

STATE OF ILLINOIS)
) SS.
COUNTY OF PEORIA)

<input type="checkbox"/>	Injured Workers' Benefit Fund (§4(d))
<input type="checkbox"/>	Rate Adjustment Fund (§8(g))
<input type="checkbox"/>	Second Injury Fund (§8(e)18)
<input type="checkbox"/>	PTD/Fatal denied
<input checked="" type="checkbox"/>	None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Stephen Collier,

Petitioner,

vs.

NO. 06 WC 33412

Caterpillar, Inc.,

10IWCC1241

Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by Respondent herein and notice given to all parties, the Commission, after considering the issues of causal connection, temporary total disability, medical expenses, and nature and extent and being advised of the facts and law, modifies the Decision of the Arbitrator as stated below and otherwise affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.

After considering the entire record, the Commission deletes the second paragraph of Section (A) of the Decision of the Arbitrator and substitutes the following text:

Petitioner testified that he was promoted to an inspector position in the mid-1990's (T.10) and that this position required him to climb on and off tractors in order to look for oil leaks, loose belts or "anything out of the ordinary." T. 14. The height of the tractors varied, with Petitioner testifying that "some of the big ones went six-foot or better." T. 12. Petitioner had to use a "grab iron" on the outside of the tractor in order to pull himself up so that he could conduct his inspection. On the larger tractors, Petitioner "absolutely" had to reach overhead to access the grab iron. He had to use both hands to pull himself up because he was going "practically straight up." T. 22. Petitioner used a "mag" flashlight to inspect the tractors. The flashlight had either two or three D cell batteries inside it and weighed 3 or 4 pounds. T. 11. Petitioner generally carried the flashlight in

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his right hand. T. 14. While performing an inspection, he would hold the flashlight so that most of it was out ahead of him. T. 11-12. Petitioner acknowledged telling Dr. Miller that the heaviest object he lifted was a flashlight but, on reflection, he also had to lift his own body in order to get up on the tractor. T. 24.

All else is affirmed.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed with the Commission on May 27, 2009, is hereby modified as stated herein and otherwise affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of \$657.52 per week for a period of 4 6/7 weeks, that being the period of temporary total incapacity for work under §8(b) of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall pay Petitioner the sum of \$591.77 per week for a further period of 56.15 weeks, as provided in Section 8(e) of the Act, because the injuries sustained caused permanency in the amount of 15% of Petitioner's right hand and 25% of his right arm (with credit to Respondent in the amount of 15% of Petitioner's right arm).

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall pay to Petitioner the sum of \$1,485.12 for medical expenses under Section 8(a) of the Act. Respondent is ordered to hold Petitioner harmless under Section 8(j) of the Act in the amount of \$10,028.84.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner interest under §19(n) of the Act, if any.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall pay Petitioner compensation that has accrued from June 7, 2006 through March 24, 2009, and shall pay the remainder of the award, if any, in weekly payments.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall have credit for all amounts paid, if any, to or on behalf of Petitioner on account of said accidental injury. To date, \$2,785.76 has been paid by Respondent for TTD and/or maintenance benefits under Section 8(j) by Respondent's group carrier.

Bond for the removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of \$35,200.00. The probable cost of the record to be filed as return to Summons is the sum of \$35.00, payable to the Illinois Workers' Compensation Commission in the form of cash,

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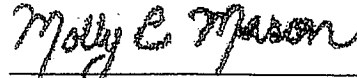
check or money order therefor and deposited with the Office of the Secretary of the Commission.

DATED: DEC 14 2010

o-08/23/10

NL/lj

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Molly C. Mason



Daniel R. Donohoo

Dissent

I respectfully disagree with the Majority's Decision finding that Petitioner sustained work-related accidents to his right shoulder, right elbow, and right hand.

In finding an accident, the Majority has affirmed and adopted the Arbitrator's finding that Petitioner's work activities placed him at greater risk than the general public and, therefore, he suffered an accident. In support of this finding, the Decision only makes reference to Petitioner's arbitration testimony; however, that testimony is contradicted by the medical records. Nowhere in the Decision is there any discussion of the following pertinent evidence or any discussion of how Petitioner's accident "manifested itself" on the alleged date of accident.

Petitioner did testify, and the medical records do verify, that Petitioner felt his right shoulder complaints began in June of 2006. However, nothing in the treatment records corroborates his testimony that he began to experience right shoulder pain in conjunction with his work activities (more specifically, the use of a flashlight or climbing on/off tractors). On June 14, 2006, Petitioner complained of "transient" right shoulder ache. He denied any specific trauma or injury. He denied any strenuous exertion with his right arm. It was further noted that his job as an inspector required him to lift "nothing heavier than a flashlight" and, furthermore, Petitioner "does no overhead neck or shoulder intensive occ. work." The doctor noted that Petitioner's right shoulder ache was "unrelated to activity". Dr. Miller's report went on to state that Petitioner's complaints appeared to be non-occupationally related and that he should seek care elsewhere. Petitioner sought no further care for his right shoulder until late 2006/early 2007. In the interim period, Petitioner was treated for right elbow and hand complaints. The physicians treating him during this period of time recorded no shoulder complaints.

In January of 2007 Petitioner was seen by Dr. Gibbons for his right shoulder complaints. Petitioner completed a "New Patient/New Problem History" questionnaire. In it, he denied any injury to his right shoulder. Despite numerous questions clearly aimed at eliciting a cause or origin for the patient's complaints, Petitioner provided no details as to any injury or any work activities he associated with the onset of his complaints. In fact, question 14 states, "What is it about your work activities that causes pain or problems when performing your job?". Petitioner answered "None." He further listed "Dr. Shepherdson" as a doctor who had treated him in the last six months for his shoulder complaints. In Dr. Gibbons' actual office note, the doctor records

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"...awoke with pain." This history as to the onset of Petitioner's right shoulder complaints is also noted in his type-written report of the same date.

The record lacks any causation opinion from Dr. Gibbons. Dr. Gibbons was never deposed. Dr. Shepherdson's records are not in evidence thereby raising the presumption that the information contained therein would be damaging to Petitioner's claim.

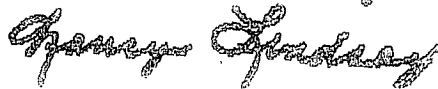
Additionally, it should be noted that Dr. Gibbons referred Petitioner for physical therapy. When initially evaluated by the physical therapist, Petitioner denied any prior right shoulder problems. Such a history is completely contrary to the medical records in evidence which clearly show a prior diagnosis and treatment regimen for right shoulder bursitis. Petitioner was not forthright with his therapist. He wasn't forthright with his doctors either as he never attributed his right shoulder symptoms/complaints to use of a flashlight or getting on/off the tractors. His testimony at arbitration is inconsistent and unsupported by the medical records. Dr. Nord, Petitioner's examining physician, did not even render a diagnosis or causation opinion with respect to Petitioner's right shoulder. Contrary to the Arbitrator's Decision (citing PX1, p. 13), Dr. Nord did not testify that Petitioner aggravated his right shoulder when he reached overhead on the tractors to inspect them. Dr. Weiss found no causal relationship between Petitioner's work activities and his right shoulder complaints. Respondent's company physician, Dr. Miller, also stated (based upon what Petitioner had told him) that there was no causal relationship between Petitioner's work and his shoulder complaints. Petitioner failed to prove he sustained an accident to his right shoulder which was causally connected to his employment activities for Respondent. The Majority's Decision is based upon testimony unsupported by the record and should be reversed.

Similarly, Petitioner has failed to prove his right hand and elbow conditions are the result of repetitive trauma work accidents. Here, too, none of the treating doctors were deposed. In adopting and affirming the Arbitrator's causation findings it appears the Majority is relying upon Dr. Nord's opinions. Dr. Nord, however, never treated Petitioner and examined Petitioner solely at the request of his attorneys (attorneys for whom Dr. Nord performs seventy-five percent of his IME's). Furthermore, Dr. Nord makes certain assumptions in Petitioner's history which are incorrect. Petitioner clearly had prior treatment for his upper extremities. Of note, Petitioner underwent an EMG and nerve conduction study in 2001 at which time he was found to have "moderate" right carpal tunnel syndrome. When repeat studies were performed in 2006 they showed "moderate to severe" right carpal tunnel syndrome. Dr. Nord never discussed or compared the two EMG's. Perhaps this is because he erroneously believed Petitioner had previously undergone a right carpal tunnel release when he had not. He also had an incorrect timeline for any earlier surgeries. Furthermore, his causation opinion is based upon Petitioner's testimony rather than the histories found in the medical records. Without Petitioner's testimony, Dr. Nord's opinion has no basis in the record. Nowhere else is there a mention of problems Petitioner associated with the flashlight, climbing on/off of equipment, or problems associated with "doing more of the inspection work". Petitioner never testified to "doing more of the inspection work" and noticing complaints. According to the medical records, he claimed no problems from February 6, 2003 through sometime in 2006 (inconsistent dates are used by

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Petitioner). He never testified to doing more inspection work in 2006 nor did he ever indicate to any other doctor that it was increased work duties he associated with his complaints. When initially seen by Dr. Miller, Dr. Miller saw no correlation between Petitioner's complaints and his work activities (as addressed by Petitioner). He further noted that Petitioner slept on his back with his elbow in flexion behind his head.

Petitioner's claim relies upon the testimony of Dr. Nord in order to prevail. That testimony is not credible. The Majority has modified the Arbitrator's Decision to include certain testimony provided by Petitioner as to his job duties. Interestingly, Petitioner never mentioned any of these job duties (and any associated difficulties) to his treating doctors. I would have reversed the Arbitrator's Decision and found Petitioner failed to meet his burden of proof with respect to his claim. For these reasons, I dissent.



Nancy Lindsay

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION

COLLIER, STEPHEN

Employee/Petitioner

Case# 06WC033412

CATERPILLAR INC

Employer/Respondent

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On 05/27/2009, an arbitration decision on this case was filed with the Illinois Workers' Compensation Commission in Chicago, a copy of which is enclosed.

If the Commission reviews this award, interest of 0.30% shall accrue from the date listed above to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

A copy of this decision is mailed to the following parties:

0564 WILLIAMS & SWEE
JAN SWEE
2011 FOX CREEK RD
BLOOMINGTON, IL 61701

0104 CATERPILLAR INC
MARK PETERS
100 N E ADAMS
PEORIA, IL 61629

State of Illinois

County of Peoria

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☐ Injured Workers' Benefit Fund (§4)
☐ Rate Adjustment Fund (§8(g))
☐ Second Injury Fund (§8(e)18)
☒ None of the above

Illinois WORKERS' COMPENSATION Commission
Arbitration Decision

Stephen Collier

Employee/Petitioner

v.

Caterpillar, Inc.

Employer/Respondent

Case # 06 WC 33412

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Stephen Mathis**, arbitrator of the Commission, in the city of **Peoria**, on **March 24, 2009**. After reviewing all of the evidence presented, the arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

Disputed Issues

- A. ☐ Was the respondent operating under and subject to the Illinois Workers' Compensation or Occupational Diseases Act?
- B. ☐ Was there an employee-employer relationship?
- C. ☒ Did an accident occur that arose out of and in the course of the petitioner's employment by the respondent?
- D. ☐ What was the date of the accident?
- E. ☐ Was timely notice of the accident given to the respondent?
- F. ☒ Is the petitioner's present condition of ill-being causally related to the injury?
- G. ☐ What were the petitioner's earnings?
- H. ☐ What was the petitioner's age at the time of the accident?
- I. ☐ What was the petitioner's marital status at the time of the accident?
- J. ☒ Were the medical services that were provided to petitioner reasonable and necessary?
- K. ☒ What amount of compensation is due for temporary total disability?
- L. ☒ What is the nature and extent of the injury?
- M. ☐ Should penalties or fees be imposed upon the respondent?
- N. ☐ Is the respondent due any credit?
- O. ☐ Other _____

Findings

- On 6-7-06, the respondent Caterpillar Was operating under and subject to the provisions of the Act.
- On this date, an employee-employer relationship *did* exist between the petitioner and respondent.
- On this date, the petitioner *did* sustain injuries that arose out of and in the course of employment.
- Timely notice of this accident *was* given to the respondent.
- In the year preceding the injury, the petitioner earned \$ 51,286.73 in straight time wages without overtime included; the average weekly wage was \$ 986.28.
- At the time of injury, the petitioner was 59 years of age, *single* with 0 children under 18.
- Necessary medical services *have not* been provided by the respondent.
- To date, \$ 2785.76 has been paid by the respondent for TTD and/or maintenance benefits under Section 8(j) by Respondent's group carrier.

Order

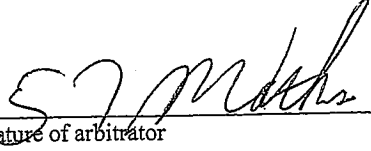
- The respondent shall pay the petitioner temporary total disability benefits of \$ 657.52/week for 4 6/7 weeks, from 11-29-06 through 1-2-07, which is the period of temporary total disability for which compensation is payable.
- The respondent shall pay the petitioner the sum of \$ 591.77/week for a further period of 56.15 weeks, as provided in Section 8(e) of the Act, because the injuries sustained caused permanency in the amount of 15% of Petitioner's right hand and 25% of his right arm (with credit to Respondent in the amount of 15% of Petitioner's right arm).
- The respondent shall pay the petitioner compensation that has accrued from 6-7-06 through 3-24-09, and shall pay the remainder of the award, if any, in weekly payments.
- The respondent shall reimburse Petitioner in the sum of \$ 1485.12 for necessary medical services, as provided in Section 8(a) of the Act. Respondent is ordered to hold Petitioner harmless under Section 8(j) of the Act in the amount of \$10028.84.
- The respondent shall pay \$ N/A in penalties, as provided in Section 19(k) of the Act.
- The respondent shall pay \$ N/A in penalties, as provided in Section 19(l) of the Act.
- The respondent shall pay \$ N/A in attorneys' fees, as provided in Section 16 of the Act.

Rules Regarding Appeals Unless a party files a *Petition for Review* within 30 days after receipt of this decision, and perfects a review in accordance with the Act and Rules, then this decision shall be entered as the decision of the Commission.

Statement of Interest rate If the Commission reviews this award, interest at the rate set forth on the *Notice of Decision of Arbitrator* shall accrue from the date listed below to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not

accrue.

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Signature of arbitrator


Date

ICArbDec p. 2

[A] ACCIDENT

MAY 27 2009

Petitioner testified that he had been employed by Respondent, Caterpillar, Inc., for over 40 years at the time of arbitration. Petitioner said that he had worked for Respondent on the tractor assembly line using airguns prior to 1993.

Petitioner said that he was promoted to an inspector position in 1993 and that his position required him to climb on and off large Caterpillar tractors to inspect them. Petitioner said that some of the tractors were six to eight feet tall and that he would use either hand overhead to pull his body weight up to inspect the top portion of the tractor. Petitioner said that he carried a 12 inch heavy duty flashlight, which weighed 3-4 pounds, to inspect the tractor parts. Petitioner said that he usually used the flashlight with his right hand that he would often have to reach out away from his body and over the tractor to inspect the parts. Petitioner said that he had to turn and twist the flashlight to view the areas he inspected.

Petitioner said that after he became an inspector in 1993, he spent 50% of his work day climbing on and off the tractors using the flashlight to inspect the parts and 50% of his day using a computer to complete paperwork. Petitioner said that he worked a lot of overtime and that his work day was longer than 8 hours. Petitioner's 2005 W-2 form indicates that he made almost \$30,000 in overtime wages (PX 11).

Petitioner said that he began to experience right shoulder pain and right hand numbness on and before 6-7-06. Petitioner said that he noticed the pain and numbness the most when he was using the flashlight and when he was climbing on and off Respondent's tractors.

The Arbitrator finds that Petitioner's work activities placed him at greater risk than the general public. The Arbitrator therefore finds accident.

[F] CAUSAL CONNECTION

Petitioner reported his work accident to Respondent on 6-7-06 and filled out an incident form. Petitioner stated that he had numbness in his right shoulder and arm and that he held a flashlight 75% of the day (PX 3, RX 1). Respondent's initial nurse's assessment stated that Petitioner had right shoulder and right arm pain with numbness and tingling into his hand (PX 4, RX 1).

Petitioner treated with Dr. Conner, an orthopedic surgeon, on 9-7-06. Dr. Conner's record indicates that Petitioner worked for Caterpillar for 41 years. Dr. Conner's records state that Petitioner underwent a previous right elbow surgery on 10-16-02 by Dr. Adamson and that the surgery resolved

Petitioner's numbness and tingling into his right hand. Dr. Conner stated that Petitioner had done well up until about six months ago when he re-developed difficulties with his right hand.

Dr. Conner's record of 9-7-06 states that Petitioner's right ring and small fingers were numb and that he had an itching in his wrist which radiated into his elbow. Dr. Conner stated that Petitioner inspected heavy equipment at Caterpillar and that this required him to do a lot of elbow motion. Dr. Conner diagnosed Petitioner with DuPuytren's disease involving the right palm at the base of the ring finger and that he also had a thumb contracture. Dr. Conner stated that there was questionable atrophy of the right first dorsal interosseus muscle. Dr. Conner diagnosed Petitioner with probable recurrent right cubital tunnel and ongoing right carpal tunnel syndrome (PX 6, RX 2).

Dr. Conner ordered an EMG on 9-19-06 which showed a moderate to severe degree of carpal tunnel syndrome and a moderate degree of right cubital tunnel syndrome with some demyelinating and axonal ulnar nerve change (PX 6, RX 2). Dr. Conner performed surgery on Petitioner on 11-29-06 consisting of a right palmar and digital fasciectomy involving the ring finger, palm and thumb; endoscopic decompression of the right median nerve; and neurolysis of the right ulnar nerve (PX 6, RX 2). Dr. Conner released Petitioner to return to work on January 2, 2007.

Petitioner treated with Dr. Conner's partner, Dr. Gibbons, for his right shoulder on 1-9-07. Petitioner filled out an intake questionnaire sheet which stated that he had continued pain in his right shoulder for approximately 6 months. In the patient information sheet of 1-15-07, Petitioner stated that his job duties included inspecting tractors and climbing on tractors all day with lifting up to 3 pounds (PX 6, RX 2). Dr. Gibbons diagnosed Petitioner with right shoulder tendonopathy and AC joint arthritis. Dr. Gibbons prescribed physical therapy which Petitioner completed on January 30, 2007 (PX 6, RX 2).

Respondent's Section 12 doctor, Dr. Weiss, testified by deposition on January 5, 2009. Dr. Weiss said that he evaluated Petitioner on February 19, 2008 (RX 5, p.p. 4, 5).

Dr. Weiss opined that Petitioner's DuPuytren's contracture is genetic, or hereditary, and that there was no relationship between Petitioner's DuPuytren's and Petitioner's work activities for Caterpillar (RX 5, p. 10). Dr. Weiss opined that Petitioner's right shoulder condition was not causally related to his work because it was his understanding that Petitioner did not do any overhead work and that most of his work was done at waist-height. Dr. Weiss opined that Petitioner's right shoulder condition was as a result of an underlying degenerative condition (RX 5, p.p. 15, 16). Dr. Weiss opined that Petitioner's work at Caterpillar was not forceful enough to contribute to his right cubital tunnel and that only forceful activities, such as swinging a hammer repetitively, could contribute to the development of cubital tunnel (RX 5, p.p. 16, 17). Dr. Weiss further opined that Petitioner's work activities at Caterpillar after 1996 were not forceful or repetitive enough to have caused or aggravated his carpal tunnel syndrome (RX 5, 17).

Petitioner's examining physician, Dr. Paul Nord, testified by deposition on July 14, 2008. Dr. Paul Nord said that he was board certified in occupational medicine, family medicine, and quality assurance and utilization review. Dr. Nord said that he examined Petitioner at Petitioner's counsel's request on June 12, 2007 (PX 1, p. 5). Dr. Nord opined that Petitioner's work as an inspector for Caterpillar contributed to the need for his surgery on 11-29-06. Dr. Nord stated that Petitioner's work as an inspector required him to grip an industrial flashlight through much of his work day and this caused some inflammation in his right wrist which contributed to his increased carpal tunnel and Dupuytren's

contractures (PX 1, p.p. 12, 13). Dr. Nord stated that Petitioner was over 200 pounds. Dr. Nord opined that Petitioner aggravated his right shoulder, arm and hand when he reached overhead to pull himself up on the tractors to inspect them (PX 1, p. 13). Dr. Nord testified that Petitioner's job required him to reach out in front while twisting, turning and gripping with his right hand and that these activities contributed to the development of his cubital tunnel syndrome because his elbow acted as a fulcrum and Petitioner's ulnar nerve was impinged with the twisting and turning of his right hand (PX 1, p.p. 10-13).

The Arbitrator notes that Petitioner had a previous right cubital tunnel syndrome which was treated with surgery in 2002 and that he had been diagnosed with some right carpal tunnel in 2001 while treating with Dr. Conner's partner, Dr. Palmer (RX 2).

Petitioner did not treat for his hands or arms from 2-6-03 through 9-7-06. At that time, Dr. Conner took a history of Petitioner having done well until approximately 6 months ago when he re-developed difficulties with his right hand (PX 6, RX 2, 9-7-06 entry).

The Arbitrator finds that Petitioner had a pre-existing condition to his right shoulder, elbow and hand. The Arbitrator relies on General Electric Company v Industrial Commission, 190 Ill.App.3d 847, 855 and finds that, even though an Employee may have suffered from a pre-existing condition, it will not preclude an award if the condition was aggravated or accelerated by his employment. In this case, Petitioner aggravated his pre-existing right shoulder condition leading to tendonitis; he aggravated his cubital tunnel causing recurrent cubital tunnel syndrome; he aggravated a pre-existing right carpal tunnel syndrome which required surgery; and he aggravated his DuPuytren's leading to the surgical intervention.

[J] MEDICAL

For reasons stated in [C] and [F], the Arbitrator orders Respondent to reimburse Petitioner in the amount of \$1,485.12 and to hold Petitioner harmless under Section 8(j) in the amount of \$10,028.84.

[K] TEMPORARY TOTAL DISABILITY

Dr. Conner performed surgery on Petitioner's right extremity on 11-29-06. Dr. Conner released Petitioner on 1-2-07.

The Arbitrator therefore awards TTD from 11-29-06 through 1-2-07.

[L] NATURE AND EXTENT, PERMANENCY

The Arbitrator finds that Petitioner's surgery of 11-29-06 consisting of a right palmar and digital fasciectomy involving the ring finger, palm and thumb; endoscopic decompression of the right median nerve; and neurolysis of the right ulnar nerve was causally related to his work accident. The Arbitrator

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further finds that Petitioner had a right shoulder tendonopathy as a result of his work accident.

The Arbitrator notes that Petitioner had a prior right ulnar transposition in 2002 by Dr. Conner's partner, Dr. Adamson. By Dr. Conner's first note of 9-7-06, Petitioner had made a good recovery after the 2002 surgery and was doing relatively well until 2006.

At the time of arbitration, Petitioner testified that he had some mild numbness in his right hand and some loss of strength. Petitioner said that he noticed some occasional right shoulder pain.

The Arbitrator therefore finds permanency.