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A2201746 (Re), 2025 CanLII 54217 (BC WCAT)

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DECISION OF THE WORKERS' COMPENSATION APPEAL TRIBUNAL

WCAT Decision Number: A2201746
WCAT Decision Date: May 30, 2025

Introduction

[1] In a March 3, 2021 decision, the Workers' Compensation Board (Board), operating as WorkSafeBC, accepted the worker's claim for a left shoulder sprain/strain resulting from his February 8, 2021 work activities. The Board paid the worker wage-loss benefits for time missed from work due to his accepted injury.

[2] In a decision dated March 4, 2022, the Board accepted left rotator cuff tendinopathy and left shoulder chronic pain (myofascial pain of the left upper scapula and periscapular muscles) under the worker's claim, finding both conditions stabilized as permanent as of March 7, 2022. The Board found the worker was entitled to a referral to the Board's Long Term Disability Services (LTDS) for assessment of permanent partial disability benefits for his accepted permanent conditions, and a referral to the Board's Vocational Rehabilitation Services (VRS). The Board found the worker was not entitled to wage-loss benefits after March 6, 2022.

[3] In an October 20, 2022 decision, the Board found the worker was entitled to permanent partial disability benefits for his accepted permanent left shoulder conditions assessed at 22.24% of total disability, for partial loss of range of motion of the left shoulder, effective March 7, 2022. Impairment ratings for loss of sensation, loss of strength, and chronic pain were denied.

[4] The employer requested a review of the Board's March 4 and October 20, 2022 decisions by the Review Division at the Board. The worker requested a cross-review of the Board's October 20, 2022 decision. In a Review Division decision dated August 8, 2022 (*Review Reference #R0289633*), a review officer confirmed the Board's March 4, 2022 decision. In a Review Division dated June 5, 2023 (*Review Reference #R0300635*) a review officer varied the October 20, 2022 decision to provide the worker an additional impairment rating of 2.50% of total disability for his accepted permanent left shoulder chronic pain.

[5] The employer appeals the August 8, 2022 and June 5, 2023 Review Division decisions to the Workers' Compensation Appeal Tribunal (WCAT), respectively assigned appeal numbers A2201746 and A2301254. The employer is represented by legal counsel. The worker is participating in both appeals and is represented by a workers' adviser. An oral hearing was held in both appeals on September 6 and 7, 2023.

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[6] Though appeals A2201746 and A2301254 were initially joined, further to submissions being completed, I elected to separate the two appeals. This decision relates only to appeal A2201746.

Issue(s)

[7] The issues are:

1. Did the worker develop left rotator cuff tendinopathy as a personal injury arising out of and in the course of his employment on February 8, 2021?
2. Did the worker develop left shoulder chronic pain (specifically myofascial pain of the left upper scapula and periscapular muscles) as a compensable consequence of his accepted left shoulder conditions?
3. Does the worker have an actual or potential disability from his left rotator cuff tendinopathy and/or left shoulder chronic pain (should those conditions be found compensable) such that he is entitled to a referral to the Board's LTDS for assessment of permanent partial disability benefits for those conditions?

Preliminary Matters

[8] Item 3.3.1 of WCAT's *Manual of Rules of Practice and Procedure* (MRPP) states that WCAT will generally restrict its decision to the issues raised by the appellant in the notice of appeal and the appellant's submissions to WCAT. An exception is where the subject of the appeal is permanent disability benefits which typically includes the effective date of the benefits as well as assessment of the permanent functional impairment. Panels may address any aspect of the permanent disability benefits decision which was addressed in the underlying Board and Review Division decisions, without notice to the parties.

[9] At the oral hearing, I confirmed with the parties that the issues in this appeal were as indicated in the issue statement above. As the employer did not indicate that it disputed any additional issues, I will not address the worker's entitlement to wage-loss benefits beyond March 6, 2022 which was addressed in the Board's March 4, 2022 decision.

[10] I note that in written submissions provided after the oral hearing, the employer's representative submitted that I have jurisdiction to find the worker engaged in fraud and misrepresentation pursuant to section 124 of the *Workers Compensation Act* (Act) and set aside the Board and Review Division decisions that accepted the worker's claim for permanent injuries. Neither of the Board nor Review Division decisions underlying this appeal addressed application of section 124 of the Act. As such, I do not have jurisdiction to decide whether the Board or Review Division decisions should be set aside because of fraud or misrepresentation. Nor do I feel it would be appropriate for me to ask the Board for a summary determination on this specific issue as it does not appear that information regarding the worker's social media postings, which the employer relies on to support that the worker has engaged in fraud and misrepresentation, was before the Board prior to its March 4, 2022 decision.

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[11] At any rate, the employer's submissions regarding the worker's credibility will be considered as part of my determination on the issues in this appeal.

Jurisdiction

[12] This appeal was filed with WCAT under section 288 of the Act.

[13] Section 308 of the Act gives WCAT exclusive jurisdiction to inquire into, hear, and determine all those matters and questions of fact, law, and discretion arising or required to be determined in an appeal before it.

[14] Under section 303 of the Act, WCAT may consider all questions of fact and law arising in an appeal, but is not bound by legal precedent. WCAT must make its decision on the merits and justice of the case, but in so doing, must apply the policies of the Board's board of directors that are applicable in the case. The applicable policy is found in the Board's *Rehabilitation Services and Claims Manual, Volume II* (RSCM II).

[15] The standard of proof which applies on appeal is the balance of probabilities, subject to section 303(5) of the Act. Section 303(5) of the Act states that if on an appeal respecting the compensation of a worker the evidence supporting different findings on an issue is evenly weighted, the issue must be resolved in favour of the worker.

Method of Appeal and Procedure

[16] The parties initially provided submissions in writing on appeal A2201746. Further to receipt of the worker's responding submission, the employer requested that the appeal proceed by way of an oral hearing as significant credibility issues had been raised. Notably, with its initial submission the employer had referred to social media postings which it submitted showed the worker engaging in activities at odds with a permanent left shoulder condition. The worker provided a responding submission disputing the dates he performed the activities shown in the social media postings. Further to receipt of the worker's responding submission, the employer asked that the appeals go by way of an oral hearing given that the worker's credibility was at issue.

[17] A pre-hearing teleconference took place on April 13, 2023 where I heard further from the parties on whether an oral hearing was required in this appeal. I allowed the employer's request for an oral hearing noting that item 7.5 (Appeal Method) of the MRPP states that WCAT will normally grant a party's request for an oral hearing where the appeal involves a significant issue of credibility, where there are significant factual issues in dispute, and/or where there are other compelling reasons for convening an oral hearing.

[18] I indicated that I was satisfied that there were significant factual issues in dispute, specifically whether the worker's reports to the Board and his treatment providers regarding ongoing left shoulder pain and associated physical impairment could be reconciled with his participation in activities as reflected on his social media accounts. It also appeared that the worker's credibility was at issue as the employer indicated that it did not believe the worker's evidence that some of

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the videos and photographs he posted to his social media accounts were from a time period prior to his February 8, 2021 work injury.

[19] I note that at the oral hearing, the parties provided evidence for both A2201746 and A2301254. The parties were advised at the oral hearing that submissions would be made in writing given that I directed the worker and the employer to produce additional evidence post-hearing.

Background, Evidence and Submissions

[20] I have reviewed and considered the disclosure to WCAT of the worker's Board claim file, as well as the evidence and submissions provided on appeal. I have set out an overview of those aspects of the worker's claim history and the available evidence as it is relevant to the appeal.

Claim File Evidence

[21] On February 16, 2021, the worker submitted an application for compensation to the Board describing that in his position as a "water spider"[1] on February 8, 2021 he had supplied bundles of boxes to various stations in the employer's warehouse. The bundles varied in weight. He would hold the bundled boxes in his hands and place them above or below various stations. On February 8, 2021, after a couple hours of doing this task, he began to have left shoulder pain. After his second break, he had sharp pain down the left arm. The worker's left shoulder pain worsened with other work tasks.

[22] The employer provided the Board with an offer of modified duties made to the worker on February 9, 2021, which indicates the worker injured his left shoulder the day prior. The worker's signature is on the offer indicating his acceptance.

[23] A February 12, 2021 physician's report describes that the worker injured his left shoulder lifting boxes and that since then had pain with movement of the left shoulder and also at night. On examination, the physician documented that the worker's left shoulder was restricted to adduction about 120 degrees; that there was tenderness around the left shoulder; and decreased strength. The physician diagnosed a left shoulder strain and recommended the worker be off from work.

[24] A February 17, 2021 employer's report describes that on February 8, 2021 the worker had worked as a water spider for 5.5 hours during his shift and that investigation indicated the worker picked up box bundles from a pallet with one hand and held the bundles by the strap. The worker had also worked four hours in packing. The worker was noted to have sought first aid attention for left shoulder and arm pain. The employer objected to the worker's claim detailing that it had offered modified duties to the worker which it felt were suitable and that it was unsure if the worker had shown his physician the offer.

[25] A February 19, 2021 physiotherapy initial report documents the worker felt left shoulder strain while working as a water spider. The physiotherapist assessed the worker was unable to use his

[1] All quotations are reproduced as written, unless otherwise indicated.

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left upper extremity especially the shoulder, and that he could possibly perform modified duties as of February 23, 2021.

[26] The worker continued to report left shoulder pain to his family physician as documented in physician's reports. A March 19, 2021 x-ray of the left shoulder was normal. An April 1, 2021 physician's report indicates the worker's left shoulder range of motion was restricted to about 120 degrees on abduction and that there was tenderness around the joint. The diagnosis continued to be a strain.

[27] The worker saw Dr. Regan, an orthopedic surgeon at the Board's Visiting Specialists Clinic, on May 12, 2021. Dr. Regan documented that the worker reported pain and stiffness in his non-dominant left shoulder, and that onset dated back to a work related injury on February 8, 2021. Dr. Regan understood that on that date, the worker was involved in repetitive activity placing boxes above and below stations at work, and started noticing diffuse pain about the shoulder. The worker reported being off work and that physiotherapy aggravated his shoulder. On examination, Dr. Regan observed that:

- The worker's right shoulder had full painless range of motion with no evidence of rotator cuff dysfunction.
- The worker's left shoulder had guarded motion forward elevation approximately 90 degrees, and abduction to 70 degrees. External rotation was limited by 40 degrees compared to the left. Internal rotation was limited by four vertebral levels.

[28] Dr. Regan's diagnosis was rotator cuff tendinopathy plus adhesive capsulitis.

[29] A May 19, 2021 ultrasound of the left shoulder did not show any significant abnormality. At Dr. Regan's direction, the worker underwent a steroid injection to the left shoulder on June 18, 2021. At a follow up consultation on August 17, 2021, Dr. Regan observed that the recent ultrasound was normal. The worker continued to report significant pain in the left shoulder. Dr. Regan wrote that the worker had full passive range of motion, but poor active motion with pain. Dr. Regan's diagnosis was myofascial pain.

[30] A Board medical advisor, Dr. Collins, reviewed the worker's claim and provided an October 13, 2021 clinical opinion. Dr. Colins wrote that full passive shoulder range of motion would not indicate adhesive capsulitis and that this condition should be considered resolved. Dr. Collins further stated that the diagnosis of myofascial pain of the left upper scapula and periscapular muscles would be reasonably related to the left shoulder injury accepted under the claim. Dr. Collins noted that surgical intervention was not recommended and that permanent disability was not anticipated.

[31] The worker participated in a pain and medication management program (PMMP) through the Board. In a February 2022 PMMP discharge report, the PMMP physician wrote that the worker continued to present with marked guarding of the left shoulder causing decreased range, decreased strength and function, disuse erythema in the hand, and muscular wasting in the shoulder girdle (generalized in the deltoids). The worker was discharged from the PMMP

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program as fit with limitations. The PMMP report describes that functional gaps related to pre-injury job demands were demonstrated in areas of lifting, carrying, push/pull, reaching, walking, gripping, and general range of motion tolerances required. The worker did have some reduced functional tolerances due to post-COVID symptoms (fatigue and weakness).

[32] A March 1, 2022 return-to-work planning memorandum indicates that the worker was determined to have a permanent partial disability. The accepted limitations on his claim file were able to lift and carry with left arm up to the limited strength category, and able to reach with the left arm only on a rare frequency basis.

[33] The Board then issued its March 4, 2022 decision terminating wage-loss benefits, accepting left shoulder chronic pain and rotator cuff tendinopathy as permanent conditions under the claim, and referring the worker to the Board's LTDS and VRS. The Board's decision does not refer to any medical opinions or evidence to support its findings.

Review Division Proceedings

[34] On review of the Board's March 4, 2022 decision, the employer briefly submitted that the Board did not fully investigate the worker's condition or properly apply the Board's policies. The employer disputed that the worker's conditions were permanent and that the worker was entitled to a referral to LTDS. The worker was represented by a workers' adviser in the Review Division proceedings who made a brief submission that the Board had properly found the worker's left shoulder conditions were permanent after consideration of the available medical evidence.

[35] In the August 8, 2022 Review Division decision, the review officer placed significant weight on Dr. Regan's consultation reports in accepting left shoulder rotator cuff tendinopathy under the worker's claim. The review officer considered the evidence and found that the worker had developed a left shoulder chronic pain condition as a compensable consequence of his accepted left shoulder injuries.

[36] In finding that the worker's left shoulder rotator cuff tendinopathy and chronic pain had stabilized as permanent by March 7, 2022, the review officer found it significant that evidence from the worker's attending physician and from the PMMP treatment team showed that the worker had ongoing left shoulder symptoms related to his compensable injury. Specifically, the attending physician continued to observe the worker's left shoulder pain and diagnose left rotator cuff tendinopathy, and neither the attending physician nor the PMMP treatment provider recommended further treatment.

[37] In a March 1, 2023 submission relating to review of the Board's October 20, 2022 decision, the employer's representative provided the Review Division with a November 4, 2022 letter to the Board asking that it conduct additional investigation of the worker. In this letter, the employer provided a PowerPoint document with embedded video posts and photographs from the worker's social medial accounts. The representative submitted that these posts were

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inconsistent with the nature of the worker's compensable injury and the associated limitations accepted by the Board. The social media posts were summarized in the representative's letter to the Board and were generally submitted to contradict the medical evidence from around the time of each post. I have summarized the posts as follows:

- A May 4, 2021 posting of a video showing the worker climbing up a rock face, and pulling himself up with both arms using a rope and chain attached to the rock face.
- A June 12, 2021 posting of two photographs showing the worker on a hike, one posing with a large backpack, including a handwritten note stating: "Another peak another week".
- A July 8, 2021 posting of a photograph showing the worker holding a large item above his head with both arms at shoulder level.
- An October 2021 posting of a video that appeared to indicate the worker planted 23 hedge trees in a single day.
- A July 5, 2022 posting of a 16-second[2] video showing the worker in a dance with his partner and moving both arms, at least once up above his head.
- A July 12, 2022 posting of a 9-second video showing the worker holding his partner's hand with his right arm and reaching up with his right arm as his partner jumps onto his back.
- An August 9, 2022 posting of a 27-second video showing the worker doing a dance with his partner and raising his left arm to shoulder height.
- An August 11, 2022 posting of a 19-second video of the worker dancing with his partner and repeatedly raising his left arm so that his left hand is at or above head height.
- An August 14, 2022 posting of a 19-second video of the worker pumping his arms out in front of him and at one point above his head.
- An August 16, 2022 posting of a 33-second video showing the worker dancing with his partner and swinging his left arm to and above shoulder height.
- An August 22, 2022 posting of a 23-second video showing the worker dancing and moving his arms at or above shoulder height, and at one point raising both arms above his head.
- A September 1, 2022 posting of a 22-second video showing the worker dancing with his partner and moving his left arm at or above shoulder height and moving his left arm in a forward arc.
- A September 2, 2022 posting of a 16-second video of the worker dancing with his partner moving his arms (but not to shoulder height) and down on the ground on his hands and knees with his head looking up.

[2] All video length times are approximate.

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- A September 3, 2022 posting of a 25-second video of the worker dancing and raising both arms above his shoulders repeatedly.
- A September 10, 2022 posting of a 13-second video of the worker kneeling on the ground reaching straight out with both arms in front of him.

[38] In response to this evidence, the worker provided an affidavit from an individual, Mr. S[3] located in another country stating that the videos posted by the worker to the Instagram account shared with his partner in 2022 were videos from a TikTok account in that country created with the same username in January 2020. Mr. S said that the TikTok account was registered under a contact number in the other country that belonged to him, and that the TikTok account was deleted in June 2020 due to regulations imposed by the government of that country. Mr. S said that he downloaded all the videos from that TikTok account onto his laptop with the worker's help which were then transferred to a USB key. Mr. S said he then gave the worker's friend who visited from Canada in October 2021 the USB key.

[39] Subsequently, the employer's representative declined to provide any further submissions noting that the issue of misrepresentation was now before WCAT on the worker's appeal of the August 8, 2022 Review Division decision.

WCAT Proceedings

Initial Written Submissions

[40] In a December 9, 2022 submission, the employer asked that the Board's March 4, 2022 decision be varied to deny permanent conditions under the claim as well as the associated referral to the Board's LTDS. The employer provided a USB key containing copies of the worker's social media postings it had previously provided the Board and suggested that the worker had engaged in misrepresentation. The employer said the worker's misrepresentation should be investigated by WCAT. The employer suggested that the Board had indicated that it was further investigating the worker.

[41] In a March 23, 2023 submission, the workers' adviser provided additional statements from the worker and his friends. In addition to referring to medical evidence to support the presence of permanent left shoulder conditions, the worker addressed the employer's reliance on social media postings. The worker admitted that he did go on a hike with his friends as depicted in the June 12, 2021 social media post, but that he did not carry any belongings with him and had borrowed the backpack of his friend for the photograph posted. The worker admitted that he did post the October 2021 video at that time, and had attended his friends' home where in fact trees were planted that day. The worker said that he himself did not plant any trees. The worker said that the rest of the videos and photographs were from 2019 to 2020, and that when TikTok was banned in the country where his account was based, he was unable to access his account from Canada. The worker said that he asked Mr. S to download the videos to his laptop and to a USB key without a TikTok watermark, and that Mr. S then gave the USB key to the worker's friend

[3] First name initials used for all witnesses.

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who visited from Canada. That friend subsequently gave the worker the USB key upon returning to Canada. The worker had then posted the videos from the USB key on the Instagram account he shared with his partner. The worker commented that social media timelines are not reliable, noting that one video post titled "**Happy Birthday to You**"[4] was posted August 14, 2022 even though he and his partner's birthdays are in February. The worker said that he did not post the videos from the USB key until May 2022 because that is when he received the USB key from his friend. The worker provided a copy of his friend's ticket which showed her traveling from her hometown in another province to Vancouver in early May 2022.

[42] The worker's friend, Mr. K, provided a signed statement saying that the hike depicted in the worker's May 4, 2021 social medial post was actually from a hike he did with the worker in September 2019. Mr. K further stated that the picture of the worker standing with an object on his head was actually taken on May 25, 2019, a few hours before Mr. K's engagement ceremony.

[43] Another friend, Mr. R, said that he did hike with the worker in June 2021 and that in the photograph posted of the worker carrying a backpack, the worker had used another friend's backpack for the picture. Mr. R further stated that in October 2021 he and his brother had planted trees on his property and that the worker was there, but did not help. He had lunch with Mr. R's family.

[44] Subsequent to the worker's written submission, the appeal method was changed to proceed by way of an oral hearing, as discussed earlier in the decision.

New Evidence Received Prior to the Oral Hearing

[45] Prior to the oral hearing the employer provided additional evidence including:

- Photographs of the worker posted to social media in August 2021 showing him at a yacht party with one reflecting his left arm raised in the air.
- A photograph of the worker from July 2021 showing him kneeling on the ground with his arms held bent in front of him and hands together in a prayer pose.
- Various webpages indicating when music used by the worker in his social media posts was released.
- A video of the worker posted on Instagram on October 8, 2021 showing him using his right arm to play skeet-ball at a recreational center.
- A video of the worker and his partner from July 1, 2022 posted to Instagram. The worker has his left arm primarily on his partner's left hip.

[4] emphasis in original

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Oral Hearing

Employer's Witness – Wellness Specialist

[46] A wellness specialist from the employer who held that position in October 2021 testified as follows:

- He is the site kinesiologist and creates injury prevention plans and return-to-work plans. He also does first aid treatment for musculoskeletal injuries.
- He had prepared the permanent accommodations for the worker's claim.
- He was present for the June 1, 2022 job site visit conducted by the Board with the worker present.
- He had watched when the occupational therapist asked the worker to reach for an object on a top shelf during the job site visit. He observed that the worker tried to reach the object but could not lift past his stomach area with his left arm and told the occupational therapist he could not do that task.
- He recalled that the worker looked as if he was making an effort to reach the object, and this struck him as odd because the information he had from the Board had indicated the worker could lift up to shoulder level normally.
- He had discussed with the occupational therapist that while the worker could be accommodated with a reduced productivity rate during a graduated return to work, that accommodation would not be available once the graduated return to work finished.
- During the job site visit, the worker had both hands in his pockets.

[47] On cross-examination, the wellness specialist agreed that he did not perform any physical assessment of the worker at the time of the job site visit and that the only physical activity he watched the worker demonstrate was the attempt to reach the box. The specialist reiterated that he felt that what the worker demonstrated in reaching the box did not align with his limitations as assessed by the Board. The wellness specialist further agreed that an individual's limitations and function can differ every day. On redirect the wellness specialist said that it was not his place to say if someone was faking an injury, but there may be times where the presenting symptoms and actions observed do not align.

Worker's Witnesses

[48] The worker called Mr. K and Mr. R as witnesses. They were excluded from the hearing until it was time for them to give their evidence.

[49] The worker provided evidence as follows:

- On February 8, 2021, he began his shift in the water spider position. He had to restock stations with boxes, dunnage, and tape.

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- His pain began in the morning and gradually increased.
- Before that day he did not have issues with his shoulder or prior injuries.
- As a water spider he had to put bundles of boxes on a cart, and then take the cart to a specific alley. Then he would stock the bundles at the stations either above his waist or below his waist.
- The weight of the bundles varied. The sizes of the boxes also varied and so some bundles had more boxes.
- The maximum distance to walk and carry a bundle was 300 to 400 meters.
- The water spider position did not have a productivity requirement. But the packers at the stations that he restocks do.
- As a water spider he was also responsible for locating a tote of products for scanning and manually giving them to the packing stations.
- Mostly he worked in the water spider position by himself. There are sirens at each station that will keep beeping until it gets what it needs (such as boxes or dunnage).
- When pushing boxes onto a bottom area of a station he would use his right hand to cut the rope and left arm to push the boxes inside where they need to go.
- When his symptoms developed on February 8, 2021, he kept working. Three quarters through his shift there was sharp pain.
- He may have been accommodated after seeking first aid on February 8, 2021 during his shift. For the next two days he was put on another role of packing. His symptoms worsened.
- After February 10, 2021 he had three regular days off, but his symptoms got worse. He saw his physician.
- During the PMMP program he had COVID-19 and did not attend for two weeks. He took a long time to recover.
- He understood that the Board occupational therapist had recommended he not return to his pre-injury job because of the productivity requirements.
- He has pain in his left shoulder and the pain goes from the neck to the arm.

[50] Regarding his social media activity, the worker gave evidence as follows:

- Most of the social medial posts produced by the employer related to activities which occurred prior to February 2021.
- Previously he had a private social media account. He then converted to a "creator account" which is signified by the title of "entrepreneur" under his name.
- It is recommended that creator accounts on Instagram upload one post every day, or four to five times a week, as well as seven to ten stories a day.

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- Creator accounts require consistent posts so that the Instagram algorithm works in the account holder's favour to monetize the account. Adding sound to posts favours the algorithms.
- The social media posts with videos of him and his partner dancing are known as reels on Instagram. Those videos were made from January to June 2020 and consisted of folk dance for his target market (consumers in the country where his TikTok account had been based). To get to that market he was targeting a local server under a contact number in that other country. This was because there was more engagement with posting under that number than a Canadian number.

[51] The worker's detailed evidence on direct and cross examination regarding the individual social media posts relied on by the employer will be addressed in the reasons of the decision. Briefly, on cross-examination the worker testified that:

- The creator account was active until March or April 2023 because his partner did not want individuals accessing her videos. His YouTube channel was still operating.
- He had not deleted his Instagram account so that the employer could not find any other information.
- After the TikTok ban in the country where his TikTok account was based, the worker was able to login into the TikTok account but was unable to access the verification code to complete access.
- Since his friend in that other country, Mr. S, was the first account holder for the worker's TikTok account, the friend was able to login and access the account.
- The worker then said that he was not sure if Mr. S required the verification code to login to TikTok after the ban was announced.
- After the ban, his first thought was to download the videos from TikTok. He did not change the number to one local to Canada because Mr. S was the individual with full access to the account. He also chose a number from outside Canada intentionally to increase engagement.
- To his knowledge, users do have the ability to download videos from TikTok without a watermark.

[52] Mr. K provided testimony as follows:

- He has known the worker more than six years.
- He was familiar with the worker's Instagram post from May 4, 2021 as he travelled to the location of that hike with the worker in September 2019.
- The May 4, 2021 Instagram post of the worker hiking was from September 2019. Mr. K recalled that he travelled outside of Canada the following month.
- Only he and the worker went on this hike.

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- He did not recall the worker having any shoulder issues at the time of their hike together.
- The July 8, 2021 photograph of the worker standing with an object on his head was taken at the time of Mr. K's engagement in May 2019 and was taken at his aunt's old house for a traditional ceremony.
- His engagement was in a hall and there was a ceremony done
- The same traditional ceremony was repeated at his wedding on July 9, 2021. His wedding was a much smaller event because of the COVID-19 pandemic.
- The traditional ceremony seen in the photograph posted July 8, 2021 is usually done a day or two before the wedding.
- He had only hiked with the worker the one time in September 2019.
- He has problems with his memory because of a motor vehicle accident, but recalls major events and tries to remember contemporaneous smaller events.

[53] Mr. R gave evidence as follows:

- He has known the worker for six to seven years.
- With regard to the worker's Instagram post on June 12, 2021 of a hike, he did recall that hike.
- He did the hike faster than the worker and reached the end 15 to 20 minutes before the worker.
- He has noticed the worker struggling with his left shoulder. He was not with the worker for the entire hike.
- The worker did not wear a backpack for the duration of the hike. Mr. R and the two other individuals on the hike carried water for the worker. Since everyone else was taking photographs with a backpack, the worker wanted to take one like that too and borrowed a backpack for the photographs.
- He hired someone to plant trees at his new property. The worker did not help with this activity. He was there for lunch and a get together.
- He recalled that when he purchased a new house in August 2021, he asked the worker to help move. The worker said he could not help because of his shoulder.

New Evidence Post-Hearing

[54] During cross-examination, counsel for the employer attempted to take the worker to the website of a fashion designer to clarify when a sweatshirt the worker was wearing in one of his social media videos was manufactured. I twice advised counsel it was inappropriate to introduce new evidence during the worker's cross-examination which the workers' adviser and myself had not been able to review. I instructed counsel that he would be permitted time to produce this new evidence, as well as two new online articles he sought to rely on, post-hearing as the parties

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would provide their submissions in writing. The worker was also asked to produced date-stamped photographs of his hike with Mr. K allegedly from September 2019 and of the worker standing with an object on his head allegedly from Mr. K's engagement in May 2019. The worker was also asked to produce emails of when he deactivated his Instagram account.

[55] After the hearing the worker provided the following evidence:

- Video clips with a date stamp of the media in the May 4, 2021 Instagram posts.
- A date stamped photograph for the July 8, 2021 Instagram post showing the worker standing holding a large object over his head.
- Screenshots of messages the worker received regarding being locked out of his Instagram account in August 2023.

[56] The worker also provided copies of website articles regarding watermark presentation on platforms. This includes an article about a particular software application to assist users with downloading TikTok videos without a watermark and an article from a news site in the country where the worker's TikTok account was based regarding the creator of that software application.

[57] The employer's representative also provided new evidence consisting of an affidavit from a paralegal attaching an email exchange with an individual at a fashion designer indicating that the sweatshirt the worker was wearing in the video posted to Instagram on August 16, 2022 was first available on July 24, 2022.The employer further provided a website article dated July 18, 2023 indicating that TikTok had launched a new update to allow users the option to save videos without a watermark.

[58] In a November 28, 2023 written submission, the employer's representative asserted that the worker's evidence that certain videos and photographs were not from the date they were posted to Instagram simply could not be believed. The employer submitted that there were too many unaccounted discrepancies in the whole of the evidence to support the worker's position on this point. The representative asked for a finding that the worker's evidence is not credible or reliable, and that as such, the statements made by the worker regarding his left shoulder and physical findings as documented by his treatment providers and examining physicians could not be given weight. The representative noted that the worker continued to report left shoulder pain and decreased left shoulder range of motion to his health care providers which was at odds with the worker's left shoulder motions as depicted in the videos and photographs from his social media postings.

[59] The representative generally submitted that no weight be given to the date stamped videos and photograph provided by the worker, indicating that the videos posted to Instagram on May 4, 2021 and the photograph posted July 8, 2021 were actually from 2019. The representative indicated that Apple iPhones have the built in ability to easily change metadata on photographs and videos.

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[60] The workers' adviser submitted that most of the photographs and videos relied on by the employer showed the worker engaging in activities such as dancing, hiking, and social gatherings. The workers' adviser noted that the worker had never indicated to the Board that he could not participate in such activities or had lost the use of his left arm. Rather, the worker has limited range of motion and chronic pain. The workers' adviser noted that the limitations accepted by the Board on the worker's claim are lifting and carrying with the left arm up to the limited strength category and being able to reach with the arm on a rare frequency basis. The social medial posts, whether from before or after February 8, 2021, did not show the worker engaging in activities beyond the accepted limitations. The workers' adviser provided an additional copy of the May 4, 2021 posted hike video and the July 8, 2021 posted photograph in its original form and then with the date edited. The electronic evidence for both the video and the photograph shows that when attempt is made to change the date, the original date is still shown for both pieces of media as 2019, next to the caption "Original". The adjusted date is shown next to the caption "Adjusted."

[61] In a rebuttal submission, the employer's representative did not comment on the additional electronic evidence produced by the worker for the May 4 and July 8, 2021 Instagram posts. The representative continued to suggest that the evidence as a whole supported that the worker had lied under oath about the dates of certain videos and photographs posted on his social media accounts, and that as such the statements and reports that he made to health care providers regarding the extent of his left shoulder condition could not be believed.

Independent Health Professional's (IHP)'s Opinion

[62] At the oral hearing, I had asked the representatives to turn their minds to whether an opinion from an IHP, which I have discretion to obtain under section 301 of the Act, would be of assistance in this appeal. In reviewing the medical evidence prior to the hearing, I had noted that neither Dr. Regan's consultation reports nor Dr. Collin's opinion addressed whether the left shoulder tendinopathy condition first diagnosed by Dr. Regan had become permanent. I also felt the IHP provider would be able to provide insight from a medical expert on the worker's left shoulder condition and whether or not the IHP's understanding of that condition was consistent with the worker's body movements and activities as depicted in the videos and photographs in the social media evidence. Further to consideration of the written submissions from the parties after the oral hearing, I elected to obtain an IHP's opinion.

[63] An IHP report dated December 12, 2024 was provided by Dr. Hamm, an occupational medicine specialist, who conducted a physical examination of the worker and reviewed the medical information in the worker's claim file. Dr. Hamm also considered the worker's social media postings as produced by the employer. Dr. Hamm concluded as follows:

- He considered it at least as likely as not that the worker's employment activities on February 8, 2021 were of causative significance for left shoulder tendinopathy.
- The accepted left shoulder strain and/or left rotator cuff tendinopathy were of causative significance to the development to the worker's left shoulder chronic pain.

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- Some of the videos produced by the employer from the worker's social medial posts showed the worker displaying upper left limb function incompatible with a left rotator cuff tendinopathy and left shoulder chronic pain at the time such images were captured (which Dr. Hamm understood from the worker to be from prior to the work injury).
- The worker's body movements and activities as seen in the social media videos and photographs were not consistent with the left shoulder range of motion measured by Dr. Smit on May 5, 2022 at a medical examination for impairment assessment (MEIA) arranged by the Board.

[64] In his IHP report, Dr. Hamm also commented that the worker had developed pain-related chronic scapulohumeral dyskinesia and altered shoulder girdle mechanics. Dr. Hamm described that on physical examination, the worker had drooping left shoulder and abnormal left scapulohumeral motion (scapular dyskinesia). Dr. Hamm included a photograph of the worker's back, shirt off, and facing forward, showing the worker's drooped left shoulder, and said that when he examined the worker, he "demonstrated markedly restricted active range of motion of his left shoulder in all planes, consistent with the measurements by Dr. Smit on May 5, 2022."

[65] In a December 19, 2024 clarification request, I asked Dr. Hamm to clarify whether the restricted active range of motion he had observed would be attributable to any or all of the accepted left shoulder conditions on the worker's claim, and/or the new condition noted by Dr. Hamm of pain-related chronic scapulohumeral dyskinesia and altered shoulder girdle mechanics. Dr. Hamm responded by way of a clarification dated January 13, 2025, in which he stated:

- It appears that scapular dyskinesis is a non-specific response to a painful condition in the shoulder rather than a specific response to glenohumeral pathology.
- The restricted active range of motion he observed in the worker was attributable to his left shoulder tendinopathy and/or left shoulder chronic pain, and also in part, to his pain-related chronic scapular/scapulohumeral dyskinesia/dyskinesis function, particularly in elevation.

[66] The parties were provided with copies of Dr. Hamm's IHP report, clarification, and all the materials Dr. Hamm considered in providing his IHP, including my terms of reference.

[67] In a February 20, 2025 submission, the employer's representative reiterated its position that the worker had lied under oath in alleging that the majority of the social media videos/photographs produced by the employer were from prior to February 8, 2021. The employer submitted that the worker had misrepresented his condition at the MEIA. The employer submitted that what it viewed as the worker's fraud undermined Dr. Hamm's conclusions.

[68] In a March 27, 2025 submission, the workers' adviser submitted Dr. Hamm's opinion should be accepted to confirm the underlying Review Division decisions. The workers' adviser observed that not only had Dr. Hamm reviewed the claim file evidence, he had also interviewed and physically examined the worker. The workers' adviser further submitted that Dr. Hamm's report provided objective evidence that the worker does have significant ongoing impairment of his left

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shoulder, including markedly restricted range of left shoulder range of motion in all planes and photographic evidence of the worker's left shoulder drooping.

[69] The workers' adviser disputed the employer's representative's assertion that because it could establish that one of the social media posts in issue occurred after the date of injury (given the date the sweatshirt worn by the worker in that post was allegedly produced) it must naturally follow that this is true of every other post. The workers' adviser suggested the affidavit evidence provided by the employer regarding the sweatshirt's production should be viewed with caution as the individual who had confirmed the date the sweatshirt was produced had not testified at the oral hearing. The workers' adviser also queried how the worker could have deceived Dr. Hamm on the provision of his opinion, and that neither Dr. Smit nor Dr. Hamm had indicated that the worker's reduced range of motion was due to self-limiting.

[70] In a rebuttal submission, the employer's representative continued to challenge the worker's credibility given the social media posts produced. The employer's position is essentially that the worker is not credible and that his reports of ongoing left shoulder pain and limitations simply cannot be believed.

Reasons and Finding

Credibility and Reliability of the Worker

[71] Before turning my mind to analysis of the issues in these appeals, it is necessary for me to make findings on the various social media posts relied on by the employer, and further to those findings, the worker's overall credibility and reliability. The employer submits that the worker lied under oath to WCAT and misrepresented his left shoulder condition to his treatment providers, Dr. Smit, and Dr. Hamm as evidenced by his social media postings. The workers' adviser suggests that the worker's evidence regarding one or more of the social media postings may not be reliable, but that this is no reason to discount the worker's evidence in its entirety.

[72] The legal principles in analysis of a party's credibility and reliability were recently summarized by Justice Blake in *Heirat v. Heidari*, 2024 BCSC 1438 as follows:

> [25] Credibility and reliability are separate concepts. Credibility relates to honesty and the willingness to speak truthfully, whereas reliability relates to a party's ability to accurately observe, recall and recount the events in issue: *Radacina v. Aquino*, 2020 BCSC 1143 at paras. 94–95. A party whose evidence is not credible cannot give reliable evidence on the same issue. Credibility is not, however, a proxy for reliability, as a credible witness may nonetheless be unreliable: *R.L. v. M.L.*, 2024 BCSC 106 at para. 107 [*R.L.*], citing *R. v. Morrissey* (1995), 22 O.R. (3d) 514 at 526, 1995 CanLII 3498 (C.A.); *Siever v. Interior Health Authority*, 2021 BCSC 880.
>
> [26] The starting point in a credibility assessment is to presume truthfulness. However, when a party's evidence "is demonstrably inaccurate the challenge from an assessment perspective is to identify the likely reason for the inaccuracy

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in a cautious, balanced and contextually sensitive way": *Hardychuk v. Johnstone*, 2012 BCSC 1359 at para. 10 [*Hardychuk*].

[27] In assessing reliability, the trial judge should consider whether the witness lacks the perceptive, recall or narrative capacity to provide reliable testimony and whether he or she may be unconsciously indulging in the human tendency to "reconstruct and distort history in a manner that favours a desired outcome": *Hardychuk* at para. 10. When assessing credibility, the trial judge should consider whether the witness is choosing, consciously and deliberately, to lie out of a perceived self-interest: *Hardychuk* at para. 10.

[28] A witness' intense animosity to the opposing party may also adversely affect that witness' credibility: *R.L.* at para. 110.

[29] The factors to be considered when assessing credibility were summarized by Justice Dillon in *Bradshaw v. Stenner*, 2010 BCSC 1398 [*Bradshaw BCSC*], aff'd 2012 BCCA 296. An assessment involves an examination of various factors, such as: the ability and opportunity to observe events; the firmness of the witness' memory; the ability to resist the influence of interest to modify his or her recollection; whether the witness' evidence harmonizes with independent evidence that has been accepted; whether the witness changes his or her testimony during direct and cross-examination; whether the witness' testimony seems unreasonable, impossible, or unlikely; whether a witness has a motive to lie; and the demeanour of the witness generally: *Bradshaw BCSC* at para. 186.

[30] The trial judge must also reasonably subject the evidence of each witness "to an examination of its consistency with the probabilities that surround the currently existing conditions": *Faryna v. Chorny*, [1952] 2 D.L.R. 354 at 357, 1951 CanLII 252 (B.C.C.A.) [*Faryna*]. It is critical to consider the evidence of a witness and whether it is in "harmony with the preponderance of the probabilities which a practical and informed person would readily recognize as reasonable in that place and in those conditions": *Faryna* at 357; see also *Johnson v. Wentworth*, 2021 BCSC 50 at para. 105.

[31] In some circumstances, where parties intentionally attempt to deceive the court, whether by deliberately lying or grossly exaggerating their story, the court may have "much difficulty in disentangling the truth from the web of deceit and exaggeration": *Le v. Milburn*, 8 A.C.W.S. (3d) 114 at para. 2, [1987] B.C.J. 2690 (S.C.) [*Le*]. In those circumstances, if the court "casts aside as untrue something that was indeed true, the litigant has only himself or herself to blame": *Le* at para. 2.

[73] I have considered the above principles when considering both the social media evidence that has been produced and the worker's overall credibility and reliability.

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May 4, 2021 Posting – Hike Video 1

[74] The May 4, 2021 video post from the worker's Instagram account shows him climbing up a rock face and pulling himself up with both arms using a rope and chain.

[75] The worker testified that the May 4, 2021 video is from a hike he did with Mr. K in 2019. Mr. K corroborated this evidence at the oral hearing, saying the hike took place in September 2019 and that he knew this because the following month he travelled outside Canada.

[76] After the oral hearing, the worker provided a date stamped photograph of the May 4, 2021 Instagram video indicating it was actually captured on September 28, 2019. The employer's representative provided a submission in response that iPhone users can easily change the metadata on photographs and videos, and provided copies of user guides with instructions on how this is done. In his responding submission, the worker provided a video from what appears to be his iPhone actively showing him changing the date of the video of the hike footage from September 28, 2019 (labeled on the iPhone as the "original" date) to a date in January 2024 labeled on the iPhone as the "adjusted" date. The caption on the iPhone for this sequence of events in the video is "Adjust Date and Time". In their rebuttal submission, the employer's representative did not specifically address this new evidence.

[77] I find the video from the worker's iPhone provided in January 2024 to be compelling evidence that the video of the hike posted to his Instagram account on May 4, 2021 was footage first captured on September 28, 2019. At the oral hearing, I asked the worker why he would fabricate the truth of what he was doing on any given day through his social media accounts. The worker replied that it was to his benefit to post multiple "stories" on Instagram in a day (in the range of 6 to 10) and noted that he had a creator account. The worker also indicated that it was common for him to embellish or distort the truth of his daily activities in his Instagram posts. The worker gave the example that if he was attending for hydrotherapy treatment of his left shoulder injury, he may caption the post to indicate that he was going swimming. The worker suggested there were multiple examples of this type of regular distortion of his daily activities on his Instagram account.

[78] The worker's evidence regarding the general distortion of truth that may be associated with an individual's social media postings was neatly summarized by Justice Crerar in *Padgham v. Ram*, 2024 BCSC 72, when he stated "…social media does not always present a realistic depiction of one's lifestyle…". In the worker's case, given the date stamped evidence he produced showing that the video footage posted to Instagram on May 4, 2021 was initially captured on September 28, 2019, and the worker's evidence at the oral hearing regarding the necessity of posting a certain amount of daily social media content, I accept that it was common for the worker to post videos and photographs to his Instagram account that were not an accurate representation of the activities that he actually engaged in on a given day. For that reason, I have approached the social media evidence obtained by the employer from the worker's social media accounts with some caution.

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[79] In so far as the May 4, 2021 Instagram video post is concerned, given my analysis of the evidence above, I am satisfied that it is at least as likely as not that video is from a hike the worker did with Mr. K in September 2019. I also note that in a screenshot of the worker's Instagram account provided by the employer the worker does describe himself as an entrepreneur and a "Hiker." Given that the worker identified himself as a hiker on his Instagram creator account, it appears reasonable to me that he would be motivated to post videos and photographs of himself engaged in hiking activities, even of hikes he did before he started his creator account.

June 12, 2021 Instagram Post – Photographs of the Worker, Hike 2

[80] The worker admitted that in June 2021 he participated in a hike as depicted in two photographs in a June 12, 2021 Instagram post. At the oral hearing, the employer took the worker through various YouTube videos (made by another content creator) depicting the terrain of that hike. However, I did not find this evidence to be compelling proof that the worker's participation in the hike exceeded his physical abilities in relation to his accepted left shoulder conditions.

[81] The two photographs of the worker show him posing with a backpack in one photograph and without a backpack in another. The worker's evidence supported by Mr. R is that the worker did not carry a backpack during the hike and that the worker borrowed the backpack to pose for the photograph to look "cool" as testified by the worker.

[82] I find that the whole of the evidence does not support a finding that the worker carried a backpack during the hike or that the worker's participation in the hike supports a finding that he was exaggerating the nature of his left shoulder condition. In this respect, I note that the two photographs produced show the worker standing with and without a backpack. The medical evidence indicates that while the worker had ongoing left shoulder pain, there was no limitation to his walking abilities (as per a June 11, 2021 physiotherapy extension request report). That report also describes that the worker reported 20 to 30 % improvement in his left shoulder condition at that time and that his left shoulder range of motion was actually better for flexion, abduction, and external rotation than subsequently measured at his MEIA in May 2022.

[83] In my view, the fact that the worker participated in a hike on June 12, 2021 is not incompatible with the extent of his accepted left shoulder condition in and around that same time, and thus does not impact my findings on his credibility. I have accepted that the worker did not wear a backpack during the hike other than to pose for a photograph as I find that there is a lack of positive evidence to suggest otherwise.

July 2021 Photograph of the Worker and his Partner at a Wedding

[84] Prior to the oral hearing, the employer provided a photograph of the worker and his partner kneeling with their arms folded in a prayer position with a bride and groom at a wedding. The worker confirmed this photograph was taken at Mr. K's wedding in July 2021. This photograph does not depict the worker doing anything that appears inconsistent with his left shoulder conditions and as such is not relevant to the issues in this appeal. It appears that the employer may have produced this evidence to establish when Mr. K's wedding occurred.

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July 8th 2021 Instagram Post – Photograph of the Worker, Arms Raised

[85] The July 8, 2021 Instagram post shows the worker with his arms raised to shoulder height to position a large item on his head. The worker and Mr. K testified that this photograph shows the worker holding a ceremonial item on his head in celebration of Mr. K's engagement in May 2019.

[86] I did find it strange, as pointed out by the employer's representative, that the photograph posted by the worker on Instagram on July 8, 2021 was on the day prior to Mr. K's actual wedding ceremony the following day on July 9, 2021. As Mr. K agreed at the oral hearing, the ceremony the worker is seen participating in, in the photograph posted July 8, 2021, is typically done the night prior to weddings in Mr. K's particular culture. There was also some inconsistent testimony from the worker and Mr. K regarding whether the location of the photograph at the time of Mr. K's engagement festivities in May 2019 differed from the location of Mr. K's wedding festivities in July 2021. Though Mr. K indicated that his aunt had moved from the location depicted in the photograph, the worker seemed to believe the engagement and wedding festivities were in the same general location. However, I do note that the worker's evidence on this point came across as unsure and that the worker also indicated that Mr. K had several relatives who all lived on the same street.

[87] Regardless of the foregoing evidence, in January 2024 the worker provided a video from his iPhone showing the original date of the photograph posted on July 8, 2021 was actually May 25, 2019, and the worker actively adjusting that date in the video to 2024. The employer did not specifically address this evidence in its rebuttal submission. Given the video evidence captured from his iPhone in January 2024, I accept that the photograph posted to the worker's Instagram account on July 8, 2021 was actually taken on May 25, 2019.

August 2021 – Photographs from Yacht Party

[88] The employer provided photographs of the worker with his left arm raised in a group photograph from a yacht party. At the oral hearing, the worker did not dispute that he attended the party in August 2021. I accept that the photograph of the worker with his left arm raised at a yacht party was taken in August 2021.

October 2021 Instagram Post - Video of Trees

[89] The employer provided an October 2021 video from the worker's Instagram account showing a backyard with the caption "All set to plant" alongside a fence and then showing a row of newly planted trees in that same location with the caption "Productive day, planted 23 [emojis of three trees]". The worker and Mr. R said that the worker did not actually help with the planting of the trees, and that the worker spent the day with Mr. R's family.

[90] Given that the videos themselves do not show the worker participating in any physical activity, and that I have accepted that the social media posts produced must be approached with caution given their tendency to present a distorted reality, I find that the October 2021 Instagram posts

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fail to establish that the worker actively engaged in planting any trees. On this point, I note that the worker's evidence was supported by that from Mr. R.

Facebook Post from October 8, 2021

[91] The employer provided a Facebook post from October 8, 2021 of a video showing the worker playing a game in an arcade type setting and using his right arm to throw a ball. As the worker is seen holding his left arm at his side in this video, I did not find it to be relevant to the issues in this appeal.

Instagram Posts from 2022 of the Worker and his Partner

[92] The employer provided multiple Instagram posts consisting of short videos showing the worker and his partner participating in an activity together set to music, typically folk dance. The videos were posted on the following dates in 2022: July 5, July 12, August 9, August 11, August 14, August 16, August 22, September 1, September 2, September 3, and September 10 (collectively the summer 2022 videos). The worker has suggested that the summer 2022 videos were actually from prior to his left shoulder injury in 2021, and were downloaded from their original posting on TikTok, to be posted to Instagram in 2022. These videos were posted to a different Instagram account than the worker's creator account. This second account appears to be focused on the worker and his partner as a couple.

[93] I acknowledge that the worker provided affidavit evidence from Ms. S confirming that he assisted the worker in downloading videos from TikTok to a USB key and that the worker was eventually given the USB key by a friend who had travelled to the country where Mr. S resides, where she assisted the worker by obtaining the USB key from Mr. S. The worker's friend then gave him the USB key when she eventually travelled to British Columbia in May 2022.

[94] However, after the oral hearing the employer's representative produced evidence from the manufacturer of the branded sweatshirt the worker and his partner are both seen wearing in the video posted to Instagram on August 16, 2022. In a September 12, 2023 email to the representative's paralegal, the manufacturer of the sweatshirt indicated that the sweatshirt worn by the worker in the August 16, 2022 video was not produced until July 2022. In my view, this is compelling evidence that the summer 2022 videos were not footage from prior to the worker's left shoulder injury in 2021. I also find it significant that the worker did not provide date stamped copies of the summer 2022 videos as he did for his May and July 2021 social media postings. Given the foregoing, I do not accept the worker's testimony that the summer 2022 videos were all from a period of time prior to his February 2021 work injury. In this respect I note that the location seen in the video posted to Instagram on August 16, 2022 appears to be the same outdoor residential location seen in videos that were posted August 9, August 22, September 1, and September 3. This is based on the distinct nature and same location of the two different fences seen in these videos one of which is older and faded, and another at the back of the residential property shown which is a bright tan/orange colour.

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[95] Given my consideration of the evidence as analyzed above, I find that it is more likely than not that the summer 2022 videos were all likely produced in and around the same time they were posted to the worker's couple Instagram account. I will discuss below what impact this finding has on the worker's credibility.

[96] I note that the employer had also subsequently provided a 10-second video posted to the worker's couple Instagram account on July 1, 2022 of the worker twirling his partner with the right hand. The worker does not move his left arm much in this video and as such I did not find it relevant to the issues in this appeal.

The Worker's Credibility and Reliability

[97] Given the evidence produced by the employer after the oral hearing indicating that the sweatshirt worn by the worker in the August 16, 2022 video was not produced or sold until the summer of that year, it would be unreasonable to accept the worker's testimony that the video footage posted on that date, and all the videos of him and his partner in that same location, were from a time period prior to February 8, 2021. I note that the worker did not directly respond to the new evidence from the employer regarding when the sweatshirt was produced.

[98] During the oral hearing, I also found the worker's testimony to be evasive at times with a tendency to deflect from answering the exact question asked by providing prolonged answers that were only tangentially relevant. I noticed this during both cross-examination and my own questioning of the worker.

[99] Given my findings above, I have determined that the worker is not a credible or reliable witness. However, this does not automatically lead to a conclusion that all the worker's reports of ongoing left shoulder pain and limitations must be rejected in their entirety, as suggested by the employer's representative. The worker's lack of credibility must be weighed within the context of the available documentary evidence that has been provided by physicians and treatment providers who physically examined the worker's left shoulder after February 8, 2021 and their findings. I have undertaken such an analysis in my consideration of each of the issues in this appeal.

Issue 1: Did the worker develop left rotator cuff tendinopathy as a personal injury arising out of and in the course of his employment on February 8, 2021?

Law and Policy

[100] Section 134 of the Act provides that a personal injury is compensable if it arises out of and in the course of a worker's employment.

[101] Policy item C3-12.00 (Personal Injury) defines personal injury as any physiological change resulting from some cause. It may result from a specific incident or a series of incidents occurring over a period of time. A personal injury is not confined to injuries which are readily and objectively verifiable by their outward signs, and specifically includes sprains and strains.

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[102] As stated in policy item C3-14.00 (Arising Out of and In the Course of a Worker's Employment), a personal injury occurs in the course of employment if it happened at a time and place and during an activity consistent with, and reasonably incidental to, the obligations and expectations of the worker's employment. For a personal injury to arise out of employment, policy item C3-14.00 states that the employment must be of causative significance in the occurrence of the injury. Causative significance means more than a trivial or insignificant aspect of the injury.

[103] Policy item C3-14.00 further provides that when reviewing medical evidence, the Board must consider whether there is a temporal relationship between the work incident and the injury; whether a physiological association is present between the injury and the work incident, including whether the incident was of sufficient degree and/or duration to be of causative significance to the injury; and any non-work related medical conditions.

Analysis

[104] The worker was first diagnosed with left rotator cuff tendinopathy by Dr. Regan in a May 12, 2021 consultation report. The worker reported pain and stiffness in the left non-dominant shoulder after his February 8, 2021 work activities. Dr. Regan understood these activities to involve placing boxes above and below stations at work. Dr. Regan indicated that the worker had left shoulder guarded motion forward elevation approximately 90 degrees, abduction to 70 degrees, and that the worker's external rotation was limited by 40 degrees.

[105] Given my findings on the worker's credibility, I have approached his reports to Dr. Regan regarding left shoulder pain and even the measured range of motion measurements with great caution.

[106] However, in considering the whole of the evidence, I find it significant that over the duration of the next several months, as the worker continued to report left shoulder pain to his treatment providers as documented in their contemporaneous reports to the Board, a September 21, 2021 physiotherapy extension request report indicated that the worker had a "[d]epressed left scapula" and persisting left shoulder pain and stiffness. A July 2, 2021 physician's report indicates that the worker had worsening left shoulder pain, resulting in a visit to the hospital emergency and a left shoulder ultrasound while at emergency, following an ultrasound guided steroid injection on June 18, 2021.

[107] When the worker attended for an assessment at the PMMP on December 7, 2021, as documented in a PMMP report dated December 14, 2021, the assessing physician, Dr. Joffe, also observed that the worker had a depressed left shoulder and muscle atrophy of the left shoulder and upper arm.

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[108] My reason for noting the observations by the worker's treatment providers of a depressed left shoulder and muscle atrophy within approximately six to nine months of his initial report of an onset of left shoulder symptoms is that these are objective findings of the worker's left shoulder which cannot be faked and are not based on the worker's self-reports of ongoing pain. In the IHP report, Dr. Hamm provided photographs he took during the worker's physical examination on November 28, 2024 of the worker's back with his shirt off. In one photograph, the worker has his right arm raised straight up in the air and his left arm raised to approximately shoulder height in front of him. Dr. Hamm said that the photographs show drooping of the worker's left shoulder and abnormal left scalpulohumeral motion (scapular dyskinesia). Again, in my view these are objective findings which are not dependent on the worker's self-reports of pain. Notably, in his IHP clarification, Dr. Hamm stated that scapular dyskinesis is a non-specific response to a painful condition in the shoulder rather than a specific response to certain glenohumeral pathology.

[109] In my view, the observations regarding the worker developing a depressed left shoulder within approximately six months of his initial reports of left shoulder pain at work on February 8, 2021; Dr. Joffe's indication that the worker had a depressed left shoulder and muscle atrophy of the left shoulder and upper arm by December 7, 2021; and Dr. Hamm's photographs and observations indicating that the worker continued to have a drooping left shoulder and left scapular dyskinesia, support that the worker did indeed continue to have left shoulder pain and limitations in left shoulder movement at the time he was diagnosed with left shoulder rotator cuff tendinopathy by Dr. Regan in May 2021. In my view, based on the comments made by Dr. Hamm in the IHP clarification, the worker would not have developed left scapular dyskinesia unless he had ongoing left shoulder pain. Therefore, despite my finding that the worker is not credible or reliable, I am able to accept that after the February 8, 2021 work incident the worker continued to have ongoing left shoulder pain and associated physical limitations as evidenced by the fact that within six to nine months he was observed to display a depressed left shoulder and muscle atrophy of the left shoulder and upper arm.

[110] In the IHP report, Dr. Hamm stated that it was at least as likely as not that the worker's employment activities on February 8, 2021 were of causative significance for the worker's left shoulder tendinopathy. In making this finding, Dr. Hamm accepted my factual finding in the IHP terms of reference that on February 8, 2021 the worker moved more boxes than normal which was attributed to Valentine's Day upcoming the following week and the employer being short-handed.[5] Dr. Hamm stated that the worker's employment activities were likely just the "final ergonomic provocation" that made symptomatic a left rotator cuff tendinopathy that was "well underway" because of the worker's employment as a water spider during the employer's busiest seasons. Dr. Hamm further observed that the worker had only done sedentary work in his six years of employment prior to that with the employer, and that since starting his new job as a water spider in the fall of 2020, the worker had significantly increased upper limb loading and repetitive movements.

[5] Reported by the worker to the Board on March 2, 2021, as documented in a phone memo.

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[111] I give significant weight to Dr. Hamm's IHP report on the matter of causation noting his expertise as a specialist in occupational medicine, his physical examination of the worker, and his thorough and detailed reasoning to support his findings in the IHP report. I note that there is no medical opinion before me which contradicts Dr. Hamm's findings. Additionally, despite the employer's submission that the worker's reports of ongoing left shoulder pain cannot be believed to accept any further conditions on his claim due to his lack of credibility, I have set out above why despite the worker's credibility problems, his reports of left shoulder pain can be accepted because of his treatment providers' objective physical observations of his left shoulder. These observations include left shoulder drooping and muscle atrophy, which were documented by the worker's treatment providers within six to nine months after his initial report of left shoulder symptoms on February 8, 2021. I also do not believe that the worker would have taken the step to attend for an ultrasound guided injection of his left shoulder in June 2021 unless he was in fact experiencing left shoulder pain.

[112] In my view, in its submissions the employer has failed to adequately weigh the worker's lack of credibility with the available documentary medical evidence which I find as a whole supports that the worker did continue to have left shoulder pain and symptoms after February 8, 2021 which Dr. Regan diagnosed as left rotator cuff tendinopathy in May 2021.

[113] Based on my consideration of the whole of the evidence as outlined above, and noting the weight I have given to Dr. Hamm's IHP report, I find that it is at least as likely as not that the worker's employment activities on February 8, 2021 were of causative significance to the worker developing left rotator cuff tendinopathy.

[114] Accordingly, I find that the worker's left rotator cuff tendinopathy arose out of and in the course of his employment on February 8, 2021.

[115] The employer's appeal is denied on this issue.

Issue 2: Did the worker develop left shoulder chronic pain (specifically myofascial pain of the left upper scapula and periscapular muscles) as a compensable consequence of his accepted left shoulder conditions?

Law and Policy

[116] A condition may also be accepted under section 134(1) of the Act as a compensable consequence of an injury already accepted under a claim. Policy item C3-22.00 (Compensable Consequences) provides that if a compensable injury was of causative significance in a further injury, then it is sufficiently connected to the compensable injury, such that it forms an inseparable part of the compensable injury and, as such, is also compensable. The policy further explains that this matter is looked at broadly and from a "common sense" point of view.

[117] Policy item C3-22.20 (Compensable Consequences – Pain and Chronic Pain) explains that a worker's pain symptoms may be accepted as compensable where the evidence indicates that the pain results as a consequence of an employment related injury or occupational disease. The policy defines pain as an unpleasant sensory and emotional experience associated with actual

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or potential tissue damage or described in terms of such damage. It includes cognitive, affective, behavioural, and physiological components. The Board recognizes chronic pain as that which persists six months after an injury and beyond the usual recovery time for that injury.

Analysis

[118] I have explained above why, despite determining that the worker lacks credibility, I have accepted the worker's reports of persisting left shoulder pain after his initial onset of symptoms on February 8, 2021. I have made this finding partially based on Dr. Hamm's IHP report which indicates that due to ongoing left shoulder pain the worker developed a depressed left shoulder and scapular dyskinesia which were observed by Dr. Hamm on physical examination of the worker in 2024. Dr. Hamm stated in his IHP report that the worker's accepted left shoulder strain and left rotator cuff tendinopathy were of causative significance to the development of the worker's left shoulder chronic pain (specifically myofascial pain of the left upper scapular and periscapular muscles). Dr. Hamm's comments in his clarification response indicates that the worker would not have developed scapular dyskinesia unless the worker in fact had ongoing left shoulder pain.

[119] Given my consideration of the evidence and findings above, I am satisfied that it is at least as likely as not that the worker has left shoulder chronic pain as a compensable consequence of his accepted left shoulder strain and rotator cuff tendinopathy.

[120] The employer's appeal is denied on this issue.

Issue 3: Does the worker have an actual or potential disability from his left rotator cuff tendinopathy and/or left shoulder chronic pain (should those conditions be found compensable) such that he is entitled to a referral to the Board's LTDS for assessment of permanent partial disability benefits?

Law and Policy

[121] Policy item #96.30 (Permanent Disability Benefits Decision-Making Procedures) provides that the Board determines whether an actual or potential permanent disability is accepted on a claim. If the Board has accepted an actual or potential permanent disability, the Board then determines the extent of the disability and the worker's permanent disability benefit entitlement.

[122] Policy item C6-36.00 (Permanent Disability Benefits – General) explains that the Board pays permanent disability benefits if a worker fails to completely recover from a work-related injury, and is left with a permanent residual disability. The entitlement to permanent disability benefits commences at the point when the worker's temporary disability under the claim ceases and the condition stabilizes. The permanent disability may be total (section 194 of the Act) or partial (sections 195 and 196).

Workers' Compensation Appeal Tribunal

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Analysis

[123] The employer's representative submits that the worker does not have any permanent disability from his accepted left shoulder conditions given the activities he is seen engaging in with his left arm in the various social media posts from 2022 the employer has produced. The representative suggests that the worker has greatly exaggerated any left arm/shoulder limitations associated with his accepted left shoulder conditions given the movement of his left arm and shoulder in the summer 2022 videos typically while performing dance movements. The worker also admitted to attending a party in August 2021 as indicated in an Instagram post of a photograph of the worker at said party with his left arm raised in the air.

[124] In my view, as also indicated by Dr. Hamm, the social media evidence from 2022 does show the worker performing movements with his left shoulder and arm which are incompatible with the worker's left shoulder range of motion as measured by Dr. Smit at the May 2022 MEIA. Specifically, the worker can be seen in raising his left arm to and above shoulder height in several videos of him and his partner dancing which I have determined were recorded in August and September 2022, after the May 2022 MEIA. In the IHP report, Dr. Hamm stated that the worker's upper limb function would be incompatible with left rotator cuff tendinopathy and left shoulder chronic pain at the time the videos were taken.

[125] In considering the evidence however, I do find it significant that there are objective signs of permanent left shoulder impairment, though I acknowledge that this is not required in the Board's policy for entitlement to a referral to LTDS. I am noting the objective evidence in this appeal because of the findings that I have made regarding the worker lacking credibility.

[126] Specifically, in determining this issue, I again find it significant the worker has been assessed as displaying a depressed left shoulder since approximately September 2021. This condition continued to be present when the worker saw Dr. Hamm for the IHP exam in 2024. I acknowledge that the extent of the worker's physical impairment from his accepted permanent left shoulder conditions may be in dispute given how he is seen moving his left shoulder and arm in the summer 2022 videos. However, this evidence must be considered alongside the objective nature of the worker's ongoing physical impairment as evidenced by his depressed left shoulder and what Dr. Hamm has now identified as scapular dyskinesia. As indicated above, Dr. Hamm has indicated that the worker would not have developed scapular dyskinesia unless he had ongoing left shoulder pain. In my view, this indication from Dr. Hamm supports a finding that the worker's left rotator cuff tendinopathy and left shoulder chronic pain are permanent, though the extent of the worker's physical impairment from those permanent conditions is in question given his left arm and shoulder movements seen in social media videos made after the May 2022 MEIA.

[127] Given the above evidence, I am satisfied that the worker has an actual or potential permanent disability from his accepted left rotator cuff tendinopathy and/or left shoulder chronic pain such that he is entitled to a referral to the Board's LTDS for assessment of permanent partial disability benefits for those conditions.

[128] The employer's appeal on this issue is denied.

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Conclusion

[129] The employer's appeal is denied and the August 8, 2022 Review Division decision (*Review Reference #R0289633*) is confirmed.

[130] I find that the worker developed left rotator cuff tendinopathy as a personal injury arising out of and in the course of his employment on February 8, 2021.

[131] I find that the worker developed left shoulder chronic pain (specifically myofascial pain of the left upper scapula and periscapular muscles) as a compensable consequence of his accepted left shoulder strain and rotator cuff tendinopathy.

[132] I find that the worker has an actual or potential disability from his accepted left rotator cuff tendinopathy and left shoulder chronic pain such that he is entitled to a referral to the Board's LTDS for assessment of permanent partial disability benefits for those conditions.

[133] As noted at the outset of the decision, this appeal has been separated from appeal A2301254 which relates to assessment of the worker's permanent partial disability benefits for his accepted permanent left shoulder conditions. A separate decision will be issued for appeal A2301254.

Appeal Expenses

[134] The parties did not make any requests for reimbursement of appeal expenses and there are no appeal expenses which are apparent to me. As such, I make no order on the matter of appeal expenses.

Jyoti Dasanjh
Vice Chair