

FINAL AWARD DENYING COMPENSATION
(Modifying Award and Decision of Administrative Law Judge)

Injury No.: 10-070253

Employee: Christopher Sliger
Employer: Peoplelink
Insurer: Arch Insurance Company

This cause has been submitted to the Labor and Industrial Relations Commission (Commission) for review as provided by § 287.480 RSMo.¹ We have reviewed the evidence and briefs, heard oral argument, and considered the whole record. Pursuant to § 286.090 RSMo, the Commission modifies the award and decision of the administrative law judge (ALJ) dated May 6, 2011.

Preliminaries

The ALJ made the following findings: 1) no accident occurred; 2) “Dr. Rogers’ testimony fails to support [employee’s] contention that the purported incident at work is the prevailing factor in causing [employee’s] torn rotator cuff...”; 3) employee failed to meet his burden of proof that his need for additional treatment flows from the work injury; and 4) employee is not entitled to temporary total disability benefits.

Employee appealed to the Commission alleging that the ALJ erred in arriving at all four of the aforementioned conclusions.

Findings of Fact

The findings of fact and stipulations of the parties were accurately recounted in the award of the ALJ and, to the extent they are not inconsistent with the findings listed below, they are incorporated and adopted by the Commission herein.

Conclusions of Law

First, it is important to note that employee is alleging that his injury occurred on August 10, 2010. Therefore, this case falls under the purview of the 2005 amendments to Missouri Workers’ Compensation Law.

Section 287.120 RSMo “requires employers to furnish compensation according to the provisions of the Worker’s Compensation Law for personal injuries of employees caused by accidents arising out of and in the course of the employee’s employment.” *Gordon v. City of Ellisville*, 268 S.W.3d 454, 458-59 (Mo. App. 2008).

Section 287.020.2 RSMo defines “accident” as: “[A]n unexpected traumatic event or unusual strain identifiable by time and place of occurrence and producing at the time objective symptoms of an injury caused by a specific event during a single work shift.”

Pursuant to § 287.020.3 RSMo, an “injury” is defined to be “an injury which has arisen out of and in the course of employment.” Section 287.020.3 RSMo further states that:

¹ Statutory references are to the Revised Statutes of Missouri 2009 unless otherwise indicated.

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An injury by accident is compensable only if the accident was the prevailing factor in causing both the resulting medical condition and disability. 'The prevailing factor' is defined to be the primary factor, in relation to any other factor, causing both the resulting medical condition and disability.

While the facts in this case concerning whether employee sustained an accident as defined by § 287.020.2 RSMo are disputed, we find that even if we assume that employee did in fact sustain an accident, the determinative issue in this case is medical causation.

In determining medical causation, the Court in *Bond v. Site Line Surveying*, 322 S.W.3d 165 (Mo. App. 2010) held as follows:

'The claimant in a worker's compensation case has the burden to prove all essential elements of her claim including a causal connection between the injury and the job.' *Royal v. Advantica Rest. Group, Inc.*, 194 S.W.3d 371, 376 (Mo. App. W.D. 2006) (internal quotation marks and citations omitted). 'Medical causation, which is not within common knowledge or experience, must be established by scientific or medical evidence showing the relationship between the complained of condition and the asserted cause.' *Lingo v. Midwest Block & Brick, Inc.*, 307 S.W.3d 233, 236 (Mo. App. W.D. 2010) (quoting *Gordon*, 268 S.W.3d at 461). The weight afforded a medical expert's opinion is exclusively within the discretion of the Commission. *Sartor v. Medicap Pharmacy*, 181 S.W.3d 627, 630 (Mo. App. W.D. 2006).

Bond, 322 S.W.3d at 170.

Employee's two-tendon rotator cuff tear is not an issue that falls under the category of common knowledge and experience. However, as to medical causation, employee relies solely on Dr. Rogers' initial causation opinion as his "scientific or medical evidence showing the relationship between the complained of condition and the asserted cause."

While Dr. Rogers initially opined that the August 10, 2010, accident was the prevailing factor causing the rotator cuff tear, after reviewing additional information concerning employee's job duties, he opined that the mechanism of injury, as described by employee, would not produce a complex two-tendon rotator cuff tear. Dr. Rogers opined that in light of employee's alleged mechanism of injury, he did not feel that the incident of August 10, 2010, was the prevailing factor causing employee's injury and current right shoulder condition.

Employee argues that Dr. Rogers' second causation opinion is based on incorrect information concerning employee's job duties. We disagree. We find that the additional information provided to Dr. Rogers after his initial causation opinion more accurately describes employee's job duties; and, therefore, Dr. Rogers' second causation opinion is more reliable than his first causation opinion.

Employee: Christopher Sliger

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Award

As stated above, it is employee's burden to prove medical causation. We find that employee failed to meet this burden and that the August 10, 2010, incident is not the prevailing factor in causing his rotator cuff tear and current right shoulder condition. All other issues are moot. Employee's claim for benefits is denied.

The award and decision of Administrative Law Judge Victorine R. Mahon, issued May 6, 2011, is attached and incorporated by this reference to the extent it is not inconsistent with this award.

Given at Jefferson City, State of Missouri, this 1st day of February 2012.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

William F. Ringer, Chairman

CONCURRING OPINION FILED

James Avery, Member

DISSENTING OPINION FILED

Curtis E. Chick, Jr., Member

Attest:

Secretary

Employee: Christopher Sliger

CONCURRING OPINION

I write separately to disclose the fact that I did not participate in the September 14, 2011, oral argument in this matter. I have reviewed the evidence, read the briefs of the parties, and considered the whole record. I concur with Chairman Ringer and adopt his decision modifying the award and decision of the ALJ.

James Avery, Member

Employee: Christopher Sliger

DISSENTING OPINION

I have reviewed and considered all of the competent and substantial evidence on the whole record. Based on my review of the evidence as well as my consideration of the relevant provisions of the Missouri Workers' Compensation Law, I believe the decision of the administrative law judge should be reversed and employee should be awarded future medical care, temporary total disability benefits, and permanent disability benefits.

On November 29, 2010, employee presented to Dr. Rogers for an independent medical evaluation at the request of employer. Dr. Rogers examined employee, took his history, and compared MRI films from the 2008 and 2010 injuries. Dr. Rogers diagnosed a right shoulder rotator cuff tear and found that employee likely sustained a recent acute injury. Dr. Rogers also found that there was no progression of the atrophy of the muscle bellies of the supraspinatus and the infraspinatus between 2008 and 2010. Dr. Rogers felt that the accident on August 10, 2010, was the prevailing factor in causing employee's current right shoulder condition and need for repeat surgical repair of the right rotator cuff.

On January 13, 2011, counsel for employer asked Dr. Rogers to assume various facts as true and issue an opinion based upon those assumptions. Specifically, employer asked Dr. Rogers to assume that employee alleged an injury caused by lifting 10 pounds a single time. Employer requested Dr. Rogers to opine as to whether he believed, based on those facts, that employee's job was the prevailing factor in causing his rotator cuff tear. On January 31, 2011, Dr. Rogers responded with a letter that employee's job was not the prevailing factor if he assumed employee performed a single lift of a 10 pound object.

The ALJ discredited Dr. Rogers' initial opinion because it was largely based on information provided to him by employee, whom she found was not credible. The ALJ listed various reasons for finding employee not credible, but it appears from the award that she gave the greatest weight to the fact that employee had previously filed a false workers' compensation claim and an alleged inconsistency in employee's testimony regarding his post-accident hunting activities.

Employee testified candidly about filing a false workers' compensation claim in 1993. He filed the false claim following a non-work related injury when two superiors, who happened to be his brother-in-law and father-in-law, suggested that he file a claim alleging that he was injured at work to avoid being fired pursuant to company policy for missing too much work for a non-work related injury. The claim was voluntarily dismissed by employee, but not until after medical care was provided.

While filing a false workers' compensation claim is a serious matter, considering it occurred nearly 20 years ago and under the direction of two superiors who happened to be family, its bearing on employee's credibility in this case should be minimal if not overlooked altogether.

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With regard to the alleged inconsistencies in employee's testimony, I find that the ALJ misunderstood the evidence. The ALJ found that employee testified during his February 2011 deposition that he last hunted in November 2010, a few months after the work injury; but when he was questioned about his most recent hunting at the hearing, employee contended that he had not hunted since black powder season in December 2009.

Upon review of the hearing transcript, it is clear that employee was testifying at the hearing as to the last time he hunted **during black powder season** (December 2009); and when he answered the question during his February 2011 deposition, he was testifying as to the last time he had hunted **with a rifle in general** (November 2010). Employee was not intending to misrepresent the last time he had gone hunting.

I find that the ALJ's determination that employee is not credible is not supported by the competent and substantial evidence.

In my opinion, it is absurd to deny employee's claim for benefits based on Dr. Rogers' limited second causation opinion. Dr. Rogers' initial opinion was based on an in-person evaluation, a history given directly to him by employee, and objective medical evidence. Dr. Rogers' second opinion was based on assumptions given to him by an attorney on behalf of their client.

Unlike the majority, I do not find Dr. Rogers' second causation opinion to be more reliable than his first opinion. While employee may not have described the mechanism of injury throughout the record as precisely as he could have, the great weight of the evidence supports a finding that an injury by accident occurred at work on August 10, 2010, and this accident was the prevailing factor in causing employee's rotator cuff tear and current need for treatment.

Based on the foregoing, I find that employee should be awarded future medical care, temporary total disability benefits, and permanent disability benefits. As such, I would reverse the award of the administrative law judge and award employee the same.

Therefore, I respectfully dissent from the decision of the majority of the Commission.

Curtis E. Chick, Jr., Member

AWARD

Employee: Christopher Sliger

Injury No. 10-070253

Dependents: N/A

Employer: Peoplelink

Before the
**DIVISION OF WORKERS'
COMPENSATION**
Department of Labor and Industrial
Relations of Missouri
Jefferson City, Missouri

Additional Party: N/A

Insurer: Arch Insurance Company

Hearing Date: March 30, 2011

Checked by: VRM/ps

FINDINGS OF FACT AND RULINGS OF LAW

1. Are any benefits awarded herein? No.
2. Was the injury or occupational disease compensable under Chapter 287? No.
3. Was there an accident or incident of occupational disease under the Law? No.
4. Date of accident or onset of occupational disease: Alleged August 10, 2010.
5. State location where accident occurred or occupational disease was contracted: Alleged Greene County, Missouri
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? No.
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: Claimant alleges that he injured his shoulder while lifting parts at work.
12. Did accident or occupational disease cause death? No. Date of death? N/A.
13. Part(s) of body injured by accident or occupational disease: Alleged right shoulder.
14. Nature and extent of any permanent disability: None.
15. Compensation paid to-date for temporary disability: None.

16. Value necessary medical aid paid to date by employer/insurer? \$2,652.98.
17. Value necessary medical aid not furnished by employer/insurer? None.
18. Employee's average weekly wages: \$315.00.
19. Weekly compensation rate: \$210.00.
20. Method wages computation: By Agreement

COMPENSATION PAYABLE

21. Amount of compensation payable: None.
22. Second Injury Fund liability: None.
23. Future requirements awarded: None.

As no compensation is awarded to the claimant, no lien or attorneys fees are awarded.

FINDINGS OF FACT AND RULINGS OF LAW:

Employee: Christopher Sliger

Injury No. 10-070253

Dependents: N/A

Employer: Peoplelink

Additional Party: N/A

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Hearing Date: March 30, 2011

Before the
**DIVISION OF WORKERS'
COMPENSATION**
Department of Labor and Industrial
Relations of Missouri
Jefferson City, Missouri

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PRELIMINARIES

The undersigned Administrative Law Judge conducted a hearing in this case on March 30, 2011. Christopher W. Sliger (Claimant), who is represented by Attorney Ryan Murphy, alleges injury on August 10, 2010, while employed by Peoplelink Staffing (Employer). On that date, Claimant was stationed at SRC, a plant that manufactures and performs maintenance on engine parts. Claimant seeks medical benefits and temporary total disability. Employer and Arch Insurance Company (Insurer), denies all liability. Employer and Insurer were represented at the hearing by Yvette Boutaugh. The Second Injury Fund is not a party.

STIPULATIONS

1. On August 10, 2010, Peoplelink, an entity fully insured by Arch Insurance Company c/o Broadspire, was a Missouri employer operating under and subject to the terms and provisions of the Missouri Workers' Compensation Law.
2. On August 10, 2010, Christopher Sliger was an employee of Employer and was working under the Missouri Workers' Compensation Law.
3. The above referenced employment and alleged injury occurred in Springfield, Greene County, Missouri.
4. Employer received timely notification of injury as required by § 287.420 RSMo.
5. The claim for compensation was filed within the time prescribed by § 287.430 RSMo.
6. Employer has paid medical benefits in the amount of \$2,652.98 and no temporary total disability.
7. Claimant's average weekly wage was \$315.00, yielding a compensation rate of \$210.00.

ISSUES

1. Did Claimant sustain an accident arising out of the course and scope of his employment?
2. If yes, was the accident the prevailing factor resulting in Claimant's right shoulder condition and need for medical treatment?
3. Is Employer liable for medical treatment to cure and relieve the effects of the injury?
4. Is Employer is liable for temporary total disability benefits?

EXHIBITS

The following exhibits were offered by Claimant and admitted:

- A. Report of Injury
- B. Medical Records – Cox Medical Center
- C. Medical Records – St. John's Clinic
- D. Medical Records – Dr. David Rogers
- E. Letter of 1/13/2011 – by Yvette Boutaugh to Dr. Rogers

The following exhibits were offered by Employer and admitted:

1. Deposition – Dr. David Rogers
2. Medical Records – Cox Medical Center
3. Medical Records – St. John's Clinic
4. Certified Records – Division of Workers' Compensation
- 5 – 8. Photographs

FINDINGS OF FACT¹

On August 10, 2010, Claimant had been working for Employer at the SCR facility for a period of about two weeks. SRC manufactures and performs maintenance on engine parts. One of Claimant's jobs required him to operate the small parts washer. The machine is barrel-shaped, approximately three feet tall, and washes and removes debris from small parts varying in size and weight up to 15 pounds. Each washing cycle is about 15 minutes. During the wash cycle, Claimant performed other duties.

On August 10, 2010, Claimant had been at work only about 45 minutes when he claims he sustained an injury to his right shoulder. He contends he was lifting a part (called an armature) in each hand from the

¹ All objections not previously ruled upon are now overruled. Any marks in the exhibits were made prior to their receipt into evidence and were not made by the Administrative Law Judge.

small parts washing and taking them to a holding board located about one and one-half feet away. As he internally rotated his right hand, with his arm extended below chest level in front of his body, he felt a sensation. He then contends that he could not lift his right arm above shoulder level. Even though Claimant stated that he had a part in each hand, he suffered no problem in his left arm. The incident was reported to SRC. A routine investigation was completed by the company's safety director, Kathy Choate.

Employer directed Claimant to go to St. John's Clinic for treatment. Claimant initially reported pain extending down the lateral part of the right shoulder into the deltoid. His right arm was placed in a sling, he was returned to work with restrictions and advised that an MRI may be necessary if symptoms continued. The initial assessment was sprain/strain.

On August 17, 2010, Claimant followed up at St. John's Clinic reporting a 50-percent improvement in his symptoms. His range of motion was improved. The medical provider prescribed medication, physical therapy, and instructed Claimant to discontinue use of the sling.

On August 27, 2010, however, Claimant returned to the clinic with worsening symptoms. The medical record for that date indicated that Claimant was upset because there had been a delay in his physical therapy and he had engaged an attorney regarding his case, and he wanted an MRI.

An MRI of the right shoulder conducted September 13, 2010 revealed a recurrent full-thickness rotator cuff tear involving the entire width of the supraspinatus and infraspinatus tendons. Dr. Galligos at St. John's Clinic wrote that the tear was severe in light of the mechanism of injury and recommended further orthopedic consultation.

Dr. David Rogers' Opinions

Claimant was referred to Dr. David Rogers, an orthopedic specialist, on November 29, 2010. Claimant informed Dr. Rogers that he had sustained a full rotator cuff tear in 2008 after being thrown 40 feet from his motorcycle. He had treated with Dr. Christopher Miller and underwent a rotator cuff repair. After his

release from Dr. Miller, Claimant had some intermittent pain after work, but he had been returned to work with no restrictions.

Dr. Rogers was asked to give a causation opinion. He said in providing such opinion he relies on the history given him by the patient. In this case, Dr. Rogers said Claimant told him that he was performing *repetitive lifting of 25-30 lbs. with both hands* and had been at work for *one and a half hours* when he felt he was unable to raise his right arm and experienced pain (Exhibit 1, pp. 10-11). Dr. Rogers reviewed the MRIs and noted that Claimant previously had a large rotator cuff tear involving the supraspinatus and infraspinatus tendons on the rotator cuff, which had been repaired. Dr. Rogers compared the prior MRI with the one obtained on September 13, 2010, which he noted also showed tears of the supraspinatus and infraspinatus tendons. Dr. Rogers diagnosed a right shoulder rotator cuff tear and initially opined that the August 10, 2010 accident was the prevailing factor causing the rotator cuff tear. Subsequent to rendering that opinion, Employer provided Dr. Rogers with additional information that had been gained from the routine investigation at SRC.

At his deposition of March 14, 2011, Dr. Rogers indicated that Claimant failed to relate to him that he had suffered a "specific injury." (Exhibit 1, p. 12). But while Claimant's statements to Dr. Rogers suggested that he suffered a repetitive-trauma-type injury, he told both SRC and the physician's assistant at St. John's Clinic that he suffered a sudden onset of symptoms occurring while he had an armature in his right hand and extended below chest level. Pursuant to SRC investigation, the armature was identified, marked and weighed at only 10 pounds. Even if Claimant had been handling an armature in *each* hand, the total weight was less than the 25 or 30 pounds that Claimant reported to Dr. Rogers. Moreover, Claimant had been at work about 45 minutes rather than the 1.5 hours he reported to Dr. Rogers. Further, while Claimant lifted the armature out of the washer several times, it was not what one necessarily would describe as repetitive lifting. Jim Cody, Claimant's supervisor at SRC, explained that Claimant may have

unloaded 8-10 armatures on the morning of August 10, 2010. But after lifting an armature from the washer, he would then have other duties such as moving screws or debris with small hand tools, and then would shift to the next station. As noted above, each wash cycle was about 15 minutes and Claimant admitted that during this time he had other job duties.

After considering the additional information, including the fact that this was a single lift incident that had been previously reported, below shoulder level of an object weighing 10 pounds in the right hand, Dr. Rogers testified that he could not envision how a massive, two-tendon rotator cuff tear could acutely develop in this manner (Exhibit 1, pp. 14, 22). Dr. Rogers ultimately concluded that the incident of August 10, 2010 was not the prevailing factor causing Claimant's current right shoulder condition. (Exhibit 1, p. 23).

Prior Workers' Compensation Claim

At the hearing on March 30, 2011, Claimant was the only witness to testify on his behalf. He admitted that he had filed a false workers' compensation claim in the past. Claimant admitted that he had injured his left shoulder on his own time. Because his supervisor believed he would be fired for missing too much work if he told the truth, his supervisor suggested that Claimant concoct a story that he was injured at work. A report of injury was made and Division records indicate that medical care was provided. The case eventually was dismissed, but not until seven months after a formal claim had been filed.

Inconsistent Testimonies

On cross-examination, Claimant admitted he has been an avid hunter, participating in both gun and bow seasons. But he contended he had not hunted since black powder season in December 2009. He explained that when he hunts, he will transport the carcass by truck or cart to wheel the carcass back to his home where he has equipment to process the meat. But in his deposition in February 2011, Claimant testified he had hunted in November 2010, a few months after the work injury. Asked how he accomplishes these

tasks, Claimant attempted to explain that he operates his gun solely with his left arm and left shoulder, even though he is right-handed.

Claimant contended that he had no residual symptoms from the prior 2008 right rotator cuff injury and surgery. But, he acknowledged that in prior testimony he had indicated he had pain one to two times a week for which he took Tylenol.

Employer's Witnesses

In addition to the testimony of Claimant's supervisor, noted above, Employer also presented the testimony of Kathy Choate, safety director at SRC. Kathy Choate identified Claimant's work station in photographs she had taken (Exhibits 6 and 7). Choate explained measures taken by SRC to create ergonomically safe work stations including regular visits to the plant by a local occupational medicine physician. With regards to the incident on August 10, 2010, Choate testified upon learning of Claimant's specific allegations, SRC conducted an investigation in which they identified, marked and weighed the armature that Claimant had claimed he was lifting at the time of the alleged injury. Choate was unaware of any other individual incurring a similar injury while operating the small parts washer.

Credibility Assessment

Claimant presented no expert medical opinion or other medical evidence substantiating that the incident on August 10, 2010 was the prevailing factor causing the two-tendon rotator cuff tear. Rather, he relies on the initial opinion of Dr. Rogers which was provided based on Claimant's version of the facts that he was lifting 25 to 30 pounds *repetitively*. I find that when Claimant saw Dr. Rogers, he gave an inaccurate accounting of his work duties. He clearly exaggerated the amount of time he spent lifting and the amount of weight he lifted. Moreover, Claimant gave differing versions about the residual problems he had from the prior right rotator cuff tear. And, he has given differing versions of whether he is capable of engaging in hunting activities since his work injury. I do not find Claimant credible.

RULINGS OF LAW

No Accident

Accident is defined as an “unexpected traumatic event or unusual strain identifiable by time and place of occurrence.” § 287.020.2 RSMo Cum Supp. 2009. At the time of injury, Claimant was holding a 10-pound part in his right hand, below shoulder level and extended out from his body. On the day of the alleged injury, claimant was stationed at his regular work station, performing his typically expected tasks for a mere forty-five minutes. The weight of the part and the mechanism required to transport it to the table did not present the need for any unusual strain, exertion, body contortion or force. Moreover, the parts were weighted consistently with objects encountered in everyday life, particularly for Claimant, who admittedly processes his own deer carcasses. Safety director Kathy Choate testified that the work stations are periodically tested to confirm they meet ergonomic safety standards, and no other individual had ever been injured in a similar fashion while operating this parts washer. The facts do not substantiate Claimant’s contention that he suffered an accident as that term is defined in the Missouri Workers’ Compensation Law.

No Medical Causation

It is Claimant’s burden to prove not only an accident, but that such accident resulted in an injury. *Lacy v. Federal Mogul*, 287 S.W.3d 691, 700 (Mo. App. S.D. 2009). An injury by accident is compensable only if the accident was the prevailing factor in causing both the resulting medical condition and disability; the “prevailing factor” being defined to be the primary factor, in relation to any other factor, causing both the resulting medical condition and disability. *Johnson v. Indiana Western Express*, 281 S.W.3d 885, 889 (Mo. App. S.D. 2009); § 287.020.3(1) RSMo Cum. Supp. 2009. An accident must produce “at the time objective symptoms of an injury.” 281 S.W.2d at 889; § 287.020.2 RSMo Cum Supp. 2009. RSMo.

Claimant must establish medical causation by presenting scientific or medical evidence when the nature of the injury is not within common knowledge or experience. *Bond v. Site Line Surveying*, 322 S.W.3d 165, 170 (Mo. App. W.D. 2010). When the condition presented is a sophisticated injury that requires surgical intervention or other highly scientific technique for diagnosis, and particularly where there is a question of preexisting disability and its extent, the proof of causation is considered outside the scope of lay understanding and requires assessment of a medical expert. *Silman v. Williams Montgomery & Associates*, 891 S.W.2d 173 (Mo. App. E.D. 1995).

Based on the MRI obtained on September 13, 2010, Claimant sustained full-thickness retracted tears of both the supraspinatus and infraspinatus tendons in his rotator cuff. According to the medical records and Claimant's testimony, Claimant had suffered a right rotator cuff tear in the past which had been repaired, but this caused him to experience intermittent pain one to two times a week. Pursuant to the testimony of Dr. David Rogers, an orthopedic surgeon specializing in upper extremity surgery, a single lift of 10 pounds was not the mechanism of injury that would have caused the type of pathology visible on the MRI. Dr. Galligos also questioned whether Claimant's work duties would have caused the massive tears seen on the MRI.

Employer's description of the work to Dr. Rogers (a single lift of 10 pounds) is not *exactly* what Claimant performed. Claimant performed several lifts in an hour and may have been lifting 20 pounds at a time, with 10 pounds in each hand. But this description appears closer than the description of the work that Claimant gave Dr. Rogers. It is clear that Claimant was not engaged in *repetitive* lifting, as one might envision on an assembly line. Claimant lifted and then performed some other duties. Moreover, Claimant's initial description of the work at SRC to the healthcare provider, and even his testimony at the hearing, contemplates an "accident" rather than a repetitive-trauma-type injury.

Claimant is not a credible witness, having filed a false workers' compensation claim in the past and having deviated from his prior deposition testimony in several regards. Second, the injury allegedly

sustained is of the complex nature requiring the analysis and assessment of an orthopedic surgeon. Expert assessment is particularly needed here when there is evidence of a similar rotator cuff pathology just two years prior. In this instance, Dr. Rogers' testimony fails to support Claimant's contention that the purported incident at work is the prevailing factor in causing Claimant's torn rotator cuff tear.

Employer Not Responsible for Medical Care

An employee has the burden to show that there is a reasonable probability that he will need additional medical treatment and that the need for this additional treatment flows from the work injury. *Fitzwater v. Department of Public Safety*, 198 S.W. 3d 623, 628 (Mo. App. 2006). For the reasons stated above, Claimant has not met his burden of proof that his need for additional treatment flows from the work injury. Claimant is not a credible witness on his own behalf, having filed a false pleading in the past and having been discredited with his prior deposition testimony. Dr. David Rogers, an orthopedic surgeon who specializes in upper extremities, was of the opinion that the mechanism of injury could not result in a complex two-tendon rotator cuff tear. Claimant has not presented testimony from a medical expert contradicting the opinion of Dr. Rogers.

No Temporary Total Disability

Having failed to meet his burden of proof on the issues of accident and medical causation, Claimant also is not entitled to temporary total disability benefits.

Date: May 6, 2011

Made by: /s/Victorine R. Mahon
Victorine R. Mahon
Administrative Law Judge
Division of Workers' Compensation

A true copy: Attest

/s/ Naomi Pearson
Naomi Pearson