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

Employee: Thomas Wann
Employer: The Lawrence Group
Insurer: Travelers Indemnity Company

Injury No.: 12-090608

This workers’ compensation case is submitted to the Labor and Industrial Relations Commission (Commission) for review as provided by § 287.480 RSMo. We have reviewed the evidence, read the parties’ briefs, heard the parties’ arguments, and considered the whole record. Pursuant to § 286.090 RSMo, we modify the award and decision of the administrative law judge. We adopt the findings, conclusions, decision, and award of the administrative law judge to the extent that they are not inconsistent with the findings, conclusions, decision, and modifications set forth below.

Preliminaries
The parties asked the administrative law judge to determine the following issues: (1) future medical care; (2) nature and extent of permanent disability; and (3) liability for disfigurement.

The administrative law judge determined as follows: (1) no liability is found for future medical treatments as a result of the work injury; (2) employee is found to have sustained a 30% permanent partial disability of the right shoulder, 20% permanent partial disability of the left shoulder, 10% permanent partial disability of the right wrist, and 10% permanent partial disability of the left wrist as a result of the reported injury for a total of 151 weeks of disability; (3) employee is entitled to $65,470.58 in compensation from employer/insurer; and (4) employee is not entitled to disfigurement.

Employee filed a timely application for review with the Commission alleging that the administrative law judge erred: (1) in finding that employee is not permanently and totally disabled as a result of the work injury; (2) in finding that employee’s sleep issues were not substantiated in the treatment record and were found only in expert reports; (3) in finding that Dr. Ritchie and Dr. Volarich did not find that employee is in need of future medical treatment; (4) in finding that the vocational evidence did not establish that employee is unable to go back to work; (5) in accepting the restrictions set forth by Dr. Ritchie in 2013, dealing with the right shoulder; (6) in finding that employee was doing better and not in need of much medicine by reason of his inert and sedentary lifestyle; and (7) in finding that there was no disfigurement for which compensation is due.

For the reasons stated below, we modify the award and decision of the administrative law judge referable to the issues of (1) nature and extent of permanent disability and (2) liability for future medical treatment. We affirm the administrative law judge’s award on the issue of disfigurement.
Discussion

Nature and extent of permanent disability
The parties disputed the issue of whether the nature and extent of the work injury rendered employee permanently and totally disabled. The administrative law judge entered an award of permanent partial disability benefits suggesting she believed that employee did not prove that he is permanently and totally disabled or unable to compete in the open labor market, because the medical evidence did not characterize ambulation deficits, narcotic pain regimens, inability to perform self-care, or marked sleep deficits. The administrative law judge noted that employee made no demonstrable attempt to alleviate his purported sleep issues and that the treatment records did not substantiate such issues. Although the medical expert reports documented employee’s alleged sleep issues, the administrative law judge found those reports unpersuasive given that such reports relied upon employee’s assertion of sleep difficulties.

Clearly, the administrative law judge did not credit employee’s testimony regarding sleep disturbance and fatigue. Ordinarily, we defer to the credibility determinations made by an administrative law judge with respect to live witnesses. In this case, however, we believe that the validity of employee’s subjective complaints must be evaluated with reference to expert medical evidence and opinion.

First, we note that from a lay perspective it seems entirely plausible that someone with significant, bilateral shoulder injuries would experience difficulty finding and maintaining a comfortable sleeping posture. We note too that employee’s physical therapy records do, in fact, make references to sleep disturbance related to his shoulder problems. Most importantly, we find that employee’s complaints of sleep disturbances are endorsed by Dr. Volarich, attributed by Dr. Volarich to employee’s work injury, and that there is no medical evidence or testimony to the contrary.

We find the following facts. Employee did not experience sleep disruptions prior to the November 15, 2012, work injury. Although employee sleeps for about eight hours each night, and gets more sleep than before the work injury, employee wakes up several times throughout the night to reposition himself due to pain caused by sleeping on either shoulder. As a result, employee has difficulty staying awake and needs to take several naps throughout the day. In the morning, employee feels about as tired as he did before going to bed the night before. Employee testified, and we so find, that both of his shoulders feel stiff after getting out of bed in the morning and that it takes about two and a half hours for his shoulders to feel better.

Employee presented the deposition and medical reports of his medical expert, Dr. Volarich. Therein, Dr. Volarich imposed significant and permanent restrictions upon employee’s ability to work. Dr. Volarich opined that employee is permanently and totally disabled by reason of his November 15, 2012, work injury, in the event that a vocational expert was unable to find a suitable job for employee.

Employee presented the deposition and report of his vocational expert, James England. Therein, Mr. England stated, based upon the physical limitations imposed by Dr. Volarich, that it was his opinion that employee was unable to perform sedentary work on a consistent
basis because such work would involve the repetitive use of employee’s upper extremities. In addition, Mr. England explained that employee’s disrupted sleep was another factor contributing to employee’s inability to perform sedentary work. Mr. England described sedentary work as being the lowest level of competitive employment. Accordingly, Mr. England concluded that employee is unable to compete in the open labor market due to the issues with employee’s bilateral upper extremities, age, and sleep difficulties.

During his deposition, Dr. Volarich stated that he reviewed Mr. England’s vocational report and opined that it verified his medical opinion that employee was permanently and totally disabled by reason of the work injury. To the extent that the medical evidence presented by the parties conflicts as to the nature and extent of employee’s disability, we credit the medical opinion of Dr. Volarich as set forth in the preceding paragraphs.

Employer/insurer presented the deposition of its vocational expert, Donna Abrams. Therein, Ms. Abrams disagreed with Mr. England’s conclusions as set forth in his vocational report. Ms. Abrams stated that, based on the physical limitations imposed upon employee by Dr. Volarich, she determined that employee was able to compete in the open labor market. However, Ms. Abrams conceded that her analysis did not account for employee’s disrupted sleep. Ms. Abrams agreed that if employee indeed has to take several naps during the day, he “may not be able to obtain and maintain a job.”

To the extent that the vocational evidence presented by the parties conflicts as to whether employee is able to compete in the open labor market, we credit the vocational opinion of Mr. England as set forth in the preceding paragraphs.

The Missouri Workers’ Compensation Law defines “total disability” as the “inability to return to any employment.” We find that employee is unable to compete for work in the open labor market owing to the effects of the work injury. As such, we conclude that employee is entitled to compensation for his permanent and total disability resulting from the November 15, 2012, work injury.

Future medical care
Section 287.140.1 RSMo provides for an award of future medical care where the employee can prove that there is a reasonable probability of a need for future medical care that flows from the work injury.

In his deposition, Dr. Volarich stated that he believed employee will need pain management when his symptoms flare up. In a medical report dated October 8, 2014, Dr. Volarich noted that employee had reached maximum medical improvement and, as to the future medical care, wrote the following:

In order to maintain his current state, he will require ongoing care for his pain syndrome using modalities including but not limited to narcotics and non-narcotic medications (NSAID’s), muscle relaxants, physical therapy, and

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1 Transcript at 449.
2 Section 287.020.6 RSMo.
similar treatments as directed by the current standard of medical practice for symptomatic relief of his complaints.

We credit the medical opinion of Dr. Volarich, as set forth above, as to the issue of future medical care. Any evidence to the contrary is unpersuasive. In addition, we disagree with and disavow any implication or opinion expressed by the administrative law judge that an employee’s desire to avoid narcotic pain medications negates the probability that he will need future medical care. Here, the fact that employee does not currently want to take narcotic pain medications to alleviate the symptoms of his work injury does not mean that there is no reasonable probability that he may need such treatments in the future. We find employee has established that there is a reasonable probability of a need for future medical care flowing from the injury.

We conclude that employee is entitled to, and employer/insurer is liable to provide, that future medical care that may reasonably be required to cure and relieve the effects of the work injury, including such care and treatments as recommended by Dr. Volarich.

**Disfigurement**

By his application, employee contests the administrative law judge’s finding that he was not entitled to disfigurement compensation. Employee neither briefed nor provided oral argument on this issue before the Commission. As such, we decline to disturb the award of the administrative law judge on the issue of disfigurement.

**Correction**

During the hearing, the administrative law judge recited her understanding that “[i]n the event an award is written of favor [sic] of claimant, counsel for claimant is requesting a fee of 12 1/2 percent.”5 No other mention of the fee requested by employee’s attorney appears on the record. In her award, however, the administrative law judge ordered that the compensation awarded to employee therein was subject to an attorney’s fee of twenty-five percent. This appears to have been the result of clerical error.

Accordingly, we correct the award of the administrative law judge to reflect the request by employee’s attorney for a twelve and one half percent fee lien on the compensation awarded herein.

**Conclusion**

We modify the award of the administrative law judge as to the issues of: (1) nature and extent of permanent disability and (2) liability for future medical treatment. We do not disturb the award of the administrative law judge on the issue of disfigurement.

Employee is entitled to, and employer/insurer is hereby ordered to provide, that future medical care that may reasonably be required to cure and relieve the effects of the work injury.

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5 Transcript at 1.
Employee: Thomas Wann

Beginning December 12, 2013, employee is entitled to receive, and employer/insurer is hereby ordered to pay, permanent and total disability benefits in the weekly amount of $827.75. The weekly payments shall continue for employee's lifetime, or until modified by law.

The award and decision of Administrative Law Judge Kathleen M. Hart, issued December 1, 2016, is attached hereto and incorporated herein to the extent not inconsistent with this decision and award.

This award is subject to a lien in favor of Frank Niesen in the amount of 12.5% for necessary legal services rendered.

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

Given at Jefferson City, State of Missouri, this 11th day of October 2017.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

John J. Larsen, Jr., Chairman

VACANT
Member

Curtis E. Chick, Jr., Member

Attest:

Secretary
AWARD

Employee:   Thomas Wann  Injury No.:   12-090608
Dependents:  n/a
Employer:    The Lawrence Group
Additional Party:    SIF – previously dismissed
Insurer:    Travelers Indemnity Company
Hearing Date:  August 23, 2016

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:     November 15, 2012
5. State location where accident occurred or occupational disease was contracted:   St. Louis
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:  
Claimant injured his upper extremities in the course and scope of his employment.
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:  right and left upper extremities
14. Nature and extent of any permanent disability:   30% right shoulder, 20% left shoulder, 10% right wrist, 10%
left wrist
15. Compensation paid to-date for temporary disability:   $38,667.75
16. Value necessary medical aid paid to date by employer/insurer?   $54,039.82
Employee: Thomas Wann

17. Value necessary medical aid not furnished by employer/insurer? None
18. Employee's average weekly wages: $1,631.35
19. Weekly compensation rate: $827.75/$433.58
20. Method wages computation: Stipulation

COMPENSATION PAYABLE

21. Amount of compensation payable:

155 weeks of permanent partial disability from Employer $65,470.58

22. Second Injury Fund liability: n/a

TOTAL: $65,470.58

23. Future requirements awarded:

Said payments to begin immediately 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:

Frank Niesen
FINDINGS OF FACT and RULINGS OF LAW:

Employee:    Thomas Wann                      Injury No.:  12-090608
Dependents:  n/a                               Before the
Employer:    The Lawrence Group                Division of Workers’
Additional Party: SIF – previously dismissed  Compensation
Insurer:     Travelers                          Department of Labor and Industrial
            Checked by:  KMH                      Relations of Missouri
                                                            Jefferson City, Missouri

A hearing was held on the above captioned matter August 23, 2016. Thomas Wann
(Claimant) was represented by attorney Frank Niesen. The Lawrence Group (Employer) was
represented by attorney Rhonda Kattelman. The SIF was dismissed prior to trial.

All objections not expressly ruled on in this award are overruled to the extent they
conflict with this award.

Claimant alleges he is totally disabled as a result of his 2012 work injury.

STIPULATIONS

The parties stipulated to the following:

1. Claimant sustained an injury by occupational disease in the course and scope of his
   employment for Employer.
2. Employer and Claimant were operating under the provisions of the Missouri Workers’
   Compensation law.
3. Employer’s liability was fully insured by Travelers.
4. Employer had notice of the injury and a claim for compensation was timely filed.
5. Claimant’s average weekly wage was $1,631.35, and his compensation rates are $827.75
   for TTD/PTD and $433.58 for PPD.
6. Claimant was paid TTD in the amount of $38,667.75 representing 46 5/7 weeks of
   benefits.
7. Claimant has received medical benefits of $54,039.82.
ISSUES

The parties stipulated the issues to be resolved are as follows:

1. Future medical care
2. Permanent disability
3. Disfigurement

FINDINGS OF FACT

Based on the competent and substantial evidence, my observations of Claimant at trial, and the reasonable inferences to be drawn therefrom, I find:

1. Claimant is a 59 year-old, right-handed, married male. He is a high school graduate and spent most of his career in the construction industry. He began working for Employer in 2010 performing various carpentry duties including framing, trimming, and demolition.

2. In November 2012, Claimant developed symptoms in his upper extremities. He sought treatment through his primary care physician, Dr. Sides, on November 5, 2012. Claimant had bilateral shoulder pain with radiating pain, numbness, and tingling in his fingers. Dr. Sides treated Claimant with medications, sent him for a right shoulder MRI, and referred him to Dr. Ritchie.

3. Claimant saw Dr. Ritchie November 19, 2012. He noted the MRI showed longstanding impingement and probably a degenerative labral tear. He opined Claimant’s options were medication, injections, or arthroscopic treatment.

4. Claimant reported his symptoms to Employer, and they authorized treatment with Dr. Sigmund. He reviewed the MRI, and opined Claimant had a superior labral tear and a small posterior labral tear. He opined Claimant’s job duties were the prevailing factor in causing the condition and need for treatment. He recommended restricted duties and conservative treatment. Injections did not improve Claimant’s symptoms, and he developed atrophy in his right arm. Dr. Sigmund sent Claimant for EMG/NCS on the right. On February 27, 2013, Dr. Sigmund opined conservative treatment on the right arm had failed, and he recommended right shoulder surgery.

5. By the end of March 2013, Claimant’s left shoulder symptoms increased. An MRI of the left shoulder showed a small undersurface SLAP tear, and Dr. Sigmund ordered physical therapy on the left shoulder. On June 5, 2013, Dr. Sigmund opined conservative treatment on the right arm had failed, and he recommended right shoulder surgery.

6. Claimant requested, and Employer authorized, treatment with Dr. Ritchie. On July 22, 2013, Dr. Ritchie performed a right shoulder arthroscopic debridement of significant labral pathology, biceps tenotomy, subacromial decompression, biceps tenodesis, and
distal clavicle resection. He sent Claimant to Dr. Wayne for studies to evaluate the left arm symptoms. These studies showed mild ulnar neuropathy at the left elbow, moderate median neuropathy at the left wrist, and no evidence of left cervical radiculopathy. Claimant continued in physical therapy and followed up with Dr. Ritchie.

7. On December 12, 2013, Dr. Ritchie reviewed a recent functional capacity evaluation (FCE), examined Claimant and issued a report. He opined Claimant had significant arthritic changes that could not be eliminated in an arthroscopic surgery. The arthritic changes are only treatable with a shoulder replacement, and Claimant did not need a replacement. He opined the work injury did not cause the arthritis, but did have a role in making it symptomatic. The FCE showed Claimant met the demand levels of heavy work below shoulder level, but Claimant did not meet the criteria for his regular job. Dr. Ritchie opined Claimant had reached maximum medical improvement (MMI) and issued permanent restrictions allowing heavy demand level work below his shoulder and only occasional overhead lifting of fifteen pounds. He later rated Claimant’s disability at 20% PPD of the right shoulder. Claimant has had no treatment on his upper extremities since Dr. Ritchie released him.

8. On September 11, 2015, Dr. Ritchie evaluated Claimant’s left arm and issued a report. He noted Claimant’s right arm still bothered him, he never went back to work after surgery, and Claimant was on disability. Claimant’s left arm symptoms were tolerable since he was not working. Claimant continued to have activity related symptoms and numbness down to his left elbow. He had pain and nearly full range of motion in the left shoulder, and full range of motion in his wrists. Dr. Ritchie diagnosed chronic left shoulder impingement and probable labral pathology, bilateral carpal tunnel syndrome, and left elbow mild ulnar neuropathy. He rated Claimant’s disabilities at 15% PPD of the left shoulder, 5% PPD of the left elbow, and 10% PPD of each wrist. He opined there would be a point Claimant wants carpal tunnel releases, and his left shoulder would improve with surgery.

9. Claimant testified he did not get a good result from the right shoulder surgery, and does not want more surgery on his shoulders or his hands. The surgery relieved the pain that radiated to his fingers, but he continues to have symptoms in both arms. He has pain in his right arm if he raises it to shoulder level. His right shoulder always feels tight and stiff, and he can’t reach very far behind his back. If he uses his arm too much, he gets pain down to the right elbow. He continues to have decreased range of motion in the left shoulder. He has pain in the shoulder when he brings his arm down after raising it, and he has pain when using a lawn mower. His left hand is more symptomatic than the right because he doesn’t use his right arm much. His left hand gets stiff and painful when he uses it. He has numbness in the tip of his long and ring fingers in both hands, but he has no problems gripping, opening jars, or dropping things. He has no elbow and no neck complaints.

10. Since his arm injuries, Claimant has difficulty sleeping. He sleeps about eight hours a night, a little more than before the injuries, but it is interrupted multiples times due to shoulder pain. He wakes up just as tired as when he went to bed. He testified he takes several naps during the day and falls asleep while watching TV or reading. Claimant
testified on direct exam that his sinus and allergy problems make sleep difficult, but later testified he has had sinus issues all his life that do not affect his sleep.

11. Claimant is generally inactive and testified he has gained 30 pounds since the date of injury. He does some laundry, cooking, and vacuuming, but he spends most of his time watching television and reading. When he sits over two hours, both of his shoulders ache. His shoulders are stiff when he wakes up in the morning and they get better throughout the day. Claimant can’t raise his arms to shampoo his hair, so he has to bend down. He has no problems dressing. He has a computer and can get on the internet, but he can’t type and doesn’t email. Claimant is able to drive, but his wife drives when they go long distances. Claimant goes shopping with his wife after church or light grocery shopping by himself during the week.

12. Claimant is able to mow his acre and a half yard without breaks because he has a riding lawn mower with hydraulic steering. Claimant has not hunted since his arm injuries. He testified he is also not able to work in his woodworking shop anymore. He has done some small furniture repairs, but testified he can’t do much more than that. He is not able to paint or work on his house anymore.

13. Claimant testified he takes Ibuprofen a few times a month at most now because he is not active. He takes Ibuprofen before going to soccer games where he would be standing or walking all day. He does not want to take narcotics.

14. Claimant has not worked since January 2013. Employer did not have light duty work within his restrictions. Claimant receives SSD of $1,900 per month and a Carpenters’ Union Pension of about $500 per month, after insurance premiums are taken out.

15. Claimant thinks he is physically unable to work because of his shoulders and sleeping problems. Claimant looked for a job taking inventory at a family member’s fence company. His family member didn’t think Claimant could do the job because he could not move the inventory. He has not looked for any other employment.

16. Claimant’s expert, Dr. Volarich, reviewed the records, examined Claimant in October 2014, and issued multiple reports. He noted Claimant had bilateral hand and shoulder pain and used his left upper extremity more than his right, but he had no problems with his elbows. Claimant had difficulty doing household chores, and could cut the grass if he took frequent breaks. Sleep was difficult and disrupted. He noted Claimant has a woodworking shop at home and has done about fifteen hours of woodworking a week since 1975. Claimant’s physical exam revealed reduced range of motion in the shoulders and nearly full motion in the elbows. He had positive Tinel’s in the wrists and an otherwise normal exam.

17. Dr. Volarich issued permanent work restrictions, and rated Claimant’s disabilities at 60% of the right shoulder, 30% of the left shoulder, and 15% of each hand. Claimant had no prior conditions that were a hindrance or obstacle to employment. Dr. Volarich recommended Claimant undergo a vocational assessment to determine if he is able to get back to work. If a vocational counselor was unable to identify a job for Claimant, he is
permanently and totally disabled as a result of the work injury alone. In Dr. Volarich’s final report, he noted he contacted Claimant to discuss his sleep issues. Claimant reported he was awakened several times a night due to shoulder pain and he never had problems sleeping before the work injury. Dr. Volarich testified Claimant was on no pain medications and did not need additional treatment. If his symptoms flared up, he may need to take ibuprofen.

18. Employer’s expert, Dr. Ritchie, treated Claimant and released him at MMI December 12, 2013. He issued permanent restrictions allowing Claimant to work in the heavy demand level with only occasional overhead lifting of up to fifteen pounds. In September 2015, Dr. Ritchie examined Claimant’s left upper extremity and issued a final report. He noted Claimant had full range of motion at the left shoulder and wrists. Studies showed Claimant had impingement and a nondisplaced labral tear in the left shoulder and carpal tunnel syndrome in both wrists. He rated Claimant’s disabilities at 20% PPD of the right shoulder, 15% of the left shoulder, 10% of each wrist, and 5% of the left elbow.

19. Claimant’s vocational expert, Jim England, reviewed the records, interviewed Claimant, and issued a report in April 2015. He noted Claimant appeared tired and winced with pain at any arm movement. Claimant spent his career in construction and had experience as a foreman. Mr. England opined Claimant had good WRAT scores and has transferable skills down to a light level of exertion. Given Dr. Ritchie’s opinion, Claimant could work as a cost estimator or in construction sales. Assuming Dr. Volarich’s restrictions, Claimant would not likely be able to do even sedentary work consistently because it requires repetitive use of his arms. Mr. England noted Claimant does not get adequate sleep due to shoulder pain, and he often dozes off when he gets into a comfortable position. Mr. England opined this would make it virtually impossible for Claimant to sustain even sedentary work. He opined considering the combination of his bilateral upper extremity problems, his age, and his difficulty sleeping, Claimant is totally disabled.

20. Mr. England testified Claimant will never be able to compete in the open labor market. Although Claimant has sleep disturbance, he takes no medication to help him sleep. He opined if Claimant were able to get a full night sleep, he could be a candidate for some jobs that do not involve much use of his arms. He testified Claimant has no memory problems and is able to use a computer.

21. Employer’s vocational expert, Donna Abrams, reviewed the records, interviewed Claimant, and issued a report in December 2015. She noted Claimant described a very disabled lifestyle that includes frequent naps due to pain that prevents him from sleeping soundly. He takes over the counter pain medications and is no longer treating for the injury. Assuming Dr. Ritchie’s restrictions, Claimant is able to work in the heavy range with occasional overhead work. Assuming Dr. Sigmund and Dr. Volarich’s restrictions, Claimant can work in the sedentary and light ranges of work. Ms. Abrams opined Claimant has the ability to perform jobs that exist in the open labor market, and he is employable. He may have a difficult time locating a job given his age and the length of time since he stopped working.
22. Ms. Abrams testified Claimant made a good first impression. She identified a number of jobs he could perform. These jobs will require him to learn new things, but he can be proficient in a few months. She opined napping three or four times a day could preclude his ability to get a job. She noted Claimant was not taking any over the counter or prescription pain medications.

**RULINGS OF LAW**

Having given careful consideration to the entire record, based upon the above testimony, the competent and substantial evidence presented and the applicable law, I find the following:

1. **Claimant is not entitled to future medical care.**

   Section 287.140.1, RSMo, requires an employer to provide an employee with such medical treatment as may be reasonably required to cure and relieve the effects of the injury. A claimant need not present evidence that future medical treatment is needed but instead needs only to show a reasonable probability that future treatment is necessary because of the work-related injury.

   Dr. Ritchie released Claimant at MMI December 12, 2013. He opined Claimant did not need surgery or any additional treatment. Claimant’s own expert, Dr. Volarich, testified Claimant did not need additional treatment and was not taking any pain medications. Claimant testified his condition has improved, he does not want more surgery, and at most, he takes a few Ibuprofen a month when he knows he will be active.

   I find Claimant has failed to establish a reasonable probability that future treatment is necessary.

2. **Claimant sustained 30% PPD of the right shoulder, 20% PPD of the left shoulder, 10% PPD of the right wrist, and 10% PPD of the left wrist as a result of the primary injury, or a total of 155 weeks of disability. He is entitled to $65,470.58 in compensation from Employer.**

   Claimant alleges he is totally disabled as a result of the work injury alone. Claimant had no restrictions or injuries prior to the work injury.

   Section 287.020.6 defines total disability as the “inability to return to any employment, and not merely…inability to return to the employment in which the employee was engaged at the time of the accident.” The question is whether an employer would reasonably be expected to employ Claimant in his current condition.
Both medical experts imposed permanent restrictions, which preclude Claimant from returning to carpentry work with frequent overhead lifting. While Claimant is not able to return to his former job, I find he is not permanently and totally disabled. He admitted he has no ambulation problems, and he offered no evidence of pain syndrome or need for post surgical drug therapy. He admitted to taking only Ibuprofen just a few times a month when he knew he would be standing or walking all day. Claimant testified to sleep difficulties, but made no demonstrable attempt to alleviate his sleep disturbance. Sleep issues are not substantiated in the treatment records and are only found in the expert reports. Claimant’s expert opinions rely on Claimant’s assertion of a sleep deficit. The vocational experts opined Claimant has good WRAT scores, is articulate, has transferable skills, has no memory problems, and is able to learn new skills; yet, he has made no effort to seek employment other than one job through a family member.

I find Claimant’s evidence is not sufficiently persuasive to establish permanent total disability or an inability to compete in the open labor market. Permanent total disability typically entails ambulation deficits, narcotic pain regimens, inability to perform self-care, or marked sleep deficits. Claimant’s medical evidence contains none of these characteristics.

I find Claimant has sustained permanent partial disabilities of 30% of the right shoulder, 20% of the left shoulder, and 10% of each wrist, for a total of 155 weeks. He is entitled to $65,470.58 in compensation from Employer. Given the location of his surgical scar, I find he is not entitled to disfigurement.

Made by:  __________________________________

KATHLEEN M. HART
Administrative Law Judge
Division of Workers' Compensation