

TEMPORARY OR PARTIAL AWARD
(Affirming Award and Decision of Administrative Law Judge)

Injury No.: 08-112117

Employee: Donald Crooks
Employer: Town & Country Butcher Shop Inc.
Insurer: Cincinnati Insurance Company
Additional Party: Treasurer of Missouri as Custodian
of Second Injury Fund

The above-entitled workers' compensation case is submitted to the Labor and Industrial Relations Commission for review as provided by section 287.480 RSMo, which provides for review concerning the issue of liability only. Having heard oral argument, reviewed the evidence and considered the whole record concerning the issue of liability, the Commission finds that the award of the administrative law judge in this regard is supported by competent and substantial evidence and was made in accordance with the Missouri Workers' Compensation Law. Pursuant to section 286.090 RSMo, the Commission affirms and adopts the award and decision of the administrative law judge dated February 7, 2011.

This award is only temporary or partial, is subject to further order and the proceedings are hereby continued and kept open until a final award can be made. All parties should be aware of the provisions of section 287.510 RSMo.

The award and decision of Administrative Law Judge Robert J. Dierkes, issued February 7, 2011, is attached and incorporated by this reference.

Given at Jefferson City, State of Missouri, this 25th day of July 2011.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

William F. Ringer, Chairman

Alice A. Bartlett, Member

Curtis E. Chick, Jr., Member

Attest:

Secretary

TEMPORARY OR PARTIAL AWARD

Employee: Donald Crooks

Injury No. 08-112117

Dependents:

Before the
**DIVISION OF WORKERS'
COMPENSATION**

Employer: Town & Country Butcher Shop, Inc.

Department of Labor and Industrial
Relations of Missouri
Jefferson City, Missouri

Additional Party: Second Injury Fund

Insurer: Cincinnati Insurance Co.

Hearing Date: January 18, 2011

Checked by: RJD/cs

FINDINGS OF FACT AND RULINGS OF LAW

1. Are any benefits awarded herein? Yes.
2. Was the injury or occupational disease compensable under Chapter 287? Yes.
3. Was there an accident or incident of occupational disease under the Law? Yes.
4. Date of accident or onset of occupational disease: December 9, 2008.
5. State location where accident occurred or occupational disease contracted: Palmyra, Marion Co., MO.
6. Was above employee in employ of above employer at time of alleged accident or occupational disease? Yes.
7. Did employer receive proper notice? Yes.
8. Did accident or occupational disease arise out of and in the course of the employment? Yes.
9. Was claim for compensation filed within time required by Law? Yes.
10. Was employer insured by above insurer? Yes.
11. Describe work employee was doing and how accident happened or occupational disease contracted:
12. Did accident or occupational disease cause death? No. Date of death? N/A.
13. Parts of body injured by accident or occupational disease: left shoulder and upper arm.
14. Compensation paid to-date for temporary disability: \$461.24.
15. Value necessary medical aid paid to date by employer/insurer? \$4,682.47.
16. Value necessary medical aid not furnished by employer/insurer? None at this time.

Employee: Donald Crooks

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17. Employee's average weekly wages: Not in issue at this time.
18. Weekly compensation rate: Not in issue at this time.
19. Method wages computation: Not applicable at this time.

COMPENSATION PAYABLE

20. Employer and Insurer are ordered to provide Employee with medical treatment as set forth herein.

This award is only temporary or partial, is subject to further order, and the proceedings are hereby continued and the case kept open until a final award can be made.

IF THIS AWARD IS NOT COMPLIED WITH, THE AMOUNT AWARDED HEREIN MAY BE DOUBLED IN THE FINAL AWARD, IF SUCH FINAL AWARD IS IN ACCORDANCE WITH THIS TEMPORARY AWARD.

:

Employee: Donald Crooks

Injury No. 08-112117

FINDINGS OF FACT and RULINGS OF LAW:

Employee: Donald Crooks

Injury No: 08-112117

Dependents:

Before the
**DIVISION OF WORKERS'
COMPENSATION**

Employer: Town & Country Butcher Shop, Inc.

Department of Labor and Industrial
Relations of Missouri
Jefferson City, Missouri

Additional Party: Second Injury Fund

Insurer: Cincinnati Insurance Co.

Checked by: RJD/cs

ISSUES DECIDED

An evidentiary hearing was held in this case in Hannibal on January 18, 2011, on Claimant's request for a temporary or partial award. The evidentiary hearing was held to decide the following issues:

1. Whether Employee sustained an accident arising out of and in the course of his employment with Town & Country Butcher Shop, Inc. on or about December 9, 2008;
2. Whether the work-related accident, if sustained, was the cause of any or all of the injuries and conditions alleged by Employee;
3. Whether the notice requirement of Section 287.420, RSMo, is a bar to Claimant's Claim for Compensation herein; and
4. Whether Employer shall be ordered to provide Employee with medical care and treatment pursuant to Section 287.140, RSMo.

STIPULATIONS

The parties stipulated as follows:

1. The Division of Workers' Compensation has jurisdiction over this case;
2. Venue for the hearing is proper in Marion County;
3. The claim is not barred by Section 287.430;
4. Both Employer and Employee were covered under the Missouri Workers' Compensation Law at all relevant times;
5. Employer-Insurer paid medical benefits in the amount of \$4,682.87, and temporary total disability benefits in the amount of \$461.24; and
6. Cincinnati Insurance Company fully insured the Missouri Workers' Compensation liability, if any, of Town & Country Butcher Shop, Inc. at all relevant times.

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EVIDENCE

The evidence consisted of the testimony of Claimant, Donald Crooks; the testimony of Chad Chamberlain, Claimant's former co-worker; the testimony of Edward Dent, president of Employer; the deposition testimony of Dr. Richard Baumann taken April 20, 2010; medical records of Dr. Richard Baumann; the deposition testimony of Dr. Michael Milne taken July 16, 2010; and the narrative medical report of Dr. Michael Milne taken January 12, 2009.

DISCUSSION

Donald Crooks ("Claimant") was born on September 21, 1959. He is a muscular, right-handed gentleman approximately 5'4" to 5'6" tall and weighing 180 to 200 lbs.

All three "live" witnesses – Donald Crooks, Edward Dent, and Chad Chamberlain – impressed me as being truthful, in spite of Employer-Insurer's counsel's repeated attempts to impeach both Claimant and Chamberlain on collateral issues. All three witnesses were clear and consistent in their testimony, and the testimony of each witness is consistent with that of the other two in all material respects, and consistent with the first report of injury filed with the Division of Workers' Compensation.

Employer is a retail butcher shop in Palmyra. In addition to the normal butcher shop business, Employer also processes deer during the deer hunting season. Employer has eight to ten employees on the premises most days, more during the deer season. Claimant began working for Employer on October 7, 2008. Claimant was hired as a laborer. Claimant would assist the meatcutters and would also assist customers. A significant portion of Claimant's work was lifting and carrying product.

Claimant alleges an injury to his left shoulder on December 9, 2008. This was during deer season. Claimant began work at 8:00 AM on that date, and alleges the accident occurred about 3:00 PM. Part of Claimant's work during deer season consisted of carrying the deer carcass from the customer's vehicle, skinning the deer and placing the skinned carcass in the cooler. The cooler was near the cutting room. After the deer were butchered, the processed deer meat would be stored in large tubs in the cooler. There would be several hundred pounds of deer meat in each of the large tubs. Another part of Claimant's job consisted of removing deer meat from the large tubs and placing it in a small tub or tote, weighing the tote on a scale, and then delivering it to one of the meat cutters, in the cutting room, for grinding. It was Claimant's job to get as close to 70 pounds of meat into each tote as possible. Claimant would fill the tote in the cooler, then lift the tote onto the scale for weighing. The scale was placed upon a table. Claimant would be required to lift the tote and place it on the scale. This required Claimant (who stands no more than 5'6") to lift the tote shoulder height or higher to get the tote onto the scale.

Claimant was lifting one of the filled totes onto the scale at about 3:00 PM on December 9, 2008, when he felt something pop in his left shoulder and elbow. His left arm immediately became painful and numb. There was no one in the cooler who witnessed the alleged accident.

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Claimant walked into the cutting room and informed meatcutter Chad Chamberlain what had happened. Claimant and Chamberlain both testified, that their mutual supervisor, Kevin Meyers, was working on the saw in the cutting room and overheard their conversation.

Claimant testified that his shoulder was extremely painful that night. Claimant and Chamberlain testified that after Claimant arrived at work on December 10, 2008, Claimant approached Chamberlain and showed him his left shoulder and bicep area, which was black, blue and purple. Claimant and Chamberlain testified that they then notified Kevin Meyers, who told Claimant to see Edward Dent, Employer's president. Dent met with Claimant. Dent testified that Claimant's shoulder and bicep area was black, blue and purple, and that Claimant's adjacent chest area and a portion of Claimant's abdomen were likewise discolored. Dent testified that he questioned Claimant as to how a work injury would have caused the bruising in the chest and abdomen area; nevertheless, Dent drove Claimant to the office of Dr. Robert Hevel in Palmyra. After Claimant saw Dr. Hevel, Dent returned to Dr. Hevel's office and drove Claimant back to Employer's place of business, where, as Dent testified, "we filled out the report (of injury)". (The handwritten version of the report of injury was entered into evidence as Employer's Exhibit 3.)

On the following day, December 11, 2008, Claimant was first seen by Dr. Richard Baumann of Midwest Orthopedics in Hannibal. Although Employer's counsel suggested in his cross-examination of Claimant that Claimant's seeing Dr. Baumann was not authorized by Employer or Insurer, that is clearly not the case. Dr. Baumann's records clearly show that Ed Dent authorized Dr. Baumann's initial care. Exhibit 3 (written by Edward Dent) states that Claimant was treating at "Midwest Orthopedics" in "Hannibal". A left shoulder MRI was performed the same day. It showed a complete rupture of the biceps tendon, a complete tear of the rotator cuff musculature, a large amount of fluid within the biceps tendon sheath, and extensive degenerative change in the left shoulder joint. The radiologist felt that the cuff tear was chronic. Dr. Baumann felt that an arthroscopic rotator cuff repair and biceps tendon repair surgery was needed. According to Dr. Baumann's records, precertification or approval of the surgery was sought with Cincinnati Insurance Co. and authorization was given by "Dave Took" on 12-16-08. Also per Dr. Baumann's records, the surgery was canceled by Insurer on 12-30-08, and Claimant was scheduled for an independent medical examination with another surgeon. Claimant saw Dr. Michael Milne, a St. Louis orthopedic surgeon, on January 12, 2009. Both Dr. Milne and Dr. Baumann testified by deposition, and their testimony is discussed below.

Claimant testified that he had no symptoms in his left shoulder prior to December 9, 2008, that he had good strength in his left upper extremity prior to December 9, 2008, and that he had no problem performing his job duties with Employer prior to December 9, 2008. Chamberlain testified that he observed Claimant's work on a daily basis, and that Claimant had no problems performing his job duties prior to December 9, 2008. Edward Dent testified that he felt that Claimant generally worked more slowly than other employees, but Dent agreed that Claimant's left upper extremity did not appear to hinder Claimant in the performance of his job duties prior to December 9, 2008.

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One of the issues in this case is whether the **notice** requirement of Section 287.420, RSMo, is a bar to Claimant's Claim for Compensation herein. Section 287.420 states, in pertinent part:

No proceedings for compensation for any accident under this chapter shall be maintained unless written notice of the time, place and nature of the injury, and the name and address of the person injured, has been given to the employer no later than thirty days after the accident, unless the employer was not prejudiced by failure to receive the notice.

Employer and Insurer take the position that no written notice was given. However, Edward Dent testified that he and Claimant, together, "filled out" the first report of injury (Exhibit 3). Although the writing on Exhibit 3 was Dent's, the information came from Claimant. It was clearly "written notice of the time, place and nature of the injury, and the name and address of the person injured". It was clearly given within thirty days after the accident. It was clearly given to the employer, as it was given to Edward Dent, who testified that he is the owner and president of Town & Country Butcher Shop, Inc. Although Exhibit 3 (as introduced into evidence) contained only one page, that page states, at the bottom: "SEE NEXT PAGE FOR IMPORTANT STATE INFORMATION/SIGNATURE". In Dr. Baumann's records, there is a two-page version of Exhibit 3, which was obviously faxed to Dr. Baumann's office by "Country Butcher Shop"; the second page has the signature of "Donald Wayne Crooks" and the hand-written date "12/10/08". I find that the notice requirement of §287.420 has been fulfilled. Nevertheless, even if it is arguable that Claimant did not give written notice, I find that Employer was not prejudice by such alleged failure. "An employee makes a *prima facie* showing the employer was not prejudiced by the failure to receive timely written notice if she establishes the employer had actual notice of a potentially compensable injury." *Dunn v. Hussman Corp.*, 892 S.W.2d 676, 681 (Mo. App. E.D. 1994). Exhibit 3 makes it perfectly clear that Employer "had actual notice of a potentially compensable injury" within 24 hours of the occurrence thereof. I find this issue in Claimant's favor.

Another issue in this case is whether Claimant sustained an **accident** arising out of and in the course of his employment with Employer on December 9, 2008. Section 287.020.2 states:

The word "accident" as used in this chapter shall mean an unexpected traumatic event or unusual strain identifiable by time and place of occurrence and producing at the time objective symptoms of an injury caused by a specific event during a single work shift. An injury is not compensable because work was a triggering or precipitating factor.

As noted above, I found Claimant to be a credible witness, and he has been consistent in his description of what occurred. He described the unexpected traumatic event or unusual strain he experienced on December 9, 2008 at 3:00 PM in the cooler at Employer's place of business. The unexpected traumatic event or unusual strain caused immediate pain and numbness. While Dr. Baumann and Dr. Milne disagree on some issues, both agree that the unexpected traumatic event or unusual strain resulted in a rupture of Claimant's biceps tendon. (Pages 10 and 14 of Exhibit 1, Milne deposition transcript.) The MRI evidenced the biceps tendon rupture. Therefore, I find that Claimant did, indeed, sustain an accident as defined in the Missouri Workers' Compensation Law.

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The real question in this case is whether the accident of December 9, 2008 was the cause of Claimant's rotator cuff injury. Section 287.020.3 states, in pertinent part:

(1) In this chapter the term "injury" is hereby defined to be an injury which has arisen out of and in the course of employment. An injury by accident is compensable only if the accident was the prevailing factor in causing both the resulting medical condition and disability. "The prevailing factor" is defined to be the primary factor, in relation to any other factor, causing both the resulting medical condition and disability.

(2) An injury shall be deemed to arise out of and in the course of the employment only if:

(a) It is reasonably apparent, upon consideration of all the circumstances, that the accident is the prevailing factor in causing the injury; and

(b) It does not come from a hazard or risk unrelated to the employment to which workers would have been equally exposed outside of and unrelated to the employment in normal nonemployment life.

(3) An injury resulting directly or indirectly from idiopathic causes is not compensable.

In this case, there is no suggestion of an idiopathic cause or causes. The hazard or risk (the lifting of a seventy-pound tub of deer meat) was clearly related to Claimant's employment. The issue, then, is whether the accident was the "prevailing factor" or "primary factor" causing the rotator cuff tear. This is, largely, a medical question. "In a workers' compensation case, the claimant must prove all of the essential elements of his claim, including a causal connection between the accident and the injury, by a reasonable probability. In cases involving medical causation, which is not within the common knowledge or experience, he must present medical or scientific evidence showing the cause and effect relationship between the complained-of condition and the asserted cause." *Davis v. General Electric Co.*, 991 S.W.2d 699, 706 (Mo.App.S.D. 1999).

Regarding the causation of the rotator cuff tear, Dr. Richard Baumann testified:

Q. Okay. With those two injuries taken separately, let me ask you this, Doctor. Do you have an opinion as to whether Donald Crooks suffered an injury to his left side rotator cuff on December 9, 2008?

A. It is my opinion with a reasonable degree of medical certainty that Mr. Crooks sustained rotator cuff injury on the – as described 12/9.

Q. Now you are aware that radiologists and others have suggested there may have been a degenerative or pre-existing condition with Mr. Crooks as it relates to the left side rotator cuff?

A. Correct.

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Q. What, if anything, is the significance of that finding in you arriving at your opinion here today?

A. You're speaking of the MRI --

Q. Yes, sir.

A. -- true? The MRI did show changes. And I think I commented on those at some point, whether it was a letter or in the history.

The degenerative changes certainly could exist around the joint, or in the labrum, which is kind of the gristle around the glenoid bone. And those were commented on.

The area of rotator cuff did show some changes of rupture, which were described as chronic in nature. The way I interpret that, however, is relative to his clinical presentation, which is before the injury the nature of his duty was such that he would need to be able to lift things away from his body, chest height and things like that, that a completely incompetent cuff as demonstrated on exam and such or -- or -- you know -- that that would be incompatible with that job description over the several months that he had worked there.

Now what can happen with a cuff injury is you can -- and -- so -- and I don't doubt that he may have had some cuff injury that predates that -- that final episode, but what happens is the cuff is a large area of soft tissue that -- that in shape kind of sits over the ball of the arm bone in a fashion that it could tear in part and then, still be attached in other parts, and then an acute injury could further rupture what may have been some degenerative change, but yet render the shoulder more dysfunctional or weaker.

Q. Is that what we would refer to as an acute on chronic type injury?

A. That certainly would be an acute on chronic type cuff injury.

Q. And again, was it your opinion that he in fact did suffer a left-sided rotator cuff tear on December 9, 2008?

A. Yes.

Q. And was this in fact in your opinion an acute incident on December 9, 2008?

A. My -- it was my impression that he had an acute injury involving his rotator cuff on that date. I did not -- at that time I -- it was my impression that he certainly did have some degenerative component involved.

But yes, that that injury was a remarkable change in his rotator cuff function consistent with new tearing.

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Q. Now you mentioned based upon his history and his job description, you have used that as part of your analysis for determining whether or not an acute injury occurred.

Is it your belief, Doctor, or do you have a belief as to whether or not Donald Crooks could have performed his job as he described it with this rotator cuff as it was presented to you on December 11, 2008?

A. I would -- you're talking about just rotator cuff?

Q. Yes.

A. Okay. My thought was that if he has no cuff function, I think that that was incompatible with that job prior to that -- I mean, if he had that -- that level of disfunction, I think that would be incompatible with that job.

I think that answers it.

Q. In other words, his dysfunction as it presented to you December 11 with this -- this passive motion -- or which this -- his range of motion that day, he could not have performed his job as he told you his job duties existed --

A. True.

Q. -- before December 9? If he --

A. As he presented to me, it was obvious that he could not perform the activities required of his job.

Q. Okay.

A. And it would be my -- it was -- would be my opinion that with a reasonable degree of medical certainty if that was the level of his dysfunction, then he couldn't have been performing that job prior to that date.

Regarding the causation of the rotator cuff tear, Dr. Michael Milne testified:

Q. Okay. Doctor, to a reasonable degree of medical certainty, based on your education and experience, taking into account the MRI scan that you reviewed, what was your opinion, to a reasonable degree of medical certainty, as to the tear of the rotator cuff and the cause of it?

A. It was my feeling at that time, and is still, based on a reasonable degree of medical certainty, that the patient's MRI showed long-standing tear of the rotator cuff and given this MRI was done within 48 hours of the injury, I felt that this chronic type of injury predated his employment and this injury.

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- Q. And to a reasonable degree of medical certainty, based on your education and experience, considering your review of the MRI films, did you have an opinion as to whether the rotator cuff was – whether the work activity was the prevailing factor with regard to the rotator cuff tear?
- A. I do not think that his work-related injury was the prevailing factor with regard to his rotator cuff tear.
- Q. Okay. What factors, to a reasonable degree of medical certainty, based on your education and experience, do you believe contributed to the rotator cuff tear?
- A. The long-standing degenerative changes in the tendon itself, the type III acromion and calcification of the coracoacromial ligament as well as the other chronic changes that were found in his shoulder.
- Q. Okay. What's the significance of the MRI being done 48 hours after the incident when trying to diagnose whether the condition of the rotator cuff was chronic or acute?
- A. Well, the MRI showed that the high riding humerus, which would not occur within 48 hours of an injury -- it would take months to form -- there was a retraction of the rotator cuff and some fatty infiltrate in the muscle itself, which often takes months or years to occur as well.

I find the testimony of both Dr. Milne and Dr. Baumann to be well-reasoned and well-explained. It is obvious from the radiologist's report of the December 11, 2008 MRI, and from the testimony of both physicians, that there was serious and long-standing degeneration of Claimant's rotator cuff prior to December 9, 2008. Yet it is also abundantly clear that Claimant worked in his position for Employer for over two months prior to December 9, 2008, doing all the heavy lifting required, without any indication of a left shoulder problem. It is difficult to imagine that Claimant was able successfully to perform his work for Employer with a completely non-functional rotator cuff. Dr. Baumann testified, quite credibly, that it would have been basically physically impossible for Claimant to perform his work for Employer with a completely non-functional rotator cuff. While Dr. Milne's testimony that Claimant's rotator cuff was completely chronically torn for a long period of time prior to the December 9, 2008 accident is quite credible based on the MRI findings alone, once Claimant's actual job performance for the two months prior to the accident is factored in, the logic of Dr. Milne's testimony begins to break down. Dr. Baumann's testimony is consistent both with the MRI findings and Claimant's demonstrated ability to perform the job prior to December 9, 2008. Therefore, I find Dr. Baumann's testimony, quoted above, to be true.

Having embraced Dr. Baumann's testimony, I must now consider whether that testimony establishes that the work accident of December 9, 2008 "was the prevailing factor in causing both the resulting medical condition and disability" as required by Section 287.020.3 (1). Dr.

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Baumann's testimony is that, prior to December 9, 2008, Claimant had "some changes of rupture" (of the rotator cuff) which were "chronic in nature". In other words, Claimant had, prior to December 9, 2008, a partially torn rotator cuff which was asymptomatic and did not interfere with his work. Dr. Baumann testified that the acute injury of December 9, 2008 "was a *remarkable change* in his rotator cuff function consistent with *new tearing*" (italics added for emphasis). Obviously there were two components or "factors" at play in the complete rotator cuff tear – the preexisting degenerative asymptomatic partial rotator cuff tear, and the traumatic new tearing that occurred as a result of the December 9, 2008 accident.

"Whether or not the employment is a substantial factor in causing the injury is a question of fact. The Commission, and not the physician, is the trier of fact in workers' compensation cases. Therefore, even if a testifying physician fails to use the exact words of Section 287.020.3, we will affirm the Commission's award if the substance of the physician's testimony establishes that there is substantial evidence upon which to base the award." *Sanderson v. Porta-Fab Corp.*, 989 S.W.2d 599, 603 (Mo.App. E.D. 1999) (citations omitted). Even though "the exact words of Section 287.020.3" have since been changed from "a substantial factor" to "the prevailing factor", the logic of *Sanderson* is still sound. Dr. Baumann did not use the magic words of the statute, the substance of his testimony is clear: the work accident was the prevailing factor in causing Claimant's medical condition (the complete rotator cuff tear) and the disability (the loss of strength, range of motion and ability to work with his left upper extremity).

The next issue that must be decided is whether Employer and Insurer shall be ordered to provide **medical treatment** for Claimant's complete left rotator cuff tear and biceps tendon tear. Section 287.140.1 states, in part:

In addition to all other compensation paid to the employee under this section, the employee shall receive and the employer shall provide such medical, surgical, chiropractic, and hospital treatment, including nursing, custodial, ambulance and medicines, as may reasonably be required after the injury or disability, to cure and relieve from the effects of the injury.

Dr. Milne testified that he believed Claimant was in need of rotator cuff repair surgery, but that a biceps tendon repair attempt would not provide Claimant with any additional function. Dr. Baumann initially recommended and scheduled both a rotator cuff repair surgery and a biceps tendon repair surgery. Dr. Baumann testified that, since a significant amount of time had passed since he had seen Claimant (more than eighteen months at the time of the taking of Dr. Baumann's testimony; more than two years now) he could not state with reasonable certainty as to exactly what treatment would be best for Claimant at this time, but he was clear that Claimant was in need of treatment, and should be evaluated by an orthopedic surgeon to determine the current best course of treatment.

FINDINGS OF FACT

In addition to those facts to which the parties stipulated, I find the following facts:

1. Donald Crooks ("Claimant"), Chad Chamberlain and Edward Dent were all credible witnesses;
2. Claimant was working for Employer on December 9, 2008 at Employer's butcher shop and meat processing facility in Palmyra, Marion County, Missouri; Claimant's began his shift at 8:00 A.M. on December 9, 2008;
3. While working for Employer on December 9, 2008, at approximately 3:00 P.M., Claimant was lifting a seventy pound tub of deer meat in the cooler when he felt something pop in his left shoulder and elbow and his left arm became painful and numb; Claimant was alone in the cooler at the time this occurred;
4. Immediately after the lifting incident, Claimant left the cooler and entered the cutting room, where he informed his friend and co-worker what had occurred;
5. Claimant experienced significant pain in his left shoulder while at home the evening of December 9, 2008;
6. Claimant returned to work on December 10, 2008, and showed Chamberlain and supervisor Kevin Meyers his left shoulder area which was bruised and swollen; a few minutes later, Claimant showed his left shoulder area to Edward Dent, president of Employer, who drove Claimant to see Dr. Robert Hevel in Palmyra; Dent later returned to Dr. Hevel's office to bring Claimant back to Employer's place of business;
7. Upon returning to Employer's place of business on December 10, 2008, Claimant and Edward Dent completed a report of injury;
8. Employer sent Claimant to see Dr. Richard Baumann, an orthopedic surgeon in Hannibal, on December 11, 2008; a left shoulder MRI was completed the same day;
9. The MRI showed a complete rupture of the biceps tendon, a complete tear of the rotator cuff musculature, a large amount of fluid within the biceps tendon sheath, and extensive degenerative change in the left shoulder joint, and the radiologist felt that the cuff tear was chronic;
10. Dr. Baumann felt that an arthroscopic rotator cuff repair and biceps tendon repair surgery was needed; according to Dr. Baumann's records, precertification or approval of the surgery was sought with Cincinnati Insurance Co. and authorization was given by "Dave Took" on 12-16-08;
11. Per Dr. Baumann's records, the surgery was canceled by Insurer on 12-30-08, and Claimant was scheduled for an independent medical examination with another surgeon;
12. Claimant saw Dr. Michael Milne, a St. Louis orthopedic surgeon, on January 12, 2009;
13. Dr. Milne opined that the December 9, 2008 accident caused the biceps tendon tear, but did not recommend a surgery to repair the biceps tendon, as he did not believe it would give Claimant any additional function;
14. Dr. Milne also opined that Claimant's rotator cuff tear was not caused by the December 9, 2008 accident, but that it was chronic and preexisting; Dr. Milne recommended that Claimant undergo a rotator cuff repair surgery;

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15. Based upon Dr. Milne's opinions, Employer and Insurer denied further medical care for Claimant;
16. Claimant began working for Employer on October 7, 2008 as a laborer; Claimant would assist the meatcutters and would also assist customers; A significant portion of Claimant's work was lifting and carrying product;
17. Between October 7 and December 9, 2008, Claimant handled his physically-demanding job with Employer without any physical problems;
18. Dr. Richard Baumann testified that Claimant would have been unable to perform his duties for Employer for two months with a completely torn left rotator cuff;
19. Dr. Richard Baumann testified to his opinion that Claimant sustained an "acute on chronic" left rotator cuff tear on December 9, 2008; Dr. Baumann believed that Claimant's left rotator cuff was partially chronically torn prior to December 9, 2008, and that he completely tore his left rotator cuff in the accident of December 9, 2008; Dr. Baumann described that December 9, 2008 injury as a "remarkable change in his rotator cuff function consistent with new tearing";
20. Dr. Richard Baumann also testified that Claimant suffered a left biceps tendon tear on December 9, 2008;
21. Both Dr. Milne and Dr. Baumann's testimony was logical and credible; however, only Dr. Baumann's medical opinion regarding the status of Claimant's left rotator cuff immediately prior to the December 9, 2008 accident is consistent with all the facts in the case; and
22. Claimant is in need of additional medical care

RULINGS OF LAW

In addition to those legal conclusions to which the parties stipulated, I make the following rulings of law:

1. Claimant sustained an accident arising out of and in the course of his employment with Employer on or about December 9, 2008;
2. Failure of Dr. Baumann to use the exact words of Section 287.020.3 in his testimony does not render his testimony incompetent, and I may rely upon his testimony in finding that the work-related accident of December 9, 2008 was the prevailing factor in the cause of Claimant's complete rotator cuff tear, as the substance of Dr. Baumann's testimony establishes that there is substantial evidence upon which to base the award. See *Sanderson v. Porta-Fab Corp.*, 989 S.W.2d 599, 603 (Mo.App. E.D. 1999);
3. The work-related accident of December 9, 2008 was the prevailing factor in the cause of Claimant's left shoulder complete rotator cuff tear and biceps tendon tear;
4. Claimant did comply with Section 287.420, RSMo, in that he gave Employer written notice of the accident within thirty days;
5. Employer would not have been prejudiced by Claimant's alleged failure to comply with the written notice requirement, as Employer had actual notice of a potentially compensable injury;

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6. Section 287.140, RSMo, requires Employer to provide Claimant with medical and surgical treatment as may be reasonably required to cure and relieve Claimant from the effects of his injury; and
7. Employer and Insurer should be ordered to provide Claimant with medical treatment for his left shoulder complete rotator cuff tear and biceps tendon tear pursuant to Section 287.140, RSMo.

ORDER

Employer and Insurer are hereby ordered to provide Donald Crooks with medical treatment to cure and relieve him from the effects of his left shoulder complete rotator cuff tear and biceps tendon tear, including, but not limited to, an evaluation by a qualified orthopedic surgeon.

This award is only temporary or partial, is subject to further order, and the proceedings are hereby continued and the case kept open until a final award can be made.

Date: February 7, 2011

Made by: /s/Robert J. Dierkes

ROBERT J. DIERKES
Chief Administrative Law Judge

A true copy. Attest:

/s/Naomi Pearson
Naomi Pearson
Division of Workers' Compensation