal injury was based on her belief of the employee's testimony, it is final and immune from appellate review." Faieta, III v. Boston Globe Newspaper Co., 18 Mass. Workers' Comp. Rep. 1, 6 (2004), and cases cited. Under these circumstances, it is irrelevant for § 1(7A) purposes that the employee had not received compensation for the 2007 injury, or that it occurred more than four years before the April 15, 2014, claimed date of injury. There was no error in the judge's finding that the employee suffered a prior compensable injury in 2007, which relieved the employee of the burden of proving her cumulative work injury . . . was a major cause of her disability and need for treatment.

Doherty, supra at 205-206.[3] Thus, contrary to the self-insurer's argument, the judge did not err in finding the 2010 lumbar injury was compensable.

However, the employee's burden of proof to defeat the applicability of § 1(7A) does not end there. Although we disagree with the self-insurer's further contention that § 1(7A) necessarily applies because the employee suffered from a chronic pre-existing back condition for which he had treated prior to 2010, (Self-insurer br. 6-7), the self-insurer's argument highlights the problem with the judge's decision – the lack of *medical* evidence the employee's pre-existing condition of lumbar degenerative spondylolistheses was causally related in any way to his 2010 compensable injury. Where the employee has a diagnosed pre-existing condition and a prior compensable work injury, we have held, as set forth above, that, " 'If there is *medical* evidence that the pre-existing condition continues to retain any connection to an earlier compensable injury or injuries, then that pre-existing *condition* cannot properly be characterized as "non-compensable" for the purposes of applying the § 1(7A) requirement that the clamed injury be 'a major'

[3] In Doherty, supra, unlike here, the medical evidence adopted by the judge supported the employee's burden of proving her pre-existing conditions were causally related to prior compensable injuries, as discussed infra. Thus, our statement that "there was no error in the judge's finding that the employee suffered a prior compensable injury which relieved the employee of the burden of proving her cumulative injury," id. at 206, was not inaccurate in the context of that case, but did not thoroughly address the analysis that was required here.

cause of disability.' " McCarthy v. Peabody Properties, 24 Mass. Workers' Comp. Rep. 89, 94-95 (2010), quoting from Lawson v. M.B.T.A., 15 Mass. Workers' Comp. Rep. 433 (2001)(emphases added). See Vieira, supra. It is not sufficient that the employee has a pre-existing compensable injury. That injury must also be causally related to the employee's combining pre-existing condition, and such causal relationship requires, except in rare cases, expert medical testimony. Dorsey, supra.[4]

This is consistent with the long-held principle that an administrative judge cannot rely on his own knowledge of medical matters to form his judgment. Lorden's Case, 48 Mass. App. Ct. 274, 280 (1999). Although, in determining causal relationship, he need not rely on expert medical testimony alone, and may give decisive weight to the employee's credible testimony, Wilson's Case, 89 Mass. App. Ct. 398, 400-401 (2016),[5] he cannot make causation findings in complex medical cases without any supporting medical evidence. See Stewart's Case, 74 Mass. App. Ct. 919 (2009)("the determination of causation in a combination injury case, as in any case involving a complicated medical issue, must be grounded in competent expert medical evidence that satisfies the

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[4] In Nason, Koziol and Wall, Workers' Compensation, § 9.7 at 237 (3rd ed. 2003), it was stated,

> [W]here the pre-existing condition is 'causally connected, in any measure' to a prior compensable injury, the employee must show only that his injury is a 'simple contributing cause' of the incapacity, under such circumstances the case is removed from the Sec. 1(7A) 'major cause' standard because the pre-existing condition 'would appropriately be characterized as compensable.' Of course, as indicated in the preceding paragraph, the determination necessarily rests on the medical evidence.

[5] Wilson's Case, supra, did not involve the complete absence of medical evidence on a key component of the § 1(7A) burden; in fact, § 1(7A) was not even raised. There, the adopted medical expert opined that the employee's left shoulder injury was secondary to the industrial accident, but later expressed some uncertainty as to causation due to the length of time he believed had passed between the initial injury and the left shoulder claim. The reviewing board reversed the administrative judge's finding of causal relationship, holding that the physician expressed two irreconcilable opinions. The court disagreed the opinions were irreconcilable and held that the physician's initial causation opinion combined with the employee's credible testimony as to the nature and cause of the injury were sufficient to support the judge's causal relationship finding. Here, there is no expert medical evidence on the critical issues of the nature of the 2010 injury to the employee's back, and whether it played any role in his pre-existing condition of lumbar degenerative spondylosistheses.

applicable standard"). We do not think this is a case in which, as a matter of "general human knowledge," and in the absence of medical testimony acknowledging the fact or the nature of the 2010 injury, the judge could make the necessary causation finding. See Lovely's Case, 336 Mass. 512 (1957).

Here, the judge found that § 1(7A) did not apply because "the pre-existing condition resulted from an injury compensable under c. 152 as I have credited the Employee's testimony regarding the 2010 incident." (Dec. 7.) However, there was *no medical evidence* causally relating the employee's pre-existing *condition* to his 2010 compensable back injury. Dr. Polivy opined that the 2015 work incident aggravated the employee's "pre-existing lumbar degenerative spondylolistheses," (Dec. 5), but Dr. Polivy did not opine as to whether that pre-existing condition was causally related to the 2010 injury, i.e., whether the 2010 compensable injury contributed in any way to the employee's lumbar degenerative spondylolistheses. In fact, Dr. Polivy seemed unaware that the employee had suffered a back injury in 2010, as he made no mention of it. It is possible, as the self-insurer postulates, that the 2010 back injury was simply a temporary exacerbation of the employee's prior condition, which returned to baseline before the 2015 industrial accident, and played no role in the employee's combining pre-existing condition. On the other hand, it is possible that the 2010 compensable injury contributed to some degree to the employee's lumbar degenerative spondylolistheses. We simply do not know, because the §11A examiner was not asked to address the question.

The only evidence about the 2010 back injury was the employee's testimony that he suffered an unspecified back injury at work in 2010, and that, following three months out of work, he worked without incident until the date of the injury in question, February 27, 2015. (Dec. 6, citing Tr. 19-21, 33-34.) This evidence is insufficient to support the judge's finding that the employee's pre-existing condition resulted from a compensable injury, so as to defeat the application of § 1(7A). Dorsey, supra; Lafleur v. M.C.I. Shirley, 24 Mass. Workers' Comp. Rep. 301 (2010)(where, in a § 1(7A) combination injury case, the judge properly determined the employee suffered a prior compensable

injury, but failed to adopt medical evidence which supported the nature of that prior compensable injury, the judge erred in finding § 1(7A) did not apply); McCarthy supra, at 95 (2010)("in the absence of any adopted medical evidence the employee's pre-existing osteoarthritis retained any causal connection to a prior compensable injury, it was both inconsistent and improper for the judge to conclude the factual predicates of § 1(7A) did not exist"); cf. Martinez v. George's Renovations, LLC, 28 Mass. Workers' Comp. Rep. 73, 76 (2014)("there was sufficient evidence for the judge to find, as she did, that the prior condition was also the result of a work injury," making § 1(7A's a major cause standard inapplicable).

Accordingly, pursuant to our decision in Dorsey, supra, and other cases cited herein, we hold that, where the employee alleges he has suffered a prior compensable injury, the appropriate analysis in assessing whether the employee has met his burden of proof to defeat § 1(7A) involves a determination of whether the pre-existing *condition* is a result of a compensable injury, not simply a finding that the prior injury is compensable. Such proof must include medical evidence, except where, as a matter of "general human knowledge," the judge can make such causation findings on his own.[6] See Lovely's Case, supra.

At a minimum, the parties should have informed the § 11A medical examiner of the employee's 2010 back injury and asked him to opine as to its causal relationship to the diagnosed pre-existing condition. They did not do so, nor did they seek to submit

[6] Cases such as Doherty, in which we have simply stated that a finding of a prior compensable injury defeats § 1(7A), are distinguishable. See footnote 3, infra. See also Catalano v. M.B.T.A., 33 Mass. Workers' Comp. Rep. 189 (2019)(parties could permissibly stipulate that existence of prior compensable injury defeated the applicability of § 1[7A]). In MacDonald's Case, supra, where the court stated that one of the ways in which the employee could defeat § 1(7A) was to prove the prior injury was compensable, the court was dealing with whether the insurer had met its burden of production regarding the *combination* aspect of § 1(7A), and not with whether the employee defeated § 1(7A) by proving the pre-existing condition resulted from a compensable injury. In addition, in setting out the employee's burden of proving no combination, the court, citing Vieira, supra, with approval, indicated it could be met by showing "the present claimed injury or condition is not combined with a *pre-existing condition arising from the prior noncompensable injury*," id. at 660, n. 3.

additional medical evidence. It is the employee's burden to prove every element of his case. See Viveiros's Case, 53 Mass. App. Ct. 296 (2001), citing Sponatski's Case, 220 Mass. 526, 527-528 (1915); Patterson v. Liberty Mut. Ins. Co., 48 Mass. App. Ct. 586, 592 (2000). G.L. c. 152, § 8(1)("An insurer's inability to defend on any issue shall not relieve an employee of the burden of proving each element of any case"). Here, by failing to present medical evidence that the employee's pre-existing lumbar condition was or continued to be causally connected to the 2010 compensable injury, the employee simply failed in his burden of proof. Consequently, the judge erred in finding that the employee defeated the applicability of § 1(7A) based on his unsupported finding that the employee's pre-existing condition resulted from a compensable injury.

The employee was required to prove that the 2015 back injury remains "a major cause" of his ongoing disability and need for treatment. He has failed to do so, as Dr. Polivy did not give "a major cause" opinion. (Dec. 7-8.) If there was additional medical evidence for the judge to consider, we would recommit the case for him to do so and make further findings. However, because there is no such evidence, recommittal is not warranted.

Accordingly, we vacate the award of permanent and total incapacity benefits, insofar as it is based in part on the employee's low back injury, as well as the award of treatment for the employee's back injury. Because it is not possible for us to tell how much the judge relied on the restrictions regarding the employee's back condition in his incapacity findings, we recommit the case to the judge to make further incapacity findings based solely on the employee's left shoulder injury. [7] In the meantime, the conference order is restored. See Lafleur v. M.C.I. Shirley, 28 Mass. Workers' Comp. Rep. 179, 192 (2014).

So ordered.

[7] We note that the restrictions the judge found for the shoulder and back were almost identical, except that he found the shoulder injury also restricted overhead lifting. (Dec. 5-6, 8-9.)

Carol Calliotte
Administrative Law Judge

Bernard W. Fabricant
Administrative Law Judge

Filed: ***March 16, 2021***

Martin J. Long
Administrative Law Judge