WORKPLACE SAFETY AND INSURANCE APPEALS TRIBUNAL

DECISION NO. 2453/18

BEFORE: J. Dimovski: Vice-Chair
P. Greenside: Member Representative of Employers
M. Ferrari: Member Representative of Workers

HEARING: August 22, 2018 at Toronto
Oral

DATE OF DECISION: January 9, 2019

NEUTRAL CITATION: 2019 ONWSIAT 82

DECISION(S) UNDER APPEAL: WSIB ARO decisions dated June 18, 2013 and April 28, 2017

APPEARANCES:

For the worker: R. Fink, Lawyer

For the employer: Not participating

Interpreter: P. Le, Vietnamese language

REASONS

(i) Issues

[1] The issues in dispute are as follows:

1. whether the worker has initial entitlement for a right hand injury sustained on September 16, 2011;

2. whether the worker has initial entitlement for a left shoulder injury sustained on September 6, 2013; and/or

3. whether the worker has initial entitlement for left and right shoulder injuries as a disablement accident.

(ii) Background to appeal proceedings

[2] On September 16, 2011, this now 58 year old worker claims she injured fingers of the right hand when they became stuck in a food packaging machine in the course of her employment processing chicken on a processing line. The worker claimed she required the help of a co-worker to free her hand from the machine. She did not seek immediate attention or lose time from work.

[3] In a letter dated January 30, 2012, the Board denied the worker's claim noting delays and inconsistency in her reporting of the alleged accident. In particular, the Board noted the worker did not seek medical attention until October 11, 2011 and that the she reported a gradual onset of injury rather than a specific incident of injury to the employer on November 8, 2011. Given the delays and inconsistency, the Board denied the worker had established a workplace accident had occurred on September 16, 2011.

[4] The worker also claimed she injured her fingers while working on a fowl line, cutting breast meat on November 4, 2011. She stated she heard a crack and this resulted in pain which prevented her from completing her shift. In a letter dated December 18, 2012, the Board found that there was no medical evidence to support the worker sustained a work-related injury on November 4, 2011.

[5] The Board's decisions were upheld in an ARO decision dated June 18, 2013.

[6] In a letter dated December 2, 2013, the Board denied the worker's claim that a left shoulder injury had also been injured as a result of a specific incident on September 6, 2013. At the time, the worker had been performing modified duties. The worker claimed that she injured her left shoulder while putting chicken necks in boxes and then moving those boxes. In denying the worker's claim, the Board wrote:

> You reported that on September 06, 2013, you put chicken necks in a box and while bringing them to the table to go on the scale, you felt immediate pain in your left shoulder. You did not indicate the date you sought initial medical attention. Your employer states that on October 11, 2013 you reported a gradual onset of left shoulder pain and sought medical attention on October 17, 2013. The medical received is dated November 09, 2013. Noting the discrepancies with the accident history reported and the date medical attention was sought, I am unable to establish that your left shoulder

> condition arose out of and in the course of employment. Therefore, I am unable to allow entitlement to benefits.

[7] As set out in a reconsideration decision dated December 31, 2013, the Board upheld its decision to deny the worker entitlement for a left shoulder injury. The Board wrote:

> I am upholding the decision and am unable to establish that your left shoulder condition arose out of and in the course of employment and is a result of any work activity you performed on September 06, 2013. You reported that you attempted to shovel and lift chicken necks on September 06, 2013. You indicated that you reported this to your supervisor. Your employer has reported that you did not report a specific work-related incident on September 06, 2013. The physician that you sought medical attention on September 07, 2013 states you did not report a specific work-related incident on September 07, 2013 and did not report a left shoulder injury on this day. Your employer reports that on October 04, 2013 you were unsure of the cause of your left shoulder pain and indicated it is not work-related. You continued to work from September 07, 2013 until you lost time on October 29, 2013. The medical note on October 29, 2013 states you have a ligament tear in your left shoulder.
>
> As provided in policy 11-01-01 and noting that your employer cannot confirm that you reported a specific work-related incident on September 06, 2013; You did not report a work-related incident to your doctor on September 07, 2013, and there is a one month delay in seeing your doctor again for left shoulder pain, I am unable to establish proof of accident. Therefore, I am unable to allow entitlement to benefits.

[8] The worker subsequently claimed she injured her right shoulder while de-boning chickens while in the course of her employment on November 25, 2013. In a letter dated February 5, 2014, the Board denied the worker's job duties could be associated with the onset of the right shoulder condition diagnosed as tendonitis/tenosynovitis. The Board's rationale included the following:

> You attribute your right shoulder pain to utilizing your right shoulder to debone chicken which is positioned at approximately waist level. Noting that there is no flexion or extension of your right shoulder and that there are no changes to your job duties, I am unable to establish that your workplace injury arose out of your employment.

[9] The Board also addressed the claim that the worker's left shoulder condition developed gradually over time while she performed modified duties. The Board concluded that the worker's modified duties did not require repetitive or awkward movements to have caused sustained shoulder tension, pressure or force to have caused injury. As a result, the Board denied the worker had sustained a left shoulder injury as a result of a disablement accident (see, Board decision dated July 6, 2016).

[10] Effective February 3, 2016, the worker's employment was terminated. In a letter dated March 22, 2016, the accident employer noted that based "on the medical information provided to us on February 3, 2016, we have concluded that you are not capable of a productive return to work…".

[11] In a decision dated April 28, 2017, an ARO upheld the decision denying the worker initial entitlement for a left shoulder injury as a result of a specific accident on September 6, 2013. Additionally, the ARO denied the worker had "entitlement to a left and right shoulder injury as a disablement relating to the worker's job duties".

(iii) Law and policy

[12] As the worker's claims relate to accident dates in 2011 and 2013, the *Workplace Safety and Insurance Act, 1997* (WSIA), as amended, is applicable to this appeal. All statutory references in this decision are to the WSIA, as amended, unless otherwise stated.

[13] An "accident" is defined in section 2(1) to include:

> (a) a wilful and intentional act, not being the act of the worker,
>
> (b) a chance event occasioned by a physical or natural cause, and
>
> (c) disablement arising out of and in the course of employment.

[14] General entitlement to benefits is governed by section 13:

> **13(1)** A worker who sustains a personal injury by accident arising out of and in the course of his or her employment is entitled to benefits under the insurance plan.
>
> **(2)** If the accident arises out of the worker's employment, it is presumed to have occurred in the course of the employment unless the contrary is shown. If it occurs in the course of the worker's employment, it is presumed to have arisen out of the employment unless the contrary is shown.

[15] The statutory presumption set out in section 13(2) does not apply to an injury by disablement. See, for example, *Decision Nos. 268* and *42/89*.

[16] In accordance with s. 126, we have also applied applicable Board policy to this appeal. In particular, we have applied *Operational Policy Manual* (OPM) Document No. 11-01-01, "Adjudicative Process", which states that an allowable claim must have five points: an employer, a worker, personal work-related injury, proof of accident, and compatibility of diagnosis to accident history. OPM Document No. 11-01-01 provides the following guidelines for determining proof of accident:

> **Proof of accident**
>
> Decision-makers may consider the following when examining proof of accident,
>
> - Does an accident or disablement situation exist?
> - Are there any witnesses?
> - Are there discrepancies in the date of accident and the date the worker stopped working?
> - Was there any delay in the onset of symptoms or in seeking health care attention?

[17] OPM Document No. 15-02-01 entitled "Definition of an Accident" defines "disablement" accident as including a condition that emerges gradually over time and an unexpected result of working duties. Generally, in determining whether there was a "disablement arising out of and in the course of employment", the Tribunal will determine whether there was an injuring process which was part of the employment. For disablement claims, the Tribunal has developed a framework for analysis which was succinctly described in *Decision No. 1925/03* as follows:

> The nature of the injury claimed by the worker is an injury by accident in the form of "disablement". This form of "accident" under the legislation was discussed in the Tribunals *Decision No. 559/87* (9 WCATR 103). At page 145, the Panel stated:

> The disablement part of the definition of accident has typically found its application in the case of injuries over time as a result of repetitive stressful motions in the employment context.
>
> Other Tribunal decisions have accepted that interpretation of the disablement portion of the definition of accident and have also generally applied the following test in determining whether disablement has occurred:
>
> > Was there an injuring process associated with the employment that made a significant contribution to the worker's disability?
>
> The question of what a significant contributing factor might be was considered in the Tribunal's *Decision No. 280* (6 WCATR 27). In that decision, the Panel stated:
>
> > A "significant contributing factor" is a factor of considerable effect or importance or one which added to the worker's pre-existing condition in a material way to establish a causal connection.…
>
> Finally, I note this excerpt from the Tribunal's *Decision No. 652/87* (10 WCATR 75):
>
> > This case raises the issue of the distinction between disabling symptoms appearing as the result of the impact of employment on a pre-existing degenerative condition which symptoms may be fairly taken as reflecting a compensable exacerbation or acceleration of a pre-existing condition, and the disabling symptoms appearing as a result of the impact of employment on a pre-existing degenerative condition which symptoms may be fairly taken as merely evidence of the disabling nature of the pre-existing condition.

[18] Where there may be many contributing factors to the disablement, it must be shown, on the balance of probabilities, that workplace factors played a significant contributing role in the cause of the disablement. See *Decision Nos. 1386/03*, *426/07*, *226/07* and *583/07*. A significant contributing factor is one of considerable effect or importance. It need not be the sole contributing factor. See, for example, *Decision No. 280*.

(iv) Analysis

(a) Entitlement for a right hand injury sustained on September 16, 2011

[19] In the Worker's Report of Injury/Disease (Form 6) dated December 1, 2011, the worker wrote she injured her fingers while performing her job duties on September 16, 2011. She described what happened, in part, as follows:

> I was cutting chicken wings on the line and put them inside the container after that put them down inside the machine but my hand got stuck holding when the container went down into the machine after I try to lift out my hands I felt my fingers right hand hurting but I still did my job with modified work and then on November 4, 2011 I was cutting breast meat of fowl chicken. Suddenly, my fingers were hurting too much I could hear a crack and after that I saw swollen I couldn't cut any more I told the lady w/red hat – my fingers hand almost broken so she help me out and she talked to Supervisor before I went home.

[20] In the Employer's Report of Injury/Disease (Form 7) dated November 10, 2011, the employer indicated that the worker complained of a gradual onset of right hand pain from "boning chicken with a knife". The employer indicated that the worker reported her injury on November 8, 2011.

[21] The Board initially accepted that the worker's work deboning chicken with a knife was repetitive work and her complaints were due to a disablement accident and allowed the claim (see, Board memorandum dated November 29, 2011).

[22] After reviewing the worker's late filed Form 6, in a Board memorandum dated January 30, 2012, the Board reversed the entitlement which was initially granted based on the discrepancy of complaint described in the Form 7 and the worker's delay in reporting. In support of the decision, the Board also noted Dr. Tran (family physician) had confirmed that the worker had not complained about a right hand injury on September 26, 2011 but had been treated for "non-work-related issues". Dr. Tran indicated in a phone conversation with the Board that the worker made her first complaint about her right hand during an October 11, 2011 visit. As a result, Dr. Tran ordered an x-ray that showed a possible small chip fracture at the base of the middle phalanx, ring and middle finger.

[23] While the Board recognized that the worker claimed that there were witnesses to her accident on September 16, 2011, there is no record in the case materials which supports the Board conducted a robust investigation, such as interviewing those witnesses, nor investigated the worker's medical history with Dr. Tran and any reporting history with the accident employer to assess the onset of the worker's complaints.

[24] In any event, the Board also did not deny the worker had a right hand condition but rather determined that the worker's failure to report an injury to Dr. Tran on September 26, 2011 was an indication that a work-related injury did not occur as claimed.

[25] We acknowledge that delay in medical reporting is a factor to be considered in assessing whether a workplace accident occurred. In this appeal, we find it appropriate to consider the worker's explanation for the delay.

[26] At the hearing, the worker testified that she had reported her right hand injury to Dr. Tran but he stated he did not want to address it until October 2011. She indicated that he was afraid to make a workplace accident report. Dr. Tran did file reports with the Board. However, there is no evidence by Dr. Tran which would support the worker's testimony about his conduct. In the circumstances, we placed no weight on the worker's testimony. Instead, we preferred to rely on Dr. Tran's statement made to the Board as it was more contemporaneous to the relevant time for this appeal. We therefore find it to be the more reliable evidence.

[27] Nevertheless, we are satisfied that lack of immediate reporting is a factor which is not fatal to the worker's claim. In this context, we note the worker was not prevented from working until her pain had become unbearable. Also, we note when the worker reported the condition to Dr. Tran in October 2011 there was no particular medical treatment or restriction which prevented her from working. The worker testified that she had ongoing pain that became progressively unbearable in November 2011. Even when her condition worsened, we note the treatment was confined to the taping of the fingers and the prescription of modified work. Therefore, we are satisfied that the less serious nature of the worker's initial injuries to her middle and ring fingers on the right hand reasonably explain why the worker did not report or complain to her physician until the persistent of the pain from the injuries was not resolving. Therefore, we find that the injuries to the worker's fingers were not significant enough to warrant immediate medical attention. As such, we accept that the worker's reporting was reasonable and there was no delay in reporting in relation to the severity of her injuries.

[28] We also find that the medical evidence supports a link between the worker's injuries and the job she claims she was performing at the time of her onset of injury. In his report dated November 29, 2011, Dr. Z. Margaliot (plastic surgeon) supports the worker had injuries to the middle and ring fingers consistent with the workplace mechanism of injury she described in her Form 6 and to the Tribunal. In the absence of medical evidence to the contrary, we find that the evidence supports a finding that the mechanics of injury described by the worker were compatible with her finger injuries. Given all this, and given the Board does not dispute she had injuries to her fingers, we find that the worker sustained work-related injuries to her middle and ring fingers of the right hand on September 16, 2011.

[29] In his report dated February 2, 2012, Dr. Margaliot also noted the worker had injury to her small finger. In his report dated November 29, 2011, Dr. Margaliot wrote that the worker's middle and ring fingers were treated "with buddy taping". Mr. Fink indicated reference to the small finger in the February 2012 was an error. We agree as there is no reference to a small finger injury in the reports filed by Dr. Tran dated December 10, 2011, January 16, 2012 and February 6, 2012. Therefore, based on the balance of evidence and the mechanics of the injury described earlier in this decision, which we accepted occurred, we find that the worker has initial entitlement for middle and small finger injuries of the right hand resulting from a workplace injury which occurred on September 16, 2011.

[30] In the report dated November 29, 2011, Dr. Margaliot indicated that an x-ray showed there "may have been a small chip fracture at the base of the middle phalanx". In his report dated October 8, 2015, Dr. Di Pasquale indicated that the worker had sustained an articular fracture of the interphalangeal joint. There is no information to support that Dr. Di Pasquale's opinion is based on any diagnostic evidence. In his January 12, 2012 report, we note Dr. Margaliot makes no reference to a fracture and in fact notes there were no signs of deformity to the right hand. Further, there is a x-ray report dated November 3, 2011 which denied there was evidence of a fracture in the right hand. As there is no diagnostic evidence of substance to support the worker sustained any fracture in the right hand, and as Dr. Margaliot's 2012 opinion does not confirm there was a fracture of the injured fingers, we placed no weight on Dr. Di Pasquale's opinion as it was based on information supplied to him. Further, we find there is no substantive diagnostic evidence to confirm the worker sustained fractures to any of the injured fingers. Given all this, we find the worker sustained strain injuries to her middle and ring and fingers of the right hand.

[31] In summation, we find the worker sustained soft tissue injuries to her middle and ring fingers of the right hand on September 16, 2011.

(b) Whether the worker has initial entitlement for a left shoulder injury sustained on September 6, 2013

[32] In a Form 7 dated October 25, 2013, the employer notified the Board that the worker complained of a gradual onset of left shoulder pain due to job duties involving the hanging of chickens on a processing line. In her Form 6 dated October 21, 2013, the worker wrote she felt an immediate onset of left shoulder pain while putting chickens in boxes on September 6, 2013. The worker also stated she reported her injury to a supervisor. In a memorandum dated November 9, 2013, the employer advised the Board that the supervisor was made aware of the left shoulder condition on October 11, 2013. Noting these discrepancies, and some delay in the seeking out of medical attention, the Board denied the worker's entitlement to benefits.

[33] We acknowledge there are inconsistencies with the reporting about the left shoulder in the case record. Despite relating the left shoulder injury with packing chicken necks into a box on September 6, 2013, there is evidence to support the worker made earlier complaints about a left shoulder ache. For example, in an email dated October 9, 2013, the worker wrote to the employer that she had complained about her left shoulder in June and July 2013 prior to her accident on September 6, 2013. The worker began physiotherapy after the claimed September 2013 accident. In the case history page attached to the physiotherapist's clinical notes, beginning with notations from September 14, 2013, the worker's left shoulder history is described as occurring 3 months prior due to repetitive work.

[34] In response to the issues surrounding the reporting, the employer wrote to the Board that it had conducted an investigation. In a letter dated October 24, 2013, the employer noted that the worker had denied the left shoulder was work-related when she complained about it before she stopped working. The Board relied, for the most part, on this investigation to deny the worker's claim. We placed no weight on the employer's investigation as it was devoid of any particulars of substance and thus, we do not place any weight on the employer's investigation and do not accept it should be relied on to deny the worker's claim.

[35] Nonetheless, as noted above with the finger injuries, we are troubled by the worker's testimony concerning the left shoulder history. For example, she stated she reported her injuries immediately but there is no such documentary evidence to support her claims. Yet, she has displayed more exactness in her correspondence. Also, she went to great lengths to provide pictures of a home-made mock up of a box of chicken necks to illustrate the duties she performed on September 13, 2013. Ultimately, the question is whether the evidence supports the worker's claim that she sustained a left shoulder injury at work on September 6, 2013.

[36] We acknowledge that there is a Physician's First Report (Form 8) dated November 9, 2013, in which Dr. N. Tong wrote that the worker was first treated for a left shoulder condition in September 2013 but elsewhere left shoulder complaints were recorded as occurring in August 2013. Despite this, Dr. Tong noted the worker's accident date as September 6, 2013. The September 6th accident date is consistent with the other Form 8s on file, including the report of January 7, 2014, by the worker's family physician, Dr. Tran. While the worker may have had a left shoulder ache prior to September 6, 2013, there is no evidence in the case materials of a left shoulder injury which required treatment.

[37] However, we find the balance of evidence which supports a finding that the worker developed acute left shoulder pain as of September 6, 2013. In addition to the statements about the accident in the Form 8s, we are satisfied that there is medical evidence contemporaneous to the worker's claim of a workplace accident on September 6, 2013 which supports she complained about an acute left shoulder condition to support she sustained an injury on that date. This is seen in the medical documentation approximate to September 6, 2013 which supports the worker required medical attention. For example, we note a physiotherapist referral certificate dated September 6, 2013, an x-ray order form dated September 7, 2013 and an x-ray report dated September 9, 2013 which indicated there was no evidence of "significant shoulder abnormality". The worker also began to receive physiotherapy treatment as of September 14, 2013. As a result, we find the balance of the medical evidence corroborates the worker's prior statements and testimony that she developed an acute left shoulder condition at the time (September 6, 2013) she claims she was injured as a result of a workplace accident.

[38] In determining whether the condition is related to work, we are also satisfied that the job duties performed at the relevant time significantly contributed to the worker's left shoulder condition. The evidence in the case material supports the worker was packing chickens in September 2013 (see, employer letter dated July 4, 2016). The employer also provided the Board a physical demands analysis (the PDA) of the worker's job in chicken packing which required significant amounts of lifting, pushing and pulling. While the PDA could be viewed as minimally describing the job demands, we are satisfied it corroborates the job duties described by the worker. Accordingly, we find that the worker's job duties on September 6, 2013 involved repetitive amounts of lifting, pushing and pulling.

[39] We note the job duties performed by the worker in September 2013 were described to Dr. Di Pasquale (orthopaedic) for an opinion. In his report dated November 17, 2014, Dr. Di Pasquale opined the worker's job duties were consistent with "rotator cuff disease superimposed on posterior shoulder girdle and cervical spine myofascial strain". In another report dated October 8, 2015, Dr. Di Pasquale specifically related the duties involved with shoveling chicken necks with the worker's left shoulder condition. We have no jurisdiction to address the neck injury or the chronic pain condition mentioned elsewhere in the medical reporting.

[40] We acknowledge that it is difficult to ascertain the exact medical diagnosis arising out of any September 2013 workplace accident as there are gaps in the medical evidence and there is evidence that there was further injury to the worker's left shoulder caused by a non-compensable event. The worker admitted she was involved in a non-compensable motor vehicle accident (MVA) in October 2014. In terms of diagnosis, we note Dr. Di Pasquale did not appear to rely on any diagnostic evidence to support his diagnosis. Moreover, Dr. Di Pasquale's reporting does not acknowledge any contribution to the worker's presentation caused by the non-compensable MVA. There is subsequent medical evidence to support the worker's left shoulder pain was due to tendinopathy and a supraspinatus tear of the rotator cuff (see, Dr. Nguyen's report dated October 26, 2017, and ultrasound report dated January 3, 2017). While the worker denied she had injured her left shoulder in the non-compensable MVA, we note in a report dated November 10, 2014, Dr. Yu (family physician), contradicted the worker's testimony by noting the worker's shoulder injuries had been aggravated by the October 2014 non-compensable MVA. Given all this, in assessing this appeal, we placed no weight on the medical evidence which addressed the nature of the worker's left shoulder injury after the non-compensable MVA.

[41] Nonetheless, we are satisfied Dr. Di Pasquale's views support a finding that the worker's job duties were associated with an injuring process compatible with the acute left shoulder injury sustained on September 2013. After reviewing the evidence and submissions in totality, we find the worker sustained a left shoulder injury on September 6, 2013.

[42] Dr. Di Pasquale diagnosed the worker with "rotator cuff disease superimposed on posterior shoulder girdle and cervical spine myofascial strain". Also, we note more recent medical reports from 2017 support the worker presented with tendinopathy and a supraspinatus tear. As noted earlier in this decision, in an x-ray report dated September 9, 2013, Dr. Miller indicated that there was no left shoulder abnormality. The supraspinatus tear was mentioned in reports prior to the worker's non-compensable motor vehicle accident (for example, see Dr. Kristof's Form 8 dated November 9, 2013). However, there is no diagnostic evidence which confirmed such a tear was present at or shortly after the accident to support a causal relationship with a workplace accident. In fact, there is no clinical or opinion evidence in the period prior to

the non-compensable MVA which concluded that the worker's injury included tearing of the left shoulder's supraspinatus tendon. On the contrary, there is evidence that the worker's presentation was the result of soft tissue injury. For example, in a Form 8 dated November 9, 2011 note Dr. Tong, diagnosed the worker with a left shoulder strain. Given there is no diagnostic or clinical evidence which supports a supraspinatus tear was present contemporaneous to the 2013 accident, and thus could be associated with it, we find the worker did not sustain a supraspinatus tendon tear as a result of the workplace accident of September 6, 2013. Rather, we find the worker sustained a left shoulder tendonitis which we are satisfied best reflects the general description of injury observed by Dr. Di Pasquale and is generally consistent with the balance of medical opinion contained in the case record most approximate to the workplace accident.

(c) Entitlement for the left and right shoulder on a disablement basis

[43] Given the submissions heard at the hearing, and as we have found the worker sustained a left shoulder injury as a result of a September 2013 workplace accident, we find the worker's continued presentation of a left shoulder injury after the workplace accident while she performed work reflects the impact of the September 2013 injury rather than a distinct injuring process which flowed out of a disablement accident. As a result, we find there is no entitlement for a left shoulder injury as a result of a disablement accident.

[44] Turning to the right shoulder, the worker testified that she began to feel shoulder discomfort shortly after returning to her work in November 2013. She associated the onset of her right shoulder injury with the modified job she was provided with by the accident employer that involved examining chicken breasts that came through on a processing line through an x-ray machine in order to identify where a piece of meat had been de-boned. The worker was to remove any bones identified by the machine. She indicated the line was fast and she had to push breasts out of the way with her right arm.

[45] The ARO relied on the PDA offered by the employer of the x-ray line of work. The ARO relied on the PDA to deny the worker's position that the job duties she performed could be associated with an injuring process which significantly contributed to a right shoulder injury. Other than provide a snap shot of the job duties, we are satisfied that the PDAs do not warrant much weight in assessing whether a disablement arose out of the duties the worker performed on the x-ray line. Among other things, it is not clear whether the PDAs were derived from an objective review of the jobs by a specialized practitioner with the ability to ergonomically assess and comment on the physical demands associated with the job. In the absence of such certification, and given the scant description in the PDA, we do not place weight on this PDA. We note that this PDA is different in detail and specificity than the PDA on the chicken packing line discussed above. Accordingly, we prefer and we accept the worker's general description that her job duties, involved pushing chicken at a fast pace with her right arm.

[46] As with the left shoulder, Dr. Di Pasquale supports that the worker's job duties were associated with movements that significantly contributed to the worker's right shoulder condition. In the absence of medical opinion to the contrary, we are satisfied that there is medical opinion from a specialized physician which supports a link between the worker's job duties and her injury.

[47] We note the medical evidence supports the worker's complaints occurred roughly during the period after her September 16, 2013 accident and well before her non-compensable motor vehicle accident in October 2014. For example, in medical notes dated February 25, 2014 and April 9, 2014, the worker's physiotherapist indicated the worker complained of bilateral shoulder problems. Also, in an employer form entitled "Fitness for Work Assessment", dated June 11, 2014, Dr. Yu noted the worker had impairment due to bilateral shoulder tendonitis. Accordingly, we find that the worker complained of a right shoulder condition contemporaneous to the time she began the x-ray job.

[48] In his report dated October 8, 2015, Dr. Di Pasquale opined that an ultrasound dated November 26, 2013 indicated there was rotator cuff disease and supraspinatus tearing in the right shoulder. In particular, Dr. Di Pasquale writes:

> The claimant reported right shoulder pain on November 25, 2013…[she] was sent home from work that day and presented to her family physician, Dr. Nham Van Tran. She was examined and an ultrasound was ordered. An ultrasound report dated November 26, 2013 shows rotator cuff tendonitis with partial thickness tearing of the supraspinatus tendon and subscapularis tendons. The ultrasound showed no evidence of impingement.

[49] In a report dated April 4, 2016, Dr. Lee (psychologist) also noted a November 2013 ultrasound indicated there was tearing in the right shoulder rotator cuff. There is no such ultrasound report in the case materials. There is an undated and incomplete ultrasound report in the case materials which showed no tearing in either shoulder. It appears neither Dr. Di Pasquale nor Dr. Lee based their statements of a tendon tear on a review of diagnostic evidence as opposed to relying on information that was provided to them. For these reasons, and as there is no diagnostic evidence which corroborates such tendon tearing was present sometime contemporaneous to the onset of the worker's right shoulder pain on November 25, 2013, and in the absence of such evidence at the relevant time, we find the worker's job duties did not significantly contribute to a right shoulder supraspinatus tear. There is some indication that the worker's presentation began to reflect a chronic pain condition (i.e. see Dr. Yu's report dated July 28, 2014). For the purposes of this appeal, however, based on the evidence before us which supports there was a right shoulder injury at the times described by the worker, we find that the worker's job duties significantly contributed to the onset of right shoulder tendonitis with an accident date of November 25, 2013. In this regard, we rely on the medical opinions most contemporaneous to the onset of the worker's bilateral shoulder complaints, i.e. see Dr. Yu's report dated July 28, 2014.

[50] As a result, the nature and duration of benefits flowing from this decision will be returned to the Board for further adjudication, subject to the usual right of appeal.

DISPOSITION

[51] The appeal is allowed as follows:

1. The worker has initial entitlement for injuries to the middle and ring fingers of the right hand as a result of a September 16, 2011 workplace accident.

2. The worker is entitled to a left shoulder injury (tendonitis) sustained on September 6, 2013.

3. The worker has entitlement for a right shoulder injury (tendonitis) sustained as a result of a disablement accident, with an accident date of November 25, 2013.

4. The nature and duration of benefits flowing from this decision will be returned to the Board for further adjudication, subject to the usual right of appeal.

DATED: January 9, 2019

SIGNED: J. Dimovski, P. Greenside, M. Ferrari