

*Stokes v. Railroad Junction Corp. (April 21, 1995)*

VERMONT DEPARTMENT OF LABOR AND INDUSTRY

JOHN STOKES                    )   File No.: E-15104  
                                      )  
v.                                )   By: Geoffrey W. Crawford  
                                      )   Hearing Officer  
RAILROAD JUNCTION CORP.    )  
                                      )   For: Mary S. Hooper  
                                      )   Commissioner  
                                      )  
                                      )   Opinion No. 7-95WC

APPEARANCES:

*John Stokes, Pro se*  
*Phyllis Severance, Esq. for the defendant Railroad Junction Corp.*

ISSUES:

- 1. Was the termination of temporary total disability compensation on October 6, 1994, appropriate?*
- 2. Has the claimant reached a medical end result and, if so, what is the appropriate measure of permanent partial disability?*
- 3. Is the claimant entitled to future medical benefits and payment of permanent partial disability compensation?*

THE CLAIM:

- 1. The claimant seeks the reinstatement of temporary total disability compensation.*

EVIDENCE:

*The witnesses at the hearing conducted on December 21, 1994, were the claimant John Stokes, his brother Stephen Stokes, John Siliski, M.D. by telephone, the investigator Andrew Walton (by telephone) and Cecile Cote, a*

*vocational rehabilitation specialist (by telephone). The written evidence admitted at the hearing consisted of the medical records which were already contained in the Department's file. These included office notes from the claimant's treating physician Dinesh Patel, M.D., records from Dr. Siliski, and from Edwin T. Wyman, Jr., M.D. In addition, the parties and the hearing officer viewed the surveillance videotape taken by Mr. Walton on September 22, 1994.*

#### **FINDINGS:**

##### *History of the Claim*

- 1. On February 10, 1992, claimant was employed as an executive chef at the Railroad Junction Corp. (Holiday Inn) in White River Junction, Vermont. He suffered a right knee injury on that date while moving a beer keg. This injury occurred in the course of his employment and is agreed by the parties to be compensable under the Vermont workers compensation statute.*
- 2. The claimant began receiving temporary total disability compensation on March 4, 1992, following arthroscopic surgery on that date. He returned to work at the Holiday Inn in May 1992. In October 1992 he moved to Massachusetts and went to work for a different employer.*
- 3. The claimant underwent a second arthroscopic knee procedure on April 27, 1993. The parties agreed that this procedure and the resulting disability were attributable to the original accident at the Holiday Inn. The claimant began to receive temporary total disability compensation again following the second procedure and received them until they were terminated on October 6, 1994.*
- 4. As a result of the injury on February 10, 1992, the claimant has developed a serious right knee problem involving ACL insufficiency and a torn medial meniscus. He has received extensive treatment including two arthroscopic surgeries and physical therapy. As of the date of the hearing, December 21, 1994, no further treatment was planned other than the recommendation by the IME physician John Siliski, M.D. that the claimant obtain a knee brace.*

##### *Termination of TTD*

- 5. On October 6, 1994, the carrier (Cigna) filed a discontinuance of compensation (Form 27) on the ground that "surveillance indicates claimant*

*working at Merrimack Pallett Supply Store, Auburn, N.H." The surveillance occurred on September 22, 1994. The investigator Andrew Walton submitted a videotape showing the claimant moving about the entrance to a warehouse building in Auburn, New Hampshire.*

*6. Although the Form 27 submitted to the Department stated that the claimant was working, the investigator made no effort to confirm the claimant's employment. In fact, the claimant was not working at the time the videotape was taken and has never been employed by Merrimack Pallett Supply.*

*On September 22, 1994, the claimant was visiting his brother who owns a different pallet company at the same location. The tape shows the claimant walking about collecting scrap firewood for his own use and throwing several shovelfuls of dirt on a patch of oil.*

*7. The investigator's report which was attached to the Form 27 reveals an inadequate investigation with no follow-up. A telephone call to the Merrimack Pallet Supply Co. would have revealed that the claimant was not employed by that company on September 22, 1994.*

*8. The activities shown on the videotape are not strenuous in nature. The videotape does not provide any evidence that the claimant is able to return to his prior employment as a chef. The Form 27 was not supported by sufficient evidence to support a termination of compensation.*

#### *Medical End Result*

*9. At the hearing at the Department of Labor and Industry on December 21, 1994, John Siliski, M.D., an orthopedic surgeon affiliated with the Massachusetts General Hospital, testified by telephone. No other physician testified. Dr. Siliski testified that the claimant has reached a medical end result. His only recommendation was that the claimant could obtain a knee brace to protect his knee from further injury.*

*10. Although further surgery such as an osteotomy was contemplated at one time, as of the date of the hearing the claimant and his physician, Dr. Patel, had no plans to undertake any further surgery. The claimant submitted no evidence that he was currently receiving medical treatment or that treatment was planned in the foreseeable future.*

*11. It is clear that as of December 21, 1994, the claimant had reached a*

*medical end result.*

### *Permanency*

*12. On October 20, 1993, Dr. Edwin Wyman, an orthopedist also at Mass. General, examined the claimant and found a 20 % disability to the right lower extremity. There is no evidence to contradict this finding, and this rating was consistent with Dr. Siliski's testimony at the hearing. Accordingly, the permanent partial disability award is 20 %, commencing on December 21, 1994.*

### *Future Medical Expenses*

*13. The claimant expressed concern at the hearing about future medical expenses. At the time of the hearing, no specific future medical treatment was anticipated by the claimant or Dr. Siliski. Under 21 V.S.A. §640, the claimant is entitled to reasonable medical services in the future so long as these services are causally related to the original injury.*

*14. The claimant is entitled to reinstatement of temporary total disability compensation from the date of termination (October 6, 1994) until the date of hearing (December 21, 1994).*

*15. The claimant is further entitled to permanent partial disability compensation commencing after December 21, 1994, for a 20 % permanent partial disability to the right lower extremity.*

### *CONCLUSIONS OF LAW*

*1. The claimant has the burden of showing that an injury comes within the scope of the workers' compensation act, including showing a causal connection between the accident causing the injury and the employment, as well as an entitlement to relief under the Act. Lapan V. Berno's Inc., 137 Vt. 393 (1979); Egbert v. Book Press, 144 Vt. 367 (1984).*

*2. In this case there is no dispute that the claimant suffered a compensable injury which arose out of and in the course of his employment, so claimant has met his burden in that regard.*

*3. Where the injury and resultant disability from a work-related accident are unquestioned, the burden is on the employer to demonstrate that the*

*disability has ceased so as to require a termination of compensation. Merrill v. University of Vermont, 133 Vt. 101 (1974). In this case the employer has not met its burden of demonstrating that claimant's temporary total disability compensation should be terminated based on its allegation that claimant was working.*

*4. Nonetheless, a claimant is only entitled to temporary total disability compensation until such time as he or she reaches a medical end result. Orvis v. Hutchins, 123 Vt. 18 (1962). In this case the uncontroverted medical evidence is that claimant has reached a medical end result. He is not entitled to temporary total disability compensation after December 21, 1994.*

*5. Claimant has met his burden of establishing that he has a 20% impairment of the right lower extremity, based on the uncontroverted medical testimony.*

**ORDER:**

*It is therefore ORDERED, that the defendant Railroad Junction Corp. or its workers' compensation carrier immediately pay to the claimant:*

- 1. Temporary total disability compensation from the date of termination (October 6, 1994) until the date of the hearing (December 21, 1994);*
- 2. Permanent partial disability compensation based on the 20 % permanent partial disability rating; such compensation shall be paid retroactively to December 21, 1994, and weekly thereafter unless the parties otherwise agree with the approval of the Department;*
- 3. Reimbursement for the actual expense of the knee brace recommended by Dr. Siliski;*
- 4. Future medical and hospital benefits for services shown to be causally related to the knee injury of February 10, 1992.*

*DATED in Montpelier, Vermont this \_\_\_\_\_ day of April, 1995.*

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*Mary S. Hooper*  
*Commissioner*