

Workers' Compensation Appeal Tribunal

Decision #151

Claim No.: 3000-1507

Related Claim No.: 2006-0250

Date of Notice of Appeal: September 18, 2008

Date Notice of Appeal Received at Tribunal: September 26, 2008

Date of Documentary Review: November 6, 2008

Date of Decision: December 3, 2008

Appeal Committee Members appointed under s. 64 (1) of the *Workers' Compensation Act*, S.Y. 2008, c. 12

Presiding Officer:	H. Leenders
Member representative of employers:	H. Hermanson
Member representative of workers:	M. McCullough

Location: Room #201, 419 Range Road
Whitehorse, Yukon Territory

Introduction

The appellant is employed as a dental therapist working in various Yukon communities. On October 10, 2007 she filed a report of injury with Yukon Workers' Compensation Health & Safety Board (the "board") indicating she suffered stress to her left shoulder on May 15, 2007 in the course of her workday. The worker reported she strained her left shoulder due to overcompensating for her work-related right shoulder injury which occurred on December 16, 2005. A January 25, 2008 adjudicator's letter notified her that her claim for compensation was not accepted.

The worker appealed this decision to a board hearing officer. The hearing officer agreed with the adjudicator in his September 16, 2008 decision. He found the worker's left shoulder condition was not work-related. The worker asks the tribunal to reverse the hearing officer's decision and to recognize that her left frozen shoulder is a work-related condition. She asks for recovery of time lost due to her shoulder condition.

Reconsideration

A documentary review was scheduled for October 27, 2008. On October 23, 2008 the deputy workers' advocate provided a further report, dated October 17, 2008, by Dr. Adam Humphrey. The appeal committee met to review the report. As outlined in Policy AP-03 the committee determined the report to be new evidence; it was sent back to the hearing officer for reconsideration. The hearing officer rendered a reconsideration decision on October 29, 2008. He found there was nothing in Dr. Humphrey's October 17, 2008 report which provided information that would influence his September 16, 2008 decision. The appeal committee reconvened on November 6, 2008 for documentary review.

Jurisdiction

- [1] On September 26, 2008 the workers' advocate office, representing the worker, filed an appeal of the hearing officer's decision with the tribunal under s. 53 of the *Workers' Compensation Act*, S.Y. 2008 (the "Act"). The review (appeal) should be determined according to the *Workers' Compensation Act*, S.Y. 2008, c. 12. Section 65(1) of the *Act* gives the appeal tribunal jurisdiction to hear and decide this appeal.
- [2] The worker filed a claim for an injury which occurred on May 15, 2007. Policy IN-03, Transition Policy – Workers' Compensation Act 2008, effective July 1, 2008, directs how the *Act* and policies apply to claims made before the effective date of the legislation. Section 2 of the policy speaks to predecessor legislation as follows:

Where a previous *Workers' Compensation Act* is repealed the normal rule of interpretation is to use the most current *Act*. The only exception is the transition part of a *Workers' Compensation Act*, which directs that entitlement of a worker to compensation is determined pursuant to the *Workers' Compensation Act* in force at the time of the worker's injury.

Compensation entitlement decisions are made pursuant to legislation in place at the time of injury. The worker reported an injury that occurred on May 15, 2007. In this instance the *Workers' Compensation Act*, R.S.Y. 2002, should be used to determine the issues of entitlement.

Background

- [3] The board provided the following policies to the tribunal as relevant to this appeal under the authority of section 24 (4) of the 2002 *Act*:
- Policy IN-03 – Transition Policy – effective July 1, 2008
 - Policy AP-03, New Evidence at Reviews & Appeals, effective July 1, 2008
 - Policy CL-54, Merits and Justice of the Case, effective February 17, 2004
- [4] The appeal was conducted by documentary review. The workers advocate provided written submissions. The employer was notified but did not participate.

Evidence

- [5] The appeal committee considered the following:
- workers' advocates submission
 - an article titled, "Adhesive Capsulitis" provided by the workers' advocate
 - the aforementioned policies
 - the entire claim records Nos. 3000-0507 and 2006-0250 as provided by the board
 - Dr. Humphrey's report dated October 17, 2008.

Hearing Officer's Decision

- [6] The worker is appealing the hearing officer's September 16, 2008 decision. She is seeking a decision recognizing her left frozen shoulder is work-related and recovery of time lost from work due to the shoulder. The hearing officer concluded that it was more probable that the left frozen shoulder was not work-related and denied the worker's appeal. He confirmed his decision in the October 23, 2008 reconsideration decision.

Evidence from the Record

- [7] The worker filed a Worker's Report of Injury/Illness dated October 10, 2007 stating that in the community of Haines Junction on May 15, 2007 she suffered a stress injury to her left shoulder while performing her duties.
- [8] The file contains two Employer's Report of Injury/Illness. An October 15, 2007 Employer's Report notes the injury was not reported. A December 4, 2007 Employer's Report is accompanied by a hand-written note that states in part:

Advised injury caused by compensating for right shoulder injury and using the dental instruments, dental equipment such as light cure unit, suction and mouth mirror, pushing and pulling of instrument boxes and file boxes and carrying things listed above up and down stairs.

[The worker] advised while in Haines Junction she noticed the strain during that same day while driving to Whitehorse for a physiotherapy appointment. She described the injury to be tired, achy and generally not feeling good.

- [9] Dr. Gagnon's November 9, 2007 Doctor's First Report diagnosed left shoulder capsulitis (frozen shoulder) which reportedly started in May of that year. The right side is now normal. The worker has been receiving treatment all summer. Recommended treatment includes physiotherapy twice a week and an x-ray of the left shoulder as well as a WCB assessment. Dr. Gagnon notes the worker is still working; a 7 – 14 day work restriction recommends that the worker limits restorative surgery to 3 per day.
- [10] A position description for dental therapist completed on October 16, 2003 is included in the claim file. Section H. of the job decision explains working conditions. Subsection a) of H. states, "Describe weights lifted", followed by "type, how heavy and percentage of the time". Listed in this section are: dental light – 20 kgs; dental chair – 45 kgs.; dental unit – 32 kgs.; supplies – 20 kgs.; and instrument case – 20 kgs. All these items are used 5% of the time by the incumbent.
- Section b) of H. questions: What working conditions (sitting, standing, bending, reaching) or types of physical effort (hiking, walking driving) are required? The position description notes that the incumbent stands 55% of the time and 70% of the time involves bending/reaching.
- [11] On November 1, 2007 physiotherapist Dr. Humphrey reports an injury to the worker occurring in May 2007. The worker's description of injury states she injured her left shoulder while lifting heavy carts of dental equipment and supplies to and from the travel vehicle. Pain intensity "has been progressively worsening". Dr. Humphrey's diagnosis is "likely adhesive capsulitis of left GH [glenohumeral] joint", with a prognosis of a full recovery in 6 to 18 months. He notes work restrictions as "unable to raise arm above shoulder height".
- [12] An initial physiotherapy report by Pamela Holmes states the worker last attended on November 14, 2007. The worker reports a history of a right frozen shoulder diagnosed in December 2005. The worker underwent extensive therapy which has improved her right shoulder but she feels that she is compensating with her left arm. Beginning in May of 2007, the worker noticed her left shoulder becoming painful in the same way her right shoulder problems began. Principal findings are "limited shoulder range of motion which is consistent with the frozen shoulder syndrome or other acute tendonitis".
- [13] Dr. Lazeo provides a progress report on December 4, 2007 noting no change in diagnosis, "waiting for x-ray". The worker is fit for modified duties but is advised to carry out only 3 restorations per day.
- [14] An x-ray of the left shoulder undertaken on December 7, 2007 reveals "normal study". There are no fractures or bony injuries noted and no other significant bone pathology is seen. No rotator cuff calcification or loose bodies are seen within the joint space of the shoulder.
- [15] An adjudicator requests the board medical consultant's opinion on December 13, 2007. He provides a reprint from the Up-to-Date Website and responds on January 3, 2008. Following are excerpts from that report:

Frozen shoulder, or adhesive capsulitis, is a relatively common condition. . . . From the reprint, you will note “frozen shoulder may occur as an idiopathic process or a result of an underlying disorder that leads to disuse. Idiopathic frozen shoulder occurs most commonly in the fourth to sixth decades of life.”

Idiopathic means that we do not know the exact cause of the condition. Disuse is one on the most common predisposing factors. On the other hand, moving the shoulder is thought to help prevent the development of the condition.

- [16] A January 25, 2008 report by Dr. Tirschmann diagnoses “frozen shoulder/rotator cuff injury bilateral” and advises the worker not to lift more than 25-30 lbs. from floor to waist level.
- [17] On January 25, 2008 a board adjudicator denies the worker’s claim for compensation because she determined there is no medical link between the worker’s job duties as a dental therapist and her current symptoms.
- [18] The worker appeals the adjudicator’s decision to the hearing officer. On September 16, 2008, the hearing officer renders his decision. He concludes that it was more probable that the left frozen shoulder was not work-related. He agreed with the adjudicator’s decision that the frozen shoulder may have occurred as the result of an idiopathic process “such as the medical reference literature indicates may be likely”.
- [19] Because a documentary review was requested rather than an oral hearing, the appeal committee did not have an opportunity to hear the worker’s explanation of how the injury occurred. We have added excerpts from the hearing officer’s review, dated September 16, 2008, with respect to the worker’s testimony of her job duties as follows:

[The worker] testified next. She has 20 years in the dental profession. Her current position is that of a dental therapist. The duties of this position overlap those of both a dental hygienist and a dentist. She does not work with an assistant and does all the equipment setups and treatments without help. Every year, the work routine requires 12 to 14 weeks working in the communities. This means using mobile equipment. It also means loading and unloading all of the equipment at each stop and setting up and breaking down when finished by herself. On the day of the injury, [the worker] had arrived at Haines Junction and was carrying equipment in for a setup. She was being more careful with her right shoulder at the time since she had suffered a right frozen shoulder condition quite recently. She felt a momentary strain in the left shoulder, so she stopped and rested the left shoulder before continuing.

- [20] An October 17, 2008 report by Dr. Humphrey states in part:

May 2007 was the first time you began complaining of left shoulder pain. This was following a work trip to the Yukon communities where you had

reported “straining” your left shoulder while lifting the cases of dental equipment from the work van. These cases were weighed on November 16, 2007 during an on-sight workplace assessment to range in weight from 50-62 lbs. each.

Initially with your more recent left shoulder complaint the main symptom was pain. But by July and more noticeably August, your left glenohumeral joint began to “stiffen” and lose passive range of motion which is a classic presentation for adhesive capsulitis (frozen shoulder). As it was with your right shoulder, the most noticeable reductions in motion were internal rotation and abduction. By September/October the pain was reported as minimal and the restriction in motion was at its greatest, although never as problematic as the right shoulder was at its worse [sic].

In regards to the causation of your left shoulder injury, I believe that it followed a similar path as your initial right shoulder injury. Adhesive capsulitis can develop following a traumatic incident to the shoulder but more often it is an idiopathic disease which has no clear precipitating factors. In your case you initially developed frozen shoulder on your right following a reported audible “pop” in which your shoulder became immediately sore while performing regular dental duties. Your left shoulder complaint had similar signs and symptoms, albeit to a lesser degree, and followed traumatic lifting of equipment which caused immediate pain as well. It is also possible that your left shoulder condition was a development of your initial right injury and that the traumatic lifting was simply a trigger. Please see the paragraph below for a brief explanation.

Current literature supports that frozen shoulder may occur in up to 16% of patients over their lifetime. Of those patients as many as 14% have their contralateral shoulders freeze while the disease is still active in the initially affected shoulder. Because your left shoulder was affected in less than 5 years of your right shoulder being affected, and the conditions were active simultaneously for many months, many experts would consider your left shoulder problem related to the initial traumatic event of your right shoulder. Some literature states that in the case when both shoulders are active within a period of less than 5 years, these conditions are best diagnosed as “bilateral frozen shoulder” and considered as a single entity with a single causation. This was the reason why I was reluctant to complete another YWCHSB “Doctor’s First Report” for your left shoulder, as I had always considered the left shoulder to be related to the initial right injury.

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- [21] Dr. Lazeo's first report of January 10, 2006 diagnoses right shoulder strain/query bursitis.
- [22] Dr. Kanachowski's March 13, 2006 progress report notes a history of ongoing right shoulder pain and an exacerbation of the pain a week prior to consultation. Due to a decreased range of motion, Dr. Kanachowski felt a most likely diagnosis was that of frozen shoulder.
- [23] On May 8, 2006, the board medical consultant reports. Following is an excerpt from that report:
- Impression: This worker now has significant adhesive capsulitis (frozen shoulder) of the right shoulder. This is most likely secondary to the primary pathology, which as yet remains uncertain. Given her occupational history and description of symptoms, it seems most likely that she had impingement syndrome from a rotator cuff tendonitis in the right shoulder which led to immobility and subsequent frozen shoulder.
- . . . It is likely that age does play some role in the development of rotator cuff tendonitis in this worker, but I would suggest that the static and prolonged and repetitive nature of her right shoulder abduction in the workplace also had a role to play. Given the balance of probabilities, I would suggest that this worker's primary pathology is as likely work related as not. Likewise, the frozen shoulder is, I would suggest, secondary to the primary pathology of impingement syndrome.
- [24] On May 22, 2006 an adjudicator notifies the worker that her claim has been accepted for adhesive capsulitis (frozen shoulder) and the worker will receive compensation benefits.
- [25] Dr. Lazeo prescribed time away from work starting May 8, 2006 to June 30, 2006. The worker resumed modified work at the end of August 2006 while continuing with physiotherapy at the Summit Center. The board approved up to 6 sessions of Pilates, which the worker completed by March 7, 2007.
- [26] On July 7, 2006, the worker's supervisor e-mails the worker's adjudicator discussing possible accommodation for her injury. The adjudicator responds by e-mail stating that an update from the worker's physiotherapist suggests restrictions should include any activity which requires her to use her dominant arm such as scaling, cleaning or restorations due to the fact the worker has a "postural strain" which caused her shoulder to fall into an anterior position. Also, because the worker did not receive aggressive physiotherapy early in her treatment, recovery has been delayed. The adjudicator mentions that according to the Medical Disability Advisory 4th edition, the length of disability can last anywhere from several months to 1 to 3 years to resolve. By July 11, 2007 the worker was working full time hours and following her doctor's advice with regards to job duties.

[27] Two e-mails from Dr. Humphrey, dated September 10 and October 2, 2007, to the adjudicator state the worker's right arm is great but her left arm is now bothering her. Dr. Humphrey's e-mails state in part:

September 10 – I treated her today and her right arm is great, left shoulder is now bothering her and has for the last few visits. She believes that she was overcompensating and now it is painful and locking up slightly.

October 2, 2007 – Yeah, I think her right shoulder claim could be closed off. In the meanwhile I have instructed [the worker] to file a separate claim for her left shoulder should she require treatment.

[28] An October 3, 2007 letter by the adjudicator advises the worker that her claim for compensation is being reviewed for closure. The adjudicator addresses the left shoulder problems as follows:

Decision: Based on the medical reports on file you have been cleared to return to full duties with a restriction of doing four, one-hour restorative procedures per day. . . . Dr. Humphrey makes note on September 10, 2007 and October 3, 2007 that your right shoulder was great but you were having problems with your left shoulder. Unfortunately your claim was accepted for a right shoulder injury you sustained at work. If you are having problems with your left shoulder and feel it is work-related you will have to initiate a claim to the board and an adjudicative decision will have to be made.

[29] The worker files a claim for her left shoulder (3000-1507) but it is denied on January 26, 2008 [see para. 17].

The Workers' Advocate Documentary Submission

[30] The submission asks the appeal committee to reverse the adjudicator's January 25, 2008 decision. [The appeal committee understands this to mean the hearing officer's September 16, 2008 decision.] The advocate on behalf of the worker wants the tribunal to reverse the hearing officer's decision. This would result in acceptance of the worker's claim as a work-related disability and provide her with loss of wages, physiotherapy costs and prescription expenses.

[31] The advocate relied on sections 6, and 117 of the *Workers' Compensation Act* RSY 2002 and the following policies:

- Policy CL-42, Arising Out of and In the Course of Employment
- Policy CL-31, Cumulative Trauma Disorders
- Policy CL-54, Merits and Justice of the Case.

[The appeal committee notes the workers' advocate office is still using the previous *Act*. Policy IN-03, Transition Policy - *Workers' Compensation Act 2008* provides direction in this regard (see para. 2)].

She also used excerpts from Terence G. Ison's, *Workers' Compensation in Canada*, 2nd ed. as follows:

- pg. 58, section 3.7.1 – Eligibility principles
- pg. 207, section 9.7.5 - Rebutting the presumptions

She provided a document titled, "Ergonomic Risk Factors Associated with the Clinical Dental Hygiene Practice".

- [32] The advocate submits the worker reported first experiencing pain in her left shoulder on May 15, 2007 while lifting heavy carts of dental equipment to and from her travel vehicle. This occurred during a 5 week road trip in which she was required to load and unload equipment and supplies 8 times in 4 different communities. The worker reported the symptoms arose in the same manner as her right shoulder and consistent with the right shoulder, grew progressively worse. The worker was still attending Dr. Humphrey for her right shoulder but when she reported left shoulder pain on May 24, 2007, Dr. Humphrey started treating her left shoulder. The worker believed the left shoulder would heal quickly but when she realized the injury was more significant, she reported to the board on October 10, 2007.
- [33] The advocate says the mechanism of injury on the doctor's first report links the injury to a time and place as required by Policy CL-42 and also shows the circumstances were consistent with the worker's obligations of employment. She says this shoulder injury does fit the criteria as legislated in Policy CL-42.
- [34] The advocate addresses the adjudicator's January 25, 2008 decision letter wherein the adjudicator is unable to find a medical link between the job duties and the worker's symptoms. The advocate maintains that this worker's job duties include the criteria contained in Policy CL-31, specifically rapid, forceful, and repeated movements as well as pressure and vibrations, and most prevalent – static loading. She says these risks are associated with the main functions of this worker's position.
- [35] The advocate says the adjudicator asked the medical consultant an incorrect question which resulted in an opinion that did not address the questions that were pertinent in fair adjudication of this claim. She says the medical consultant's January 3, 2008 report provides an opinion on the commonality of frozen shoulder and relays that it may occur as an idiopathic process – which means the exact cause of the condition is unknown.
- [36] The advocate sets out section 6 of the 2002 *Act* which states that if a disability arises out of or in the course of a worker's employment, the disability is presumed to be work-related unless the contrary is shown. In this instance, she asserts, there is no contrary evidence, therefore the presumption clause does apply.

[37] She concludes the worker's symptoms started in her left shoulder in May of 2007. The symptoms were consistent with the symptoms she had suffered in 2005 on her right shoulder, which was determined to be a work-related injury/disability. Relying on a summary of information from "Ergonomic Risk Factors Associated with the Clinical Dental Hygiene Practice", the advocate suggests there have been extensive studies done on the ergonomic risks associated with dentistry that cover the frequency and effects of rapid movement, forceful movement, and static loading over extended periods of time. The advocate submits this worker has been doing the same job for over 20 years, 7.5 hours per day. There is no contrary evidence to demonstrate that this injury was not work-related, and in the absence of contrary evidence, the benefit of the doubt must be used to find in favour of the worker. The advocate submits this worker's employment certainly was considered to be a significant contributing factor in her right shoulder injury only two years earlier.

Issue: Is the frozen left shoulder a work-related injury?
Answer: Yes.

Analysis of the Issue

[38] The worker is a dental therapist who travels to a number of Yukon communities to provide dental services to school children. The worker suffered an injury on December 16, 2005 to her right shoulder which developed into adhesive capsulitis or frozen shoulder from which she took a long time to recover. In May 2007 she attended her physician with adhesive capsulitis symptoms in her left shoulder.

[39] The board accepted the 2005 claim and paid for the worker's treatments as well as time loss. The board, as recorded earlier, did not accept the 2007 frozen shoulder as a legitimate work-related injury citing sections 3 and 117 of the 2002 *Act* and Board Policies CL-31, CL-42, and CL 54. The hearing officer's decision stated that it is a relatively common condition and most likely due to an idiopathic process.

[*Dorlands Pocket Medical Dictionary*, 25th ed. defines "idiopathic" as: self-originated; occurring without known cause.]

[40] The committee considered the work conditions of the worker that led to the initial injury in December 2005. The worker's job description requires the worker to lift or move equipment weighing up to 45 kilograms from her office in Whitehorse into a van and then from the van into a school in each of the communities she attends. It was such a lifting episode that resulted in the initial injury. Subsequently the demands of the job did not change, however, the worker did favour the right shoulder which required the left shoulder to compensate.

[41] An adjudicator's October 3, 2007 letter notified the worker that her claim for her frozen right shoulder was officially closed. At this time she was also being treated by her doctor and physiotherapist for adhesive capsulitis symptoms in her left shoulder which had manifested in May 2007.

- [42] The worker did not file a claim for the left frozen shoulder until after receiving the October 3rd letter. Her claim shows May 15, 2007 as the date she experienced a momentary strain in the left shoulder as she was conducting a setup in Haines Junction. She reported the strain and related pain to Dr. Humphrey on her subsequent visit to him on May 24.
- [43] Why the discrepancy in onset of symptoms and the filing of a claim? The committee recognizes from the records that the worker was being treated for frozen left shoulder from May 24 to the time of the closing of her right shoulder claim. Since the board was paying the treatment costs she evidently did not see any reason to file another claim. However, when she received the adjudicator's letter closing her right shoulder claim, she immediately filed a claim for the left shoulder. The proximity of the receiving of the letter and the filing of the claim seems to lend itself to this deduction.
- [44] The worker evidently was not alone in thinking that this was work-related as her treating physician, Dr. Humphrey of the Summit Centre, writes in his letter to the worker dated October 17, 2008:
- In your case you initially developed frozen shoulder on your right following an audible "pop" in which your shoulder became immediately sore while performing regular dental duties. Your left shoulder complaint had similar signs and symptoms, albeit to a lesser degree, and followed traumatic lifting of equipment which caused immediate pain as well.
- It is also possible that your left shoulder condition was a development of your initial right injury and that the traumatic lifting was simply a trigger. Some literature states that in the case when both shoulders are active within a period of less than five years, these conditions are best diagnosed as "bilateral frozen shoulder" and considered as a single entity with a single causation. This was the reason why I was reluctant to complete another YWCHSB "Doctor's First Report" for your left shoulder, as I had always considered the left shoulder complaint to be related to the initial right.
- [45] The committee agrees with the hearing officer that in the same letter Dr. Humphrey may have exaggerated the May 15 incident by calling it a 'traumatic lifting of equipment' however, the committee does not disregard that statement out of hand because of the exaggeration.
- [46] The workers' advocate argues that the left shoulder injury fits the criteria as legislated in Policy CL-42, Arising Out of and In the Course of Employment. She cites Dr. Humphrey's report as "shoulder injured lifting heavy carts of dental equipment and supplies to and from travel vehicle". The committee recognizes that the statement reflects the worker's position as to the reason for her left shoulder condition, however, Dr. Humphrey does not refute it since he is aware of the weights being carried by the worker.

- [47] Dr. Gagnon states on her November 9, 2007 Doctor's First Report, "Frozen shoulder started on left side since May". No specific cause was listed. The shoulder was treated all summer.
- [48] The worker was also directed by Dr. Gagnon to reduce restorative surgeries to three a day. This indicates that those type of surgeries put undue strain on her shoulders and they become susceptible to injury.
- [49] The medical consultant's August 8, 2008 report states the literature presented by the workers' advocate on Ergonomic Risk Factors Associated with Clinical Dental Hygiene Practice states, "Until many group studies are carried out in the dental profession to firmly establish a direct link from job task to this type of injury, claims will continue to be ignored." The consultant, on the basis of the foregoing statement, claimed that the paper may be more of an advocacy paper than a research paper.

The literature in question was jointly funded by the B.C. W.C.B. and the dental hygienist group. We view this document as a resource to show that dental hygienists "continue to identify chronic neck, back, and shoulder pain as an occupational ailment associated with their profession".

- [50] The medical consultant in his January 3, 2008 report points out that disuse is one of the most common predisposing factors, while moving the shoulder is thought to help prevent the development of the condition. If that is the case, the worker should not have contracted the condition because her work requires a lot of shoulder movement as he stated in his May 8, 2006 report.
- [51] The committee notes that both the adjudicator and hearing officer frequently use the term "may" in their decisions not to accept the left shoulder claim. The term "may" depicts uncertainty.
- [52] We understand this case does present a degree of uncertainty. However, we are directed by the 2008 Act, Part 3, Presumption and Benefit of Doubt, and Policy CL-54 to fairly weigh all the evidence and when in doubt to invoke section 19 of the Act, Balance of Probabilities.
- [53] The committee commends the hearing officer on his presentation of the issues as he sees them. However, we disagree with him that the case weighs more against the worker's frozen shoulder being work-related than for it.
- [54] Since frozen shoulder is an idiopathic condition that manifests itself mostly in the worker's age group, it is possible that the left shoulder froze apart from any work-related activity or any bilateral transfer. It is equally possible that the worker, during a lifting incident, hurt her left shoulder and it followed the same path as her right shoulder had previously. Moreover, if 14% of people with one frozen shoulder also, through bilateral transfer, have the other shoulder affected, then that possibility has to be considered as well.

[55] Thus we have a number of assumptions being made, none of which can be clearly substantiated with facts. Based on our findings, the committee comes to the following conclusion.

CONCLUSION

[56] The committee concludes that the evidence for the worker's injury being work-related is as conclusive as the evidence against it being work-related. On that basis, we find, directed by section 19 of the *Act* that the disputed possibilities are evenly balanced on the issue and therefore the issue is resolved in favour of the worker.

DECISION

The worker's appeal is allowed. The hearing officer's September 16 and October 29, 2008 decisions are reversed.

1. The worker is entitled to loss of earnings benefits and medical benefits as provided by sections 22 and 36 of the 2008 *Act*.
2. Interest is awarded pursuant to section 31 of the *Workers' Compensation Act*, S.Y. 2008 and Policy EL-03.

Dated this 3rd day of **December 2008** in the City of Whitehorse, Yukon Territory.

This decision is made with the concurrence of the appeal committee.

H. Leenders, Committee Chair

Committee Members:

H. Leenders	Committee Chair
M. McCullough	Member
H. Hermanson	Member