

FINAL AWARD ALLOWING COMPENSATION  
(Affirming Award and Decision of Administrative Law Judge)

Injury No.: 05-002579

Employee: Edward Michalik  
Employer: True Manufacturing  
Insurer: Liberty Mutual Fire Insurance Company  
Additional Party: Treasurer of Missouri as Custodian  
of Second Injury Fund (Open)  
Date of Accident: January 11, 2005  
Place and County of Accident: Franklin County, Missouri

The above-entitled workers' compensation case is submitted to the Labor and Industrial Relations Commission (Commission) for review as provided by section 287.480 RSMo. Having reviewed the evidence and considered the whole record, the Commission finds that the award of the administrative law judge is supported by competent and substantial evidence and was made in accordance with the Missouri Workers' Compensation Act. Pursuant to section 286.090 RSMo, the Commission affirms the award and decision of the administrative law judge dated January 25, 2007. The award and decision of Administrative Law Judge Leslie E. H. Brown, issued January 25, 2007, is attached and incorporated by this reference.

The Commission further approves and affirms the administrative law judge's allowance of attorney's fee herein as being fair and reasonable.

Any past due compensation shall bear interest as provided by law.

Given at Jefferson City, State of Missouri, this 19<sup>th</sup> day of September 2007.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

\_\_\_\_\_  
William F. Ringer, Chairman

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Alice A. Bartlett, Member

DISSENTING OPINION FILED

\_\_\_\_\_  
John J. Hickey, Member

Attest:

\_\_\_\_\_  
Secretary

DISSENTING OPINION

After a review of the entire record as a whole, and consideration of the relevant provisions of the Missouri Workers' Compensation Law, I believe the decision of the administrative law judge should be modified.

I agree with the administrative law judge's denial of benefits with regard to employee's right elbow and wrist

injuries as all symptoms pertaining to those injuries resolved. However, I believe the administrative law judge erred in concluding that employee's work related accident on January 11, 2005 was not a substantial factor in causing his right shoulder injury.

The administrative law judge found that employee failed to prove that his shoulder condition was a result of his work-related injury. The administrative law judge found that the substantial weight of the evidence indicated that employee experienced the right shoulder pain or injury in issue two days after the work related accident, and after work hours, and not on the premises of his employment but rather at home while removing his shirt. However, competent and substantial evidence shows that employee did suffer a shoulder injury on January 11, 2005.

Immediately following his injury, employee sought treatment and complained of pain in his right wrist, elbow and shoulder. Employee underwent x-rays of his wrist and elbow, but none were taken of his shoulder at that time. However, the medical record does indicate that employee had shoulder related complaints immediately following his work-related injury which pre-dated the "pop" he experienced in his right shoulder on the 13<sup>th</sup> of January. Employee was suffering from an injury which could have been aggravated by other activities, such as removing his shirt. Any subsequent aggravation of his condition would be related to the primary injury on the 11<sup>th</sup> of January. Therefore, almost certainly the pop employee experienced while removing his shirt was only an aggravation of his January 11, 2005 work-related injury and was not the cause of employee's shoulder injury.

Furthermore, employee has established through the testimony of Dr. Volarich that the work injury sustained on January 11, 2005, was the substantial contributing factor causing employee's right shoulder strain injury. Dr. Volarich opined that as a direct result of the injuries sustained on January 11, 2005, that there was a 20% permanent partial disability of the right upper extremity rated at the shoulder due to the strain/sprain injury and development of myofascial pain in the trapezius muscle. The rating accounted for the joint strain, which contributed to employee's pain, mild loss of motion, and weakness in the dominant arm.

Therefore, employee has met his burden by establishing that he suffered a work-related injury on January 11, 2005 and that his shoulder condition is medically causally related to the work-related injury. Accordingly, I would modify the decision of the administrative law judge and award compensation for employee's right shoulder injury.

For the foregoing reasons, I respectfully dissent from the decision of the majority of the Commission to deny compensation for employee's right shoulder strain injury.

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John J. Hickey, Member  
**AWARD**

Employee: Edward Michalik

Injury No. 05-002579

Dependents: ---

Employer: True Manufacturing

Before the  
**DIVISION OF WORKERS'  
COMPENSATION**

Additional Party: State Treasurer, as Custodian of the Second Injury Fund (Open)

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

Insurer: Liberty Mutual Fire Insurance Company

Hearing Date: October 19, 2006

Checked by: LEHB/lsn

#### **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: January 11, 2005
5. State location where accident occurred or occupational disease was contracted: Franklin County, 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 occurred or occupational disease contracted:  
Drilling into a cooler and the drill caught
12. Did accident or occupational disease cause death? No Date of death? ---
13. Part(s) of body injured by accident or occupational disease: right elbow
14. Nature and extent of any permanent disability: ---
15. Compensation paid to-date for temporary disability: \$0.00
16. Value necessary medical aid paid to date by employer/insurer? \$1,279.36
  
17. Value necessary medical aid not furnished by employer/insurer? \$2,695.00 (See Award)
18. Employee's average weekly wages: \$452.83
19. Weekly compensation rate: \$301.89/\$301.89
20. Method wages computation: by agreement of the parties

**COMPENSATION PAYABLE**

21. Amount of compensation payable:

Unpaid medical expenses: (Bill for MRI ordered by Dr. Brown) ..... \$2,695.00 (See Award)

2 1/7 weeks of temporary total disability (or temporary partial disability) .....\$646.91

--- permanent partial disability from Employer ---

--- weeks of disfigurement from Employer ---

Permanent total disability benefits from Employer beginning --- for ---  
Claimant's lifetime

22. Second Injury Fund liability: Open

TOTAL: .....\$3,341.91

23. Future requirements awarded: None

Said payments to begin as of date of this Award and to be payable and be subject to modification and review as provided by law.

The compensation awarded to the claimant shall be subject to a lien in the amount of 25% of all payments hereunder in favor of the following attorney for necessary legal services rendered to the claimant:

## **FINDINGS OF FACT and RULINGS OF LAW:**

Employee: Edward Michalik

Injury No: 05-002579

Before the  
**DIVISION OF WORKERS'  
COMPENSATION**

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

Dependents: ---

Employer: True Manufacturing

Additional Party State Treasurer, as Custodian of the Second Injury Fund (Open)

Insurer: Liberty Mutual Fire Insurance Company

Checked by: LEHB/lsn

This is a hearing in Injury Number 05-002579. The claimant, Edward Michalik, appeared in person and by counsel, Attorney Frank Niesen. The employer/insurer, True Manufacturing Company/Liberty Mutual Fire Insurance Company, appeared by and through counsel, Attorney Brad McChesney. The claim against the Second Injury Fund is to remain open by agreement of the parties, and the Second Injury Fund was not present at this hearing.

The parties entered in to certain stipulations, and agreements as to the complex issues and evidence to be presented in this hearing.

### STIPULATIONS:

On or about January 11, 2005: a. the claimant while in the employment of True Manufacturing Company sustained an injury to his right elbow by accident, arising out of and in the course of his employment occurring in Franklin County, Missouri; b. the employer and employee were operating under and subject to the provisions of the Workers' Compensation law; c. the employer's liability was insured by Liberty Mutual Fire Insurance Company; d. the employee's average weekly wage was \$452.83, the rate being \$301.89/\$301.89.

e. The employer had notice of the injury. f. A Claim for Compensation was filed within the time prescribed by law. g. No temporary total disability benefits have been paid. h. Medical aid has been provided in the total amount of \$1,279.36.

ISSUES:

1. Medical causation in regards to the right shoulder
2. Liability of past medical expenses
3. Nature and extent of temporary total disability for the period of January 17, 2005 through February 28, 2005
4. Nature and extent of permanent partial disability

EXHIBITS:

The following exhibits were admitted into evidence without objection as to the admissibility:

Claimant's Exhibits:

No. A: Medical records from St. Anthony's Medical Center emergency room for two service dates of January 11, 2005, and the second date January 14, 2005

No. B: Itemized bill from St. Anthony's Medical Center referable to Mr. Michalik for the two visits described in Exhibit A respectively for January 11, 2005 in the amount of \$932.81 and January 14, 2005 in the amount of \$868.00 (Stipulation: these bills are reasonable and necessary care, but the employer and insurer is disputing liability as to the shoulder.)

No. C: Records from BarnesCare

No. D: Medical record from Orthopedic Center of St. Louis/Dr. David Brown, M.D.

No. E: Records from Imaging Partners, 01/24/05 MRI with attached bill

No. F: Records from ProRehab Physical Rehabilitation Center

No. G: Itemized bill from ProRehab referable to Mr. Michalik (Stipulation: these bills are reasonable and necessary and related to the shoulder, but the employer and insurer is disputing liability as to the shoulder.)

No. H: Records from Orthopedic Specialists/Dr. Joseph R. Ritchie, M.D.

No. I: Itemized bill from Orthopedic Specialists/Dr. Ritchie referable to the treatment rendered Mr. Michalik, in the amount of \$499.00 (Stipulation: these bills are reasonable and necessary and related to the shoulder, but the employer and insurer is disputing liability as to the shoulder.)

No. J: Bill from South County Radiologists referable to treatment rendered at St. Anthony's Medical Center on 1/11/05 to Mr. Michalik, in the amount of \$79.00 (Stipulation: these bills are reasonable and necessary and related to the shoulder, but the employer and insurer is disputing liability as to the shoulder.)

No. K: Bill from South County Radiologists in the amount of \$85.00 and is referable to the January 14, 2005 emergency room visit by Mr. Michalik to St. Anthony's Medical Center (Stipulation: these bills are reasonable and necessary and related to the shoulder, but the employer and insurer is disputing liability as to the shoulder.)

No. L: Series of pharmaceutical bills referable to Mr. Michalik's care and treatment, and from various physicians at the emergency room at St. Anthony's Hospital and from Dr. Ritchie [NOTE: By mistake the lead bill here for Amoxicillin in the amount of \$12.34 is not related.] (Stipulation: these bills are reasonable and necessary and related to the shoulder, but the employer and insurer is disputing liability as to the shoulder.)

No. M: Medical rating report of David T. Volarich, D.O., dated November 8, 2005

Employer/Insurer's Exhibits:

No. 1: Emergency room records from St. Anthony's for treatment on July 16, 2004

FINDINGS OF FACTS AND RULINGS OF LAW<sup>[1]</sup>

ISSUE: Medical causation in regards to the right shoulder

It is agreed and stipulated to by the claimant and the employer/insurer that the claimant sustained a work-related accident on or about January 11, 2005 while working for True Manufacturing Company resulting injury to his right elbow. At issue is whether or not the claimant also sustained injury to his right shoulder as a result of the January 11, 2005 work related accident, and the parties have put medical causation in issue.

Michalik, the claimant, testified about his accident at True Manufacturing on Tuesday, January 11, 2005,

stating that it occurred in the early afternoon. My usual hours when I worked then, I think, was 7:00 a.m. to 3:30 p.m., the claimant said, unless I did overtime. Explaining how he had hurt himself, Michalik testified the day of the 11th I was taking the doors over and put them on the cooler and as I was drilling. I had the drill about head height, and as I was drilling into the cooler, the drill caught and twisted my whole arm, Michalik said. That's when I went to the people in my work station and reported the injury to Jeremy and Chris, the claimant said, and then I went straight from them to the foreman on the line, which was Joe. At that time the part of my body would have been my whole right arm was from my elbow to my wrist up into my shoulder, Michalik said. He agreed that he had requested treatment. Eventually that afternoon I was taken by somebody from human resources to BarnesCare in Fenton, Michalik stated.

At BarnesCare my complaints to the doctor were of the whole arm, Michalik testified, the wrist up into the elbow up into the shoulder. They did x-rays of my elbow and they came back and told me that there was nothing that they could see in the x-rays that was wrong, the claimant stated, and then they said that they were closing and I had to leave. When asked how he had gotten back to work or to his car, Michalik answered I asked the HR rep on the way up if I could have him bring me back, and he said he couldn't because he would be going on overtime. Eventually I called my fiancée who lives in DeSoto, which is about an hour's drive, and she picked me up at BarnesCare. At that point I was still feeling worse, Michalik stated, because the doctors at BarnesCare wouldn't look at my entire arm. So I went straight from there to St. Anthony's on Tesson Ferry, Michalik said. At St. Anthony's, first I reported everything to a nurse from my wrist to my elbow to my shoulder, Michalik testified, then I was seen by a doctor and they took x-rays while I was there. Then they also prescribed a sling and medication, he said, and then one-handed duty to my left hand. I left the emergency room at that point and went home, the claimant said.

The next day, a Wednesday, I reported for work, and at first I was putting screws in this little rubber grommet, Michalik said, I did that for maybe 30 minutes. Then they changed my job to sweeping all day with the left hand, he said. I worked on Thursday with my sling on for probably two and a half hours, Michalik stated. Barry and an HR rep came up to me and said they had called St. Anthony's and St. Anthony's told them that I needed to remove the sling, that I didn't have to work with it, Michalik said, so I did what they told me, but it still hurt so I held it at where the sling would hold my arm because it was still hurting. Later that night I was still having the pains, but then that's when I had more pain in my collarbone which now it was protruding, and I was having more pain from my arm up into my collar; you could see it sticking out, Michalik said. The claimant agreed that he went back to St. Anthony's that night, January 14<sup>th</sup>. At St. Anthony's they did some more x-rays, and they prescribed medication that day and they also told me that I needed to see a specialist, Michalik testified. The claimant stated that he had reported to work the next day, the 15<sup>th</sup>, a Friday, and then he went to BarnesCare. The doctor was very upset that I went to St. Anthony's, the claimant stated. He also wanted to observe my arm, but I needed help taking off the sling, Michalik stated, he refused to help me take off the sling. Then that's when he cleared me of his specialties, and then he suggested also a specialist, Dr. Brown, Michalik testified. I think I went back to work that day after I was at BarnesCare, Michalik stated, but I don't know if it was later in the day that I went to Barnes and then I think I went home. He agreed that he went to see Dr. Brown on the 17<sup>th</sup>, which was a Monday. Dr. Brown examined my wrist and my elbow, he left the room, and he said he could not examine my wrist anymore, Michalik stated. But also I was real pale that day so I couldn't get x-rays that day, so they sent me home, the claimant said. Actually I had to wait out in the parking lot for a while before I could drive, he said.

Michalik was asked had he ever asked anybody at True to have somebody look at his shoulder. Well, from the time of the accident I reported everything to try and get treatment for that and they refused, Michalik answered. He was asked if Dr. Brown had ever looked at his shoulder. Dr. Brown said he was not a specialist in shoulders, Michalik responded. I told Dr. Brown about my shoulder, Michalik said, I even asked him to recommend a specialist. Dr. Brown said there was people in that building, but he wasn't going to recommend one, Michalik stated. He agreed that he went to see Dr. Brown a couple of times. Any restrictions Dr. Brown had on me was still to the one arm, Michalik stated, I could still do stuff with the left, but he did not give me full recovery on the right arm.

On cross examination by the employer/insurer, Michalik testified that he got to BarnesCare on January 11, 2005 at probably 20, 30 minutes before they closed. I think they closed at 4:30 or 5:00, I don't know, the claimant said. Michalik stated that he would not have a reason to doubt it if the medical records from BarnesCare on January 11, 2005 showed an arrival time at 3:41. When queried if he had any reason to doubt it if the medical

records from BarnesCare on January 11, 2005 showed a departure time or discharge time of 4:37, Michalik responded - I don't know. They shooed me out the door and locked the door, so if that's what they wrote down, then yes, he stated. He was asked what time did he call his girlfriend to come pick him up. As soon as I got there, Michalik answered, and in HR's car I called because I was asking him on the way up on how to get a ride back. My girlfriend arrived I think 20 or 30 minutes after they pushed me out the door, Michalik said. He agreed that if the records reflected 4:37, she showed up right about five o'clock. From Fenton to St. Anthony's it took me, I would say, probably 25 to 30 minutes, Michalik said. He stated that he would have no reason to doubt the arrival time if the medical records from St. Anthony's reflected an arrival time of 6:14. He was asked what accounted for the other 45 minutes. If there was traffic, then that would be one; if I sat in the waiting room to find out where I needed to sign in, that would account for some time too, Michalik answered. He was asked if he had made any stops between BarnesCare and St. Anthony's. No, I went straight to St. Anthony's, Michalik answered. I probably did not talk to anyone other than my girlfriend on the phone from the time I got to BarnesCare to the time I got to St. Anthony's, he said. Michalik agreed there were no phone calls to True Manufacturing. He was asked if he felt like BarnesCare had rushed him out the door, and Michalik answered - Yes. He agreed that he felt like they should have done an x-ray on his shoulder at that time. The claimant was queried - If you were ushered out the door as you said, why not call True Manufacturing to say - Hey, they're running me out, what do I do? Because I needed medical treatment because it was still hurting, Michalik responded, I mean, if they were closing, the hospital was the next closest place. Michalik agreed that he had said that when he arrived at St. Anthony's he saw a nurse there first then he saw a doctor. He stated that he then saw probably a technician in the x-ray room. Michalik agreed that the x-rays they did at St. Anthony's those were for his wrist and elbow. He was queried - They didn't do an x-ray on your right shoulder? But I complained of the right shoulder, Michalik responded. The claimant then agreed that they didn't do an x-ray on his right shoulder. He was asked what time was he discharged from St. Anthony's on January 11, 2005, and Michalik answered - I have no clue. I did not feel like I was rushed at St. Anthony's, he said. It was noted that Michalik had just testified that he thought BarnesCare should have done an x-ray on his right shoulder; Michalik was queried - If you went all the way to St. Anthony's, why didn't you raise it with somebody then? If the doctor didn't see -- and with the pain still and then also not having my collarbone protruding and more pains there; I would say that's probably why, Michalik answered. The claimant agreed that it would be fair to say that on January 11, 2005 he saw two doctors that evening, and saw two doctors/technicians in the x-ray room that evening - one at Barnes and one at St. Anthony's - and none of these doctors did an x-ray on his right shoulder that first day.

During cross examination, Michalik agreed that he returned to work the following day on January 12, 2005, and did not go to the emergency room that day or see any other doctors. I worked the full day the following day, January 13, 2005, Michalik said, 7:00 to 3:30. He agreed that after his work shift he went home, and was home at seven o'clock. Michalik testified that he arrived at St. Anthony's Hospital on the 14<sup>th</sup>, not the 13<sup>th</sup>. The claimant was shown a document marked as Employee's Exhibit A and described as the medical records from St. Anthony's; he agreed that in a nursing history assessment, page 2 of 2, it mentioned date of service as January 14, 2005, and that at the bottom of the form it said January 13, 2005. Michalik stated that he was not disputing the medical records if the medical records indicated that on January 13, 2005 he was present at St. Anthony's at 22:35; he agreed that he remembered that he arrived in the evening and was discharged early in the morning about one o'clock. The claimant was queried - So wouldn't it seem logical that if the records reflect 22:35 on January 13, that you arrived in the evening and you were discharged at about one o'clock the following morning? That would be the 14th, yes, Michalik responded. Michalik was asked if he had talked to anyone at True Manufacturing about his trip to the emergency room on January 13, 2005. When I returned with medical records from the 11<sup>th</sup>, he responded. I didn't call them before and say - hey, I'm in agony, I've got to go to the emergency room, Michalik admitted. Michalik stated that he remembered telling the emergency room at St. Anthony's on January 13, 2005 that he felt a pop in his shoulder that evening, and he remembered telling the same thing to BarnesCare the following morning. The claimant was asked if, specifically at Barnes, did he remember telling them that he felt a pop in his shoulder when he was taking his shirt off the night before. The night before, yes, Michalik answered, when I was getting ready for bed. He agreed that when he was getting ready for bed the night before on January 13, 2005 he felt a pop in his shoulder. He was queried - And that's what prompted you to go to the emergency room; correct? With the pain in my shoulder, yes, Michalik answered. Agreeing that it was the second trip to the emergency room at St. Anthony's is where they did the x-ray of his right shoulder, Michalik added - the same day that True asked me to take off my sling. The claimant stated that he has not had any other x-rays to his right shoulder. I think it was just that one that night, he agreed.

During cross examination, it was noted that the St. Anthony's records reflected that the first time he had gone to the emergency room on January 11, 2005 there was a reference to a prior admission date of January 5, 2005. Explaining why he had gone on January 5, 2005, Michalik stated I was attacked. Michalik then remembered that it might have been at Urgent Care for the 5th. I was off sick for a couple of days, he said. He was queried - And that's why you went to the emergency room in January of '05? Because I don't have a primary physician, Michalik responded. The claimant stated that he did not know why they would have listed Dr. Schwarze as his primary care physician. When asked if Dr. Schwarze was ever a primary care physician, Michalik answered - He might have been the person that I've seen at the hospital. He was asked if he had ever seen Dr. Schwarze for his right wrist, elbow, or shoulder. If that's the person that I saw on the 11th, then yes; but (otherwise) no.

Michalik was queried, during cross examination - Did you tell Dr. Brown that you didn't notice pain in your right shoulder until January 13, 2005? No, I reported the pain from the 11<sup>th</sup>, Michalik answered. The claimant was again queried specifically as to what he had told Dr. Brown. That I had pain from my wrist to my elbow up into my shoulder radiating, Michalik responded. Michalik was queried if he would take exception if Dr. Brown's records reflected a comment that he hadn't noticed the right shoulder pain until January 13, 2005. No, Michalik answered, but the doctor might have not just -- not heard me or didn't write it down.

During cross examination, the claimant was asked his dates of employment at Overcamp Yardscaping. I worked there three and a half years, he answered, maybe 2001 to I guess right before I started at True. The claimant agreed that he saw Dr. Volarich in November of 2005. He was queried – What if Dr. Volarich's report says, "he also tells me he has also worked at Overcamp Yardscaping part-time from the present". Well, I did do -- I was on the books there, but I didn't have any extra work that was done that week, the claimant responded. I haven't done any extra stuff, but I was still on his payroll but I didn't receive any checks, Michalik further stated. He was asked when was the last time that he did any work at Overcamp. When I started working at Lowe's I ran some equipment for him for probably eight hours, I think, one day, Michalik answered. He was queried if he had only worked for him one day. It probably had been a couple of days, Michalik answered, I don't know offhand. It was noted that Dr. Volarich's report indicated that at Overcamp Michalik built retaining walls, set the base, ran equipment, and shoveled; Michalik was asked if he had done all that in one day. No, not that day, he answered. I ran the equipment, Michalik said, that would be, I guess, the jobs that I would do at Overcamp. Those would be the jobs, he stated, and not every day did we set walls or did base, or we would run equipment some days and do walls some days, mulch some days. Michalik was asked - Since you started working at Lowe's, have you worked at Overcamp any more than just one day? Recently, no, Michalik answered. I started at Lowe's I think March 14th, 2005; I probably worked maybe six days. He was asked if he had held any other jobs since he'd been employed at Lowe's. No, he answered.

Medical records in evidence included the following:

a. Records from BarnesCare (No. C) indicated that Michalik was treated at the facility on January 11, 2005, with a check-in time of 3:41 p.m. and a discharge time of 4:37 p.m. Michalik's chief complaint was noted to be: right elbow pain. Michalik's history was: "I was drilling with an air powered wratchet and hurt my right elbow." It was noted that the injury had occurred on that date, January 11, 2005 that afternoon. A Physician's History was also in the Patient Chart:

Patient states he was using an air wrench, felt a pull in his right elbow. Pain is at antecubital area. Hurts to flex and extend elbow. No fall or impact injury. Says his elbow slightly "tingles", no numbness in fingers.

In the Occupational History section of the 01/11/05 Patient Chart was written: Assembly one month. The Physical Exam section included the following:

Constitution/Appearance: The patient appears well developed, well nourished in no immediate distress...

Distress: Tearful, complains of elbow pain. Holds arm flexed, shoulder adducted.

Upper Extremity (RIGHT): Arm

Surface Trauma/Changes: None

Type: Guards all motions of elbow and shoulder.

No bony tenderness.  
Soft Tissue Observation:  
Soft tissue swelling: No  
Palpation:  
Tenderness: Complains of pain with palpation of antecubital fossa...  
Right hand:  
Grip strength: 5/5  
Neuro:  
Sensory: Intact.....

The Patient Chart indicated that an x-ray of the right elbow was ordered, and the initial impression was – negative. The patient Chart indicated that treatment included medication prescribed, massage 2-3 times per day, do range of motion activities in regards to the elbow. Michalik's work status on 01/11/05 was: "Return to work with restrictions today; limit lifting/pulling/gripping to 20 lbs with right arm.

b. Medical records from St. Anthony's Medical Center (No. A) indicated that Michalik was seen in the emergency room on January 11, 2005 at approximately 6:14 p.m. The chief complaint was noted to be: Right elbow injury. In the Notes section was written: "At work using air ratchet caught spun elbow. c/o R elbow pain." It was noted that Michalik indicated that his right elbow pain was a 10 on of a 1 – 10 scale with 10 being the worst pain. On a sheet entitled Elbow Injury Template, it was indicated that Michalik reported pain in the right elbow and right wrist; the sheet had the specific question – Involves shoulder?, and this was checked – "N". The sheet indicated a final diagnosis of – musculoskeletal strain; also indicated was that Michalik was discharged in good condition. The 01/11/05 record indicated that x-rays were taken of the right elbow and right wrist. In a 01/11/05 Nurse's Notes and Treatment Record, the following was handwritten:

1850 – Pt returns from xray. States twisted R arm while using any air powered wratchet. c/o pain to R wrist, R elbow & R shoulder. (No) deformity noted. +Radial pulse +movement & sensation to digits. Vicodin given for pain....wrist splint applied (With) sling. Discharged (with) instructions...& work excuse.....

Reports of x-rays of the right elbow and right wrist taken on 01/11/05 were in the record, and both indicated opinions of – negative.

c. Medical records from St. Anthony's Medical Center (No. A) indicated that Michalik was again treated in the emergency room on January 14, 2005; it was noted that Michalik had previously been treated on 01/11/05. The record indicates that Michalik presented at the emergency room a little before midnight on January 13, 2005, but actually seen and treated after midnight on January 14, 2005; a Nursing Documentation Short Form in the record included the following:

2332 – Pt to ER 2424 via cart.  
MIDN00 – Pt c/o pain to R shoulder. States twisted R arm using air ratchet on Tuesday. Pt initially c/o R wrist/elbow pain; now c/o R shoulder/clavicle/scapula pain. 0030 – Pt to x-ray. 0059 – Pt D/C'd in stable condition. Instructions provided (with) verbalized understanding.

In an initial document in the record, a Nursing History/Assessment sheet, the history from Michalik was noted to be: right shoulder pain, date of symptom onset - Tuesday. In the Notes section of the Nursing History/Assessment sheet was written: "Pain R wrist & elbow began Tuesday was seen in ER after having arm twisted (at) work. At 7:00 p.m. felt pop in R shoulder – made him dizzy & N – V x 1." In a Shoulder-Humerus Pain/Injury sheet in the record the emergency room physician noted the following history of present illness: "24 y old was at work on Tuesday & using an air wratchet – twisted his R arm. Pain was mostly at wrist elbow – gave wrist splint and sling." It was further indicated in the Shoulder-Humerus Pain/Injury sheet that he had had the symptoms for 2-3 days; it was noted that the pain was in the right shoulder; physical exam findings were – tenderness in the right scapula, clavicle, AC joint, rotator cuff and Gleno-humeral joint. Further indicated in the physician's sheet was that x-rays of the right shoulder and right acromioclavicular joint were both negative, (the x-ray reports were in the record). The emergency room physician's final diagnosis was – shoulder strain. An Instruction and Information sheet to the patient reflected that Michalik was discharged on January 14, 2005 at about 12:54 a.m. with instructions about his medication, to keep the right arm in a sling, and to follow up with

designated referral as needed.

d. A January 14, 2005 treatment entry was also in the BarnesCare record (No. C), and indicated that Michalik was treated at the facility on that date during the time period of 10:40 a.m. – 11:17 a.m. In the Patient Chart, it was written that Michalik's chief complaint was – right elbow pain. The patient's history was: "I was drilling with an air powered wrench and hurt my right elbow. The date of injury was noted as: 01/11/05. An Interval History from Michalik was noted: "After I left here my wrist started hurting and I went to St. Anthony's. Last night I was taking off my shirt and my shoulder popped. I went back to St. Anthony's. The pain is worse." The diagnosis was: pain right elbow, and pain right wrist. Treatment recommendations were the same, and the work restrictions remained the same. In the section of Assessment and Plan in the 01/14/05 Patient Chart, the following was written:

Reports L elbow pain after using air wrench -- much muscle tightness -- advise muscle relax at bedtime/nsaid/massage -- limit heavy activity x 2 days. Then recheck. 01/14: reports worsening R arm pain -- has been seen in ER x2 also for R wrist and shoulder pain -- ROM extremely guarded -- degree of impairment is disproportionate to history of injury -- advise 2<sup>nd</sup> opinion with specialist --Theresa at True will schedule it.

The 01/14/05 Patient Chart indicated that Michalik was discharged to the care of a specialist, to be scheduled by employer.

e. Medical records of Dr. David Brown, M.D. of Orthopedic Center of St. Louis (No. D) reflected treatment and evaluation of Edward Michalik on two occasions, January 17th and 31st, 2005. At the first visit on 01/17/05, Dr. Brown noted that Michalik was referred to him by the Missouri workers' compensation insurance company for evaluation for a problem with his right upper extremity. "I have been only authorized to evaluate his right elbow", Dr. Brown noted. The doctor noted that Michalik was a right hand dominant 24 year old who had started working for True Manufacturing about a month earlier. Dr. Brown included the following in the History of Present Illness section of the 01/17/05 entry:

He states on 1-11-05 he was using a drill with an air ratchet and twisted his arm. Following that he had pain in his elbow. Later on he had pain in his wrist and then in his collarbone. He also complains of pain his shoulder. He states he went to Barnes Care, had an x-ray of his elbow and this was reportedly negative. He then went to St. Anthony's Emergency room. He was treated with a sling and a wrist brace. His current complaints are diffuse pain in his elbow, upper arm, shoulder, and collarbone area. He states it is getting worse and it is "spreading". He states he didn't notice the shoulder pain until 1-13-05.

Dr. Brown noted that Michalik's past medial and surgical history was "Unremarkable". Physical examination findings on 01/17/05 were:

On examination, Mr. Michalik is holding his arm in a guarded position with it across his torso. There is no visible abnormality on inspection. There is no bruising, no visible swelling. When I asked Mr. Michalik to actively move his arm he demonstrated minimal active range of motion. When I attempted to passively move his arm he resisted my attempts at passive motion complaining of pain. I could detect no sympathetic changes of the right upper extremity compared to the left. He has good sensation and perfusion in the digits of the right upper extremity compared to the left. He has good sensation and perfusion in the digits of the hand. Distal neurovascular function is intact. During the examination Mr. Michalik became dizzy, nauseated and he had to lie down on the exam table for some time. Grip strength was measured at 42 pounds on the right, 101 pounds on the left.

Dr. Brown wrote that a review of x-rays of the wrist, hand, forearm and elbow revealed no abnormalities. Dr. Brown's written impression/recommendations on 01/17/05 were:

The cause of Mr. Michalik's severe subjective complaints are not clear. His examination was limited due to his over guarding of the extremity. At this point I'd recommend he undergo and MRI of the elbow, since the majority of the pain appears to be around centered around his elbow. He is also complaining of a lot of pain around the "collarbone" and his shoulder. I explained to him I am not authorized to treat the shoulder and that he should discuss this with his primary care physician. I'll see him back here after he's obtained

an MRI.

Dr. Brown wrote as to Michalik's work status in the 01/17/05 entry - Strictly one handed work with the uninjured extremity. The report of the MRI of the right elbow ordered by Dr. Brown was in evidence (No. E), and indicated that the study was performed by a Dr. Cizek at Imaging Partners of Missouri on 01/24/05; Dr. Cizek's impression was - normal MRI of the right elbow. Dr. Brown's record (No. D) indicated that he again saw Michalik after the MRI on 01/31/05, and Dr. Brown wrote that Michalik had undergone an MRI of his right elbow on 01/24/05 and this was normal. Michalik's complaints at that time were noted to be: still having pain in his upper arm, shoulder and around his collarbone; occasionally, the pain radiates down the arm; he has "cracking" in his shoulder, occasionally his elbow; and he denies any numbness or tingling. Dr. Brown wrote of the physical exam findings on 01/31/05:

On examination, there is no visible swelling. He has good active range of motion of the elbow on today's exam. There are no sympathetic changes. He has no point tenderness. The elbow is grossly stable with stressing. He has good sensation and perfusion to the digits of the hand. Provocative tests for cubital tunnel syndrome and carpal tunnel syndrome are negative. He has no point tenderness over the wrist.

Dr. Brown wrote of his impression and recommendations as of 01/31/05:

With regards to his elbow, Mr. Michalik's is minimally symptomatic. His examination is negative. His MRI x-rays were normal. I have no further treatment recommendations. Mr. Michalik's main complaints are upper arm, shoulder and the collarbone area. As I explained to him last time that I am not authorized to treat his shoulder area or collarbone and as a hand surgeon, that is not in the realm of my expertise. I recommend he discuss this with his primary care physician and see a shoulder specialist or possibly a physiatrist to evaluate this more proximal complaint. He explained to me that he was going to see a shoulder specialist today. I will see him back on an as needed basis.

Dr. Brown wrote of Michalik's work status as of 01/31/05: "With regards to his elbow, I see no objective reason why he cannot return to work. I anticipate his more proximal complaints will prevent him from returning to work."

e. Records of Dr. Joseph R. Ritchie, M.D. of Orthopedic Specialists (No. H) reflected treatment of Michalik on January 31, 2005 and February 14, 2005. Dr. Ritchie wrote the following in his initial treatment note of January 31, 2005:

Ed is a twenty-four year old laborer who works for a company that involves him using air ratchets. He was doing that into a refrigerator that he works on and the ratchet caught, it twisted his right wrist, elbow and shoulder, and he apparently was treated and released by workmen's comp even though he has continued pains and discomfort. This happened on the 11<sup>th</sup> of January. He has been taking medicines on occasion. His major complaint now is the posterior aspect of his shoulder. His elbow and wrist seem to have made significant improvements. He had an MRI of his elbow which was negative.

Physical exam: Physical exam show tenderness over the trapezius and peri-rhomboid scapular muscles. The shoulder itself and elbow itself and wrist itself do not show any significant pain.

The MRI and the plain films are negative.

Dr. Ritchie's assessment on January 31, 2005 was – Soft tissue injuries after this rotational injury mechanism. The doctor recommended to continue anti-inflammatory, start physical therapy, and "we will see him back in two weeks to assess his ability to go back to work". Records from ProRehab Physical Rehabilitation Center (No. F) indicated that Michalik received physical therapy for a diagnosis of right shoulder strain beginning with an initial evaluation on 02/01/05. In a February 11, 2005 report to Dr. Ritchie, the therapist wrote that Michalik had attended 6 out of 6 physical therapy appointments, and had been complaint with the doctor's plan of care. Further written was:

The patient reports a considerable improvement in his posterior shoulder pain since beginning therapy. He also notes improved ROM and strength. However, the patient notices that most of his pain is centered

around the clavicle, and he still cannot lift very heavy objects like his girlfriend's 40 lb. child.

It was noted in the February 11, 2005 report that Michalik "no longer adopts a protective position of the right arm". Also written in the February 11, 2005 physical therapy report was:

The patient has demonstrated considerable progress with respect to active ROM and strength. The patient notes some pain around the clavicle with resistive shoulder testing. The patient does not want to return to work unless he is 100% because of the heavy lifting involved at work (60-70 lbs). The patient has benefited from your prescribed therapy.

Dr. Ritchie's record (No. H) indicated that he next saw Michalik on February 14, 2005, and the doctor wrote the following:

Ed follows up his soft tissue injuries of his right upper extremity and they are better. He feels like he is progressing. He is looking for another job. The physical therapy he feels has helped him quite a bit. Most of his discomfort is in the trapezius periscapular muscles and not about the shoulder or elbow.

Physical exam: His exam is much better with better strength, less irritability.

Dr. Ritchie's diagnosis was – Status post soft tissue injuries. The doctor's written recommendation was: "We will do a couple of more weeks of physical therapy to loosen him up, get his strength going and let him return to work at that time." I will see him back if necessary in one month, the doctor further wrote. The ProRehab Physical Rehabilitation Center record (No. F) indicated that Michalik again received physical therapy for the diagnosis of right shoulder strain later in February 2005. In a February 25, 2005 report to Dr. Ritchie, the therapist wrote that Michalik had attended 6 out of 6 physical therapy appointments, and had been complaint with the doctor's plan of care. Further written was:

The patient reports no significant pain to his shoulder at this time. He notes full ROM and strength at this time. He feels that he can return to work without any functional deficits. However, he does report that he is seeking employment from another company.

After a discussion of the physical therapy exam findings, the physical therapist wrote the following in the February 25, 2005 report:

The patient demonstrates full ROM and strength as shown by the objective measures. Subjectively, he reports no significant functional deficits. The patient is ready to return to work at this time. The patient has benefitted from your prescribed therapy.

Will plan to discharge this patient from the physical therapy at this time. The patient reports that he is not going to follow up with your office, but he is planning on returning to work on Monday.

f. A medical record of prior treatment was offered into evidence, an emergency room record from St. Anthony's Hospital (No. 1) concerned the treatment of Michalik on July 16, 2004; the chief complaint was noted as – Assault. Noted on the Admission sheet was: "Pt states he was assaulted earlier today. c/o R ear lobe pain, back pain. (No) L(oss) O(f) C(onsciousness). In the Nursing History/Assessment sheet, written in the Pain section was – "Shoulders/Rt ear lobe". On a sheet entitled "Any Complaint" was indicated Michalik had pain in the neck/back radiating to arms, and also indicated on the sheet was an ear laceration; on the sheet the initial diagnosis was – achiness, and the final diagnosis was – cervical sprain. In a Trauma Flowsheet, Notes section was handwritten information (mostly illegible), but included: "Pt. c/o pain to shoulders/??????. Strained like ??? in shoulders between shoulders & insides of neck. Good ROM of arms & neck – no midline neck or back.....". The instruction sheet to the patient, Michalik, stated that the doctor felt his symptoms were due to a neck strain, and instructions in regards to this diagnosis were listed on the sheet.

Dr. David T. Volarich, D.O. offered his opinions on behalf of the claimant by a rating report, dated November 8, 2005 (No. M). The following was initially noted by the doctor:

## BRIEF SUMMARY OF EVENTS:

Mr. Michalik worked as a laborer for True Manufacturing for about three months. He quit working there sometime near the end of February of 2005. He currently works for Lowe's Corporation as an associate.

On or about 1/11/05, while at work for True Manufacturing Company, he injured his right shoulder girdle. He was diagnosed initially with elbow and wrist strains. Subsequently, he was diagnosed with right shoulder soft tissue injuries. He was treated conservatively, but continues to experience ongoing difficulties as a result of this accident.

## HISTORY RE THE INJURY OF 1/11/05:

On 1/11/05, Mr. Michalik was using an eight-pound pneumatic drill with an air ratchet that had hoses attached drilling on a refrigeration unit. His right arm was elevated at the shoulder and flexed at the elbow due to his short stature. He reported the pneumatic drill became caught as he drilled, twisted and externally rotated his right upper extremity. He experienced right wrist, right elbow, and right shoulder pain, as well as neck pain...

On 1/11/05, he followed up at Barnes Care regarding pain in the right elbow. He was prescribed medications and advised to work restricted duty. During an emergency room visit of 1/13/05, he reported his right shoulder popped while changing clothes however he incurred no new injury. Right shoulder x-rays were performed that failed to reveal abnormality (according to medical records). He was diagnosed with a right shoulder strain. Right AC joint x-rays were performed that revealed symmetrical AC joint without evidence of separation (according to medical records)....

He presented to Dr. Ritchie 1/31/05, and on 2/14/05. He was diagnosed with a soft tissue injury to the shoulder and was prescribed medications and physical therapy. He is not currently under active treatment. He denies any new or prior injuries to the right shoulder.

Dr. Volarich noted the following in his discussion of Michalik's job activities:

## JOB ACTIVITIES:

Mr. Michalik was employed at True Manufacturing as a Laborer between 11/04 and 1/05. His job duties included setting up tables, carrying drop pans and 10- to 15-pound doors. He was required to flip coolers and explained that the coolers were extremely difficult to maneuver due to the large size. He placed the coolers on top of a box and then pushed the box to his workstation. He believed the cooler weighed about 5 pounds. He then drilled 12 holes, put in spacers, and attached hinges and screws. He used impact wrenches, screw guns, and a Phillips screwdriver. He placed square pans in plastic pans and put screws and filters into metal pans. He used a putty knife when inputting hinges. He explained that he would drill holding the drill with his right hand, and he would push the screws into place with his left hand. Most often, he worked with his arms overhead while drilling.

He worked from 7:00 to 3:30 with overtime as needed and took a half-hour lunch and no breaks.

I asked Mr. Michalik how his injury impacted his ability to work. He explained that in January of 2005, he was advised that if he was unable to return to full duty, he needed to seek other employment so he secured a job at Lowe's in 4/05. Shortly thereafter, he was released to full duty. Mr. Michalik explains that at Lowe's, he does not have to perform any physical labor, and he is able to rely more on power equipment. He work sin the lawn and garden department. (sic)

He also tells me he has also worked at Overcamp Yardscaping part-time from the present. He built retaining walls and set the base, ran equipment and shoveled. He explained that following his injury, he

had to decrease his time at Overcamp. He could only work there every other weekend because he needed the intervening time for his shoulder to recuperate. Also, this was seasonal work.

Dr. Volarich discussed Michalik's relayed ongoing complaints, and discussed Michalik's preexisting medical conditions or complaints. The doctor listed the medical records and x-rays he had reviewed. In his discussion of Michalik's upper extremity and joint exam, Dr. Volarich included the following:

In the right shoulder, there is a 10% loss in motion as evaluated by the Apley scratch test, particularly with internal rotation and extension when trying to reach behind his back to touch the tip of his opposite shoulder blade. Impingement apprehension, clunk, and Adson's testing are all negative for shoulder joint pathology. The AC joint is also normal, but the sternoclavicular joint is somewhat tender to palpation and is more prominent than the left side. The majority of his pain occurs in the right trapezius muscle, where trigger points are found in the mid belly. Below the spine of the scapula, no discomfort is identified. There is no winging of the scapula.

In the remainder of the upper extremities, there is full motion in the elbow and wrists. Tests for entrapment neuropathy are negative bilaterally.

Dr. Volarich wrote his diagnosis in regards to the 1/11/05 injury: 1. External rotation injury right shoulder/shoulder girdle causing myofascial pain and right sternoclavicular joint strain. The doctor's diagnosis as to preexisting conditions or injuries was: 1. Historic cervical strain and left shoulder girdle strains – resolved. Dr. Volarich wrote the following concerning causation:

#### CAUSATION:

It is my opinion the work accident that occurred 1/11/05, when Mr. Michalik was using a pneumatic ratchet to assemble a refrigeration unit, and while holding his right arm abducted at shoulder level with his elbow flexed, the pneumatic drill caught and torqued forcefully, externally rotating his right arm at the shoulder, is the substantial contributing factor causing the right elbow and wrist strain injuries that resolved, as well as causing the right shoulder strain injury to the sternoclavicular joint and shoulder girdle musculature, resulting in myofascial pain syndrome that required conservative medical care.

"Based on the treatment provided to date, he has achieved MMI", Dr. Volarich wrote. Dr. Volarich wrote the following opinion as to disability ratings:

Pertaining to and as a direct result of the injuries sustained on 1/11/05 while in the employ of True Manufacturing, it is my opinion that the following industrial disability exists that is a hindrance to his employment or reemployment:

1. There is a 20% permanent partial disability of the right upper extremity rated at the shoulder girdle due to the strain/sprain injury and development of myofascial pain in the trapezius muscle. This rating also accounts for the sternoclavicular joint strain, all of which contribute to cause pain, mild loss of motion, and weakness in the dominant arm.
2. Disability referable to the right elbow and right wrist is not found since those symptoms resolved.

Pertaining to his preexisting neck and left shoulder strain injuries, disability is not found since symptoms resolved.

Dr. Volarich listed work and other activity restrictions referable to the right shoulder for Michalik.

Under Missouri Workers' Compensation law, the employee carries the burden of proving all essential elements of the claim, including causation. *Lawrence v. Joplin R. VII School District*, 834 S.W.2d 789 (Mo. 1992). The employee must establish a causal connection between the accident and the claimed injuries. *Fischer v. Archdioceses of St. Louis*, 791 S.W.2d 195 (Mo.App. 1990). While proof of cause of injury is sufficiently made on reasonable probability (*Smith v. Terminal Transfer Company*, 372 S.W.2d 659, 664(7) (Mo.App.1963)), proof of permanency of injury requires reasonable certainty. *Davis v. Brezner*, 380 S.W.2d 523, 588(6-- 9) (Mo.App.1964).

Whatever may be the quantum of proof the law imposes on a given issue in a compensation case, however, such proof is made only by competent substantial evidence and may not rest on surmise or speculation. *Griggs v. A. B. Chance Co.*, 503 S.W.2d 697, 703 (Mo.App. 1973).

“For an injury to be compensable the evidence must establish a causal connection between the accident and the injury. The testimony of a claimant or other lay witness can constitute substantial evidence of the nature, cause and extent of the disability when the facts fall within the realm of lay understanding.

“An injury may be of such a nature [however] that expert opinion is essential to show that it was caused by the accident to which it is ascribed.” (Citations omitted) *Griggs*, 503 S.W.2d at 704.

\* \* \*

“...an injury may be of such a nature that expert opinion is essential to show that it was caused by the accident to which it is ascribed. When the condition presented is a sophisticated injury that requires surgical intervention or other highly scientific techniques for diagnosis, and particularly where there is a serious question of pre-existing disability and its extent, the proof of causation is not within the realm of lay understanding...” *Knipp v. Nordyne, Inc.* 969 S.W.2d 236, 240 (Mo.App. 1998)

\* \* \*

“Medical causation not within common knowledge or experience, must be established by scientific or medical evidence showing the cause and effect relationship between the complained of condition and the asserted cause.” *Selby v. Trans World Airlines, Inc.*, 831 S.W.2d 221, 222 (Mo.App. 1992).

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“A medical expert’s opinion must have in support of it reasons and facts supported by competent evidence which will give the opinion sufficient probative force to be substantial evidence.” (citations omitted) *Pippin v. St. Joe Minerals Corp.*, 799 S.W.2d 898, 904 (Mo.App. 1990.)

In this case, at issue is whether or not the January 11, 2005 work related accident is the cause of the claimant’s right shoulder injury. Considering, firstly, the claimant’s own testimony, Michalik testified that it was the evening of January 13, 2005 while at home getting ready for bed and taking off his shirt is when he felt a pop in his right shoulder. He agreed, during cross examination, that that pain in his shoulder was what had prompted him to go to the emergency room later that evening/early morning of January 13th/14th, 2005. The claimant agreed that after the work related accident on January 11, 2005, he had returned to work on January 12, 2005 and had worked a full day and had not gone to the emergency room; he agreed that he worked January 13, 2005 his regular work schedule of 7:00 a.m. to 3:30 p.m. and had gone home and was at home at 7:00 p.m. when the pop in his shoulder had occurred. Both January 14, 2005 entries in the St. Anthony’s and BarnesCare medical records reflect an interval history from Michalik of his shoulder popping after work at 7:00 p.m. while taking off his shirt.

The claimant testified at the hearing that at the time of the accident at work on January 11, 2005, he injured his whole right arm, which would have been from his wrist into the elbow up into the shoulder. Michalik testified that this was his complaint at the first facility where he got treatment, BarnesCare, but they were closing and he had to leave, so they only did x-rays of his elbow. The claimant testified that he was then feeling worse because the doctors at BarnesCare would not look at his entire arm, so he went to St Anthony’s later that same day. Michalik testified that at St. Anthony’s on January 11, 2005 he reported everything to a nurse from his wrist to his elbow to his shoulder; he agreed that the x-rays they did at St. Anthony’s were for his right wrist and his right elbow. The claimant agreed that he did not feel like he had been rushed at St. Anthony’s on January 11, 2005; he agreed that at St. Anthony’s on January 11, 2005, he had been seen by a nurse, an x-ray technician/doctor and the emergency room doctor, and none of these medical people had done an x-ray of his right shoulder that day. The January 11, 2005 entry in the BarnesCare medical record reflected a history from Michalik of a right elbow injury at work in the afternoon of that day, and complaints of right elbow pain; it was noted that Michalik guarded all motions of the elbow and shoulder, but the record further indicated that x-rays were taken of the right elbow, and

treatment and diagnosis was to the right elbow. The January 11, 2005 St. Anthony's record also noted the history of the work accident, that an air ratchet had spun the elbow, and Michalik had complaints of right elbow pain; a nurse's note included that Michalik had complaints of pain in the right wrist, elbow and shoulder, but on a sheet entitled Elbow Injury Template, the specific question of if the shoulder was involved was listed, and the answer written was "No"; the January 11, 2005 record indicated that x-rays were taken of the right elbow and wrist. Again, both January 14, 2005 entries in the BarnesCare and St. Anthony records specifically noted that Michalik had been previously seen on Tuesday, January 11, 2005 and at that time had had complaints of right elbow pain (and right wrist pain, St. Anthony's record), and now had complaints of right shoulder pain. Dr. Brown, who saw Michalik in January 2005 on referral of the workers' compensation insurance carrier, wrote in his January 17, 2005 report in the History of Present Illness section about the January 11, 2005 work related accident and that following that accident Michalik had pain in his elbow, and later pain in his wrist, and then pain in his collarbone, and that Michalik also complains of pain in his shoulder; Dr. Brown further wrote – "He states he didn't notice the shoulder pain until 1-13-05." Treatment records of a Dr. Joseph Ritchie were in evidence. Dr. Ritchie's, it is found, was a treatment record which briefly noted a history of the January 11, 2005 work related accident and that it twisted Michalik's right wrist, elbow and shoulder; the doctor, however, gave no indication of a review of all the medical records in the case and never rendered an opinion on causation.

Considering this evidence, it is found that the substantial weight of the evidence does not support the claimant's testimony of right shoulder injury on January 11, 2005 immediately subsequent to the work related accident. It is found that the substantial weight of the evidence indicates that claimant experienced the right shoulder pain or injury in issue two days after the work related accident, and after work hours, and not on the premises of his employment but rather at home while removing his shirt. The claimant alleges in his testimony that it was after his employer made him remove his sling while working on January 13, 2005 that the right shoulder pain occurred. The claimant's history of onset of right shoulder pain, however, is not at the time of performing his work duties on or about January 13, 2005; the claimant's history of onset of right shoulder pain is while removing his shirt while sitting on his bed at home the evening after work, and at about four hours after leaving work, or about 7:00 that evening, this history is also in the medical records. Additionally, notwithstanding the claimant's testimony that he had complaints of right shoulder pain on January 11, 2005, the medical treatment records do not support this testimony, nor does the history noted by Dr. Brown as relayed to him by the claimant. The claimant's credibility is put in issue.

Dr. Volarich offered opinions based, in part, on the history relayed to him by the claimant, i.e. that upon the January 11, 2005 work related accident the claimant experienced pain in the right wrist, right elbow, right shoulder and neck. The medical treatment records do not corroborate these as the pain complaints expressed by Michalik at the time of treatment on January 11, 2005 for injuries as a result of the work related accident sustained earlier that day. Dr. Volarich notes the factual events that the claimant's right shoulder popped while changing clothes on 1/13/05 and that the claimant was then subsequently diagnosed on January 14, 2005 with a right shoulder strain, but gives no explanation of how the January 11, 2005 accident, diagnosed by both St. Anthony's and BarnesCare as right elbow/wrist pain/strain, caused the January 14, 2005 diagnosis. The claimant argues in his Memorandum of Law that treatment he received in July of 2004 was ultimately diagnosed as a cervical strain and not a shoulder injury. In the treatment record for the July 2004 injury (a St. Anthony's Hospital July 14, 2004 record), the claimant's complaints noted in various sections of the record included right ear lobe and back pain, in the Pain section it was written - shoulders and right ear lobe, and on a sheet entitled "Any Complaint" it was indicated that Michalik had pain in the neck/back radiating to the arms, and in a Trauma Flowsheet it was indicated that Michalik had complaints of pain to the shoulders and symptoms in the shoulders and in between the shoulder and insides of the neck; perhaps at times in relaying a history of his injuries as a result of the January 11, 2005 work related accident, the claimant confused the separate incidents of injuries. Dr. Volarich, who noted that Michalik denied any prior injuries to the right shoulder, wrote that Michalik reported to him of the July 2004 assault injury and that he was diagnosed with cervical strain; the doctor gave no indication that he had reviewed the treatment records of July 16, 2004. The history relied on by Dr. Volarich as to the claimant's work at a second employer, Overcamp, at or near the time of the January 11, 2005 work related accident and right shoulder injury in issue is questionable. At the hearing, during cross examination, the claimant was questioned about his dates of employment at Overcamp Yardscaping. I worked there three and a half years, Michalik testified, maybe 2001 to I guess right before I started at True Manufacturing. It was noted that Dr. Volarich's November 8, 2005 report said - "He also tells me he has also worked at Overcamp Yardscaping part-time from the present". I was on the books there, but I didn't have any extra work that was done that week, the claimant responded. I haven't done any extra stuff, but I

was still on his payroll but I didn't receive any checks, Michalik further testified. When asked when was the last time he had done any work at Overcamp, Michalik responded - When I started working at Lowe's I ran some equipment for him for probably eight hours, I think, one day. It probably had been a couple of days, I don't know offhand, Michalik testified when further queried. In his evaluation report, Dr. Volarich wrote: "He explained that following his injury, he had to decrease his time at Overcamp. He could only work there every other weekend because he needed the intervening time for his shoulder to recuperate. Also, this was seasonal work." The claimant's testimony at the hearing, it is found, was evasive and contradictory to what Dr. Volarich indicated was relayed to him by Michalik.

It is found, considering the evidence, that the medical expert's, Dr. Volarich's, opinions are not probative on the issue of causation as to the claimant's right shoulder injury in relation to the January 11, 2005 work related accident in that the doctor's opinions are based in part on information from the claimant whose testimony has been found to be at times contradictory, uncorroborated and evasive. It is further found that in the event the injury in question is not sophisticated and lay testimony could establish causation, the lay testimony presented is that of the claimant, and again, the claimant's credibility is questionable. It is found that the claimant has failed to meet his burden of establishing that the January 11, 2005 work related accident was a substantial cause in the right shoulder injury diagnosed on January 14, 2005. It is found that the substantial weight of the competent evidence establishes that as a result of the January 11, 2005 work related accident, the claimant sustained injuries to his right elbow.

ISSUE: Nature and extent of temporary total disability for the period of January 17, 2005 through February 28, 2005

It has been determined in this Award that the January 11, 2005 work related accident was not a substantial cause in a right shoulder injury; it was agreed and stipulated to by the parties that as a result of the January 11, 2005 work related accident the claimant sustained injury to his right elbow, and determined in this Award that the substantial weight of the competent evidence establishes that as a result of the January 11, 2005 work related accident, the claimant sustained injuries to his right elbow. Considering the evidence in relation to the time period in issue, Dr. Brown's records indicate that he saw Michalik on January 17, 2005 by referral of the employer/insurer. Dr. Brown noted that he had been authorized to evaluate only the claimant's right elbow. After examination of Michalik on January 17, 2005, Dr. Brown recommended an MRI of the right elbow. Dr. Brown wrote as to Michalik's work status in the 01/17/05 entry - Strictly one handed work with the uninjured extremity. Dr. Brown's record (No. D) indicated that he again saw Michalik after the MRI on 01/31/05, and Dr. Brown wrote that Michalik had undergone an MRI of his right elbow on 01/24/05 and this was normal. The doctor noted Michalik's complaints at the January 31, 2005 exam: still having pain in his upper arm, shoulder and around his collarbone; occasionally, the pain radiates down the arm; he has "cracking" in his shoulder, occasionally his elbow; and he denies any numbness or tingling. Dr. Brown wrote of the physical exam findings on 01/31/05:

On examination, there is no visible swelling. He has good active range of motion of the elbow on today's exam. There are no sympathetic changes. He has no point tenderness. The elbow is grossly stable with stressing. He has good sensation and perfusion to the digits of the hand. Provocative tests for cubital tunnel syndrome and carpal tunnel syndrome are negative. He has no point tenderness over the wrist.

Dr. Brown wrote of his impression and recommendations as of 01/31/05:

With regards to his elbow, Mr. Michalik's is minimally symptomatic. His examination is negative. His MRI x-rays were normal. I have no further treatment recommendations. Mr. Michalik's main complaints are upper arm, shoulder and the collarbone area. As I explained to him last time that I am not authorized to treat his shoulder area or collarbone and as a hand surgeon, that is not in the realm of my expertise. I recommend he discuss this with his primary care physician and see a shoulder specialist or possibly a physiatrist to evaluate this more proximal complaint. He explained to me that he was going to see a shoulder specialist today. I will see him back on an as needed basis.

Dr. Brown wrote of Michalik's work status as of 01/31/05: "With regards to his elbow, I see no objective reason why he cannot return to work. I anticipate his more proximal complaints will prevent him from returning to work." The evidence includes treatment records of a Dr. Ritchie which indicates treatment of Michalik subsequent to Dr.

Brown's release of the claimant on January 31, 2005. Dr. Ritchie in his first treatment note of January 31, 2005 wrote:

Ed is a twenty-four year old laborer who works for a company that involves him using air ratchets. He was doing that into a refrigerator that he works on and the ratchet caught, it twisted his right wrist, elbow and shoulder, and he apparently was treated and released by workmen's comp even though he has continued pains and discomfort. This happened on the 11<sup>th</sup> of January. He has been taking medicines on occasion. His major complaint now is the posterior aspect of his shoulder. His elbow and wrist seem to have made significant improvements. He had an MRI of his elbow which was negative.

Dr. Ritchie's record indicated that he then referred Michalik to physical therapy with a diagnosis of – right shoulder strain. It is found that Dr. Ritchie's record indicates treatment was to the claimant's right shoulder; this injury has been determined to not be causally related to the compensable accident of January 11, 2005. Dr. Volarich evaluated the claimant on the claimant's behalf of November 8, 2005 and wrote – “Based on the treatment provided to date, he has achieved MMI”.

Section 287.020.7 RSMo defines the term "total disability" as an “inability to return to any employment and not merely mean inability to return to the employment in which the employee was engaged at the time of the accident”. “Temporary total disability” is not defined by the workers' compensation statute, but is intended to be an award intended to cover a healing period and is a benefit granted only for the time prior to when the employee can return to work; an award for temporary total disability is not intended to encompass disability after the condition has reached the point where further progress is not expected. See, *Williams V. Pillsbury Co.*, 694 S.W.2d 488, 489 (Mo.App. E.D. 1985). In determining whether a claimant is totally disabled, the main issue is whether any employer in the usual course of business would reasonably be expected to employ the claimant in the claimant's present physical condition, and this standard applies to all total disability claims – permanent and temporary. See, generally, *Boyles v. USA Rebar Placement, Inc*, 26 S.W.3d 418, 424 (Mo.App. W.D. 2000). The claimant's testimony of an inability to work during treatment for the work-related injury with corroborating medical evidence constitutes substantial evidence on which to award temporary total disability benefits. See, generally, *Patterson v. Engineering Evaluations*, 913 S.W.2d 344, 347 (Mo.App. E.D. 1995).

In this case, the claimant testified in regards to the time period in issue that he reported to work after he saw Dr. Brown on January 17<sup>th</sup>. And I worked for a little bit, and then they asked me to leave, the claimant stated. I asked him for a written documentation why I would have to leave and they called the cops and had me escorted out, Michalik testified. He agreed that that was because of his one-handed duty. The claimant was asked if he had been given instructions on when he was supposed to return. They told me I could not return until I was fully recovered, Michalik answered, that I needed to call every single day in between 6:30 and 7:00 before my shifts. Michalik agreed that Dr. Brown had an MRI done of his elbow. Dr. Brown released me from my elbow, Michalik testified, there was no more, I guess, medication or whatever treatment that he could do to my elbow, but that I needed to go see another specialist for my shoulder. Agreeing that he had asked a friend and got a name of an orthopedic doctor that did shoulders, Michalik stated that it was Dr. Ritchie at Des Peres Hospital. It was approximately January 31, 2005 when I saw Dr. Ritchie, Michalik agreed. The claimant agreed that his attorney sent him to Dr. Volarich for an evaluation; Michalik agreed that from the time he was discharged by Dr. Ritchie and the time he saw Dr. Volarich he did not see any other doctors, and he hadn't seen any other doctors since seeing Dr. Volarich.

In *Herring v. Yellow Freight System, Inc.*, 914 S.W.2d 816, 821 (Mo.App. W.D. 1995) the Appellate Court held: “...the fact that (the claimant) was refused work under Yellow Freight's modified work program supports the Commission's finding he was totally disabled.”

In this case, the claimant gave undisputed testimony that upon his attempt to return to work on January 17, 2005 under the authorized doctor's (Dr. Brown's) work restrictions of one-handed work duty, the employer asked him to leave work and gave him instructions not to return until he was fully recovered. The evidence reveals, it is found, that Dr. Brown then provided treatment for the work related injury, and on January 31, 2005 reported findings of improvement in regards to the work related injury and released the claimant from treatment for the injury sustained in the January 11, 2005 and gave the claimant a full work release at that time. It is found that the evidence reveals that subsequent to January 31, 2005, the claimant received no further treatment for the January

11, 2005 work related injury, and no medical evidence indicates further treatment with improvement for the work related injury subsequent to the release from treatment by Dr. Brown on January 31, 2005. It is found that there is competent and substantial evidence establishing that the claimant was at a temporary total disability status in regards to his January 11, 2005 work related injury from January 17, 2005 up to his release from treatment and return to full duty on January 31, 2005. Consequently, it is found that the employer/insurer is liable for temporary total disability benefits for the period of January 17, 2005 through January 31, 2005, or for 2 1/7 weeks. This would be: 2 1/7 weeks x \$301.89 = \$646.91.

#### ISSUE: Liability of past medical expenses

In *Blackwell v. Puritan-Bennett Corp.*, 901 S.W.2d 81, 84 -85 (Mo.App. E.D. 1995), the Court of Appeals noted:

"§ 287.140 RSMo.1994 provides:

In addition to all other compensation, 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. If the employee desires, he shall have the right to select his own physician, surgeon, or other such requirement at his own expense.

The intent of the statute is obvious. An employer is charged with the duty of providing the injured employee with medical care, but the employer is given control over the selection of a medical provider. It is only when the employer fails to do so that the employee is free to pick his own provider and assess those costs against his employer. Therefore, the employer is held liable for medical treatment procured by the employee only when the employer has notice that the employee needs treatment, or a demand is made on the employer to furnish medical treatment, and the employer refuses or fails to provide the needed treatment. *Hawkins v. Emerson Electric Co.*, 676 S.W.2d 872, 880 (Mo.App.1984)."

In this case, it has been determined that the competent and substantial evidence, with the stipulation between the claimant and the employer/insurer, that as a result of the January 11, 2005 work related accident the claimant sustained injury to his right elbow. There was an issue as to whether or not the claimant's right shoulder injury was medically/causally related to the January 11, 2005 work related accident, and it has been determined in this Award that the January 11, 2005 work related accident was not a substantial cause in a right shoulder injury. There is no dispute that the claimant was sent to Dr. Brown for an evaluation in regards to injuries sustained in the January 11, 2005 work related accident. Dr. Brown's records indicate that he recommended and referred the claimant for an MRI of the right elbow. Exhibit No. E is the report of the MRI of the right elbow performed on January 24, 2005; the report indicates that Dr. Brown was the referring doctor. Exhibit No. E was described to have attached to the January 24, 2005 MRI report a bill from Imaging Partners for the radiological study performed on January 24, 2005; the amount charged for the January 24, 2005 services was \$2695.00. It is found that the employer/insurer is liable for the bill for the January 24, 2005 MRI ordered by the authorized treating doctor, Dr. Brown.

It has been determined in this Award that the treatment given by Dr. Ritchie to the claimant was in regards to the claimant's right shoulder, and that the right shoulder injury was found not to be caused by the January 11, 2005 work related accident. Dr. Ritchie's record indicated that he saw the claimant on January 31, 2005 and February 14, 2005 as well as prescribed two periods of physical therapy at ProRehab in February 2005. Exhibit No. G is an itemized bill from ProRehab referable to therapy rendered to Michalik in February 2005. Exhibit No. I is an itemized bill from Orthopedic Specialists/Dr. Ritchie referable to the treatment rendered Michalik on January 31, 2005 and February 14, 2005. The parties stipulated that the bills reflected in Exhibit Nos. G and I were related to the shoulder, and that the employer/insurer was disputing liability as to the shoulder. In light of the determination that the shoulder is not a compensable injury, any treatment on account of this injury is found not to be compensable; the employer/insurer are found not to be liable for the bills of ProRehab and Orthopedic Specialists/Dr. Ritchie reflected in Exhibit Nos. G and I.

The claimant also offered into evidence bills for treatment at St. Anthony's on January 11, 2005 and on

January 14, 2005. The claimant testified about his accident at True Manufacturing on Tuesday, January 11, 2005 in the early afternoon. I then went to the people in my work station and reported the injury to Jeremy and Chris, the claimant said, and then I went straight from them to the foreman on the line. Michalik agreed that he had requested treatment. Eventually that afternoon I was taken by somebody from human resources (HR) to BarnesCare in Fenton, Michalik stated. At BarnesCare they did x-rays of my elbow and they came back and told me that there was nothing that they could see in the x-rays that was wrong, the claimant stated, and then they said that they were closing and I had to leave. Michalik testified that he asked the HR rep on the way up if I could have him bring me back, and the HR rep said he couldn't because he would be going on overtime. Eventually I called my fiancée and she picked me up at BarnesCare, Michalik testified. At that point I was still feeling worse, Michalik stated, because the doctors at BarnesCare wouldn't look at my entire arm. So I went straight from there to St. Anthony's on Tesson Ferry, Michalik said. At St. Anthony's, first I reported everything to a nurse from my wrist to my elbow to my shoulder, Michalik testified, then I was seen by a doctor and they took x-rays. I left the emergency room at that point and went home, the claimant said. I reported for work the next day, Wednesday, Michalik testified, and I worked on Thursday. While working my arm was still hurting, Michalik said. Later that night I was still having the pains, but then that's when I had more pain in my collarbone which now it was protruding, and I was having more pain from my arm up into my collar; you could see it sticking out, Michalik stated. He agreed that he went back to St. Anthony's that night, January 14<sup>th</sup>, and they did some more x-rays and prescribed medication. And they told me that I needed to see a specialist, Michalik testified. I went to work the next day, the 15<sup>th</sup>, a Friday, and I went to BarnesCare, Michalik testified. The doctor was very upset that I went to St. Anthony's, the claimant stated. He also wanted to observe my arm, but I needed help taking off the sling, Michalik stated, he refused to help me take off the sling. Then that's when he cleared me of his specialties, and then he suggested also a specialist, Dr. Brown, Michalik testified. I think I went back to work that day after I was at BarnesCare, Michalik stated, but I don't know if it was later in the day that I went to Barnes and then I think I went home. He agreed that he went to see Dr. Brown on the 17<sup>th</sup>, which was a Monday. Michalik was asked had he ever asked anybody at True to have somebody look at his shoulder. Well, from the time of the accident I reported everything to try and get treatment for that and they refused, Michalik answered.

On cross examination by the employer/insurer, Michalik was asked if he had made any stops between BarnesCare and St. Anthony's. No, I went straight to St. Anthony's, Michalik answered. I probably did not talk to anyone other than my girlfriend on the phone from the time I got to BarnesCare to the time I got to St. Anthony's, he said. Michalik agreed there were no phone calls to True Manufacturing. He was asked if he felt like BarnesCare had rushed him out the door, and Michalik answered - Yes. He agreed that he felt like they should have done an x-ray on his shoulder at that time. The claimant was queried - If you were ushered out the door as you said, why not call True Manufacturing to say - Hey, they're running me out, what do I do? Because I needed medical treatment because it was still hurting, Michalik responded, I mean, if they were closing, the hospital was the next closest place. Michalik agreed that he had said that when he arrived at St. Anthony's he saw a nurse there first then he saw a doctor. He stated that he then saw probably a technician in the x-ray room. Michalik agreed that the x-rays they did at St. Anthony's were for his wrist and elbow, and no x-ray of his shoulder was done. I did not feel like I was rushed at St. Anthony's, the claimant testified. It was noted that Michalik had just testified that he thought BarnesCare should have done an x-ray on his right shoulder; Michalik was queried - If you went all the way to St. Anthony's, why didn't you raise it with somebody then? If the doctor didn't see -- and with the pain still and then also not having my collarbone protruding and more pains there; I would say that's probably why, Michalik answered. During cross examination, Michalik agreed that he returned to work the following day on January 12, 2005, and did not go to the emergency room that day or see any other doctors. I worked the full day the following day, January 13, 2005, Michalik said. He agreed that after his work shift he went home, and was home at seven o'clock. Michalik agreed that he remembered that he arrived at St. Anthony's in the evening though, and was discharged early in the morning about one o'clock on January 14, 2005. Michalik was asked if he had talked to anyone at True Manufacturing about his trip to the emergency room on January 13/14, 2005. When I returned with medical records from the 11<sup>th</sup>, he responded. I didn't call them before and say - hey, I'm in agony, I've got to go to the emergency room, Michalik admitted. Michalik stated that he remembered telling the emergency room at St. Anthony's on January 13/14, 2005 that he felt a pop in his shoulder that evening, and he remembered telling the same thing to BarnesCare the following morning. The claimant was queried - And that's what prompted you to go to the St. Anthony's emergency room on January 13/14, 2005; correct? With the pain in my shoulder, yes, Michalik answered.

It is found that the claimant admits in his testimony that after the employer/insurer had provided treatment

for his work related injuries at BarnesCare on January 11, 2005, he did not request additional treatment from the employer/insurer and went to St. Anthony's that same evening on his own. The BarnesCare record of January 11, 2005 (See, No. C) noted that a follow-up appointment was scheduled for January 14, 2005. The claimant testified that he worked on January 12, 2005 and January 13, 2005, but gave no indication the he had advised or requested from his employer permission to go to or return to St. Anthony's prior to returning to St. Anthony's the late evening/early morning of January 13/14, 2005. The evidence reveals that the claimant also did go to the follow-up appointment at BarnesCare on January 14, 2005. It is found that the claimant chose to exercise his right under Section 287.140.1 RSMo of: "If the employee desires, he shall have the right to select his own physician, surgeon, or other such requirement at his own expense." Consequently, any bills as a result of the treatment at St. Anthony's are found not to be compensable, and these bills are the following: 1) No. B, the itemized bill from St. Anthony's Medical Center referable to Michalik for the two visits to St. Anthony's Medical Center on January 11, 2005 and January 14, 2005; 2) No. J, the bill from South County Radiologists referable to treatment rendered at St. Anthony's Medical Center on January 11, 2005 to Mr. Michalik; and 3) No. K, the bill from South County Radiologists referable to the January 14, 2005 emergency room visit by Michalik to St. Anthony's Medical Center.

It has been determined above that bills as a result of treatment rendered by Dr. Ritchie in January and February 2005 and bills as a result of treatment at St. Anthony's Medical Center on January 11, and 13/14, 2005 are not compensable. Thus, also found not to be compensable are prescription bills marked as Exhibit No. L which were described as a series of pharmaceutical bills referable to Michalik's treatment from various physicians at the emergency room at St. Anthony's Hospital and from Dr. Ritchie.

#### ISSUE: Nature and extent of permanent partial disability

By stipulation between the claimant and the employer/insurer, as well as findings in this Award, it has been determined that as a result of the January 11, 2005 work related accident the claimant sustained injury to his right elbow. Only one medical opinion in regards to permanent partial disability was offered, and that was the opinion of Dr. Volarich. Dr. Volarich opined:

Pertaining to and as a direct result of the injuries sustained on 1/11/05 while in the employ of True Manufacturing, it is my opinion that the following industrial disability exists that is a hindrance to his employment or reemployment:

1. There is a 20% permanent partial disability of the right upper extremity rated at the shoulder girdle due to the strain/sprain injury and development of myofascial pain in the trapezius muscle. This rating also accounts for the sternoclavicular joint strain, all of which contribute to cause pain, mild loss of motion, and weakness in the dominant arm.
2. Disability referable to the right elbow and right wrist is not found since those symptoms resolved.

A claimant must show not only causation between the accident and the injury but also that a disability resulted and the extent of such disability. *Smith v. National Lead Co.*, 228 S.W.2d 407, 412(4) (Mo.App.1955). While proof of cause of injury is sufficiently made on reasonable probability (*Smith v. Terminal Transfer Company*, 372 S.W.2d 659, 664(7) (Mo.App.1963)), proof of permanency of injury requires reasonable certainty. *Davis v. Brezner*, 380 S.W.2d 523, 588(6-- 9) (Mo.App.1964). Whatever may be the quantum of proof the law imposes on a given issue in a compensation case, however, such proof is made only by competent substantial evidence and may not rest on surmise or speculation. *Griggs v. A. B. Chance Co.*, 503 S.W.2d 697, 703 (Mo.App. 1973). A workers' compensation claimant does not carry his burden of proving extent of his disability where a physician's opinion does not provided a rating of disability for the compensable injury. See, generally, *Meyer v. Superior Insulating Tape*, 882 S.W.2d 735, 740 (Mo.App. E.D. 1994).

In this case, there is no medical opinion as to any permanent partial disability in regards to the compensable right elbow and wrists injuries. Therefore, it is found that the claimant has not met his burden of proving the extent of his disability as to the compensable injury, and thus a permanent partial disability benefit is denied.

## SUMMARY OF THE EVIDENCE

Edward Lee Michalik, the claimant, testified that his date of birth is June 10, 1980. He was asked his height and weight, and Michalik answered that he is five one and a half inches tall and weighs 155 pounds. Stating that this is not his usual weight, the claimant said I've been fluctuating to about 163 pounds. I am right handed, Michalik said. I am not married, the claimant stated. testifying as to his education, Michalik stated I have five years of college; I have two years of an Associate's Degree in Fire Science Technology and then I also had a couple years in elementary education. I am no longer in school he said.

Agreeing that he has been employed by True Manufacturing (True), Michalik testified that he first started there a little bit before Thanksgiving of 2004 at the Pacific plant. He agreed that he had the same job the whole time he was at True. Unless I did overtime, he added, then I would change jobs. And then also there was a girl that was sick one day so I did switch one day, Michalik further noted. My basic job at True was that I would put big coolers together, the claimant stated. I would push them off the assembly line onto a box and push them over to an area where I would work, he said. Then I would walk another fifteen feet, grab doors, take those back over to the box across the assembly line, and I would grab a drip pan that had already been put together before that, and then would put the drip pan on the one side, screw that in with four screws, he stated. Each door had four screws, so eight screws total, Michalik testified, first I would put the front hinges on and then I would put the rear hinge -- that's the one that caused the accident.

Michalik agreed that he had had an accident at True Manufacturing on Tuesday, January 11, 2005 in the early afternoon. My usual hours when I worked then, I think, was 7:00 a.m. to 3:30 p.m. the claimant said, unless I did overtime. Explaining how he had hurt himself, Michalik testified the day of the 11th I was taking the doors over and put them on the cooler and as I was drilling. I had the drill about head height, and as I was drilling into the cooler, the drill caught and twisted my whole arm, Michalik said. That's when I went to the people in my work station and reported the injury to Jeremy and Chris, the claimant said, and then I went straight from them to the foreman on the line, which was Joe. At that time the part of my body that would have been my whole right arm was from my elbow to my wrist up into my shoulder, Michalik said. He agreed that he had requested treatment. Eventually that afternoon I was taken by somebody from human resources to BarnesCare in Fenton, Michalik stated.

At BarnesCare my complaints to the doctor were of the whole arm, Michalik stated, the wrist up into the elbow up into the shoulder. They did x-rays my elbow and they came back and told me that there was nothing that they could see in the x-rays that was wrong, the claimant stated, and then they said that they were closing and I had to leave. When asked how he had gotten back to work or to his car, Michalik answered I asked the HR rep on the way up if I could have him bring me back, and he said he couldn't because he would be going on overtime. Also I asked if I could get a cab, Michalik stated, they didn't know of a cab company that could take me. So eventually I called my fiancée who lives in DeSoto, which is about an hour's drive, and she picked me up at BarnesCare. At that point I was still feeling worse, Michalik stated, because the doctors at BarnesCare wouldn't look at my entire arm. So I went straight from there to St. Anthony's on Tesson Ferry, Michalik said. At St. Anthony's, first I reported everything to a nurse from my wrist to my elbow to my shoulder, Michalik testified, then I was seen by a doctor and they took X-rays while I was there. Then they also prescribed a sling and medication, he said, and then one-handed duty to my left hand. I left the emergency room at that point and went home, the claimant said.

The next day, a Wednesday, I reported for work, and at first I was putting screws in this little rubber grommet, Michalik said, I did that for maybe 30 minutes. Then they changed my job to sweeping all day with the left hand, he said. I worked on Thursday with my sling on, Michalik stated, I worked for probably two and a half hours. Barry and an HR rep came up to me and said they had called St. Anthony's and St. Anthony's told them that I needed to remove the sling, that I didn't have to work with it, Michalik said, so I did what they told me, but it still hurt so I held it at where the sling would hold my arm because it was still hurting. Later that night I was still having the pains, but then that's when I had more pain in my collarbone which now it was protruding, and I was

having more pain from my arm up into my collar; you could see it sticking out, Michalik said. The claimant agreed that he went back to St. Anthony's that night, January 14<sup>th</sup>. At St. Anthony's they did some more x-rays, and they prescribed medication that day and they also told me that I needed to see a specialist, Michalik testified.

He was asked if he had reported to work the next day, the 15<sup>th</sup>, a Friday. I went to work, I went to BarnesCare, Michalik responded. The doctor was very upset that I went to St. Anthony's, the claimant stated. He also wanted to observe my arm, but I needed help taking off the sling, Michalik stated, he refused to help me take off the sling. Then that's when he cleared me of his specialties, and then he suggested also a specialist, Dr. Brown, Michalik testified. I think I went back to work that day after I was at BarnesCare, Michalik stated, but I don't know if it was later in the day that I went to Barnes and then I think I went home. He agreed that he went to see Dr. Brown on the 17<sup>th</sup>, which was a Monday. Dr. Brown examined my wrist and my elbow, he left the room, and he said he could not examine my wrist anymore, Michalik stated. But also I was real pale that day so I couldn't get x-rays that day, so they sent me home, the claimant said. Actually I had to wait out in the parking lot for a while before I could drive, he said.

Michalik was asked had he ever asked anybody at True to have somebody look at his shoulder. Well, from the time of the accident I reported everything to try and get treatment for that and they refused, Michalik answered. He was asked if Dr. Brown had ever looked at his shoulder. Dr. Brown said he was not a specialist in shoulders, Michalik responded. I told Dr. Brown about my shoulder, Michalik said, I even asked him to recommend a specialist. Dr. Brown said there was people in that building, but he wasn't going to recommend one, Michalik stated. He agreed that he went to see Dr. Brown a couple of times. Any restrictions Dr. Brown had on me was still to the one arm, Michalik stated, I could still do stuff with the left, but he did not give me full recovery on the right arm.

I reported to work after I saw Dr. Brown on January 17<sup>th</sup>, Michalik stated, and I worked for a little bit, and then they asked me to leave. I asked him for a written documentation why I would have to leave and they called the cops and had me escorted out, Michalik said. He agreed that that was because of his one-handed duty. The claimant was asked if he had been given instructions on when he was supposed to return. They told me I could not return until I was fully recovered, Michalik answered, that I needed to call every single day in between 6:30 and 7:00 before my shifts.

Michalik agreed that Dr. Brown had an MRI done of his elbow. Dr. Brown released me from my elbow, Michalik testified, there was no more, I guess, medication or whatever treatment that he could do to my elbow, but that I needed to go see another specialist for my shoulder. Agreeing that he had asked a friend and got a name of an orthopedic doctor that did shoulders, Michalik stated that it was Dr. Ritchie at Des Peres Hospital. It was approximately January 31, 2005 when I saw Dr. Ritchie, Michalik agreed. Dr. Ritchie did treatment, Michalik said, medication, and then also that's when I got the physical therapy. The treatment was more x-rays, and I guess range of motion he was checking and then medication, the claimant said. Then also he gave me I think it was a steroid base to help get my shoulder back, Michalik said. He agreed that he was prescribed physical therapy, and it was at ProRehab per Dr. Ritchie's prescription. Dr. Ritchie put me off work, Michalik said, and authorized me to go back to work, I think, on February 28<sup>th</sup>.

Michalik was asked if he had gone back to work at True after this. No, he answered, I gave them a letter of resignation because I had a family to support and I didn't think it was going to be good, I guess, rapport because they told me I was going to be fired in four weeks after I reported the injury.

Physical therapy was in Festus, Missouri, Michalik agreed. Explaining what they did for him in physical therapy, Michalik stated it was a lot of stretching. They did electric shock therapy, massages, he stated, and I also did some weight-bearing lifts. I also told them that one of the requirements at True is that you have to lift 65 pounds so I wanted to build up to the 65 pounds, but also having the pains it was very hard to get that done, Michalik noted.

He was asked if he had continued to have problems with his right arm and shoulder when they were done with him at physical therapy. Yes, Michalik answered, sleeping, shaving, and then just doing my every day jobs that I would have done before I got injured.

Today I still have problems with my right arm and shoulder that I relate to the accident of January 11, 2005, Michalik stated. Agreeing that he works now, Michalik stated that he works at Lowe's in Festus, Missouri. He was asked if the injury he sustained on January 11, 2005 had any impact on how he does his job at Lowe's. I have to get extra help with loading products, Michalik answered. I drive mostly the forklift that I have other people load, he said, but if there's not people there, it takes me more time to load it. He was asked to describe what kind of restrictions he has on lifting because of his shoulder. I have partners helping and then just I've got to watch what I lift by myself, Michalik responded, I don't lift anything over 65 pounds. He was asked if he takes any medication now for his right shoulder and arm. I do at night probably two to three times a week to help me sleep; Ibuprofen, Michalik answered. The claimant was asked to discuss what things he has trouble doing now that he didn't have trouble doing with his right arm and shoulder before the accident. I used to do landscaping and I used to get extra money doing that, he said. It takes a lot longer to do the job, Michalik stated, I have to time it out so I don't injure myself or cause more pain to my shoulder from the injury at True. Discussing the kind of pain he has, Michalik stated I get it in my wrist and my elbow up into my shoulder, and it probably is a level six or a seven. If I do vigorous work at night the pain is really bad, so I would say it's probably a seven at night, Michalik said, and during the day it's probably a one or a two but the pain is still there. He agreed that he was having pain right then at the hearing. The pain is located in the whole entire arm, Michalik stated, the wrist, the elbow up into the shoulder. No. I'm not currently seeing a doctor for my arm, Michalik said, I'm trying to find actually a personal physician. He was asked if there were movements with his right arm and shoulder that are more difficult now than before the accident. Lifting heavy objects over my head, Michalik answered.

Michalik agreed that the bill for physical therapy is completely unpaid. The bills from St. Anthony's I had to pay in part out of my own pocket and part from some group insurance I had, the claimant agreed. It was the same with Dr. Ritchie, Michalik agreed, part paid out of my own pocket and part from group insurance, as well as the bills from the radiologists. Michalik agreed that with respect to the pharmaceutical bills, those reflect the amounts he actually paid out of his own pocket. Michalik agreed that all of these bills that he described are related to his accident of January 11, 2005.

Michalik testified about things that he has trouble doing at home now that he didn't have trouble doing before the accident because of his injury of January 11, 2005. Shaving is a problem, he said, because I can't shave with a normal razor. I have to use an electric because I get razor burn really bad, he said. And then holding it and then shaving the bottom part of my neck, Michalik said, I had to have my fiancée do it. I have a new baby now, Michalik stated, and just carrying the diaper bags and stuff, they are heavy.

To the best of my knowledge I didn't have any problems with my right arm and shoulder before January 11, 2005, Michalik said.

On cross examination by the employer/insurer, Michalik was asked what time did he get to BarnesCare on January 11, 2005. It was probably 20, 30 minutes before they closed, he answered, I think they closed at 4:30 or 5:00, I don't know. Michalik stated that he would not have a reason to doubt it if the medical records from BarnesCare on January 11, 2005 showed an arrival time at 3:41. When queried if he had any reason to doubt it if the medical records from BarnesCare on January 11, 2005 showed a departure time or discharge time of 4:37, Michalik responded - I don't know. They shoed me out the door and locked the door, so if that's what they wrote down, then yes, he stated. He was asked what time did he call his girlfriend to come pick him up. As soon as I got there, Michalik answered, and in HR's car I called because I was asking him on the way up on how to get a ride back. My girlfriend arrived I think 20 or 30 minutes after they pushed me out the door, Michalik said. He agreed that if the records reflected 4:37, she showed up right about five o'clock. From Fenton to St. Anthony's it took me, I would say, probably 25 to 30 minutes, Michalik said. He stated that he would have no reason to doubt the arrival time if the medical records from St. Anthony's reflected an arrival time of 6:14. He was asked what accounted for the other 45 minutes. If there was traffic, then that would be one; if I sat in the waiting room to find out where I needed to sign in, that would account for some time too, Michalik answered. He was asked if he had made any stops between BarnesCare and St. Anthony's. No, I went straight to St. Anthony's, Michalik answered. I probably did not talk to anyone other than my girlfriend on the phone from the time I got to BarnesCare to the time I got to St. Anthony's, he said. Michalik agreed there were no phone calls to True Manufacturing. He was asked if he felt like BarnesCare had rushed him out the door, and Michalik answered - Yes. He agreed that he felt like they should have done an x-ray on his shoulder at that time. The claimant was queried - If you were ushered out the door as you said, why not call True Manufacturing to say - Hey, they're running me out, what do I do? Because I

needed medical treatment because it was still hurting, Michalik responded, I mean, if they were closing, the hospital was the next closest place. Michalik agreed that he had said that when he arrived at St. Anthony's he saw a nurse there first then he saw a doctor. He stated that he then saw probably a technician in the x-ray room. Michalik agreed that the x-rays they did at St. Anthony's those were for his wrist and elbow. He was queried - They didn't do an x-ray on your right shoulder? But I complained of the right shoulder, Michalik responded. The claimant then agreed that they didn't do an x-ray on his right shoulder. Michalik stated that if the medical records indicated that the x-rays came back normal, he would agree that that was his understanding. Michalik was asked, during cross examination, if anyone had ever told him after January 11, 2005 that he had any broken bones in his wrist, elbow or shoulder. No, he answered. He was asked what time was he discharged from St. Anthony's on January 11, 2005, and Michalik answered - I have no clue. I did not feel like I was rushed at St. Anthony's, he said. It was noted that Michalik had just testified that he thought BarnesCare should have done an x-ray on his right shoulder; Michalik was queried - If you went all the way to St. Anthony's, why didn't you raise it with somebody then? If the doctor didn't see -- and with the pain still and then also not having my collarbone protruding and more pains there; I would say that's probably why, Michalik answered. The claimant agreed that it would be fair to say that on January 11, 2005 he saw two doctors that evening, and saw two doctors/technicians in the x-ray room that evening - one at Barnes and one at St. Anthony's - and none of these doctors did an x-ray on his right shoulder that first day.

During cross examination, Michalik agreed that he returned to work the following day on January 12, 2005, and did not go to the emergency room that day or see any other doctors. I worked the full day the following day, January 13, 2005, Michalik said, 7:00 to 3:30. I don't think I worked any overtime that day, he stated. He agreed that after his work shift he went home, and was home at seven o'clock. Michalik was queried - If the St. Anthony's records reflect an arrival time on January 13, 2005 of about 10:30, does that sound about right to you? Yes, the claimant answered. Michalik then testified - No, it would be the 14th that I went to the hospital. The claimant was shown a document marked as Employee's Exhibit A and described as the medical records from St. Anthony's; it was noted that in a nursing history assessment, page 2 of 2, it mentioned date of service as January 14, 2005; Michalik was asked if he saw at the bottom of the form where it said January 13, 2005, and he answered - Yes. Michalik was further queried if he also saw on Exhibit A where it said time as 22:35, and Michalik answered - Yes. He was asked if he had arrived at the emergency room the evening of January 13, 2005, and Michalik responded - No. The claimant was further queried if he was disputing the medical records if the medical records indicated that on January 13, 2005 he was present at St. Anthony's at 22:35. No, I'm not disputing the medical records, Michalik answered, but she could have got the date wrong. He agreed that he remembered that he arrived in the evening though, and was discharged early in the morning about one o'clock. The claimant was queried - So wouldn't it seem logical that if the records reflect 22:35 on January 13, that you arrived in the evening and you were discharged at about one o'clock the following morning? That would be the 14th, yes, Michalik responded. He stated that if the record indicated that he presented at the emergency room on the 13<sup>th</sup> at about 10:35 in the evening, then he'd agree. Michalik was asked if he had talked to anyone at True Manufacturing about his trip to the emergency room on January 13, 2005. When I returned with medical records from the 11<sup>th</sup>, he responded. I didn't call them before and say - hey, I'm in agony, I've got to go to the emergency room, Michalik admitted.

Michalik stated that he remembered telling the emergency room at St. Anthony's on January 13, 2005 that he felt a pop in his shoulder that evening, and he remembered telling the same thing to BarnesCare the following morning. The claimant was asked if, specifically at Barnes, did he remember telling them that he felt a pop in his shoulder when he was taking his shirt off the night before. The night before, yes, Michalik answered, when I was getting ready for bed. He agreed that when he was getting ready for bed the night before on January 13, 2005 he felt a pop in his shoulder. He was queried - And that's what prompted you to go to the emergency room; correct? With the pain in my shoulder, yes, Michalik answered. Agreeing that it was the second trip to the emergency room at St. Anthony's is where they did the x-ray of his right shoulder, Michalik added - the same day that True asked me to take off my sling. The claimant stated that he has not had any other x-rays to his right shoulder. I think it was just that one that night, he agreed. I think I did one at the specialist, Dr. Ritchie, Michalik added. He was asked if there had been any other trips to the emergency room other than these two that they had talked about since the time of the accident. No, he answered. To get medical records, yes; but to return for treatment, no, Michalik added.

During cross examination, it was noted that the St. Anthony's records reflected that Michalik's primary care physician was Dr. Schwarze, and Michalik responded that that probably was right. The claimant was asked if he

remembered if the first time that he went to the emergency room on January 11, 2005 there was a reference to a prior admission date of January 5, 2005. Explaining why he had gone on January 5, 2005, Michalik stated I was attacked. Michalik then remembered that it might have been at Urgent Care for the 5th. I was off sick for a couple of days, he said. He was queried - And that's why you went to the emergency room in January of '05? Because I don't have a primary physician, Michalik responded. The claimant stated that he did not know why they would have listed Dr. Schwarze as his primary care physician. When asked if Dr. Schwarze was ever a primary care physician, Michalik answered - He might have been the person that I've seen at the hospital. He was asked if he had ever seen Dr. Schwarze for his right wrist, elbow, or shoulder. If that's the person that I saw on the 11th, then yes; but (otherwise) no. I have not seen Dr. Schwarze as a primary care physician for any reason, Michalik said.

Michalik was queried, during cross examination, wasn't it correct that the MRI that he had was done on his elbow. I was told I was going to get a wrist and elbow, but when I got the MRI, they changed it to the elbow, the claimant answered. He agreed that it was his understanding that the MRI on his elbow was normal. I think this was at the request of Dr. Brown that that the MRI of the elbow was done, Michalik agreed. He agreed that after Dr. Brown reviewed the MRI, the doctor didn't recommend any further treatment on his elbow. Michalik agreed that no doctor has recommended surgery on his right shoulder. The claimant was queried - Did you tell Dr. Brown that you didn't notice pain in your right shoulder until January 13, 2005? No, I reported the pain from the 11<sup>th</sup>, Michalik answered. The claimant was again queried specifically as to what he had told Dr. Brown. That I had pain from my wrist to my elbow up into my shoulder radiating, Michalik responded. Michalik was queried if he would take exception if Dr. Brown's records reflected a comment that he hadn't noticed the right shoulder pain until January 13, 2005. No, Michalik answered, but the doctor might have not just -- not heard me or didn't write it down. The claimant was asked if Dr. Ritchie had asked him to return to see the doctor after his physical therapy was finished. No, he did not, Michalik answered. When asked how many physical therapy visits did he have, Michalik responded - A bunch; I don't know offhand. He was asked if had gone back to see Dr. Ritchie after he was done with physical therapy. Physical therapy, no, Michalik answered. I did make a phone call to him, Michalik added. He was queried - At that time he recommended no further medical treatment; correct? No, Michalik answered, he said if it got worse, go see another doctor, and that's when I saw the other doctor, Dr. Volarich I think. Agreeing that his attorney sent him to Dr. Volarich for an evaluation, Michalik stated that that would be the doctor that he asked about his pains then too. Michalik agreed that from the time he was discharged by Dr. Ritchie and the time he saw Dr. Volarich, he didn't see any other doctors, and he hadn't seen any other doctors since seeing Dr. Volarich. The claimant was queried, isn't it correct that he is not currently under any physical restrictions. Besides the weight limits, no, Michalik answered. He was asked - What weight limits, who put a weight limit on you The lifting over 65 pounds, Michalik answered. He was again asked which doctor put this restriction on him. I don't think they put it in the medical records, Michalik responded, but that's what I described to Dr. Ritchie when I left to go to ProRehab was to lift over 65 pounds. Michalik agreed that that was something that he had told them, that he needed to be able to lift 65 pounds to go back to True. Michalik was further queried - But there wasn't a doctor that specifically said you should limit your lifting to less than 65 pounds? I should take it easy, yes, Michalik responded. He was asked which doctor had said that he should take it easy. Well, with the other ones with the pain still radiating and causing a little bit of problems, I mean I'm not going to go jump back and go in the weight room and lift 200 and something pounds, Michalik replied.

Michalik was queried, during cross examination, if he remembered describing to Dr. Volarich that his job at Lowe's does not require him to perform any physical labor. I told the doctor that I still have to load stuff, yes, but mostly I was on the forklift at the time that I saw him, Michalik answered. I was also doing a lot of paperwork too, he added. Michalik agreed that he is able to use equipment to aid himself, and he is able to have other people assist if something is too heavy. He was asked his position at Lowe's. I'm basically the assistant manager in the outside garden; they called it a team leader, Michalik answered. The most number of employees I have supervised at one time I think was six, he said. He agreed that essentially he's in a managerial position to the extent that he's directing these people around to lift and carry things. The claimant was asked his dates of employment at Overcamp Yardscaping. I worked there three and a half years, he answered, maybe 2001 to I guess right before I started at True. The claimant agreed that he saw Dr. Volarich in November of 2005. He was queried - What if Dr. Volarich's report says, "he also tells me he has also worked at Overcamp Yardscaping part-time from the present". Well, I did do -- I was on the books there, but I didn't have any extra work that was done that week, the claimant responded. I haven't done any extra stuff, but I was still on his payroll but I didn't receive any checks, Michalik further stated. He was asked when was the last time that he did any work at Overcamp. When I started working at Lowe's I ran some equipment for him for probably eight hours, I think, one day, Michalik

answered. He was queried if he had only worked for him one day. It probably had been a couple of days, Michalik answered, I don't know offhand. It was noted that Dr. Volarich's report indicated that at Overcamp Michalik built retaining walls, set the base, ran equipment, and shoveled; Michalik was asked if he had done all that in one day. No, not that day, he answered. I ran the equipment, Michalik said, that would be, I guess, the jobs that I would do at Overcamp. Those would be the jobs, he stated, and not every day did we set walls or did base, or we would run equipment some days and do walls some days, mulch some days. Michalik was asked - Since you started working at Lowe's, have you worked at Overcamp any more than just one day? Recently, no, Michalik answered. I started at Lowe's I think March 14th, 2005; I probably worked maybe six days. He was asked if he had held any other jobs since he'd been employed at Lowe's. No, he answered. I have not missed any time from work since I started working at Lowe's, Michalik said. Just recently having the baby, yes, he added.

During cross examination, Michalik was asked if he was currently taking any prescription medication for his wrist, elbow, or shoulder. Over the counter; no; but the ibuprofen at night, yes, he answered.

It was noted, during cross examination, that Michalik had mentioned he had five years in college; Michalik was asked what kind of college courses did he take. I took fire science for the first couple years, the claimant answered. Well, actually for a year and a half I took engineering degrees in chemistry and science and math, he testified, and then I changed my degree into fire science technology. I took I think two to three years on that, and then I took almost a year of elementary education, he said. It was noted that Michalik had testified earlier about the landscaping, that he used to do landscaping but it takes longer to do the job; Michalik stated that he remembered saying this. He was asked what time frame was he referencing then, when did he do this landscaping work. Around my house or helping friends out, Michalik answered, or I guess when I worked those six days with Bill; I couldn't really do the walls because I would have to take breaks before I could work almost eight hours constant. Now I would have to work an hour or two and then take a break, he said. Michalik agreed that he had testified earlier that he has difficulty shaving, that he uses an electric because he breaks out. He was queried - So that doesn't have anything to do with your wrist elbow, or shoulder? Well, holding the electric shaver instead of a little razor, yes, he answered. He agreed that he was not saying that the breaking out had anything to do with it. Michalik agreed that he is able to shave with his left hand, adding - Then also the help by my fiancée.

During cross examination, Michalik agreed that the morning of January 11, 2005 he was disciplined for working too slow. Yes, I was reprimanded, he testified, they wanted me to speed up. I sped up and then that caused the injury, Michalik stated. He was asked how the reprimand had made him feel. That I needed to speed up, Michalik responded. They also told me that if I continued my job to do good, that they might have another job for me to do, he further stated.

On redirect examination, Michalik agreed that he went to St. Anthony's Hospital on January 11, 2005. He was again directed to Exhibit A, and asked if it reflected that he told the nurse there that he had complaints of pain to his right wrist, right elbow and right shoulder. Yes, Michalik answered. He agreed that this was January 11<sup>th</sup>, the date of the accident.

Medical records in evidence included the following:

Records from BarnesCare (No. C) indicated that Michalik was treated at the facility on January 11, 2005, with a check-in time of 3:41 p.m. and a discharge time of 4:37 p.m. Michalik's chief complaint was noted to be: right elbow pain. Michalik's history was: "I was drilling with an air powered wratchet and hurt my right elbow." It was noted that the injury had occurred on that date, January 11, 2005 that afternoon. A Physician's History was also in the Patient Chart:

Patient states he was using an air wrench, felt a pull in his right elbow. Pain is at antecubital area. Hurts to flex and extend elbow. No fall or impact injury. Says his elbow slightly "tingles", no numbness in fingers.

In the Occupational History section of the 01/11/05 Patient Chart was written: Assembly one month. The Physical Exam section included the following:

Constitution/Appearance: The patient appears well developed, well nourished in no immediate distress...

Distress: Tearful, complains of elbow pain. Holds arm flexed, shoulder adducted.

Upper Extremity (RIGHT): Arm

Surface Trauma/Changes: None

Type: Guards all motions of elbow and shoulder.

No bony tenderness.

Soft Tissue Observation:

Soft tissue swelling: No

Palpation:

Tenderness: Complains of pain with palpation of antecubital fossa...

Right hand:

Grip strength: 5/5

Neuro:

Sensory: Intact.....

The Patient Chart indicated that an x-ray of the right elbow was ordered, and the initial impression was – negative. The patient Chart indicated that treatment included medication prescribed, massage 2-3 times per day, do range of motion activities in regards to the elbow. Michalik's work status on 01/11/05 was: "Return to work with restrictions today; limit lifting/pulling/gripping to 20 lbs with right arm. The 01/11/05 record indicated that modified work was available.

Medical records from St. Anthony's Medical Center (No. A) indicated that Michalik was seen in the emergency room on January 11, 2005 at approximately 6:14 p.m. The chief complaint was noted to be: Right elbow injury. In the Notes section was written: "At work using air ratchet caught spun elbow. c/o R elbow pain." It was noted that Michalik indicated that his right elbow pain was a 10 on of a 1 – 10 scale with 10 being the worst pain. On a sheet entitled Elbow Injury Template, it was indicated that Michalik reported pain in the right elbow and right wrist; the sheet had the specific question – Involves shoulder?, and this was checked – "N". The sheet indicated a final diagnosis of – musculoskeletal strain; also indicated was that Michalik was discharged in good condition. The 01/11/05 record indicated that x-rays were taken of the right elbow and right wrist. In a 01/11/05 Nurse's Notes and Treatment Record, the following was handwritten:

1850 – Pt returns from xray. States twisted R arm while using any air powered wratchet. c/o pain to R wrist, R elbow & R shoulder. (No) deformity noted. +Radial pulse +movement & sensation to digits. Vicodin given for pain....wrist splint applied (With) sling. Discharged (with) instructions...& work excuse.....

Reports of x-rays of the right elbow and right wrist taken on 01/11/05 were in the record, and both indicated opinions of – negative.

A January 14, 2005 treatment entry was also in the BarnesCare record (No. C), and indicated that Michalik was treated at the facility on that date during the time period of 10:40 a.m. – 11:17 a.m. In the Patient Chart, it was written that Michalik's chief complaint was – right elbow pain. The patient's history was: "I was drilling with an air powered wratchet and hurt my right elbow. The date of injury was noted as: 01/11/05. An Interval History from Michalik was noted: "I left here my wrist started hurting and I went to St. Anthony's. Last night I was taking off my shirt and my shoulder popped. I went back to St. Anthony's. The pain is worse." The diagnosis was: pain right elbow, and pain right wrist. Treatment recommendations were the same, and the work restrictions remained the same. In the section Assessment and Plan in the 01/14/05 Patient Chart, the following was written:

Reports L elbow pain after using air wrench -- much muscle tightness -- advise muscle relax at bedtime/nsaid/massage -- limit heavy activity x 2 days. Then recheck. 01/14: reports worsening R arm pain -- has been seen in ER x2 also for R wrist and shoulder pain -- ROM extremely guarded -- degree of impairment is disproportionate to history of injury -- advise 2<sup>nd</sup> opinion with specialist --Theresa at True will schedule it.

The 01/14/05 Patient Chart indicated that Michalik was discharged to the care of a specialist, to be scheduled by employer.

Medical records from St. Anthony's Medical Center (No. A) indicated that Michalik was again treated in the

emergency room on January 14, 2005; it was noted that Michalik had previously been treated on 01/11/05. The record indicates that Michalik presented at the emergency room at about midnight, January 14, 2005; a Nursing Documentation Short Form in the record included the following:

2332 – Pt to ER 2424 via cart.

MIDN00 – Pt c/o pain to R shoulder. States twisted R arm using air ratchet on Tuesday. Pt initially c/o R wrist/elbow pain; now c/o R shoulder/clavicle/scapula pain. 0030 – Pt to x-ray. 0059 – Pt D/C'd in stable condition. Instructions provided (with) verbalized understanding.

In an initial document in the record, a Nursing History/Assessment sheet, the history from Michalik was noted to be: right shoulder pain, date of symptom onset - Tuesday. In the Notes section of the Nursing History/Assessment sheet was written: "Pain R wrist & elbow began Tuesday was seen in ER after having arm twisted (at) work. At 7:00 p.m. felt pop in R shoulder – made him dizzy & N – V x 1." In a Shoulder-Humerus Pain/Injury sheet in the record the emergency room physician noted the following history of present illness: "24 y old was at work on Tuesday & using an air wratchet – twisted his R arm. Pain was mostly at wrist elbow – gave wrist splint and sling." It was further indicated in the Shoulder-Humerus Pain/Injury sheet that he had had the symptoms for 2-3 days; it was noted that the pain was in the right shoulder; physical exam findings were – tenderness in the right scapula, clavicle, AC joint, rotator cuff and Gleno-humeral joint. Further indicated in the physician's sheet was that x-rays of the right shoulder and right acromioclavicular joint were both negative, (the x-ray reports were in the record). The emergency room physician's final diagnosis was – shoulder strain. An Instruction and Information sheet to the patient reflected that Michalik was discharged on January 14, 2005 at about 12:54 a.m. with instructions about his medication, to keep the right arm in a sling, and to follow up with designated referral as needed.

Medical records of Dr. David Brown, M.D. of Orthopedic Center of St. Louis (No. D) concerned the treatment and evaluation of Edward Michalik on two occasions in January 2005. At the first visit on 01/17/05, Dr. Brown noted that Michalik was referred to him by the Missouri workers' compensation insurance company for evaluation for a problem with his right upper extremity. "I have been only authorized to evaluate his right elbow", Dr. Brown noted. The doctor noted that Michalik was a right hand dominant 24 year old who had started working for True Manufacturing about a month earlier. Dr. Brown included the following in the History of Present Illness section of the 01/17/05 entry:

He states on 1-11-05 he was using a drill with an air ratchet and twisted his arm. Following that he had pain in his elbow. Later on he had pain in his wrist and then in his collarbone. He also complains of pain his shoulder. He states he went to Barnes Care, had an x-ray of his elbow and this was reportedly negative. He then went to St. Anthony's Emergency room. He was treated with a sling and a wrist brace. His current complaints are diffuse pain in his elbow, upper arm, shoulder, and collarbone area. He states it is getting worse and it is "spreading". He states he didn't notice the shoulder pain until 1-13-05.

Dr. Brown noted that Michalik's past medical and surgical history was "Unremarkable". Physical examination findings on 01/17/05 were:

On examination, Mr. Michalik is holding his arm in a guarded position with it across his torso. There is no visible abnormality on inspection. There is no bruising, no visible swelling. When I asked Mr. Michalik to actively move his arm he demonstrated minimal active range of motion. When I attempted to passively move his arm he resisted my attempts at passive motion complaining of pain. I could detect no sympathetic changes of the right upper extremity compared to the left. He has good sensation and perfusion in the digits of the right upper extremity compared to the left. He has good sensation and perfusion in the digits of the hand. Distal neurovascular function is intact. During the examination Mr. Michalik became dizzy, nauseated and he had to lie down on the exam table for some time. Grip strength was measured at 42 pounds on the right, 101 pounds on the left.

Dr. Brown wrote that a review of x-rays of eh wrist, hand, forearm and elbow revealed no abnormalities. Dr. Brown's written impression/recommendations on 01/17/05 were:

The cause of Mr. Michalik's severe subjective complaints are not clear. His examination was limited due to his over guarding of the extremity. At this point I'd recommend he undergo an MRI of the elbow, since the majority of the pain appears to be around centered around his elbow. He is also complaining of a lot of pain around the "collarbone" and his shoulder. I explained to him I am not authorized to treat the shoulder and that he should discuss this with his primary care physician. I'll see him back here after he's obtained an MRI.

Dr. Brown wrote the following opinion as to Michalik's work status in the 01/17/05 entry: "Strictly one handed work with the uninjured extremity."

The report of the MRI of the right elbow ordered by Dr. Brown was in evidence (No. E), and indicated that the study was performed by a Dr. Cizek at Imaging Partners of Missouri on 01/24/05. The findings on the MRI were:

The elbow joint is in anatomic alignment. There is no significant joint effusion. The bone marrow signal is within normal limits. There is no evidence of fracture or edema. No soft tissue mass lesions are seen. The tendons and ligaments are also intact without evidence of tear. There is not evidence of edema or epicondylitis. The bicipital tendon attaches appropriately.

Dr. Cizek's impression was: 1. Normal MRI of the right elbow.

Dr. Brown's record (No. D) indicated that he again saw Michalik after the MRI on 01/31/05. The doctor wrote that Michalik had undergone an MRI of his right elbow on 01/24/05 and this was normal. Michalik's complaints at that time were noted to be: still having pain in his upper arm, shoulder and around his collarbone; occasionally, the pain radiates down the arm; he has "cracking" in his shoulder, occasionally his elbow; and he denies any numbness or tingling. Dr. Brown wrote of the physical exam findings on 01/31/05:

On examination, there is no visible swelling. He has good active range of motion of the elbow on today's exam. There are no sympathetic changes. He has no point tenderness. The elbow is grossly stable with stressing. He has good sensation and perfusion to the digits of the hand. Provocative tests for cubital tunnel syndrome and carpal tunnel syndrome are negative. He has no point tenderness over the wrist.

Dr. Brown wrote of his impression and recommendations as of 01/31/05:

With regards to his elbow, Mr. Michalik's is minimally symptomatic. His examination is negative. His MRI x-rays were normal. I have no further treatment recommendations. Mr. Michalik's main complaints are upper arm, shoulder and the collarbone area. As I explained to him last time that I am not authorized to treat his shoulder area or collarbone and as a hand surgeon, that is not in the realm of my expertise. I recommend he discuss this with his primary care physician and see a shoulder specialist or possibly a physiatrist to evaluate this more proximal complaint. He explained to me that he was going to see a shoulder specialist today. I will see him back on an as needed basis.

Dr. Brown wrote of Michalik's work status as of 01/31/05: "With regards to his elbow, I see no objective reason why he cannot return to work. I anticipate his more proximal complaints will prevent him from returning to work."

Records of Dr. Joseph R. Ritchie, M.D. of Orthopedic Specialists (No. H) reflected treatment of Michalik on January 31, 2005 and February 14, 2005. Dr. Ritchie wrote the following in his initial treatment note of January 31, 2005:

Ed is a twenty-four year old laborer who works for a company that involves him using air ratchets. He was doing that into a refrigerator that he works on and the ratchet caught, it twisted his right wrist, elbow and shoulder, and he apparently was treated and released by workmen's comp even though he has continued pains and discomfort. This happened on the 11<sup>th</sup> of January. He has been taking medicines on occasion. His major complaint now is the posterior aspect of his shoulder. His elbow and wrist seem to have made significant improvements. He had an MRI of his elbow which was negative.

Physical exam: Physical exam show tenderness over the trapezius and peri-rhomboid scapular muscles. The shoulder itself and elbow itself and wrist itself do not show any significant pain.

The MRI and the plain films are negative.

Dr. Ritchie's assessment on January 31, 2005 was – Soft tissue injuries after this rotational injury mechanism. The doctor recommended to continue anti-inflammatory, start physical therapy, and “we will see him back in two weeks to assess his ability to go back to work”.

Records from ProRehab Physical Rehabilitation Center (No. F) indicated that Michalik received physical therapy for a diagnosis of right shoulder strain beginning with an initial evaluation on 02/01/05. In a February 11, 2005 report to Dr. Ritchie, the therapist wrote that Michalik had attended 6 out of 6 physical therapy appointments, and had been complaint with the doctor's plan of care. Further written was:

The patient reports a considerable improvement in his posterior shoulder pain since beginning therapy. He also notes improved ROM and strength. However, the patient notices that most of his pain is centered around the clavicle, and he still cannot lift very heavy objects like his girlfriend's 40 lb. child.

It was noted in the February 11, 2005 report that Michalik “no longer adopts a protective position of the right arm”. Also written in the February 11, 2005 physical therapy report was:

The patient has demonstrated considerable progress with respects to active ROM and strength. The patient notes some pain around the clavicle with resistive shoulder testing. The patient does not want to return to work unless he is 100% because of the heavy lifting involved at work (60-70 lbs). The patient has benefited from your prescribed therapy.

Dr. Ritchie's record (No. H) indicated that he next saw Michalik on February 14, 2005, and the doctor wrote the following:

Ed follows up his soft tissue injuries of his right upper extremity and they are better. He feels like he is progressing. He is looking for another job. The physical therapy he feels has helped him quite a bit. Most of his discomfort is in the trapezius periscapular muscles and not about the shoulder or elbow.

Physical exam: His exam is much better with better strength, less irritability.

Dr. Ritchie's diagnosis was – Status post soft tissue injuries. The doctor's written recommendation was: “We will do a couple of more weeks of physical therapy to loosen him up, get his strength going and let him return to work at that time.” I will see him back if necessary in one month, the doctor further wrote. Dr. Ritchie had two (2) work status slips in his record concerning Michalik; although not dated, the first slip stated – “Off work until 2/15/05”, apparently indicating off work from the first appointment on January 31, 2005 until 02/15/05. The second work status slip was dated 02/14/05, and stated – “RTW; no restrictions 2/28/05”.

The ProRehab Physical Rehabilitation Center record (No. F) indicated that Michalik again received physical therapy for the diagnosis of right shoulder strain later in February 2005. In a February 25, 2005 report to Dr. Ritchie, the therapist wrote that Michalik had attended 6 out of 6 physical therapy appointments, and had been complaint with the doctor's plan of care. Further written was:

The patient reports no significant pain to his shoulder at this time. He notes full ROM and strength at this time. He feels that he can return to work without any functional deficits. However, he does report that he is seeking employment from another company.

After a discussion of the physical therapy exam findings, the physical therapist wrote the following in the February 25, 2005 report:

The patient demonstrates full ROM and strength as shown by the objective measures. Subjectively, he reports no significant functional deficits. The patient is ready to return to work at this time. The patient has

benefitted from your prescribed therapy.

Will plan to discharge this patient from the physical therapy at this time. The patient reports that he is not going to follow up with your office, but he is planning on returning to work on Monday.

Medical records of prior treatment were offered into evidence:

An emergency room record from St. Anthony's Hospital (No. 1) concerned the treatment of Michalik on July 16, 2004; the chief complaint was noted as – Assault. Noted on the Admission sheet was: “Pt states he was assaulted earlier today. c/o R ear lobe pain, back pain. (No) L(oss) O(f) C(onsciousness). In the Nursing History/Assessment sheet, written in the Pain section was – “Shoulders/Rt ear lobe”. On a sheet entitled “Any Complaint” was indicated Michalik had pain in the neck/back radiating to arms, and also indicated on the sheet was an ear laceration; the diagnosis on sheet was – cervical sprain. In a Trauma Flowsheet, Notes section was handwritten information (mostly illegible), but included: “Pt. c/o pain to shoulders/??????. Strained like ??? in shoulders between shoulders & insides of neck. Good ROM of arms & neck – no midline neck or back....”. The instruction sheet to the patient, Michalik, stated that the doctor felt his symptoms were due to a neck strain, and instructions in regards to this diagnosis were listed on the sheet.

Dr. David T. Volarich, D.O. offered his opinions on behalf of the claimant by a rating report, dated November 8, 2005 (No. M). The following was initially noted by the doctor:

#### BRIEF SUMMARY OF EVENTS:

Mr. Michalik worked a laborer for True Manufacturing for about three months. He quit working there sometime near the end of February of 2005. He currently works for Lowe's Corporation as an associate.

On or about 1/11/05, while at work for True Manufacturing Company, he injured his right shoulder girdle. He was diagnosed initially with elbow and wrist strains. Subsequently, he was diagnosed with right shoulder soft tissue injuries. He was treated conservatively, but continues to experience ongoing difficulties as a result of this accident.

#### HISTORY RE THE INJURY OF 1/11/05:

On 1/11/05, Mr. Michalik was using an eight-pound pneumatic drill with an air ratchet that had hoses attached drilling on a refrigeration unit. His right arm was elevated at the shoulder and flexed at the elbow due to his short stature. He reported the pneumatic drill became caught as he drilled, twisted and externally rotated his right upper extremity. He experienced right wrist, right elbow, and right shoulder pain, as well as neck pain...

On 1/11/05, he followed up at Barnes Care regarding pain in the right elbow. He was prescribed medications and advised to work restricted duty. During an emergency room visit of 1/13/05, he reported his right shoulder popped while changing clothes however he incurred no new injury. Right shoulder x-rays were performed that failed to reveal abnormality (according to medical records). He was diagnosed with a right shoulder strain. Right AC joint x-rays were performed that revealed symmetrical AC joint without evidence of separation (according to medical records)....

He presented to Dr. Ritchie 1/31/05, and on 2/14/05. He was diagnosed with a soft tissue injury to the shoulder and was prescribed medications and physical therapy. He is not currently under active treatment. He denies any new or prior injuries to the right shoulder.

Dr. Volarich noted the following in his discussion of Michalik's job activities:

#### JOB ACTIVITIES:

Mr. Michalik was employed at rue Manufacturing as a Laborer between 11/04 and 1/05. His job duties included setting up tables, carrying drop pans and 10- to 15-pound doors. He was required to flip coolers and explained that the coolers were extremely difficult to maneuver due to the large size. He placed the coolers on top of a box and then pushed the box to his workstation. He believed the cooler weighed about 5 pounds. He then drilled 12 holes, put in spacers, and attached hinges and screws. He used impact wrenches, screw guns, and a Phillips screwdriver. He placed square pans in plastic pans and put screws and filters into metal pans. He used a putty knife when inputting hinges. He explained that he would drill holding the drill with his right hand, and he would push the screws into place wit his left hand. Most often, he worked with his arms overhead while drilling.

He worked from 7:00 to 3:30 with overtime as needed and took a half-hour lunch and no breaks.

I asked Mr. Michalik how his injury impacted his ability to work. He explained that in January of 2005, he was advised that if he was unable to return to full duty, he needed to seek other employment so he secured a job at Lowe's in 4/05. Shortly thereafter, he was released to full duty. Mr. Michalik explains that at Lowe's, he does not have to perform any physical labor, and he is able to rely more on power equipment. He work sin the lawn and garden department. (sic)

He also tells me he has also worked at Overcamp Yardscaping part-time from the present. He built retaining walls and set the base, ran equipment and shoveled. He explained that following his injury, he had o decrease his time at Overcamp. He could only work there every other weekend because he needed the intervening time for his shoulder to recuperate. Also, this was seasonal work.

Dr. Volarich discussed Michalik's relayed ongoing complaints, and discussed Michalik's preexisting medical conditions or complaints. The doctor listed the medical records and x-rays he had reviewed. In his discussion of Michalik's upper extremity and joint exam, Dr. Volarich included the following:

In the right shoulder, there is a 10% loss in motion as evaluated by the Apley scratch test, particularly with internal rotation and extension when trying to reach behind his back to touch the tip of his opposite shoulder blade. Impingement apprehension, clunk, and Adson's testing are all negative for shoulder joint pathology. The AC joint is also normal, but the sternoclavicular joint is somewhat ender to palpation and is more prominent than the left side. The majority of his pain occurs in the right trapezius muscle, where trigger points are found in the mid belly. Below the spine of the scapula, n o discomfort is identified. There is not winging of the scapula.

In the remainder of the upper extremities, there is full motion in the elbow and wrists. Tests for entrapment neuropathy are negative bilaterally.

Dr. Volarich wrote his diagnosis in regards to the 1/11/05 injury: 1. External rotation injury right shoulder/shoulder girdle causing myofascial pain and right sternoclavicular joint strain. The doctor's diagnosis as to preexisting conditions or injuries was: 1. Historic cervical strain and left shoulder girdle strains – resolved. Dr. Volarich wrote the following concerning causation:

#### CAUSATION:

It is my opinion the work accident that occurred 1/11/05, when Mr. Michalik was using a pneumatic ratchet to assemble a refrigeration unit, and while holding his right arm abducted at shoulder level with his elbow flexed, the pneumatic drill caught and torqued forcefully, externally rotating his right arm at the shoulder, is the substantial contributing factor causing the right elbow and wrist strain injuries that resolved, as well as causing the right shoulder strain injury to the sternoclavicular joint and shoulder girdle musculature, resulting in myofascial pain syndrome that required conservative medical care.

“Based on the treatment provided to date, he has achieved MMI”, Dr. Volarich wrote. Dr. Volarich wrote the following opinion as to disability ratings:

Pertaining to and as a direct result of the injuries sustained on 1/11/05 while in the employ of True

Manufacturing, it is my opinion that the following industrial disability exists that is a hindrance to his employment or reemployment:

3. There is a 20% permanent partial disability of the right upper extremity rated at the shoulder girdle due to the strain/sprain injury and development of myofascial pain in the trapezius muscle. This rating also accounts for the sternoclavicular joint strain, all of which contribute to cause pain, mild loss of motion, and weakness in the dominant arm.
4. Disability referable to the right elbow and right wrist is not found since those symptoms resolved.

Pertaining to his preexisting neck and left shoulder strain injuries, disability is not found since symptoms resolved.

Dr. Volarich listed work and other activity restrictions referable to the right shoulder for Michalik.

Date: January 25, 2007

Made by: /s/ LESLIE E.H. BROWN  
LESLIE E.H. BROWN  
Administrative Law Judge  
Division of Workers' Compensation

A true copy: Attest:

/s/ PATRICIA "PAT" SECREST  
PATRICIA "PAT" SECREST  
Director  
Division of Workers' Compensation

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[\[1\]](#) **SUMMARY OF THE EVIDENCE** begins on page 27.