

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

Lorraine Taft)	State File No. G-19596
)	
v.)	By: John H. Fitzhugh
)	Hearing Examiner
)	
Blue Mountain Union School)	For: Steve Janson
)	Commissioner
)	
)	Opinion No. 10-99WC

APPEARANCES:

John L. Pacht, Esq. for Claimant
Keith J. Kasper, Esq. for Defendant

ISSUES:

1. Did claimant suffer a personal injury by accident arising out of and in the course of her employment with defendant on or before June 30, 1994?
2. If so, was claimant temporarily partially disabled within the meaning of the Act from June 30, 1994 until March 1, 1996?
3. If so, has claimant reached a medical end result and when?
4. If so, is claimant permanently and totally disabled pursuant to the Act as a result of her alleged compensable work injury?
5. If so, are claimant's medical reimbursement requests compensable pursuant to the Act and WC Rule 40?
6. If so, is claimant entitled to an award of attorney's fees?

THE CLAIM:

1. Medical benefits in the amount of \$41,343.94.
2. Permanent total disability benefits.
3. Temporary partial disability benefits from June 30, 1994 until March 1, 1996.
4. Attorney's fees and costs pursuant to 21 V.S.A. § 678(a).

STIPULATIONS:

1. Claimant was an employee of defendant within the meaning of the Vermont Workers' Compensation Act (hereinafter "Act") at all relevant times.
2. Defendant was an employer within the meaning of the Act at all relevant times.
3. Vermont School Board Insurance Trust Fund was the workers' compensation insurance carrier for defendant at all relevant times.
4. On June 30, 1994 claimant alleges that she became permanently totally disabled due to a personal injury by accident, arising out of and in the course of her employment with defendant.
5. For the twelve weeks prior to June 30, 1994, claimant's average weekly wages were \$692.31 resulting in an initial compensation rate of \$461.49.
6. Claimant was employed by Northeast Kingdom Mental Health as a substitute care person for a group home for the disabled for four weeks in the summer of 1994 and was paid \$10 per hour for this work.
7. Claimant was then employed at Northeast Kingdom Community Action from October 1, 1994 until March 1, 1996 as a Headstart Program Advocate working 37 hours per week at \$10 per hour.

EXHIBITS:

Claimant's Exhibits

- A: January 24 to 26, 1994 Anderson report
- B: April 5, 1994 Anderson report
- C: Dr. Anderson's resume
- D: [None]
- E: Bibliography of MCS articles
- F: BMUS floor plan (Blow-up)
- G: Medically necessary bills (changes to come)
- H: Dr. Moore's resume
- I: State of Vermont survey report 11/18/92
- J: State of Vermont survey report 3/4/93
- K: Taft's contingent fee agreement
- L: Taft's reference letter and rating
- M: Taft's resume
- N: Grace Ziem's resume
- O: Wayne Fillion 5/23/94 letter
- P: BMUS letter to Parents

Defendant's Exhibits

- A: Anderson Lab - Sensory Irritation Data Sheet
- B: Designation E 981 - Standard Test Method for Estimating Sensory Irritancy of Airborne Chemicals

- C: CMK Architects report
- D: Floor plan of BMUS
- E: Resume of Thomas Broido
- F: Anderson Questionnaire
- G: Indoor Air Quality Forms - Occupant Interview
- H: Floor plan showing carpet
- I: Summary of Testing Using ASTM Method E 981
- J: Curriculum Vitae of John A. Davis
- K: Sargent Report 4/12/94

Joint Exhibits

- 1: Medical records
- 2: Medical bills
- 3: Medically necessary bills
- 4: Anderson Laboratories 2/18/94 Report
- 5: Anderson Laboratories 4/11/94 Report
- 6: 11/18/92 letter from State of Vermont/Harold Sargent
- 7: 3/4/93 letter from State of Vermont/Harold Sargent

The Commissioner may take judicial notice of the following documents and all other official forms in the Department's file.

Form 1 Employer's First Report of Injury dated March 23, 1994, filed by the defendant.

PRELIMINARY MATTERS:

1. This case was assigned to the hearing officer on October 17, 1997 and a pretrial conference held on November 5 of that year. Because of her health, the claimant requested the hearing be held in specific locations. A hearing date was set for February 9 and 10, 1998 but postponed at the parties' request for additional discovery. The hearing was later postponed due to the unavailability of one of the claimant's attorneys. Eventually, the hearing was scheduled to begin August 4 and held at the Pavilion office building in Montpelier.
2. Just prior to the hearing, the defendant filed a Motion in Limine to exclude the likely testimony by three of the claimant's expert witnesses. The 37-page Motion contained 20 exhibits. On July 29, the claimant responded with a 28-page memo containing 17 exhibits. On July 31, the hearing officer denied the Motion with respect to Drs. Moore and Ziem on the basis that the Commissioner would probably not want altered the Department's policy as enunciated in *Petit v. North Country Union High School*, Opinion No. 20-98WC (Apr. 30, 1998). With respect to Dr. Anderson, the hearing officer decided to reserve a decision as to whether her testimony should be excluded for the reasons set forth in *Daubert v. Merrill Dow Pharmaceutical*, 509 U.S. 579 (1993) "until after the hearing, at which time the Commissioner will have an opportunity to more fully consider all the facts and arguments presented."
3. The hearing was held August 4 through 7. On September 29, the claimant filed a 15-page proposed Findings of Fact and Conclusions of Law, with exhibits and a revised Memorandum in Opposition to Defendant's Motion in Limine to exclude expert

testimony; defendant at the same time filed a 76-page proposed Findings of Fact and Conclusions of Law as well as exhibits. On October 19, 1998 both sides submitted rebuttal memorandum with accompanying exhibits and the record closed.

FINDINGS OF FACT:

1. The stipulations above in paragraphs 1 through 7 are true.
2. The claimant, Lorraine Taft, grew up in or around Rochester, New York, except between the ages of 12 and 18 when she and her family lived in San Paolo, Brazil. Her father worked for Eastman Kodak as a chemist. Between semesters at Nazareth College from 1966-69, she worked for Eastman Kodak as a color print inspector. After graduating from college with a degree in sociology, the claimant entered the Peace Corps.
3. The claimant's father, with whom she is close, now lives in Annapolis. He suffers from chronic leukemia, apparently as a result of formaldehyde exposure from his work for Eastman Kodak. Her mother lives in Rochester. Her grandparents had bladder cancer.
4. In 1981 she began working at the Oxbow School as a Special Needs teacher. She obtained a Master's in special education from UVM in 1983. She worked at Oxbow until 1990 and also served on the library board. She was auditor for the Town of Victory. She taught special ed courses at UVM. Until 1991, the claimant lived on a homestead where she raised her own food, used horses for logging, and raised pigs. She was very active, both at home and at work.
5. Up until the illness for which she now seeks compensation, the claimant had a number of health complications. As a youngster, she had scarlet fever with deliria and hallucinations. She had a severe case of mononucleosis as a high school student in Brazil. She has used an inhaler for asthma. She has a history of hives from MSG and yellow dye in foods.
6. In 1990 she was diagnosed with cervical cancer and underwent two cryosurgeries. In January of 1990 she was in a car accident in which her head hit the side of the door frame, hurting her eye on the left side and giving her a concussion which affected her memory for a week. As a result of holding a horse which bumped into an electric fence, she suffered joint pain in her fingers but treated herself. In 1991-92 she pinched a nerve at the base of her neck which caused radiation of pain down her left arm.
7. Prior to her illness, the claimant had a strong work ethic and always worked regardless of how she felt. She has an above average IQ.
8. The claimant began working at Blue Mountain Union School (sometimes "BMUS") in 1991. The school had advertised for a special education coordinator; the claimant applied and was given the job. The community at the time was divided on special education and it was a stressful job.

9. The claimant's office initially was located in the central core of the 500-student school. The central core was heated and air-conditioned from a roof-top unit; the classrooms around the central core had individual heating/ventilating units. During the energy crisis of the late 1970s, the outside air intakes in the wall units were closed to save heat. There was no evidence the air intake to the roof-top unit was restricted (a filter fit improperly). Exhaust fans, however, were manually activated by staff; it's unclear how often they were turned off. The claimant's initial office was without windows and opened onto the secretarial pool.
10. In 1992 the school renovated the interior core. The claimant's new office still had no windows and opened into a room for the school's photocopier and laminator. From September until December 1992 the claimant's room had an air supply duct but no air return. In the late fall of 1993 the laminator was moved into the school's hallway.
11. During the claimant's first year at Blue Mountain, 1991-92, she worked long hours and during many vacations. She noted some increased throat irritation and bronchitis in her first year of work, but attributed it to germs carried by school children.
12. In June 1992 claimant saw her family doctor and complained about feeling rundown and achy, with asthma-like symptoms.
13. During the summer of 1992 renovations in the school's central core included installation of insulation, movement of walls, repainting, and installation of new carpeting. The carpeting was installed just before the school year began. Although the claimant did some work with parents during that summer, she was mostly at home and outside. Whatever irritation she had suffered while at work during the previous school year cleared up that summer.
14. In August she saw her family doctor for eye irritation, possibly from mold dust, and for pain on the left side of her ribs which the physician diagnosed as somatic dysfunction.
15. The Blue Mountain Union School was tested by Harold Sargent of the Vermont Department of Health on September 17, 1992. Sargent was surprised to find the CO₂ level below the State's safety level of 1,000 ppm because the indoor air "did not have a fresh air feeling to it" and the air exchange system in the building seemed inadequate. Sargent also noted stained ceiling tiles (an indication of possible mold and fungus) and the presence of a number of individual fans near work desks. Indoor air quality in schools is generally worse in winter months, at the end of the school day, and at the end of the school week.
16. Sargent again tested the air at Blue Mountain in January and February of 1993 during the winter months. Sargent then found that 10 out of 13 rooms contained carbon dioxide concentrations in excess of 1,000 ppm (the State's recommended limit). The area around Taft's office was just over 1,000 ppm at 1:24 p.m.; a lecture room at the perimeter was 1,968 ppm. In general the Sargent results of January 19 indicated greater fresh air in the central core than in the classrooms with wall ventilators. High CO₂ levels is an indicator

of poor air quality, may in itself cause lethargy and short-term mental impairment, and suggests the possibility of unhealthy concentrations of indoor toxins (formaldehyde, volatile organic compounds, mold spores, etc.).

17. No changes were made in the school's ventilation system until after the Anderson study in 1994, except that air conditioner blowers in the central core were left on after the first Sargent visit in September 1992.
18. Shortly after returning to work in the fall of 1992, the claimant noticed a resumption of symptoms. Her eyes burned, her nose ran, she had a dry cough, and throat irritation. She noted a strong chemical smell in the central core. The laminator was "smelly." As a result of criticisms by the claimant and other persons, particularly regarding the new carpeting, fans were installed to push air out of the central core.
19. While working at BMUS, the claimant lived with her husband in a log cabin in Victory. Beginning in 1992, the claimant and her husband built an addition to the log cabin, but attempts were made to keep the construction separate from the rest of the house. The claimant's husband smokes a pack of cigarettes a day and for at least some period of time the claimant had four cats and two dogs. The claimant's husband does not smoke within the house. At no time has an air quality test been conducted of the claimant's home. A mold test taken in 1994 revealed some mold spores in the house (2 colony count) and a much higher concentration at school (23 colony count-penicillium particularly). Dr. Moore found the claimant allergic to penicillium. There was no evidence that long-term exposure to penicillium could result in symptoms like those experienced currently by claimant.
20. During the 1992-93 school year, the claimant always felt as though she were getting the flu; she considered the possibility of an allergy. By the end of each week she felt fatigued but after spending a weekend at home was resuscitated. Again the claimant's health improved during the summer of 1993, when she was at home and mostly outside.
21. Returning to school in the fall of 1993, the claimant experienced a resumption of the symptoms: pain across the chest, burning throat, shallow breathing while at work, burning eyes, and a dry cough. She had her contact lenses checked but they were okay. She complained of a dry cough, neck "fullness" and malasia to her health clinic in October. During Thanksgiving weekend, she was really tired and her family prepared the meal. She found she couldn't work over Christmas vacation, saw her health clinic again for a persistent cough and, when conditions didn't improve during February vacation, she sought medical advice by seeing Joan Lang, a Registered Nurse in St. Johnsbury. Claimant believed her symptoms might be menopausal.
22. In October 1993 the claimant began taking 120 mg Seldane per day to ease her respiratory discomfort. She experienced daily headaches and had loss of concentration. She began to have memory lapses. Symptoms appeared away from school.
23. The chart notes of the claimant's visit to see Lang state that the claimant had not been feeling well for the last year but that her symptoms (headache, leg cramp, sternum pain,

nausea) had increased in the previous two months. Lang said the claimant's greatest fear was stroke or cancer. Lang made no specific diagnosis.

24. At the time the claimant saw Lang, her brother, a few years older than herself, was (in Lang's words) "terminally ill with a systemic form of rare cancer." He died in 1994 apparently of lymphatic cancer.
25. The same day the claimant saw Lang, an article appeared in the local newspaper about air quality at Blue Mountain Union School ("School Building Termed 'Sick'") based on the Anderson study (see below). The claimant's office was mentioned in the article as having "seriously polluted air." The school superintendent was quoted as saying the report "wasn't as bad as I thought it would be." On March 7, 1994 the claimant called Lang and said, "This is what's wrong with me," and informed Lang that she was referring herself to see Dr. Michelle Moore that day. Claimant learned of Moore from another teacher at BMUS.
26. The claimant saw Dr. Moore in Keene. Dr. Moore specializes in treatment of symptoms identified as MCS. Her credentials are summarized in *Petit, supra*. She stresses a history in making a diagnosis. When the claimant saw Dr. Moore, the claimant wrote that "since the Anderson Lab testing at the end of January, there's been an increase in the symptoms and their frequency." Dr. Moore advised the claimant against returning to work. The claimant remained out of work until early April, but then returned for the remainder of the school year. The school made some accommodations: her office was moved to an open-air perimeter room. The claimant testified she felt the recurrence of symptoms if she visited the core area again.
27. On March 23, 1994 the school's superintendent filed a First Report of Injury citing "ineffective ventilation of central office" leading to MCS as cause of the claimant's disability.
28. Deterioration in the claimant's health from 1991 to 1994 was not all physical. Beginning in September 1993, she experienced some memory loss and found it more difficult to organize herself or her work. Despite a background in math and physics, she had difficulty budgeting. She had trouble finding places she had been before. Co-workers noted this change in her work habits, energy level, and attentiveness.
29. In December of 1992 a co-worker of the claimant, Joyce Kramer, who also worked in the central core, experienced a seizure. She had trouble processing information, experienced some memory loss, and had problems with balance. She subsequently was diagnosed with epilepsy from an unknown cause. At the time Ms. Kramer was president of the teacher's union, and partly as a result of her seizure, and partly because of complaints from other teachers regarding air quality at the school, the teacher's union asked Dr. Rosalind Anderson of Anderson Labs to inspect the school. Dr. Anderson's name was given to the teachers by a representative of Congressman Sanders.
30. Anderson Labs agreed to conduct an air quality examination of Blue Mountain School at no expense, provided the superintendent made the request. He did, and in January 1994,

Dr. Anderson visited the school to talk to teachers, to tour the facility, and to get some idea of what air quality problems might exist.

31. Dr. Anderson is a graduate of Holyoke College and Yale University, with a Ph.D. in physiology and endocrinology. She's a toxicologist and has been studying the biological effect of chemicals for the past twenty years. She has specialized in off-gassing from carpeting. The laboratory which she runs with her husband began conducting indoor air quality tests in 1990. She now lives and works in Windsor County.
32. In evaluating air quality, Dr. Anderson utilizes a three-phase approach: first she tours the facility, talks to staff, and tries to determine the direction of air flow. She and her staff then map air flow, inventory the products and cleaning materials in the building, and estimate air flow and some air elements (oxygen, carbon monoxide, carbon dioxide, humidity, and temperature). If the administration agrees, she will also survey workers as to their opinion of air quality. If the second phase appears to indicate an air quality problem, Dr. Anderson will then conduct a test of the air in specific rooms using a modified ASTM3-981 test (see below).
33. Dr. Anderson's testing methodology is different than other air quality labs (see *Petit v. North Country Union High School, supra*). Other labs test for the existence of known toxins and compare their concentration with certain federal or industry safety standards. Except for certain basic tests (O₂, CO₂, CO) Dr. Anderson does not test for chemical content but rather attempts to gauge the air sample's impact on mice and from that extrapolate a possible impact on humans. This methodology utilizes modifications on a test known as ASTM3-981.
34. Dr. Anderson's ASTM3-981 testing methodology varies somewhat from the published protocols. She heats the air sample (the protocol is silent as to whether this should be done) and uses somewhat less air than is specified (she says the mice don't need that much). Most significantly, Dr. Anderson utilizes the ASTM3-981 apparatus to conduct a functional observation battery (FOB) test; the ASTM test itself only envisions a respiratory exam.
35. The federal EPA accepts the ASTM3-981 test.
36. Dr. Anderson gave an initial report of the BMUS air February 18, 1994. She revisited the school in April of that year and issued a revised report on April 15, 1994.
37. Based on Dr. Anderson's initial report, BMUS in February 1994 had poor air circulation and negative pressure (that is, outside air was not entering the building as fast as inside air left). The HVAC system was designed to provide over 35,000 cubic feet per minute (cfm), but modifications had reduced that to 1,500 cfm, a 95% reduction. (For a school Blue Mountain's population, ASHRAE standards suggest a minimum of 13,000 cfm, so based on that standard the BMUS air exchange was 11.5% of normal.) She reported the presence of some suspect products (new or wet carpeting, insecticides, a poorly ventilated copy and laminating machine). Based upon a health questionnaire prepared by her husband, Dr. Julius Anderson, and given to the BMUS staff, 50% of the teachers at the school felt the air was unhealthy. (The World Health Organization considers a

building “sick” if 20% of its inhabitants complain.) The survey is not an objective test of air quality but rather an indication that something is wrong. Of the 44 staff members responding (out of 86), 77% felt their mental functions had been impaired.

38. Dr. Anderson believes in utilizing the ASTM3-981 test because she believes it is difficult to ascertain which of some 3,000 potential products or chemicals in air in a closed environment could trigger adverse health effects among humans. Her ASTM test exposes mice to air from the suspect building and then compares the respiratory and pulmonary responses of the mice to the suspect air sample with their responses to a medically neutral, pure air sample.
39. Of the two types of responses, the respiratory or physiologic portion is more accurate. That is the test outlined in ASTM3-981. Electric monitors gauge changes in mice respiration upon their exposure to a suspect air sample. Dr. Anderson’s FOB test, on the other hand, requires an observer to evaluate a mouse’s performance after being exposed for some length of time to a suspect air sample. This test requires the observer to judge to what extent the mouse behaves in a manner atypical to usual mouse activity. Four mice are tested to the same air sample simultaneously.
40. Dr. Anderson’s ASTM tests were not “blinded,” that is, the tester had knowledge which samples came from BMUS and which were of medically neutral air. The ASTM published protocol does not require blinding. The individual who did Anderson’s FOB tests was skilled and trained in such technology.
41. The ASTM3-981 test was developed by Dr. Yves Alarie, a noted toxicologist, and was accepted by the American Society of Testing and Materials (ASTM) in 1984 and reapproved in 1996. Dr. Anderson has used the test on various carpet samples. The Federal Environmental Protection Agency has refused to accept her test results because they could not be replicated by EPA. (Replication is the ability to duplicate the results of an experiment in another laboratory.)
42. Dr. Anderson collected air samples from the claimant’s office, the room next to hers with a photocopier, and certain other locations in the school. In the claimant’s office and the office next door, Dr. Anderson found that carbon monoxide and TVOC (Total Volatile Organic Compound) levels¹ were normal; carbon dioxide was somewhat above normal (600 ppm) but not as high as elsewhere in the school. (When the tests were taken two months later, CO₂ levels had dropped in the copier room but not in Taft’s office.) According to Anderson, based on the ASTM tests, the air in Taft’s office and the copier room was “fairly irritating” and caused moderate sensory and pulmonary irritation to

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Claimant argues that although the TVOC levels were normal, specific, unknown VOCs were toxic as found by the ASTM test. There is no way for the fact finder to make such a conclusion. Other substances in the air sample could have affected the mice.

mice. When the same ASTM test was conducted two months later, the total neurological score had dropped from 20 to 15 in Taft's office and from 25 to 13 in the copier room. Dr. Anderson considers a score between 10 and 20 as moderate irritation; above 20, serious irritation.

43. The Anderson Report of February 1994 states that "we do not expect an exact translation of these findings to humans because neurological toxins often have different effects in different species of animals." Nevertheless, mice are generally considered good indicators for human responses and may be more resistant to a toxic environment than humans.
44. In testing the new carpet installed in the school, using the ASTM test, Anderson found evidence of pulmonary or sensory irritation in only one of four mice which she concluded "is indicative of irritant related discomfort for sensitive humans." The new carpet was located in the central core, office and corridor. It's unclear whether Anderson tested a sample of the carpet as it existed in 1994 or a sample of a new carpet identical to that which was installed in September 1992.
45. After the Anderson report, BMUS adopted most of her recommendations for action.
46. Although Anderson expressed concern regarding bus diesel fumes entering the school due to the negative air pressure, no tests indicated high levels of TVOCs or CO which might be expected from such fumes.
47. After the 1993-94 school year, the claimant's position at BMUS was eliminated.
48. During the summer of 1994 the claimant's condition improved significantly as she worked in her garden and for the town of Victory. On a visit to her mother and her aunt, however, she felt a recurrence of symptoms brought on by a moldy room and soap at her mother's house, perfume at her aunt's. She said it took two to three days to recover from each incident.
49. During the end of the summer of 1994, the claimant began to look for a new job. She interviewed for positions but said she became almost immediately ill if she found herself inside any school. She first worked four weeks in a group home for Northeast Kingdom Mental Health but quit because of a recurrence of symptoms. She decided to do outreach for Headstart (N.E. Kingdom Community Action). The new position required her to visit families for up to two hours in their homes. Sometimes this brought her into contact with wood smoke and severe second-hand cigarette smoke. Headstart's carbonless, NCR forms also bothered her considerably. Her initial supervisor made some accommodations, but a subsequent supervisor was less tolerant. In Dr. Merrion's 1998 neuropsychological evaluation, there is reference to formaldehyde-impregnated files at Headstart which made the claimant sick.
50. In April 1995 the claimant saw Dr. Moore's nurse at which time she expressed concern about continued headaches and becoming sick after going to a particular house. Nevertheless, she said she felt better while off work and at home from May through September 1995.

51. After working with Headstart for six weeks in the fall of 1995, the claimant again saw Dr. Moore for an assortment of symptoms, including numbness, joint pain, depression, lack of appetite, tightness and pain in the chest, and blurred vision. For the first time, she expressed greater complaints about joint pain and numbness, in contrast to respiratory problems and headaches.
52. When she saw Dr. Moore, the claimant was on Premarin and Progesterone, which had replaced Orthocept as her medication. At that time, according to Dr. Moore, the decision was made to refer the claimant to Dr. Grace Ziem of Baltimore, an expert in MCS, “because Lorraine may pursue WC [workers’ compensation] from Blue Mountain.”
53. Dr. Moore has not specifically opined that the claimant’s ailments in 1994-96 were causally related to her employment at BMUS. In a letter dated November 7, 1996 Dr. Moore said that lab findings indicated that the claimant had significant allergies “to molds, feathers, dust, mites, cats, tobacco smoke and formaldehyde.” Dr. Moore believed that the claimant was 100% permanently disabled in November of 1996.
54. Claimant first saw Dr. Ziem in February of 1996. Dr. Ziem has a Ph.D. in Public Health from Harvard and since 1975 has been on the Johns Hopkins Faculty. Her specialty is epidemiology and industrial hygiene; in recent years, she has focused her practice on illnesses related to toxic exposure. She has conducted immunological investigations of Multiple Chemical Sensitivity since 1996 and is currently the treating physician for more than 300 patients with symptoms she identifies as MCS. In particular, Dr. Ziem has examined the similarity and overlap between Multiple Chemical Sensitivity (MCS), Chronic Fatigue Syndrome (CFS), and Fibromyalgia.
55. Dr. Ziem defines MCS as a chronic illness affecting multiple organ systems and the brain, which is acquired following an identifiable exposure to some toxic environment and which results in a heightened sensitivity to a multiple list of chemicals. She says the difference between Sick Building Syndrome (SBS) and MCS is that SBS ceases upon departure from the suspect environment while MCS is a resurfacing of SBS symptoms after removal from the suspect environment.
56. Dr. Ziem ascribes to a theory of “time dependent sensitization” (TDS) as the cause of MCS. Under this theory, after intermittent exposures to dosages of chemicals or biological triggers in a suspect environment, a neurological alteration occurs within the body which causes heightened sensitivity to other substances as well, even after the individual has been removed from the suspect environment.
57. This theory, as well as other theories for the cause of MCS, remain unconfirmed by scientists. As mentioned in *Petit, supra*, many scientists and physicians dispute whether MCS exists as a distinct illness.
58. Based on an extensive questionnaire completed by the claimant, Dr. Ziem at first suspected Fibromyalgia and Chronic Fatigue Syndrome based on her history. After further testing, Dr. Ziem diagnosed the claimant as suffering from these illnesses, as well as MCS and Toxic Encephalopathy. Dr. Ziem believes all these ailments may be caused

by polluted environments.

59. Dr. Ziem also concluded that the claimant meets the criteria of the American College of Rheumatology for fibromyalgia. Fibromyalgia is a rheumatological condition characterized by fatigue in which there is widespread musculoskeletal pain in conjunction with tenderness at a minimum number of tender points.
60. Dr. Ziem concluded that the claimant met the CFS criteria for Chronic Fatigue Syndrome. Chronic Fatigue Syndrome is debilitating fatigue of at least six months duration accompanied by other symptoms such as a fever, myalgia, and depression.
61. Toxic Encephalopathy is disease caused by the body's ingestion of poisons.
62. A psychiatric examination of the claimant in July 1997 by Dr. Nelson Hendler, on behalf of UNUM insurance, found no psychiatric basis for the claimant's illness. Dr. Hendler, who is also a specialist in chronic pain, said it was "conceivable" that the claimant had fibromyalgia "because she does have pain in more than eleven of eighteen spots." Dr. Hendler doubted Chronic Fatigue Syndrome.
63. Based on all the medical testimony and evidence submitted at this hearing, it's probable the claimant suffers from fibromyalgia; there's less support for a diagnosis of CFS or MCS or Toxic Encephalopathy.
64. Dr. Ziem is a strong believer in MCS and her course of treatment combines comprehensive analysis and testing; control of diet and environment; and alteration of the patient's make-up with nutritional supplements and over-the-counter pain medications. Dr. Ziem's initial February 1996 report on the claimant's condition misstated some of the claimant's history and overstated some of the environmental conditions at BMUS which Dr. Ziem believes caused claimant's illness. (The claimant was not "fired" from BMUS; Anderson's test of Taft's office did not show "seriously" polluted air; there was no evidence introduced at the hearing of other BMUS teachers with MCS; claimant's memory problems did not begin "almost immediately" after beginning her employment with BMUS; there was some ventilation in Taft's office; and there was no evidence that "pesticides were sprayed on a regular basis.")
65. Dr. Ziem testified at the hearing that claimant's condition has improved since 1994, but that the claimant is not at a medical end result and will have a "life long risk" of complications. She says claimant now has "average" mental capability. She thinks the claimant could work a few hours from a totally non-toxic environment but that she could never go back to working a 40-hour week. However, if the claimant could control her major environment (home and work), then Dr. Ziem felt she could make great progress.
66. There is no reliable evidence that any particular treatment of patients with MCS symptoms will lead to either a cure or substantial lessening of symptoms.
67. During the spring of 1996, the claimant was exposed to propane from a leak in her home in Vermont. This caused nausea, pain in her arms, legs, and joints, swelling and pain in her neck, a brain-stem headache, brain function to slow down, and fatigue.

68. In July 1996 the claimant saw Dr. Zidi Berger to whom the claimant had been referred by Dr. Ziem for thyroid testing. At that time, Dr. Berger recommended that the claimant take an over-the-counter antihistamine called Zaditen, available only in Mexico, which Dr. Berger said would after six months “cure the claimant’s chemical sensitivities.” It does not appear from the record that the drug has ever been tried nor that Dr. Ziem agrees with Dr. Berger’s advice.
69. The claimant is currently residing in a “clean” environment on the eastern shore of Maryland. Her house is heated by electricity. The claimant says she suffers a recurrence of her symptoms when she is exposed for more than 20 minutes to a “mildly toxic” environment from such things as perfumes, food mold, petrochemicals, fabric softeners, dry cleaned clothing, NCR paper, and new carpeting. First her eyes lose depth perception, then speaking and thinking are impaired. Attempts to find work in Maryland have thus far failed.
70. After purchasing the house in Maryland, the claimant incurred \$16,983.68 in expenses changing the heat from oil to electric; in correcting insulation; replacing utilities; and installing 14 new windows. It’s unclear which, if any, of these improvements were expressly made upon Dr. Ziem’s advice. Problems were encountered when 200 gallons of diesel fuel were spilled nearby and pesticide was found to have been sprayed in the crawl space beneath the house foundation. According to the claimant, those problems were quickly and satisfactorily resolved.
71. Based on the comprehensive neuropsychological evaluation of the claimant in January 1998 by Dr. Merrion, the claimant has a very mild cognitive decline in specific areas of function, specifically visual motor speed and tracking concentration and verbal and visual memory function. Although Dr. Merrion felt that the claimant had a tendency to exacerbate physical complaints if she finds herself in a stressful work situation, she believes the claimant is capable of working part-time and being productive and found no specific psychological component to her illness.
72. Dr. Ziem testified that in her opinion the cause of the claimant’s current disability was her “exposure at Blue Mountain Union School.” She reached this conclusion based on the claimant’s history and Dr. Ziem’s knowledge of the BMUS air quality (particularly the CO₂ level). She testified that the claimant’s MCS, CFS, Fibromyalgia, and Toxic Encephalopathy are all causally related to her work at Blue Mountain. She also ascribes the claimant’s “significant loss of brain function” to these diseases.
73. In fact, the CO₂ level as measured in Taft’s office was not abnormally high.
74. At the same time, Dr. Ziem acknowledged that exposure to pesticides (not found at Blue Mountain) is a more common cause for MCS. She also acknowledged that the claimant’s work for Headstart (which she urged in March 1996 that the claimant cease) may have contributed to the severity of her symptoms.
75. According to an article by Dr. Ziem and James McTamney entitled Profile of Patients with Chemical Injury and Sensitivity, March 1997, “agents whose exposures are

associated with symptoms and suspicion of causing onset of chemical sensitivity with chronic illness include gasoline, kerosene, natural gas, pesticides (especially chlordane and chlorpyrifos), solvents, new carpet and other renovation materials, adhesives/glues, fiberglass, carbonless copy paper, fabric softener, formaldehyde and glutaraldehyde, carpet shampoos (lauryl sulfate) and other cleaning agents, isocyanates, combustion products (poorly vented gas heaters, overheated batteries) and medications (dinitrochlorobenzene for warts, intranasally packed neosynephrine, prolonged antibiotics, and general anesthesia with petro chemicals).” From this list, the only agent the claimant is known to have been in contact with at Blue Mountain was a new carpet. She was in contact with carbonless copy paper at Headstart.

76. Blue Mountain was not tested for formaldehyde. In 1996 a blood test of claimant for formaldehyde sensitivity was negative. A newspaper article in April of 1994 stated that recent water tests at the school revealed elevated levels of lead at 6 out of 20 faucet locations but no other evidence of possible lead poisoning was introduced at the hearing.
77. The employer’s expert, Dr. John Davis, testified as he did in *Petit, supra*, that MCS is not medically accepted as a diagnosis nor is any cause known for such ailment. He further testified that there is no evidence that CFS or Fibromyalgia is caused by an occupational disease process. He acknowledged that Time Dependency Sensitivity (TDS) has been confirmed in animals but never documented in humans. He testified that radical therapy (like changing one’s environment from Vermont to Maryland) was expensive and an unproven value. Although Dr. Davis is experienced and knowledgeable regarding MCS, he never examined or treated the claimant.
78. The claimant submitted a contingent fee agreement with her attorney. In addition, claimant submitted an itemized account of services rendered by her attorney from April 16, 1996 until September 22, 1998, totaling 738.7 hours which, at \$35 an hour, comes to \$17,573.50.
79. The claimant’s attorney also submitted a summary of costs incurred in representing the claimant. These total \$17,272.24. These costs included expert fees, deposition expenses, photocopying, postage, long-distance phone calls, etc. Some large expenses included \$1,500 as an advance for Dr. Davis’ deposition fee, \$3,450 as an advance for Dr. Ziem’s preparation for her deposition, and \$800 to Anderson Laboratories as an advance for the cost of Dr. Anderson’s deposition.
80. The claimant submitted medical bills totaling \$24,360.26 for reimbursement. Defendant did not argue that any of these bills were unreasonable in amount.

CONCLUSIONS OF LAW:

1. The principal issue in this dispute is whether the claimant suffers from Multiple Chemical Sensitivity Syndrome (MCS)², and, if so, whether this condition is a personal

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Multiple Chemical Sensitivity Syndrome is referred to as either “MCSS” or MCS.” In this decision, we will use the abbreviation “MCS.”

injury by accident which arose out of and in the course of her employment with the Blue Mountain School. The compensability of MCS was addressed twice by the Commissioner last year in *Petit v. North Country Union High School*, Opinion No. 20-98WC (Apr. 30, 1998) and *Rena Latouche v. North Country Union High School*, Opinion No. 58-98WC (Oct. 19, 1998). In both cases, the Commissioner found that the claimant had failed to carry her burden of proof that the symptom complex for which the claimant sought compensation was a direct and natural consequence of her work with the defendant employer.

2. As MCS is a disputed diagnosis of questionable ideology and a wide assortment of symptoms, some of which are manifested only sporadically over a number of years, presentation of the evidence in these cases is complex and time consuming and at the very frontier of medical research. This case is no different.
3. We start, of course, with the principal that in every workers' compensation case, the claimant has the burden of proof, *King v. Snide*, 144 Vt. 395 (1984), and sufficient competent evidence must be submitted verifying the character and extent of the injury and the disability, as well as the causal connection between the injury and the employment. *Egbert v. Book Press*, 144 Vt. 367 (1984).
4. There must be created in the mind of the trier of facts something more than a possibility, suspicion, or surmise that the incidents complained of were the cause of the injury and the inference from the facts proved must be the more probable hypothesis. *Burton v. Holden Lumber Co.*, 112 Vt. 17 (1941). Where an injury is obscure and a lay person would have no well-grounded opinion as to the causation, expert testimony is the sole means of laying a foundation for an award, *Lapan v. Berno's, Inc.*, 137 Vt. 393 (1979).
5. It's also black-letter law that an employer takes each employee as is and is thus responsible under our workers' compensation law for an accident or trauma which disables one person but which might not disable another. *Morrill v. Bianchi*, 107 Vt. 80 (1935).
6. A personal injury need not be instantaneous to be compensable as a work-related injury in Vermont. *Campbell v. Savelberg*, 139 Vt. 31 (1980). The Department has long recognized that cumulative micro-trauma arising out of and in the course of employment is compensable. *Petit, supra*, citing Rule 2(f), Workers' Compensation and Occupational Disease Rules, April 1, 1995 (hereinafter "Rules"); *Jefts-Martin v. Claussen's Florist*, Opinion No. 43-96WC (July 15, 1996). By law, there is no limitation of time as to how long cumulative trauma must continue for it no longer to be considered an "injury by accident" under our law; for the purposes of determining date of injury in a cumulative trauma case, it is either the date of initial diagnosis or the date when the claimant can no longer work because of the injury.
7. The first question we have to decide is the admissibility of the testimony and written reports by Doctors Ziem, Moore and Anderson (see Preliminary Matters #2 above).

CLAIMANT'S EXPERT TESTIMONY:

8. The defendant employer argued strenuously that testimony by Drs. Ziem and Moore, and Dr. Anderson's test results (see Findings of Fact ¶¶35 through ¶43), should not be admitted because the opinions and results are not scientific knowledge as defined in the landmark case of *Daubert v. Merrill Pharmaceutical, Inc.*, 509 U.S. 579 (1993). As discussed in the *Petit, supra*, *Daubert* has been adopted into Vermont law through Rule 702 of the Vermont Rules of Evidence and pursuant to *State v. Brooks*, 162 Vt. 26 (1994) and *State v. Streich*, 163 Vt. 331 (1995). VRE 702 applies to workers' compensation cases unless it is inconsistent with our rules or would defeat the "informal nature" of our hearings. Rule 7(a).
9. As recited in *Petit, supra*, the *Daubert* test asks a trial court to scrutinize the theory or technique employed by an expert and determine whether (1) the theory or technique has gained general acceptance within scientific communities; (2) the theory or technique has been subject to peer review and publication; (3) the theory or technique can be and has been tested; (4) there is a known or potential error rate; and (5) there are generally accepted standards applicable to the theory or technique. *Id.*, at P.11. As mentioned in *Petit*, the *Daubert* test is particularly appropriate in jury trials, where the trial judge has a gatekeeper's function to determine whether evidence presented to the jury meets certain requirements of law. That is not to say the rule is inapplicable in court trials or hearings such as this before a hearing officer acting on behalf of the Commissioner, just that it has more utility in jury trials.
10. In *Petit*, the Commissioner decided he was not prepared to exclude medical testimony regarding MCS on a *Daubert* basis, stating that "medicine is a constantly changing, evolving, living science, and what causes the human body to break down, physically or emotionally, frequently is not quantifiable or replicable using the scientific method but is subject to immensely complex physical, biological, environmental, and ultimately human circumstances." I decided in *Petit*, and confirmed in *Latouche, supra*, that plausible medical testimony from qualified physicians on MCS should be admitted based on the current status of medical knowledge, subject of course to cross examination and contrary medical opinions.
11. For the reasons set forth in *Petit, supra*, I will thus accept the testimony in this case of Drs. Ziem and Moore regarding the possible causation of the claimant's symptoms, tested by cross-examination, the credit-worthiness of their opinions, and the other evidence in the record.
12. As noted in the hearing officer's prehearing order following the defendant's Motion in Limine (see Preliminary Matters ¶2 above), the testimony of Dr. Anderson regarding the toxicology of the air at Blue Mountain Union School is significantly different than the testimony of Drs. Ziem and Moore regarding the cause of the claimant's current illness. Dr. Anderson's modified ASTM3-981 test is, or purports to be, "hard science," whereas the medical doctors' opinions are just that, opinions expressed to a reasonable degree of medical probability. I think this makes a difference.
13. Thus, it's necessary to examine Dr. Anderson's testimony, and particularly the results of the modified ASTM report, in the hard light of *Daubert*.

14. Dr. Anderson's testimony can, like Caesar's Gaul, be divided into three parts: evidence regarding the temperature, humidity, CO₂, CO, and TVOC in the air at BMUS; evidence regarding the respiratory impact of the BMUS air on mice pursuant to the ASTM3-981 test; and evidence regarding the pulmonary/neurological irritation on mice based on a functional observation battery (FOB) test which utilized the ASTM3-981 apparatus.
15. The defendant does not contest the first part of Dr. Anderson's testimony, although it criticizes her findings as being erratic and thus somewhat suspect. The defendant's criticism is thus an issue of credibility, not admissibility. Consequently her testimony, and the findings of her lab, regarding the chemical content of the air at Blue Mountain may and should be considered.
16. With respect to the second part of her testimony, defendant asserts that Dr. Anderson's results in other tests have not been replicated by other labs, such as EPA, Dupont, and Monsanto. Claimant disputes this. Defendant asserts correctly that replicability is an important criterion for admission of scientific evidence under *Daubert*. These tests were of carpet samples. The apparent reason for this lack of replicability is Dr. Anderson's heating of carpet sample and perhaps some variations in the test methodology itself (See Finding ¶35 above). Defendant adds that Dr. Anderson's carpet test results have been excluded from evidence by all courts which have considered them, including the Superior Court of the State of Vermont. *Sands v. Dorset Carpet Mills*, Washington Superior Court, Docket S93-88 WnC (Opinion and Order by Judge S. Martin re: Testimony of Rosalind C. Anderson, Ph.D., dated August 25, 1994).
17. In Dr. Anderson's defense, it should be noted that the test she employs for respiratory irritation, ASTM3-981, has been peer reviewed, approved, and re-approved by a testing group well recognized by the scientific community (See Finding ¶42). Certainly then, to the extent Dr. Anderson's test complies with ASTM3-981, it meets the *Daubert* standard of reliability and relevance.
18. The ASTM3-981 test is silent on heating of samples. As mentioned, this appears to be the principal controversy with respect to Dr. Anderson's carpet tests, which she (or her assistants) will heat up to a temperature as much as 150 degrees Fahrenheit. Dr. Anderson says she does this to increase the likelihood of detecting toxins. Dr. Anderson's scientific opponents argue that by so doing, the test volatilizes possible carpet toxins beyond what would happen in typical use and thus skews her results unfairly. This is not an issue of replicability, but appropriateness. Carpet tests without such heating by others result in different results.
19. From the evidence submitted in this case, I think the opposition to Dr. Anderson's carpet testing methodology is well-founded and that her test results do not thus meet the *Daubert* standards and should, therefore, not be considered in this case. (It should be noted, however, that in this case Dr. Anderson's carpet analysis was relatively inconclusive (See Finding ¶45).
20. I am not, however, prepared to exclude the results of Dr. Anderson's respiratory test of the BMUS air using the ASTM3-981 methodology. While her air sample was heated (to 98°F), her purpose appeared sound (to try and replicate the volatility of the sample at the time it was taken) and was not so extreme as likely to skew the results. The test

otherwise was conducted pursuant to the established ASTM test.³ Finally, there was no evidence introduced that Dr. Anderson's air tests (as opposed to carpet tests) have not been replicated. Thus the respiratory portion of her ASTM test on the BMUS air should be considered.

21. Finally, I get to the third portion of Dr. Anderson's testimony and report, that regarding the functional observation battery (FOB) test. This test is not specifically outlined or authorized in the ASTM3-981 protocol and is apparently a test Dr. Anderson developed herself. She has characterized it to Congress as "heavy duty exploratory work" and has apparently since abandoned it in favor of something she now describes as "rule base pulmonary analysis." (See Defendant's Motion in Limine, Pages 28-29.)
22. Dr. Anderson's FOB test itself is akin to closely examining a canary in a coal mine for possible signs of methane.⁴
23. Because Dr. Anderson's FOB test is not conducted pursuant to some established protocol, is not apparently utilized by other toxicologists in her field, is somewhat subjective in nature, is not carried out in a "blind" fashion, and is apparently unreplicated,⁵ it does not meet the *Daubert* test for reliability. Were the test results to be submitted to a jury not familiar with all of the background available to the Commissioner (pursuant to the Motion in Limine, the claimant's responsive memo, and all the exhibits submitted thereto), I think it should properly be excluded.
24. However, under the circumstances of this case and for some of the same reasons I have accepted the testimony of Drs. Ziem and Moore regarding MCS and because of our view of the evidence even after considering the results of her FOB tests, I am not prepared to exclude the results of Dr. Anderson's FOB tests for whatever value they may have. The fact that mice may become somewhat disoriented (according to a trained observer) after inhaling an air sample from BMUS has some relevance I think to the issues in dispute.

CAUSATION:

25. Having decided then that it is appropriate to consider some of Dr. Anderson's testimony and not to exclude the testimony of Drs. Ziem and Moore for the reasons set forth in *Petit, supra*, I am now prepared to consider the merits of this claim.⁶

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I do not find the size of the air sample significant.

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Methane is a colorless, odorless deadly gas found in coal mines. Miners learned some years ago that canaries would drop dead after inhaling methane in quantities too small to affect humans. Consequently, canaries were taken into mines to serve as a kind of methane alarm for miners.

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Claimant in her post-hearing memo states that the Anderson FOB test has been replicated and Dr. Anderson so testified. If so, the hearing examiner doesn't recall it. For the reasons cited in Conclusions ¶24, the issue is moot.

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26. There is no question based on the evidence that the claimant is ill, that her illness is real and not feigned, and that her illness substantially impairs her ability to work. The fundamental issue is whether her current illness arises out of and in the course of her employment at Blue Mountain Union School.
27. An injury arises out of employment when it occurs in the course of it and as the proximate result of it, and when an injury is a natural and necessary incident or consequence of the employment, though not foreseen or expected, it arises out of it. *Rae v. Green Mountain Boys Camp*, 122 Vt. 437 (1961).
28. The defendant does not challenge the fact that the claimant is sick. In fact, the defendant introduced no testimony from any medical expert who had ever examined the claimant. Thus we are left with the diagnosis of the claimant's treating physician, Dr. Ziem, and to some extent her previous physician, Dr. Moore, that she suffers from either MCS, Chronic Fatigue Syndrome (CFS), fibromyalgia, or toxic encephalopathy. Of these diagnoses, the evidence seems to suggest most strongly fibromyalgia, an illness recognized by the American College of Rheumatology, but that is a medical question better answered by medical experts.
29. As treating physicians, the diagnoses and opinions of Drs. Ziem and Moore are entitled to preferential consideration and, were this a test of credibility simply between Dr. Ziem or Dr. Moore, on the one hand, and Dr. Davis (who conducted a record review and not even an independent medical exam), on the other, I would need to defer to the opinions of the claimant's treating physicians. *Gardner v. Grand Union*, Opinion No. 24-97WC (Aug. 22, 1997).
30. I do not see this as simply a comparison of medical opinions, however. Despite all the evidence submitted in this case, including the testimony of experts both in person and by document, and the submission of numerous scientific and medical articles on the topics of MCS, CFS, and fibromyalgia, the etiology of the claimant's illness remains unknown. Dr. Ziem believes fervently that the air quality at Blue Mountain Union School caused the claimant's unusual illness, and in support thereof relies upon indications of poor air quality; the nature and timing of the claimant's symptoms; and examples of other persons with similar symptoms sharing a similar history. Just as fervently, however, Dr. Davis opines on the issue of causation that there is no reliable scientific evidence that persons, once removed from a toxic environment, will continue to have a recurrence of symptoms brought on by encountering situations or chemicals entirely distinct from those they were exposed to while in the toxic environment.

Defendant argues that to accept the doctors' opinions and rule in the claimant's favor here, would be to engage in the speculation forbidden by *Norse v. Melsur*, 143 Vt. 241 (1983), a case in which my predecessor found job causation for a hernia. A significant difference between this and *Norse* is that here there is some medical testimony on causation; in *Norse*, there was apparently none.

31. In looking for the truth in this matter, I must consider all of the evidence while remembering that the claimant has the burden of proof. This is particularly important when, as claimant concedes, MCS is a “diagnosis of history.” Mistakes in the history or ambiguities in the history are highly important. Having said that, I cannot find that, by a preponderance of the evidence, the claimant has demonstrated that her illness arose out of and in the course of her employment.
32. In reaching this conclusion, I am influenced by the following:
- (a) The absence of any agreement in the medical community that an illness like the claimant’s can under any circumstances arise from a toxic environment except possibly one significantly more toxic than the evidence produced here shows existed at BMUS, (i.e., *Appeal of Kehoe*, 139 NH 24 (1994));
 - (b) The exaggeration or misstatements of fact by Dr. Ziem of some conditions at BMUS as a factor in reaching her conclusion on causation (Findings ¶¶65);
 - (c) The absence of the kind of agents in the BMUS air identified by Dr. Ziem as likely to cause chemical sensitivity (TVOC levels were normal and Dr. Anderson’s carpet test result, even assuming it should have been admitted, was inconclusive);
 - (d) The impact of claimant’s subsequent employment with Headstart on either the onset or longevity of her present symptoms (there was evidence that carbonless copy paper significantly effects the claimant, that she used such paper while working for Headstart, and that her condition was at a minimum seriously aggravated by the use of this product);
 - (e) The existence of other factors in claimant’s life which could have triggered or aggravated her present condition (her husband’s cigarette smoking, a propane leak at her home, pre-existing asthma, her dogs and cats). While aggravation of existing health problems caused by work is still compensable under our law, where the aggravating circumstance is itself difficult to pinpoint, the claimant has not carried her burden of proof.
 - (f) The absence of any connection between the kinds of products or situations which trigger a worsening in claimant's condition (Findings ¶¶70) and the products she was most likely exposed to at BMUS (Findings ¶¶43).
33. The admission and consideration of Dr. Anderson’s FOB test does not substantially help the claimant’s case. Those results show moderate, not extreme, pulmonary irritation and at best demonstrate that the claimant was exposed to a toxic environment. They do not explain why the claimant should have become permanently sensitized to completely different chemicals long after removal from that environment. While Drs. Ziem and Moore have theories for that result -- different theories, I might add -- Dr. Davis disputed those theories and I cannot conclude that the theories by the claimant’s physicians are more than that, theories. That is an insufficient basis for me to rule in the claimant’s

favor.

34. For the foregoing reasons, I find that the claim for benefits must be denied. By doing so, there is no need to determine the claimant's eligibility for Temporary Total Disability Benefits, medical benefits or attorneys' fees; nor the defendant's request that I require a higher standard of proof in "chemical sensitivity" cases (as with heart attacks, *Olander v. Town of Corinth*, Opinion No. 17-98WC (Apr. 15, 1998), or in mental injury claims, *Bedini v. Frost*, 165 Vt. 167 (1996), or that I consider these cases under our Occupational Disease Statute.

ORDER:

For the reasons set forth in the above Findings of Fact and Conclusions of Law, I hereby ORDER, ADJUDGE and DECREE that the claim asserted herein is DENIED.

Dated in Montpelier, Vermont, this 24th day of March 1999.

Steve Janson
Commissioner