

**IN THE DISTRICT COURT
AT WELLINGTON**

**I TE KŌTI-Ā-ROHE
KI TE WHANGANUI-A-TARA**

[2022] NZACC 80

ACR 16/21

UNDER THE ACCIDENT COMPENSATION ACT 2001
IN THE MATTER OF AN APPEAL UNDER SECTION 149 OF THE
ACT
BETWEEN MICHAEL JAMIESON
Appellant
AND ACCIDENT COMPENSATION
CORPORATION
Respondent

Hearing: 27 April 2022
Held at: Auckland/Tāmaki Makaurau
By AVL

Appearances: The appellant was self-represented
L Hawes-Gandar and F Becroft for the respondent

Judgment: 6 May 2022

RESERVED JUDGMENT OF JUDGE P R SPILLER
[Claim for personal injury – ss 25-26 , Accident Compensation Act 2001]

Introduction

[1] This is an appeal from the decision of a Reviewer dated 11 January 2021. The Reviewer dismissed an application for review of:

- (a) the Corporation’s decision dated 10 August 2020, declining to approve funding to treat Mr Jamieson’s left shoulder and cover for secondary impingement; and
- (b) the Corporation’s decision of 12 August 2020, declining to accept Mr Jamieson’s application for weekly compensation.

Background

[2] Mr Jamieson was born in 1978. He had issues with his left shoulder as a youth and had shoulder stabilisation surgery when he was 15. These issues do not appear to relate to any accident, and the surgery was not funded by the Corporation.

[3] On 15 February 2013, Mr Jamieson injured his left shoulder when he was exercising. At the time he was working as a painter and paperhanger.

[4] On 22 February 2013, Mr Jamieson saw Dr Benjamin Liu, GP, who lodged a claim on his behalf for a right shoulder/upper arm sprain. On 25 February 2013, the Corporation granted cover.

[5] On 27 February 2013, an ultrasound scan showed tenosynovitis involving the long head of the biceps and mild bursal thickening.

[6] Mr Jamieson continued to have problems with his left shoulder and was referred for assessment. On 5 April 2013, Mr Clayton Chan, Orthopaedic and Spinal Surgeon, recorded that the 2013 accident occurred when Mr Jamieson lifted a weight bench and felt pain in his shoulder, as opposed to an earlier description of having missed hitting a punching bag. Based on his own examination, Mr Chan noted that “the impingement test was mildly positive”.

[7] On 17 April 2013, an MRI was performed on Mr Jamieson. Dr Richard Ng, Radiologist, reported:

Moderate to large glenohumeral joint effusion with associated synovitis is a non-specific finding. There is no particular bone marrow oedema or cortical destruction to indicate infection. This effusion extends into the LHB tendon sheath.

There is also a moderate subacromial bursitis.

Normal rotator cuff and no left pectoralis tendon or muscle tear.

[8] On 19 April 2013, Mr Chan noted that the cause of the large joint effusion and synovitis was not readily apparent.

[9] On 16 May 2013, Mr Peter Mutch, Shoulder Surgeon, saw Mr Jamieson and diagnosed post-traumatic left frozen shoulder. Mr Mutch recommended a steroid injection.

[10] On 2 July 2013, a steroid injection was performed. This was successful in increasing the range of motion, however, Mr Jamieson continued to have pain. At Mr Jamieson's request, he was referred for a further opinion.

[11] On 26 September 2013, Mr Matthew Brick, Orthopaedic Surgeon, saw Mr Jamieson. Mr Brick diagnosed tenosynovitis of the long head of the biceps. Mr Brick assessed that the position of Mr Jamieson's arm when he was moving the weight bench, and the fact that this was fully loaded at the time, was in keeping with the long head of biceps tendon injury. On the same day, Mr Jamieson applied to the Corporation to fund surgery for the diagnosis of tenosynovitis.

[12] On 25 October 2013, the request for funding was reviewed by Branch Medical Advisor, Dr David Scott. Dr Scott noted that Mr Brick had diagnosed tenosynovitis of the longhead of the biceps and that the surgery he was proposing would release and reattach the tendon nearby. Dr Scott assessed that it was plausible that this pathology was caused by the 2013 accident and recommended approving the surgery.

[13] On 25 October 2013, the Corporation approved Mr Jamieson's left shoulder surgery.

[14] On 4 November 2013, Mr Brick performed surgery. In his surgery report he noted:

The superior labrum had extensive synovitis surrounding it and there was a tear at the biceps labral junction. Extensive bursitis but no evidence of impingement on the acromion or coracoacromial ligaments. The bursal surface of the cuff looked good.

[15] On 25 January 2020, Mr Jamieson suffered an accident which caused injury to his should, neck, upper arm and ankle.

[16] On 12 February 2020, Mr Jamieson visited Dr Adrian Wan, GP. Dr Wan lodged a claim for sprain of Mr Jamieson's left shoulder and upper arm, and for sprain of his neck and ankle. The claim form endorsed by Dr Wan recorded that Mr Jamieson fell on a back

step while putting out clothing, hit his left arm, his neck and his right ankle. The Corporation granted cover on the same day.

[17] On 17 February 2020, Mr Jamieson was seen by Jeremy Lai, Physiotherapist. Mr Lai noted that Mr Jamieson had not noticed pain until a few days after his accident. Mr Lai recorded a potential diagnosis of shoulder impingement and/or biceps tenosynovitis; and that Mr Jamieson had good strength and range of motion but reported pain with more resistance.

[18] On 20 February 2020, an ultrasound scan was taken. Dr Ricky Rutledge, Radiologist, reported:

Mild thickening of the subdeltoid bursar during abduction.

Minor insertional tendon changes, but no evidence of a full thickness tear.

[19] On 2 June 2020, Mr Jamieson returned to Dr Wan, and was referred to Mr Brick for assessment.

[20] On 16 June 2020, the Corporation recorded a conversation with Mr Jamieson in which he noted that, after the accident, he hoped that he would get better, but he did not. He was unable to see his GP during the Covid-19 lockdown but saw his GP as soon as the lockdown level changed.

[21] On 18 June 2020, Dr Wan endorsed a Work and Income Work Capacity Medical Certificate noting that Mr Jamieson had an accident on 25 January 2020, he now had pain in his left shoulder with weakness and neck and ankle right pain, his injury reduced his capacity to work and he was now unable to work, and he had no more money to cover rent and no holiday pay left.

[22] On 29 June 2020, Mr Brick reported that the 2020 accident had occurred when Mr Jamieson had fallen on his outstretched left hand after which he had felt “immediate quite severe pain”. Mr Brick noted that Mr Jamieson had initially been on light duties but had more recently been completely off work. Mr Brick noted that he was unsure of the source of Mr Jamieson’s symptoms and referred him for an MRI.

[23] On 2 July 2020, an MRI was performed, and Anthony Doyle, Radiologist, reported, *inter alia*:

The rotator cuff muscle bellies are normal size and signal with the exception of teres minor which has some early fatty infiltration. The distal supraspinatus tendon is thin for over a length of 3 cm and there are extensive partial thickness tears of the articular surface with some fine near full thickness fissures.

[24] On 9 July 2020, Dr Wan certified Mr Jamieson as having been unfit for work from 22 June 2020, noting that funding was being sought for surgery.

[25] On 14 July 2020, Mr Brick lodged a request to fund surgery with a diagnosis of “Partial thickness tearing supraspinatus with secondary impingement left shoulder”. In terms of a causal link between the 2020 accident and this diagnosis, Mr Brick suggested that it should be inferred that the tearing of the supraspinatus had been caused by the 2020 accident, due to the onset of symptoms afterwards, and because of the lack of any symptoms prior:

Given the traumatic loss of functioning and onset of pain, it is likely that he suffered a degree of partial thickness tearing of the bursal surface of the supraspinatus. There is no evidence of impingement like pain at work as a spraypainter over the last few years to suggest that this is a chronic subacromial impingement.

[26] The Corporation sought advice from its Clinical Advisor, Mr Scott Burns, Physiotherapist. On 15 July 2020, Mr Burns advised that Mr Jamieson appeared to be suffering from a rotator cuff pathology which was pre-existing and not caused by the 2020 accident. Mr Burns advised that the covered shoulder sprain would have resolved already, and that Mr Jamieson’s incapacity was due to the underlying degenerative condition.

[27] On 4 August 2020, the request for surgery funding was reviewed by Clinical Advisor, Mr Ray Fong, Orthopaedic Surgeon. Mr Fong advised:

The client is suffering from his left shoulder subacromial impingement with subacromial subdeltoid bursitis and rotator cuff tendinopathy. This is a longstanding gradual process condition that is sympathetically aggravated by the claim accident but not caused by that.

[28] On 10 August 2020, on the basis of Mr Fong’s advice, the Corporation issued its decision declining cover for Mr Jamieson’s left shoulder partial thickness tearing

supraspinatus with secondary impingement and payment for surgery for this condition, on the basis that the need for surgery was not primarily due to the injury on 25 January 2020.

[29] On 12 August 2020, the Corporation issued its further decision declining the request for weekly compensation for the injury on 25 January 2020, on the basis that there was no causal link between Mr Jamieson's left shoulder condition requiring treatment/surgery and his covered injury. Mr Jamieson applied for a review of both the Corporation's decisions.

[30] On 13 October 2020, Mr Brick advised that, when he performed surgery in 2013, there had been some bursitis, but he had not identified any evidence of impingement. He acknowledged that subacromial impingement is "in many cases a gradual process problem", and that the bursal surface tearing could have occurred asymptotically at any time since the 2013 surgery:

He did not have it at present in 2013 but of course we have no way of knowing at exactly what point this occurred. We do not know whether it occurred asymptotically during the last 7 years or whether it occurred at least in part during his fall.

[31] However, Mr Brick restated his opinion that the requirement for Mr Jamieson's surgery was a direct result of his accident in January 2020:

I note that the ACC doctors made reference to his AC joint arthrosis. This is largely irrelevant as it is asymptomatic and the application for surgery does not intend to treat the asymptomatic early arthritic AC joint. ...

All we can say is that Michael has had seven years of a very functional shoulder in a demanding job as a spray painter right up until the moment where he had a very high force injury falling downstairs with a load of washing.

On the balance of probabilities, it is my opinion that the requirement for surgery is a direct result of falling down the stairs with a load of washing. The tissue damage is partial thickness cuff tearing resulting in cuff dysfunction and severe subacromial impingement that has been impossible to treat non-surgically.

[32] Mr Jamieson provided a statement (undated) explaining that he had fallen from a height of 95 centimetres onto very hard ground and that he had been unable to put his hand out to stop his fall, resulting in his left shoulder taking the impact of the fall.

[33] On 17 December 2020, review proceedings were held. On 11 January 2021, the Corporation's decisions were upheld by the Reviewer, on the basis that the views of Dr

Fong and Mr Burns were preferred to the view of Mr Brick, and that Mr Jamieson's incapacity was not as a result of his injury on 25 January 2020.

[34] On 5 February 2021, a Notice of Appeal was lodged.

[35] In March 2021, Mr Jamieson had shoulder surgery performed through the public health system.

[36] On 24 May 2021, Mr Simon Young, Orthopaedic Surgeon, produced a consultation note. Mr Young referred to Mr Jamieson's appeal against the Corporation's decisions and advised:

Michael's symptoms seem to have been arising from the partial thickness tear, and it is a reasonable supposition that the cause of this was due to the recent injury rather than long term changes. I read through Michael's notes for the appeal, and I certainly think he has good grounds for appeal.

[37] On 6 July 2021, Mr Jamieson's claim was reviewed by the Corporation's Clinical Advisory Panel ("CAP"). On 16 July 2021, the CAP advised that it agreed with the previous opinion of Mr Fong, that Mr Jamieson was suffering from gradual process subacromial impingement which was longstanding and had been rendered symptomatic but not caused by the 2020 accident. The CAP explained that it considered the objective evidence to indicate a long-standing degenerative process and that it could not identify any evidence of traumatic injury:

Dr Adrian Wan General Practitioner noted on 12/02/2020 recorded a "free" range of motion, mild crepitus and painful internal rotation, which seems most consistent with the ACC-covered left shoulder sprain. Mr Jeremy Lai Physiotherapist noted on 17/02/2020 that Mr Jamieson "didn't notice pain until next few days" and had a full range of left arm elevation (abduction and flexion) with a painful and positive impingement tests (Hawkins Kennedy).

The CAP explained that these examination findings were non-specific and can be found in acute cases of sprains, tears and with symptomatic chronic impingement. Based on the overall clinical picture, the history, physical examination, progress, medical reports and imaging, Mr Jamieson's presentation was most consistent with chronic pathological subacromial impingement which became painful after his fall on 25/01/2020. There is no evidence of any anatomical or physiological disruption of Mr Jamieson's left shoulder and no evidence of a physical injury from that fall.

More recently, Mr Jamieson's left shoulder ultrasound scan on 20/02/2020 noted "no tear detected" of the supraspinatus, infraspinatus and subscapularis rotator cuff tendons. There were "mild insertional changes" consistent with tendinosis and intrasubstance tearing. By 18/06/2020 Dr Wan noted that Mr Jamieson's left shoulder

symptoms were now worse, and then, the 29/06/2020 MRI scan noted thinning, partial and full thickness tearing of the supraspinatus tendon.

This is most typical of the natural progress of chronic tendinosis and gradual rotator cuff tendon tearing. There was gradual shearing of the tendon fibers deep inside the tendon. This indicates chronic changes rather than a single episode of trauma.

The bursal and coracacoacromial ligament thickening was also part of Mr Jamieson's left shoulder chronic, gradual onset tendinosis process. The thickening occurs slowly as a chronic fibrotic process, similar to forming calluses on the hands and feet. The down-sloping acromion is a bony change which also developed over a long time.

Relevant law

[38] Section 20(2)(a) of the Act provides that a person has cover for a personal injury which is caused by an accident. Section 26(2) states that "personal injury" does not include personal injury caused wholly or substantially by a gradual process, disease, or infection (unless it is personal injury of a kind specifically described in section 20(2)(e) to (h)). Section 25(1)(a)(i) provides that "accident" means a specific event or a series of events, other than a gradual process, that involves the application of a force (including gravity), or resistance, external to the human body. Section 25(3) notes that the fact that a person has suffered a personal injury is not of itself to be construed as an indication or presumption that it was caused by an accident.

[39] In *Johnston*,¹ France J stated:

[11] It is common ground that, but for the accident, there is no reason to consider that Mr Johnston's underlying disc degeneration would have manifested itself. Or at least not for many years.

[12] However, in a passage that has been cited and applied on numerous occasions, Panckhurst J in *McDonald v ARCIC* held:

"If medical evidence establishes there are pre-existing degenerative changes which are brought to light or which become symptomatic as a consequence of an event which constitutes an accident, it can only be the injury caused by the accident and not the injury that is the continuing effects of the pre-existing degenerative condition that can be covered. The fact that it is the event of an accident which renders symptomatic that which previously was asymptomatic does not alter that basic principle. The accident did not cause the degenerative changes, it just caused the effects of those changes to become apparent ..."

[13] It is this passage which has governed the outcome of this case to date. Although properly other authorities have been referred to, the reality is that the preceding decision makers have concluded that Mr Johnston's incapacity through back pain is due to his pre-existing degeneration and not to any injury caused by the accident.

¹ *Johnston v Accident Compensation Corporation* [2010] NZAR 673.

[14] ... I consider it important to note the careful wording in the McDonald passage. The issue is not whether an accident caused the incapacity. The issue is whether the accident caused a physical injury that is presently causing or contributing to the incapacity.

[40] In *Ambros*,² the Court of Appeal envisaged the Court taking, if necessary, a robust and generous view of the evidence as to causation:

[65] The requirement for a plaintiff to prove causation on the balance of probabilities means that the plaintiff must show that the probability of causation is higher than 50 per cent. However, courts do not usually undertake accurate probabilistic calculations when evaluating whether causation has been proved. They proceed on their general impression of the sufficiency of the lay and scientific evidence to meet the required standard of proof ... The legal method looks to the presumptive inference which a sequence of events inspires in a person of common sense ...

[67] The different methodology used under the legal method means that a court's assessment of causation can differ from the expert opinion and courts can infer causation in circumstances where the experts cannot. This has allowed the Court to draw robust inferences of causation in some cases of uncertainty --see para [32] above. However, a court may only draw a valid inference based on facts supported by the evidence and not on the basis of supposition or conjecture ... Judges should ground their assessment of causation on their view of what constitutes the normal course of events, which should be based on the whole of the lay, medical, and statistical evidence, and not be limited to expert witness evidence ...

[41] In *J*,³ Kos P stated:

[52] In *Accident Compensation Corporation v Mitchell Richardson J* observed that the proper approach to construing the Act was that it be given a "generous and un-niggardly" construction. We endorsed that approach in *Harrild v Director of Proceedings*. The importance of this principle lies where more than one available interpretation exists. If the Act is unavoidably niggardly or ungenerous, that is that. But if a reasonable choice presents, the more generous path should be taken.

[42] In *Sparks*,⁴ Judge Ongley stated:

[29] By s26(2) and (4) of the Injury Prevention, Rehabilitation, and Compensation Act 2001, personal injury does not include personal injury caused wholly or substantially by a gradual process, disease, or infection, or by the ageing process. The legal test for entitlements requires sufficient evidence to show that need for assistance arises as a consequence of the covered injury. Where there is an accompanying degenerative or gradual process condition, entitlements will not be available if the personal injury is caused wholly or substantially by that condition. In the present case therefore, the appellant has to be able to point to evidence demonstrating that the condition, as it was when the need for surgery was identified in August 2004, was substantially and effectively caused by the covered injury and not by a pre-existing process.

² *Accident Compensation Corporation v Ambros* [2007] NZCA 304, [2008] 1 NZLR 340.

³ *J v Accident Compensation Corporation* [2017] NZCA 441, [2017] 3 NZLR 804.

⁴ *Sparks v Accident Compensation Corporation* [2006] NZACC 45.

[43] Section 103(2) provides:

The question the Corporation must determine is whether the claimant is unable, because of his or her personal injury, to engage in employment in which he or she was employed when he or she suffered the personal injury.

[44] Schedule 1, Part 2, Clause 32 of the Act provides:

The Corporation is liable to pay weekly compensation for loss of earnings to a claimant who-

- (a) has an incapacity resulting from a personal injury for which he or she has cover; and
- (b) was an earner immediately before his or her incapacity commenced.

[45] In *Gazzard*,⁵ Judge Beattie stated:

[28] It is a basic principle of the Act that a claimant only has a right to a statutory entitlement when that claimant can establish that entitlement arises as a consequence of the personal injury by accident for which cover was granted. In the case of weekly compensation the requirement must be that a claimant is incapacitated, as that condition is defined under the Act. The incapacity must be caused by or as a consequence of the personal injury by accident. In other words there must be a direct causal nexus between the injury which was suffered in the accident and the physical condition which is causing the incapacity at the time when that enquiry is being made.

Discussion

[46] The issue in this case is whether the subacromial impingement and tear of the supraspinatus tendon in Mr Jamieson's left shoulder are causally linked to his accident injury in January 2020. If a causal connection is established, Mr Jamieson would be eligible for funding for surgery and weekly compensation.⁶ In order to obtain cover (and resulting entitlements), Mr Jamieson needs to establish that his condition resulted from a personal injury by accident, which does not, in principle, include personal injury caused wholly or substantially by a gradual process or disease.⁷ If medical evidence establishes that Mr Jamieson had pre-existing degenerative changes which were brought to light or which became symptomatic as a consequence of an accident, it can only be injury caused by the accident and not the injury that is the continuing effects of the pre-existing

⁵ *Gazzard v Accident Compensation Corporation* [2001] NZACC 313, upheld on appeal (HC Wellington, CIV 2005-485-2388, 22 May 2006, Miller J).

⁶ Schedule 1, Part 2, Clause 32 of the Act; and *Gazzard*, at [28].

⁷ Sections 20(2)(a) and 26(2) of the Act.

degenerative condition that can be covered.⁸ In construing claims brought under the Act, a generous and “unniggardly” construction is the proper approach where more than one available interpretation exists.⁹

[47] The Corporation submits as follows. Subacromial impingement is a gradual process which results in gradual changes to tendons and eventually to partial tears, like the tear in Mr Jamieson’s shoulder. Mr Jamieson’s accident was not of the type that one would expect to have caused a rotator cuff tendon tear or subacromial impingement. Mr Jamieson’s presentation and reporting following the 2020 accident were consistent with a chronic condition which had been rendered symptomatic, rather than an acute tendon tear. The findings of the medical imaging were suggestive of a longstanding gradual process condition and did not show any indication of traumatic injury. Thus, Mr Jamieson’s tear and impingement were caused by a pre-existing degenerative process which was merely rendered symptomatic and not caused by the January 2020 accident. The Corporation relies on paper-based medical evidence from Mr Burns, Physiotherapist, Mr Fong, Orthopaedic Surgeon, and the Corporation’s Clinical Advisory Panel.

[48] The Court acknowledges the submissions and evidence produced by the Corporation, and in particular the report of the CAP. However, the Court prefers the evidence in support of Mr Jamieson’s claim, particularly that of Mr Brick, the Orthopaedic Surgeon who attended on Mr Jamieson. Mr Brick was well-acquainted with the health of Mr Jamieson, having first seen him in September 2013 and conducted surgery on his left shoulder in November 2013. Mr Brick saw Mr Jamieson in June 2020, in relation to the January 2020 accident. The Court notes the following evidence.

[49] First, the accident of 25 January 2020 was a significant event:

- (a) The claim form endorsed by Dr Wan, on 12 February 2020 (18 days after the accident) recorded that Mr Jamieson fell on a back step while putting out clothing and hit his left arm and neck and his right ankle. The claim was for sprain of Mr Jamieson’s left shoulder and upper arm, and for sprain of his neck and ankle, and the Corporation granted cover for this injury.

⁸ See *Johnston* n1 above, at [12].

⁹ See *J* n3 above, at [52].

- (b) Mr Brick's report of 29 June 2020 recorded the direct testimony of Mr Jamieson given to Mr Brick, as follows:

Mike was walking out of the house with a load of washing to hang on the line. He slipped and lost his footing and fell down some stairs. He fell on his outstretched left hand. He did not feel his shoulder pop or go out of place. He had immediate quite severe pain. It was mainly anterior and then also after some time also round the deltoid. Mike regards it as being very similar to his pain from when he injured his long head biceps [which required surgery that the Corporation agreed to fund].

- (c) Mr Brick's assessment of the accident (based on Mr Jamieson's direct testimony), in the recommendation for surgical treatment on 14 July 2020, was that this was an "awkward heavy fall" as Mr Jamieson was carrying a load of washing as he fell down the stairs.
- (d) Dr Doyle, Radiologist, reported that the MRI performed on 2 July 2020 showed extensive partial thickness tears of the articular surface with some fine near full thickness fissures.

[50] Second, the ensuing consequences of the January 2020 accident for Mr Jamieson were significant:

- (a) In a conversation Mr Jamieson had with the Corporation on 16 June 2020, he noted that, after the accident, he hoped that he would get better, but did not. He was unable to see his GP during the Covid-19 lockdown, and he saw his GP as soon as the lockdown level changed.
- (b) On 18 June 2020, Dr Wan endorsed a Work and Income Work Capacity Medical Certificate noting that Mr Jamieson had an accident on 25 January 2020. Mr Jamieson now had pain in his left shoulder with weakness and neck pain with ankle right pain. His injury reduced his capacity to work and he was now unable to work, and he had no more money to cover rent and no holiday pay left.
- (c) Mr Brick's report of 29 June 2020 records that Mr Jamieson was put on light duties at work, but more recently had been completely off work on earnings-

related compensation, and that any kind of significant lifting aggravated his shoulder.

[51] Third, Mr Brick, based on his professional knowledge and experience as an orthopaedic surgeon, and on his attendance on Mr Jamieson, drew a direct causal link between the proposed surgical treatment and the covered injury of 25 January 2020:

- (a) On 14 July 2020, in Mr Brick's recommendation for surgical treatment for arthroscopic subacromial decompression/repair, he noted:

Given the dramatic loss of function and onset of pain, it is likely he suffered a degree of partial thickness tearing of the bursal surface of supraspinatus. There is no evidence of impingement like pain at work as a spray painter over the last few years to suggest that this is chronic subacromial impingement.

- (b) On 13 October 2020, in response to the Corporation's decline of cover and entitlements, Mr Brick commented:

I note that the ACC doctors made reference to his AC joint arthrosis. This is largely irrelevant as it is asymptomatic and the application for surgery does not intend to treat the asymptomatic early arthritic AC joint. ...

All we can say is that Michael has had seven years of a very functional shoulder in a demanding job as a spray painter right up until the moment where he had a very high force injury falling downstairs with a load of washing.

On the balance of probabilities, it is my opinion that the requirement for surgery is a direct result of falling down the stairs with a load of washing. The tissue damage is partial thickness cuff tearing resulting in cuff dysfunction and severe subacromial impingement that has been impossible to treat non-surgically.

[52] Fourth, Mr Young, Orthopaedic Surgeon, who performed the shoulder surgery on Mr Jamieson in March 2021, also drew a causal link between the surgical treatment and the covered injury of 25 January 2020:

Michael's symptoms seem to have been arising from the partial thickness tear, and it is a reasonable supposition that the cause of this was due to the recent injury rather than long term changes. I read through Michael's notes for the appeal, and I certainly think he has good grounds for appeal.

Conclusion

[53] In light of the above considerations, the Court finds, on a balance of probabilities, that the subacromial impingement and tear of the supraspinatus tendon in Mr Jamieson's left shoulder are causally linked to his accident injury in January 2020.

[54] This appeal is therefore allowed, and the review decision of 11 January 2021 is set aside.

[55] Mr Jamieson is entitled to costs and/or disbursements. If these cannot be agreed within one month, I shall determine the issue following the filing of memoranda.

A handwritten signature in black ink, appearing to read 'P R Spiller', is written over a faint, light-colored rectangular stamp or watermark.

P R Spiller
District Court Judge

Solicitors for the Corporation: Medico Law.