BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

GEORGE K. HANER, Claimant, v. GLANBIA FOODS, INC., Employer, and AMERICAN ZURICH INSURANCE CO., Surety, Defendants.	**IC 2014-032215** **IC 2015-023179** **FINDINGS OF FACT, CONCLUSION OF LAW, AND RECOMMENDATION** FILED MAR 28 2022 INDUSTRIAL COMMISSION

INTRODUCTION

Pursuant to Idaho Code § 72-506, the Idaho Industrial Commission assigned the above-entitled matter to Referee Brian Harper, who conducted a remote video hearing on May 7, 2021. Brian Tanner of Twin Falls represented Claimant. David Gardner of Pocatello represented Defendants. The parties produced oral and documentary evidence at the hearing, and submitted briefs. This bifurcated hearing was the second to be held in this matter. The matter came under advisement on December 3, 2021.

ISSUE

The sole issue for determination is whether the Claimant's left shoulder medical condition for which he seeks benefits was caused in whole or in part by either or both of two accepted industrial accidents he suffered while working for Employer.

CONTENTIONS OF THE PARTIES

Claimant contends he suffered injury to his left shoulder as the result of a work accident which occurred on November 23, 2014, which injury was permanently aggravated in a second work accident on August 24, 2015.

Defendants acknowledge Claimant suffered a left shoulder sprain in the course and scope of his employment on November 23, 2014, which resolved with time and conservative care. The sprain resulted in no permanent impairment or work restrictions. His current left shoulder complaints are not causally connected to this accident or a subsequent work accident on August 24, 2015, which was the subject of an earlier hearing and decision from the Industrial Commission.

EVIDENCE CONSIDERED

The record in this matter consists of the following:

1. The testimony of Claimant taken at hearing;
2. Claimant's exhibits (CE) A through D admitted at hearing;
3. Defendants' exhibits (DE) 1 through 9 admitted at hearing;
4. The Idaho Industrial Commission's file on this matter.

PROCEDURAL BACKGROUND

While acting within the course and scope of his employment, Claimant sustained an injury to his left shoulder on November 23, 2014. A first report of injury was filed that same day. The Industrial Commission assigned the claim number 2014-032215 to this claim. No complaint was filed at that time.

On August 24, 2015, Claimant suffered injuries in another workplace accident. A first report of injury was filed the following day, and the Industrial Commission assigned

this matter the claim number 2015-023179. Claimant filed a complaint for this accident on January 5, 2018, seeking impairment and disability benefits. Eventually this case went to hearing and Claimant was awarded disability benefits inclusive of impairment of 70%.

On April 23, 2020, Claimant filed a new complaint in the 2015-023179 case on which a disability determination had previously been made as referenced above. This complaint sought a range of benefits for left shoulder damage stemming from the August 24, 2015 work accident, including medical care, TTD, impairment and permanent disability. Then, on June 29, 2020, Claimant filed a complaint for those same benefits related to his left shoulder injury stemming from the November 23, 2014 accident.

After the cases were consolidated Defendants petitioned the Commission for a declaratory ruling that Claimant was barred from asserting these claims due to the statute of limitations, *res judicata*, and waiver of jurisdiction. The Commission denied Defendants' petition. Defendants appealed this denial to the Idaho Supreme Court. The Supreme Court proceedings are currently suspended pending the outcome of this limited decision on causation.

FINDINGS OF FACT

November 23, 2014 Accident and Medical Treatment

1. On November 23, 2014, while attempting to set a cabinet-like piece of equipment known as a sealer onto alignment pins as part of his regular employment duties, Claimant was pulled and twisted by his left arm, and knocked into adjacent equipment when the sealer slipped. The collision impacted Claimant's left shoulder. Claimant immediately felt a sharp pain in his shoulder. He reported the accident that day.

2. Claimant began treatment the following day with Brian Johns, M.D., at St. Luke's Occupational Medicine Clinic in Twin Falls. Diagnosis that day was left shoulder sprain/strain.

Claimant was given range of motion (ROM) exercises and medication, and scheduled for follow up visits. He continued to work for Employer.

3. At Claimant's December 8 office visit, Dr. Johns "saw no weakness by exam" although Claimant continued to complain of some pain, weakness, and limited motion. Dr. Johns scheduled Claimant for an MRI with arthrogram to check for any "serious pathology." CE A, p. 23.

4. Claimant's left shoulder MRI/arthrography (MRI) was performed on January 13, 2015. It showed mild degenerative changes of the acromioclavicular (AC) joint. No evidence of internal derangement or foreign bodies were detected.

5. Claimant's shoulder was still bothersome and weak feeling with a limited ROM at his January 22, 2015 visit with Dr. Johns. Claimant was taking no medications. Dr. Johns explained the MRI was essentially negative other than some mild arthritis. Dr. Johns felt Claimant seemed disappointed (Claimant confirmed this observation in testimony) by the MRI results. On physical examination Claimant initially had active left shoulder abduction only to 90 degrees. However, Claimant had full range passive abduction and forward flexion, albeit with pain complaints on abduction greater than 90 degrees. After passive testing, Claimant demonstrated nearly full active abduction. Claimant's other testing that day (Jobe empty can testing for stability, and Hawkins Kennedy test for impingement syndrome) were normal. Claimant was given additional ROM exercises. Dr. Johns anticipated Claimant would continue to improve.

6. On Claimant's January 30 office visit he reported he was not doing any better and claimed he could not fully lift his left arm as it felt like it got stuck. Again, his active left shoulder abduction was limited to 90 degrees, but with "very gentle passive pressure" Claimant had full abduction. Likewise, Claimant's initial left shoulder forward flexion was only 110 degrees,

but, as Dr. Johns noted "even with just touching his upper arm, me really not putting any passive pressure on it, he demonstrates full forward flexion." CE A, p. 46. All other tests that day were negative, and Claimant had no left shoulder crepitus with movement. Dr. Johns felt Claimant's findings that day were "somewhat incongruous with what I would expect. His shoulder motion appears to be effort dependent at least partially. I reassured him that he has normal motion, and spent several minutes instructing him on a home exercise program to include active forward flexion, return through adduction, and rotator cuff strengthening with bands." *Id.*

7. Claimant's left forearm and hand were in a splint when he saw Dr. Johns on February 6, 2015. Claimant explained that he had his finger "tore up" in an accident involving his horse and had undergone surgery on his left long finger the day before this visit. (Details of this accident were never fleshed out in the instant proceedings, other than that the accident was a "horse wreck.") Prior to the horse accident Claimant had been doing his exercises and his shoulder was improving. Claimant exhibited full range of forward flexion with slight passive help. He was encouraged to continue his home exercises.

8. Dr. Johns' office notes from Claimant's February 20, 2015 visit indicate Claimant had active, fluid left shoulder forward flexion to 160 degrees and full passive flexion and abduction. Dr. Johns found no evidence of rotator cuff weakness and felt Claimant should be at or approaching MMI at his next visit.

9. At Claimant's next office visit on March 5, 2015, he indicated his left shoulder was continuing to improve with home exercises. Claimant still felt a slight catch in his shoulder when raising his left arm above shoulder level, with some perceived weakness. On physical examination Dr. Johns found Claimant had "nearly symmetric left shoulder abduction and forward flexion." Claimant had nearly full abduction and with "very gentle passive help" over the last 5 degrees

or so, full abduction. CE A, p. 57. Claimant exhibited normal strength on testing and no tenderness to palpation. Dr. Johns saw no need for further work up or treatment other than continuation of home exercises for at least a few more months. He declared Claimant to be at MMI and discharged him from treatment without impairment or any work restrictions.

10. Claimant testified that he has always had the catch in his shoulder and overhead weakness since this accident to the time of hearing.

August 24, 2015 Accident and Medical Treatment

11. Facts surrounding Claimant's August 24, 2015 accident are contained in the published *Findings of Fact, Conclusion of Law, and Recommendation* in the matter of *Haner v. Glambia Foods, Inc.,* IC 2015-023179 (April 22, 2019), and incorporated by reference herein. For ease of reading, facts relevant to this proceeding are also recited hereinbelow.

12. On August 24, 2015, Claimant was performing preventative maintenance on a piece of equipment as part of his normal work duties with Employer. As he was working on a fan pulley, the machine unexpectedly began running, pulling Claimant's right hand into the space between the pulley wheel and the belt. Due to the equipment's configuration, Claimant's right hand stuck in this space as the wheel and pulley belt continued to turn, abrading his fingers to the point of traumatic amputation. In the process of freeing himself while using his left arm, Claimant also injured his left, non-dominant hand, albeit it a lesser degree. Left hand injuries included bone fractures and lacerations, and long-term ligament injuries of his middle and ring fingers.

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13. Claimant's post-accident medical care for his hands included seven surgeries, physical therapy, occupational therapy, and related treatments. The parties agree Claimant suffered permanent disability over his 33% WP permanent impairment.[1]

14. Claimant's first left shoulder complaints of record after the August 24, 2015 accident appear in the office notes of Anna Hawker, FNP, of St. Luke's Orthopedics and Plastic Surgery Clinic of Twin Falls dated March 8, 2016[2]. At that time Claimant reported his left shoulder pain had been ongoing for the past couple of weeks and rated at 5/10. Claimant further indicated he had injured his left shoulder approximately one year previously, but that injury "improved with conservative treatment and he felt that he had recovered completely." CE B, p. 70. Then, he began to notice persistent anterior left shoulder pain "several weeks ago." *Id.* Activity did not seem to exacerbate his pain, but "arm hanging" did.[3] NP Hawker assessed a sprain/strain. She ordered a left shoulder MRI/arthrogram.

15. The MRI was performed on April 6, 2016. It was read as showing "probable tendinosis of the supraspinatus tendon and a partial intrasubstance tear of the distal infraspinatus tendon." There was no evidence of a full thickness rotator cuff tear. CE B, p. 74.

16. No records of any follow up visits with NP Hawker (or anyone else) were located in the produced record for this hearing or argued in the parties' briefing regarding any immediate further shoulder care. However, in Dr. Faciszewski's IME report (discussion *infra),* he noted that

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[1] Claimant received a 26% WP impairment rating for his right hand and a 10% WP impairment for his left hand, for a combined whole person impairment rating of 33% for injuries sustained in the accident at issue.

[2] Mitch Robinson, PA-C and William May, M.D., who also treated Claimant's left shoulder, are likewise associated with St. Luke's Orthopedics and Plastic Surgery Clinic of Twin Falls.

[3] Claimant testified his left arm had limited use and for a time had been in a sling after his 2015 accident but became more active shortly before his visit with NP Hawker.

NP Hawker on April 12, 2016, saw Claimant in follow up at which time he complained of increasing shooting pain in his left shoulder and down his arm. NP Hawker felt Claimant's symptoms suggested cervical spine involvement and referred Claimant to a physician for cervical evaluation and treatment, which involved physical therapy for Claimant's cervical spondylosis.

17. The next produced records involving Claimant's left shoulder are from his May 3, 2018 visit with Mitch Robinson, PA-C. On that date Claimant was again complaining of left shoulder pain, which he indicated had been ongoing since 2013. Claimant complained of difficulty with overhead activity, pain which radiated down his arm, and numbness/tingling into his hand, ongoing since "previous complication to a surgery." CE B, p. 60. After x-rays showed nothing significant, PA Robinson ordered another MRI/arthrogram.[4]

18. Claimant's MRI taken on May 30, 2018, was interpreted as showing supraspinatus and subscapularis tendinosis along with mild acromioclavicular degenerative changes. It was negative for full-thickness rotator cuff tear.

19. On June 7, 2018, PA Robinson, after reviewing MRI findings with Claimant, suggested injections and physical therapy. Claimant declined the injections and stated that his shoulder was improving, and he would just see if the shoulder would improve on its own over time. PA Robinson suggested Claimant return if his pain continued and he would order EMG testing as a next step.

20. Claimant returned to PA Robinson on September 18, 2018, with left shoulder complaints. Claimant indicated he "was doing well up until he twisted his neck sending a sharp stabbing pains [sic] back into the shoulder and down his arm. Unfortunately, he now has

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[4] Interestingly, the x-rays taken in 2018, as well as the subsequent MRI, showed Claimant with a type II, or curved, acromion, whereas the MRI taken in 2015 noted Claimant had a type I, or flat, acromion at that time. See CE A, p. 40.

a hard time doing any bending of the neck. He has a constant numbing and aching sensation going down to his arm." Claimant denied any specific weakness. CE C, p. 79. EMG testing was negative. Treatment centered on Claimant's neck.

21. Claimant followed up with PA Robinson on January 17, 2019, for left shoulder pain. Claimant had been undergoing treatment for his neck with an orthopedist and was improving. Claimant complained of a deep, persistent ache in his shoulder in spite of his neck injections and physical therapy. Examination of his left shoulder that day showed Claimant had "excellent" ROM, with no pain when stressing his rotator cuff. Claimant exhibited 5/5 rotator cuff strength. His impingement sign was negative, as was his speed test. Claimant's motor and sensory examination distally were intact. Claimant decided to try a cortisone shot into his left shoulder joint. The injection was performed on January 31, 2019.

22. The injection gave Claimant good relief for a time, but by April 11, 2019, he was back at PA Robinson's office with impingement-type complaints. PA Robinson's notes of that date indicate Claimant may well need an arthroscopic evaluation with a subacromial decompression and distal clavicle excision. PA Robinson stated, "[t]here is no doubt in my mind this is coming from his work injuries." CE C, p. 89. Claimant was referred to orthopedic surgeon William May, M.D. for surgical evaluation.

23. By May 30, 2019, Claimant's shoulder pain and limitation was worsening. He was awaiting authority from Surety to proceed with surgery.

24. On June 27, 2019, Claimant saw Dr. May. Dr. May's notes under patient's history indicate the doctor's belief that Claimant strained his shoulder in 2013, (seemingly a typo for 2014), then in 2015 "he was doing something when he jerked his left shoulder he felt some immediate pain in his shoulder and ever since that time he has been having pain." CE C, p. 243,

which is a supplemental record found after Claimant's page 93. Dr. May went on to describe the 2015 accident in further detail. He noted the jerking-type movement involved in the 2015 accident "could've occurred with that type of injury as well." *Id.*

25. Upon examination, Claimant had what Dr. May described as "actually…pretty good range of motion of his shoulder. When I passively move it and uses [sic] it moves quite freely. There is no evidence of an adhesive capsulitis. When I stress his rotator cuff he is able to hold it against resistance. His biceps [sic] is intact. He has a very mildly positive impingement sign. His motor and sensory exams otherwise are intact. He does have a little bit of pain with crossarm elevation test and with his biceps elevation test." *Id.*

26. X-rays reviewed that day showed some degenerative changes in Claimant's AC joint. The most recent MRI (from 2018) showed a large inferior osteophyte, signal changes in the AC joint, and fluid and edema in the supraspinatus tendon. No frank tears were noted. Dr. May suggested another MRI, which apparently was not authorized. Dr. May also suggested surgery, which Surety denied.

27. Dr. May again saw Claimant on June 9, 2020. Records from that date indicate Dr. May felt Claimant had impingement syndrome in his left shoulder, with a possibility of torn rotator cuff, which would need to be fleshed out with an MRI. Dr. May noted that because Claimant has to use his left arm more due to his right hand injury, he has had more left shoulder pain. Impingement and rotator cuff resistance testing were positive. X-rays showed type II acromion and degenerative changes in the AC joint. Dr. May opined that Claimant's "shoulder problem has been going on for some time and it is from his injuries related at work." CE C, p. 242. Dr. May again recommended surgery.

28. Additionally, Dr. May filled out an undated "check-the-box" form provided to him by Claimant's counsel. Therein, he checked the "yes" box which related Claimant's need for medical care to his November 23, 2014 accident. He also checked "yes" to the proposition that Claimant's need for medical care was due to a combination of Claimant's 2014 accident and his 2015 accident. Dr. May wrote on the form "I feel his shoulder impingement is a work related injury. He could definitely have aggravated it with the second injury trying to pull his arm free." Dr. May also agreed that Claimant should undergo surgery for his left shoulder and that such surgery would be related to his industrial accidents. CE C, p. 93.

Defendants' IME

29. On November 2, 2017, Defendants arranged for Claimant to be seen by orthopedic surgeon Tom Faciszewski for an independent medical evaluation and written report in regard to Claimant's August 24, 2015 industrial accident. The primary focus of the examination involved the significant injuries to Claimant's hands, but Claimant did also mention his left shoulder injury to Dr. Faciszewski. Claimant stated his left shoulder problems predated the 2015 accident, and Claimant was not sure if his current shoulder issues were related to the 2015 accident. Claimant further indicated his left shoulder was "really not that bad" and he only felt pain in the shoulder "just once in a while." Claimant related that he had "excellent motion" in his left shoulder. DE 7, p. 24.

30. On physical examination, Dr. Faciszewski noted 5/5 strength in Claimant's bilateral upper extremities and shoulders with no atrophy. Dr. Faciszewski conclusions included a finding that Claimant's intermittent left shoulder pain was unrelated to his industrial accident of August 24, 2015, based on the temporal relationship of the injury and Claimant's onset

of symptoms, as well as Claimant's own uncertainty of a causal connection. Dr. Faciszewski assigned no impairment rating to Claimant's left shoulder.

31. In April 2021, Dr. Faciszewski prepared a supplemental report specifically focused on Claimant's left shoulder claims based upon a review of records, including nearly 200 pages of additional records not available at the time of his original IME report.

32. Dr. Faciszewski concluded that Claimant suffered a left shoulder strain in his November 25, 2014 accident, and was at MMI on March 5, 2015, as per Dr. Johns. Claimant's left shoulder current condition was totally unrelated to Claimant's August 24, 2015 work accident.

33. Dr. Faciszewski diagnosed Claimant with left shoulder acromioclavicular degeneration with intermittent symptoms and a natural history of progression. Claimant suffered no permanent injury as the result of either the 2014 accident or the 2015 accident.

34. Dr. Faciszewski specifically noted that the MRI scan of May 30, 2018, was "negative for a full-thickness rotator cuff tear, and showed only supraspinatus and subscapularis tendinosis, and mild acromioclavicular degeneration changes. These findings are indicative of impingement syndrome, and possibly symptoms related to acromioclavicular arthritis, and are unrelated to any specific injury of August 24, 2015." DE 8, p. 40. Dr. Faciszewski opined Claimant suffered no left shoulder injury of any sort in the 2015 accident.

DISCUSSION AND FURTHER FINDINGS

35. Idaho Code § 72-432(1) mandates that an employer shall provide for an injured employee such reasonable medical, surgical or other attendance or treatment, nurse and hospital service, medicines, crutches, and apparatus, as may be reasonably required by the employee's physician or needed immediately after an injury or manifestation of an occupational disease, and for a reasonable time thereafter. However, an employer is only obligated to provide

medical treatment necessitated by an industrial accident and is not responsible for unrelated medical treatment. *Williamson v. Whitman Corp./Pet, Inc.*, 130 Idaho 602, 944 P.2d 1365 (1997). As stated in *Henderson v. McCain Foods, Inc.,* 142 Idaho 559, 563, 130 P.3d 1097, 1101 (2006), "An employer cannot be held liable for medical expenses unrelated to any on-the-job accident or occupational disease." *Sweeney v. Great West Transp.,* 110 Idaho 67, 71, 714 P.2d 36, 40 (1986). The fact that an employee suffered a covered injury to a particular part of his or her body does not make the employer liable for all future medical care to that part of the employee's body, even if the medical care is reasonable." Thus, Claimant must prove not only that he suffered an industrial injury, but also that the medical treatment sought is due in whole or in part to that injury.

36. Claimant herein must prove not only that he injured his left shoulder, but also that his current need for medical treatment results from either or both accidents at issue. *See, e.g., Seamans v. Maaco Auto Painting*, 128 Idaho 747, 918 P.2d 1192 (1996). Proof requires medical testimony that supports his claim for compensation to a reasonable degree of medical probability. *Langley v. State, Industrial Special Indemnity Fund*, 126 Idaho 781, 785, 890 P.2d 732, 736 (1995). Establishing a possible causal link is not sufficient to satisfy this burden. *Beardsley v. Idaho Forest Industries*, 127 Idaho 404, 406, 901 P.2d 511, 513 (1995). Rather, Claimant is required to establish a probable connection between cause and effect to support his contention. *Dean v. Dravo Corporation*, 95 Idaho 558, 560-61, 511 P.2d 1334, 1336-37 (1973). To prove that a causal relationship is medically probable requires Claimant to demonstrate that there is more medical evidence for the proposition than against it. *Jensen v. City of Pocatello*, 135 Idaho 406, 18 P.3d 211 (2000). No special formula is necessary when medical opinion evidence plainly and unequivocally

conveys a doctor's conviction that the events of an industrial accident and injury are causally related. *See, e.g., Hart v. Kaman Bearing & Supply,* 130 Idaho 296, 939 P.2d 1375 (1997).

37. Claimant argues he has met his burden of proof based upon the facts that nothing in the record documents Claimant suffered any other traumatic injuries to his left shoulder other than the ones at issue herein, and the medical providers opined that Claimant's condition is causally related to one or both of his industrial accidents.

38. Claimant has made a *prima facie* showing[5] with the submission of PA Robinson's notation of April 11, 2019, wherein he stated "[t]here is no doubt in my mind this is coming from work injuries" and Dr. May's entry of June 9, 2019, wherein he stated his belief that Claimant's "shoulder problem has been going on for some time and it is from his injuries related at work," as well as Dr. May's "check-the-box" responses. However, these conclusory statements must be weighed against the medical conclusions provided by Dr. Faciszewski whose opinions stand in contrast to those of PA Robinson and Dr. May.[6]

39. Claimant's November 23, 2014 injury was diagnosed as a sprain/strain. Claimant's condition improved with treatment. An MRI taken not long after this accident showed nothing surgical. In fact, only minor degenerative arthritic changes were noted. While he continued to complain of a minor catch and subjective mild weakness at shoulder level, Claimant had basically full range of motion. Dr. Johns noted Claimant's subjective complaints were inconsistent with

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[5] The reader should not infer from this language that Claimant has met his burden of proof of causation. Rather, Claimant has raised sufficient evidence to establish causation unless it is contradicted, disproved, rebutted, and/or overcome by other evidence. *See Trumbo v. Stevens*, IC 00-037096 (Idaho Ind. Comm. March 19, 2002); *Watson v. Joslin Millwork, Inc.*, 149 Idaho 850, 243 P.3d 666 (2010). As developed *infra*, this Referee finds that the record contains, particularly the opinion of Dr. Faciszewski, more persuasive medical evidence that contradicts the conclusions of PA Robinson and Dr. May.

[6] Other references cited by Claimant are either simply recitations of Claimant's stated complaints, or do not rise to the level of an opinion held to a reasonable medical probability. See *Meikle v. Alpine Flagging, LLC*, 2001 WL 470656 (Idaho Ind. Com. Apr. 27, 2001).

the objective findings. The doctor found no rotator cuff weakness with testing. Claimant returned to his time-of-injury job without further medical treatment or restrictions on March 5, 2015.

40. Several months after Claimant was released to work with no restrictions, Claimant was severely injured in a work accident involving both of his hands on August 24, 2015. He underwent extensive treatment including seven surgeries on his hands and prolonged therapy.

41. On March 8, 2016, Claimant complained of left shoulder pain. An MRI taken in April 2016 was interpreted as showing "probable tendinosis of the supraspinatus tendon and a partial intrasubstance tear of the distal infraspinatus tendon." There was no evidence of a full thickness rotator cuff tear. Treatment thereafter focused on Claimant's neck as a source of shooting pain in his left arm and shoulder.

42. After the 2016 MRI, Claimant did not seek treatment for shoulder issues until May of 2018. An MRI taken in 2018 showed tendinosis and degenerative changes, much like his 2016 findings. Eventually, Claimant was diagnosed by PA Robinson and Dr. May as having left shoulder impingement syndrome, although that diagnosis was specifically ruled out in earlier medical records, implying a recently-developing condition.

43. Neither Dr. May nor PA Robinson explained how this impingement syndrome is causally related to either or both of Claimant's industrial accidents. Dr. May does opine that the pulling and twisting motion experienced by Claimant in his 2015 accident could produce an injury but fails to point to evidence that it did produce an injury which in whole or in part necessitated the contemplated surgery.

44. All MRIs and x-rays show progressing degenerative changes, including arthritis and osteophytes. Other findings, such as supraspinatus and subscapularis tendinosis, and mild

acromioclavicular changes, remain undefined and unexplained by the medical experts and are thus not supportive of causation.

45. In spite of Dr. May's written conclusory assertion that he feels Claimant's impingement syndrome is a work-related injury, Claimant has failed to produce expert testimony defining the conditions seen on MRIs, explaining how these findings support a conclusion of causation, or even offering evidence that such conditions are due to a sudden traumatic event, as opposed to an age-related degenerative process. While Dr. May's conclusory assertion might be read to imply that impingement syndrome is a trauma-induced condition, there is nothing in the record beyond this possible inference to support Claimant's position.

46. Dr. Faciszewski likewise did not provide much of an explanation supporting his conclusions. When examining the 2018 MRI findings, he opined that supraspinatus and subscapularis tendinosis, and mild acromioclavicular degeneration changes were "indicative of impingement syndrome, and possibly symptoms related to acromioclavicular arthritis, and are unrelated to any specific injury of August 24, 2015." Likewise, this conclusion might support an inference that the conditions noted on the MRI are not the result of trauma.

47. Claimant argues that because there are no medical records showing left shoulder complaints other than those regarding the two injuries to his left shoulder, and he testified he had not injured his shoulder prior to the 2014 accident, it is not possible to ascribe his left shoulder condition to anything other than the accidents in question. However, the fact Claimant injured his left shoulder on two occasions at work and has suffered no other traumatic injuries to his shoulder does not necessarily mandate the finding that his current medical condition is related to one or both of those accidents. While Claimant points out that no medical record used the phrase "age-related" changes, medical records do note degeneration and arthritic changes, which occur

over time. Dr. May noted a large osteophyte which also develops over time. *See* Ex. C, p. 243. For what it's worth, no MRI findings include the words "traumatic" or "acute." In fact, the record in this case does not develop the cause of the conditions noted in the MRI readings. The MRI readings list the conditions found, and do not comment on their likely origin. One is left to guess whether these findings are more likely than not age-related findings or trauma-related findings.

48. The second major area of concern comes from Claimant's statements in the record. He noted to NP Hawker that his previous shoulder injury resolved completely, and his new pain was just a few weeks old. Additionally, there was a period of two years with no records of ongoing shoulder complaints after Claimant's 2016 MRI, which supports the opinion that Claimant has a left shoulder joint with progressive degenerative changes which cause intermittent pain, as opposed to a traumatically injured shoulder joint which has been symptomatic for years.

49. The record leaves many unanswered questions on the medical significance of the objective findings. Claimant bears the burden of tying those findings to either or both of his industrial accidents, and he did not do so.

50. Considering the record as a whole, Dr. Faciszewski's opinion that Claimant suffers from non-industrial left shoulder acromioclavicular degeneration with intermittent symptoms and a natural history of progression is more consistent with the medical records and Claimant's statements to physicians and is afforded more weight than the conclusory opinions of PA Robinson and Dr. May.

51. When the totality of the evidence is examined, Claimant has failed to establish his current need for shoulder surgery is due to either or both of his work accidents.

CONCLUSION OF LAW

Claimant has failed to establish by a preponderance of the evidence a causal connection

between his current left shoulder condition and either or both of his industrial accidents in question.

RECOMMENDATION

Based upon the foregoing Findings of Fact and Conclusion of Law, the Referee recommends that the Commission adopt such findings and conclusion as its own and issue an appropriate final order.

DATED this 21st day of December, 2022.

INDUSTRIAL COMMISSION

Brian Harper

Brian Harper, Referee

CERTIFICATE OF SERVICE

I hereby certify that on the 28th day of March, 2022, a true and correct copy of the foregoing **FINDINGS OF FACT, CONCLUSION OF LAW, AND RECOMMENDATION** was served by email transmission and regular United States Mail upon each of the following:

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BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

GEORGE K. HANER, Claimant, v. GLANBIA FOODS, INC., Employer, and AMERICAN ZURICH INSURANCE CO., Surety, Defendants.	**IC 2014-032215** **IC 2015-023179** **ORDER** FILED MAR 28 2022 INDUSTRIAL COMMISSION

Pursuant to Idaho Code § 72-717, Referee Brian Harper submitted the record in the above-entitled matter, together with his recommended findings of fact and conclusion of law, to the members of the Idaho Industrial Commission for their review. Each of the undersigned Commissioners has reviewed the record and the recommendation of the Referee. The Commission concurs with this recommendation.

Therefore, the Commission approves, confirms, and adopts the Referee's proposed findings of fact and conclusion of law as its own. Based upon the foregoing, IT IS HEREBY ORDERED that:

1. Claimant has failed to establish by a preponderance of the evidence a causal connection between his current left shoulder condition and either or both of his industrial accidents in question.

2. Pursuant to Idaho Code § 72-718, this decision is final and conclusive as to all matters adjudicated.

DATED this the 25th day of March, 2022.

INDUSTRIAL COMMISSION

Aaron White, Chairman

Thomas E. Limbaugh, Commissioner

Thomas P. Baskin, Commissioner

ATTEST:

Kamerron Slay
Commission Secretary

CERTIFICATE OF SERVICE

I hereby certify that on the 25th day of March, 202__, a true and correct copy of the foregoing **ORDER** was served by email transmission and regular United States Mail upon each of the following:

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