

**STATE OF VERMONT
DEPARTMENT OF LABOR AND INDUSTRY**

Wendell Severinghaus,)	State File No. F-01598
Claimant,)	
)	By: Margaret A. Mangan
v.)	Hearing Officer
)	
Banner Publishing Co.,)	For: Steve Janson
Defendant.)	Commissioner
)	
)	Opinion No. 14-98WC

Submitted on Stipulated Facts and Legal Briefs
Record closed on October 17, 1997

APPEARANCES:

Attorney Jessica Ellicott for the claimant
Attorney James B. Grussing for the defendant

EXHIBITS:

Joint Exhibit I:	Medical records
Exhibit C:	Form 5, Employee's Notice of Injury and Claim for Compensation
Exhibit D:	Form 25, Wage Statement
Exhibit F:	Letter from claimant's vocational rehabilitation counselor
Exhibit G:	Medical bills for fibromyalgia and repetitive stress

Marked for ID only -

Exhibit A:	Textbook of Rheumatology
Exhibit B:	Administrative Appeal of Claimant's Disability Denial

ISSUES:

1. Did the claimant suffer an injury in the course of her employment in April of 1992?
2. If the claimant suffered a work related injury, is she entitled to temporary disability benefits?
3. If the claimant is entitled to temporary disability benefits, is her disability partial or total?
4. If the claimant is entitled to temporary disability benefits, what is the applicable time frame for her temporary disability?
5. If the claimant's injury is compensable, when did she reach her medical end point?

6. Is claimant entitled to Attorney's fees and costs?

STIPULATIONS:

1. Claimant was employed as a managing editor by the Bennington Banner in April of 1992.
2. The position of managing editor is more than a salaried, 9 a.m. to 5 p.m. job. The job entails overtime work.
3. The claimant alleges she suffered from work-related injuries beginning in April of 1992.
4. Claimant began losing time from work in May of 1992.
5. The parties agree that if the claimant's injury is compensable, then the issue of claimant's permanency will be decided after this decision. The claimant will seek an impairment rating and the insurance company would need additional time to schedule an independent medical examination.
6. Vocational rehabilitation is not an issue at this time. Although the claimant may be entitled to it, at this point in time, the claimant is unable to derive any benefits from vocational rehabilitation. The claimant's rehabilitation specialist has attested to this fact. For this reason, vocational rehabilitation will be an issue in the future if the claimant's injuries are compensable.

FINDINGS OF FACT:

1. Claimant began working at the Bennington Banner in 1985. She resigned on July 6, 1992.
2. On January 19, 1990 claimant's physician, Dr. Robert Block, noted that claimant had "a history of several years of upper back pain and occasional arm spasms," and that she had suffered a concussion in 1983 with episodic neck pain ever since.
3. Later in January of 1990 claimant saw Dr. Keith Edwards for complaints of back pain and hand numbness of a two to three year duration. In February of that year, Dr. Edwards saw claimant again and documented more problems with swelling and achiness in her right hand. EMG studies were normal. Dr. Edwards noted that claimant had chronic back pain.
4. In October of 1991 claimant saw Dr. Eric Seyferth with complaints that she had wrenched her neck a few weeks earlier, had pain that radiated from above the right scapula into the neck as well as tingling in the fingertips. Expressing the need to consider nerve root compression, Dr. Seyferth referred claimant to Dr. Roberta Bennett to define the level of the nerve root problem.

5. About two weeks later, Dr. Bennett examined claimant, documented claimant's "multiple toxic allergies," extreme environmental sensitivity, and extreme anxiety. Dr. Bennett's impression was thoracic outlet syndrome.
6. In December 1991 claimant saw Dr. Woodworth with complaints of shooting pains in her legs.
7. Claimant's work included sitting at a work station, typing, using the telephone, editing and reviewing materials for inclusion in the newspaper, and supervising fellow employees. In the spring of 1992 it became apparent that claimant's work station was not ergonomic. Measures were taken to improve it.
8. In April 1992 claimant sought medical care from Dr. Block for neck pain after some long days at work .
9. In May 1992 claimant saw Dr. Kuhrt Wieneke with complaints of low back pain radiating down both legs. At that visit she did not complain of neck or arm pain. Results of Dr. Wieneke's examination were normal.
10. Physical therapy notes for the period from May 20, 1992 through June 3, 1992 indicate that claimant was receiving therapy for low back complaints at the direction of Dr. Woodworth.
11. On June 17, 1992 claimant returned to Dr. Bennett with complaints of low back pain and right leg pain since March or April of that year. The notes for that visit state that claimant reported not working for the previous four weeks and that her hand symptoms had resolved. Dr. Bennett interpreted the June 1992 MRI as showing a "mild central posterior disk bulging at C5-6 but with lots of room for the cord and nerve roots."
12. The records contain two notes from Dr. Block for June 18, 1992. In one, Dr. Block noted that she was being seen for an evaluation of low back pain and that she had several recent incidents, including a March tobogganing accident and a late April rafting trip. Dr. Block noted that she had not worked since May. He recommended a return to work with job modifications, every two hour rests, and minimization of vibrational activities. In the other report of that date, Dr. Block noted that she was being seen for an evaluation of her neck. He documented claimant's report that she had increasing pain in her neck which she attributed to high pressure work, 18 hour days and work bent over a computer. Dr. Block concluded that she could be at work with appropriate job modifications, including a computer screen at eye level.
13. Claimant was out of work from May 1992 until June 22, 1992 when she returned with some job modifications. She left her

job in July of that year. The record is silent on the reason for the departure.

14. On August 23, 1992 claimant saw Dr. Woodworth who documented her complaints that she was under heavy pressure in her job at the Bennington Banner, that the chair she worked in aggravated her back and that he suspected a great psychological, anxiety overlay.
15. In December 1992 Dr. Block recorded claimant's report that she could not work at a typewriter for more than an hour or two without "marked fatigability in the arms and pain radiating to her neck."
16. On January 26, 1993 claimant saw Dr. John Popp who examined her and reviewed the June 1992 MRI. In Dr. Popp's opinion, the MRI failed to show any significant abnormality. In March he reviewed x-rays which showed no evidence of instability. Dr. Popp concluded that claimant had no surgically remedial condition in her neck.
17. Dr. Block's notes of February 6, 1993 indicate that claimant continued to be bothered by any typing or push/pull activity. In April he noted that she still had pain in arms and hands when she worked with her neck flexed for any prolonged period. In May 1993 Dr. Block concluded that claimant "remained disabled from work on the basis of her cervical radiculopathy with both neck pain as well as weakness and numbness in her right hand."
18. Dr. Paul Jendrek at the International Center for the Disabled saw claimant on August 3, 1993. He diagnosed chronic pain syndrome affecting her neck shoulders and arms.
19. On October 27, 1993 claimant again saw Dr. Jendrek who indicated that although her diagnosis was uncertain, he felt that she was suffering from "accumulated stress syndrome and fibromyalgia." Dr. Seyferth concurred with those diagnoses.
20. After he reviewed claimant's medical records, Dr. Peter Upton, a neurosurgeon, noted that there was no pathology in the cervical or lumbar region that could explain her arm or leg symptoms and that "there is virtually no evidence that her current symptom complex is due to a work related condition." Dr. Upton concluded that her symptoms were due to preexisting disease as evidenced by the fact that she had the same symptoms which had come and gone in the past.
21. In July 1994 Dr. Don Goldenberg, Chief of Rheumatology at the Newton-Wellesley Hospital in Newton, Massachusetts, saw claimant for "chronic musculoskeletal symptoms." He determined that she had fibromyalgia. In a follow-up letter dated September 29, 1994, Dr. Goldenberg explained that fibromyalgia is a chronic musculoskeletal pain disorder for which there are no abnormalities on laboratory testing such as MRI or CT scan, that functional impairments could not be

measured objectively, and that he must rely on the patient's own self-evaluation of symptoms.

22. On August 17, 1994 claimant saw Dr. Joanne Borg-Stein, whose impressions included an "exacerbation of local upper extremity symptoms related to posture and the type of repetitive work that she does with her upper extremities." (Emphasis added).
23. In October 1994, Dr. Borg-Stein concluded that claimant should not return to a career in journalism and that she should "avoid any work involving repetitive motion, i.e. typing or word processing."
24. On October 12, 1994 claimant underwent a sleep evaluation at Dartmouth, which Dr. Michael Sateia interpreted as showing "nonrestorative sleep associated with fibromyalgia."
25. On March 27, 1995, claimant again saw Dr. Don Goldenberg who noted little change from the previous July. In the conclusion of his note for that visit, Dr. Goldenberg explained that her symptoms still fit into the poorly-understood and overlapping syndromes variously labeled fibromyalgia and chronic fatigue syndrome.
26. On April 24, 1995 Dr. Seyferth wrote a letter expressing his opinion that claimant was permanently totally disabled due to fibromyalgia and chronic fatigue syndrome. He wrote that the diagnoses were "confirmed by multiple specialists ... [and that she was] unable to do any sort of activity, either mental or physical for more than an hour or two at a time without significant rest. Her concentrating ability is poor and because of fibromyalgia she is unable to perform any sort of repetitive motions including keyboarding or other office work and certainly is incapable of any prolonged standing, lifting, bending or stretching."
27. In a June 13, 1995 letter to Dr. Eric Seyferth, Dr. Ronald Mensh, a gastroenterologist, reported on his examination of the claimant and her medical history. Claimant had reported to Dr. Mensh that her body had not been the same since a trip to Latin America when she was 19 years old. Claimant complained of generalized fatigue, myalgias, and weight loss. Dr. Mensh scheduled follow up tests for her failure to thrive, all of which were normal.
28. In an August 21, 1995 letter, Dr. Patricia Major, from the Diagnostic Immunology and Allergy Department at the University of Miami School of Medicine, wrote that claimant was 100% disabled due to chronic fatigue syndrome with symptoms of "severely disabling fatigue, malaise, myalgias, lethargy, weakness, nausea, dizziness, low grade fever, joint pain, sore throat, swollen glands, headaches, generalized weakness and fatigue."
29. Exhibits marked for "ID only" were excluded because they lacked a proper foundation, were hearsay, and were not

disclosed to opposing counsel as required by *Workers' Compensation Rule 7 (a) (1)*.

CONCLUSIONS OF LAW:

1. The claimant in workers' compensation cases has the burden of proving her injury and disability and of establishing all facts essential to the rights asserted. *King v. Snide*, 144 Vt. 395, 399 (1984); *Goodwin v. Fairbanks, Morse, Co.*, 123 Vt. 161 (1962). She must establish by sufficient credible evidence the character and extent of her injury as well as the causal connection between the injury and the employment. *Egbert v. The Book Press*, 144 Vt. 367 (1984).
2. Where the injury is obscure and a layperson would have no well-grounded opinion as to causation, expert testimony is the sole means of laying a foundation for an award. *Lapan v. Berno's, Inc.* 137 Vt. 393 (1979).
3. There must be created in the mind of the trier of fact more than a possibility, speculation or surmise that claimant suffered a 1992 injury which was the cause of her radiculopathy chronic fatigue syndrome and fibromyalgia, and the inference from the facts proved must be at least the more probable hypothesis. See, *Burton v. Holden & Martin*, 112 Vt. 17 (1941).
4. Claimant contends that her work at the Bennington Banner caused radiculopathy, fibromyalgia and chronic fatigue syndrome.
5. The record from Dr. Block purporting to link cervical radiculopathy with long days at work at the Bennington Banner is based primarily on claimant's belief that such work caused the neck problems. Unfortunately, the record is devoid of objective support for the diagnosis of radiculopathy and subsequent examiners were not able to confirm it. Consequently, we are left with no more than a possible link between work and her neck pain, which cannot support an award under the standard enunciated by *Burton*, 112 Vt. 17.
6. Similarly, the evidence is not sufficient to prove a causal link between claimant's work at the Bennington Banner and her chronic fatigue syndrome and fibromyalgia. In fact, the medical records that caution her to limit her activities were based on examinations performed long after she left her job and do not establish causation with her work in 1992. Dr. Borg-Stein's August 1994 note suggested that claimant was still working at the Bennington Banner, when in fact she had left that job two years earlier.
7. Claimant has had a multitude of medical problems and undoubtedly experienced some stress and strain at her job as an editor. However, it would be no more than speculation to state that the job caused those problems. The most credible opinion, given the record as a whole, is one provided by Dr.

Goldenberg, i.e. that the cause of claimant's fibromyalgia is unknown and that it is impossible to confirm its association with stress. The same is true for claimant's chronic fatigue syndrome. Without the requisite causal link, this claim fails in its entirety.

ORDER:

Based on these Findings of Fact and Conclusions of Law, all claims are DENIED.

Dated at Montpelier, Vermont, on this __13th__ day of March 1998.

Steve Janson
Commissioner