

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

Joanne True	)	State File No. L-24812
	)	
	)	By: Margaret A. Mangan
v.	)	Hearing Officer
	)	
	)	For: Steve Janson
State of Vermont,	)	Commissioner
Department of Corrections	)	
	)	Opinion No. 20-99WC

Heard in Montpelier, Vermont, on January 22, 1999  
Record Closed: February 5, 1999

**APPEARANCES:**

Michael R. Loignon, Esquire for Claimant  
Keith J. Kasper, Esquire for the Employer

**ISSUE:**

Whether claimant's right knee injury, as diagnosed in May 1998, arose out of and in the course of her employment.

**CLAIM:**

1. Pursuant to 21 V.S.A. § 642, temporary total disability compensation for the period of May 8, 1998 through October 5, 1998.
2. Pursuant to 21 V.S.A. § 648, permanent partial disability compensation at a rate to be determined.
3. Medical benefits pursuant to 21 V.S.A. § 640.
4. Attorney fees and expenses pursuant to 21 V.S.A. § 678.

**EXHIBITS:**

Joint Exhibit I:	Stipulation between the parties
Joint Exhibit II:	Medical Records
Joint Exhibit III:	Deposition transcript of Lon Wesley Howard, M.D.
Joint Exhibit IV:	Calendar depicting March 1998 through May 1998
Claimant's Exhibit 1:	Written statement of Lawrence Lewis
Claimant's Exhibit 2:	Written statement of Jeff Percy

**STIPULATION:**

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. Defendant was self-insured within the meaning of the Act at all relevant times.
4. For the twelve weeks prior to March 18, 1994, claimant's average weekly wages were \$473.49 resulting in an initial compensation rate of \$315.63.
5. At the time of the accident and thereafter, claimant has no dependents.
6. Claimant seeks medical reimbursement for her unpaid medical bills to date, temporary total disability benefits from May 8, 1998 to October 5, 1998, permanent impairment of the right lower extremity to be determined, and, if successful, attorney fees and costs associated with this formal hearing process.
7. At issue in the claim is, did claimant's right knee disability of May 8, 1998 arise out of and in the course of her employment?
8. The parties agree to the submission of a joint medical exhibit.
9. There exists no dispute as to the qualifications of any of claimant's examining or treating health care professionals.

#### **FINDINGS OF FACT:**

1. Notice is taken of all forms filed with the Department in this matter. The exhibits are admitted into evidence.
2. Since February 1994, claimant has been employed as a Corrections Officer for the defendant. During March 1998, she served in the specific capacity of a yard officer. In this position, claimant's duties included walking the perimeter, conducting inmate control, and overseeing access to the truck trap. She was known as a worker who "toughed things out."
3. During that time period, claimant alleges that, while working in the truck trap, she slipped on ice and fell to the ground, landing on the inside of her right knee. As a result of this fall, claimant experienced a searing pain in her knee, but she continued in her employment activities.
4. Initially, claimant stated that this incident occurred on March 18, 1998. However, she presently contends that although the event occurred in March, she is uncertain of the exact date.
5. To substantiate the occurrence of this incident, claimant proffered ample corroborating evidence.

6. First, inmate Andrew Wood testified that he witnessed claimant's fall, although he stated he was not certain of the exact date, or even month of the occurrence. He did, however, explain that the event happened in the wintertime, and possibly during the month of March 1998. Moreover, he stated that based upon claimant's facial expressions and body mechanics, he surmised that claimant was in pain after the fall occurred.
7. Additionally, claimant testified that on the day of the occurrence, during her 10:30 a.m. break, she informed her immediate supervisor, Hal Colleran of the incident. An Office Memorandum of the Department of Corrections confirms this meeting. In the written memo, Mr. Colleran explains that in mid-March 1998, he observed claimant limping. When he inquired into her condition, claimant informed him that she had slipped on some ice in the truck trap. Acting on this information, Mr. Colleran asked claimant to complete a First Report of Injury. However, claimant, believing that her injury was minor and hoping that the pain would alleviate, declined to complete the form.
8. Claimant also submitted the written statement of Lawrence Lewis, the work crew supervisor, to bolster her testimony. This statement verifies that during March 1998, claimant reported that she had slipped on ice.
9. Finally, claimant's boyfriend, Courtney Lilly, who is also a Corrections Officer for defendant, testified at the Hearing as well. Specifically, he stated that during March 1998, he first became aware of claimant's injury when he was at work and other employees informed him of the situation. Later that evening, claimant personally told him that she hurt her knee. Furthermore, he explained that he noticed a bruise on claimant's knee and observed claimant limping for approximately 2-3 days following the incident.
10. Claimant testified that, after the fall, she sustained a bruise on the inside of her knee and she described experiencing pain, swelling, and stiffness of the knee. In addition, due to the injury to her knee, claimant stated that she began limping. Eventually, however, claimant's condition improved. In fact, claimant related that, approximately three days after the incident, she felt fine.
11. As such, at the time immediately following the incident, claimant did not miss any time from work.
12. Subsequently, in April 1998, claimant, along with Courtney Lilly and his parents, Mr. and Mrs. James Lilly, vacationed together in Nevada for two weeks. Both Courtney Lilly and James Lilly testified that they were not aware of claimant injuring her knee during this vacation. However, they did explain that claimant began to feel discomfort and pain in her knee the day before their return and they noticed that she began limping again.
13. Claimant also testified that, at the end of her vacation, she developed pain in her knee again. Specifically, she recounted that when she stood up as she was getting out of bed, she felt a "twinge" in her knee. This "twinge" developed into a limp later in the day.

14. Despite the condition of her knee, claimant, upon her return from vacation, resumed her work activities. For approximately three days, claimant continued to work until the pain progressed to a point which necessitated medical attention.
15. At this time, specifically, on May 8, 1998, claimant went to the North Country Hospital emergency room. After explaining her medical condition and her prior fall at work during March 1998, claimant was examined by the hospital personnel, who diagnosed her with right knee sprain and a right anterior cruciate tear. Acting on this diagnosis, the examining doctor prescribed claimant with crutches, a knee immobilizer, Motrin, elevation, and moist heat. In addition, claimant was referred to an orthopedic surgeon, Dr. Maas, for further evaluation.
16. Since Dr. Maas was not able to examine claimant any earlier than two weeks following her ER visit, claimant sought medical care from Lon Howard, M.D., another orthopedic surgeon, on May 18, 1998.
17. When Dr. Howard examined claimant, he inquired into the history of claimant's knee condition. Claimant related that she initially fell on her right knee in March of 1998. But, she explained that the original symptoms seemed to subside until she recently felt a "twinge" in her knee and began to experience swelling and pain in her right knee again.
18. Although claimant maintains that she informed Dr. Howard of the "twinge" incident, defendant disputes whether this actually occurred. In asserting this challenge, defendant relies upon the deposition testimony of Dr. Howard. During that deposition, the doctor confirmed his understanding of the history of claimant's knee condition. He agreed with defense counsel's summation, which provided that claimant had a slip and fall in March of 1998, and then did not experience any knee problems until shortly before her emergency room visit in May 1998. When read in its proper context, this statement does not substantially endorse defendant's proposition. In fact, Dr. Howard's concurrence easily may be interpreted to mean that Dr. Howard did not find the "twinge" incident a remarkable event when documenting claimant's history.
19. After conducting a physical examination of claimant, Dr. Howard diagnosed her with a torn medial meniscus, osteochondral defect, grade I MCL, grade I ACL and baker's cyst with distal numbness. He recommended an MRI to confirm the need for an arthroscopy. Finally, in discussing the cause of claimant's knee condition, Dr. Howard opined that the injury was clearly related to the March 1998 fall.
20. Acting on Dr. Howard's causal assessment, claimant, at this time, filed an incident report with her employer, asserting that her knee injury resulted from her March 1998 fall at work.
21. Since the MRI was remarkable for a torn meniscus, Dr. Howard proceeded with surgery that began as an arthroscopic procedure and progressed to an open procedure, on June 11, 1998. During this surgery to repair the torn meniscus, Dr. Howard observed additional injuries to the claimant's right knee. He noted and corrected a chondral defect of the

medial femoral condyle, a chondral defect of the patella and femoral trowchlea, and lateral subluxation of the patella.

22. In addressing the issue of causation, both parties have proffered medical experts to advance their respective theories. Claimant relies upon her treating physician, Dr. Howard. Whereas, defendant submits the opinion of an independent medical evaluator, Eric White, M.D., an orthopedic surgeon, who reviewed claimant's medical records, the MRI, and depositions in arriving at his opinion.
23. Dr. Howard unequivocally states that, within a reasonable degree of medical certainty, claimant's knee condition, as revealed during the arthroscopic procedure, was caused by her March 1998 fall at work. During his deposition, Dr. Howard thoroughly explained his opinion. Specifically, after sustaining a trauma to the patella, or kneecap, the claimant experienced an immediate pain and swelling which resolved temporarily. At the same time, as a result of this trauma, the articular cartilage of claimant's knee sustained a crack. Subsequently, over the next few weeks or months, the muscles of claimant's knee became weaker, the patella slid further out of position, and the articular cartilage proceeded to further wear away. As this occurred, the posterior horn of the medial meniscus endured great stress, which caused the tear. Eventually, when the cartilage wore away and the bone became irritated, claimant experienced a sudden onset of pain, which can frequently occur without any significant event. Overall, it is Dr. Howard's impression that claimant's condition was a common presentation for this type of trauma induced injury. Had the problem been caused by a degenerative process, Dr. Howard would have expected claimant to have had problems in both knees. No such evidence of a bilateral condition exists.
24. Conversely, Dr. White opined that claimant's injuries were related entirely to a long-standing chronic degenerative condition rather than the result of an acute trauma. The doctor based his opinion on the delayed presentation of claimant's symptomatology. He stated that if the diagnosed injuries occurred in March 1998, claimant would have experienced severe pain immediately and consistently. In addition, if claimant's injuries were caused by an acute trauma, Dr. White testified that the MRI should have revealed a bone bruise. Since claimant's MRI failed to indicate this, he concluded that her injuries resulted from a degenerative process. Since claimant had a period of several weeks when she did not exhibit any symptomatology, Dr. White concluded that claimant's medical problems were more likely caused by a long-standing pre-existing degenerative condition, with the symptomatology being triggered by the "twinge" incident when claimant was getting out of bed.
25. However, during his testimony, Dr. White conceded that Dr. Howard's causal opinion was possible. In addition, he stated that an MRI can fail to reveal an existing bone bruise. Finally, Dr. White admitted that a treating physician is often in a better position than an IME evaluator to determine the cause of an injured patient's condition.

#### **CONCLUSIONS OF LAW:**

1. In the instant case, defendant contests the compensability of the claim on two theories. First, defendant challenges claimant's credibility and asserts that the March 1998

incident did not occur. Second, if the Department determines that the claimant did fall at work, then defendant contends that the injuries to claimant's right knee, as evidenced by the arthroscopy, are not causally related to her employment, specifically the March 1998 fall. After a complete review of the proffered evidence, it is apparent that both of these arguments are unfounded.

A. THE MARCH, 1998 INCIDENT:

2. In a worker's compensation claim, it is the burden of the claimant to establish all facts essential to support her claim. *Goodwin v. Fairbanks, Morse and Co.*, 123 Vt. 161 (1963). Sufficient competent evidence must be submitted verifying the character and extent of the injury and disability, as well as the causal connection between the injury and the employment. *Egbert v. Book Press*, 144 Vt. 367 (1984).
3. To support her testimony as to the March 1998 fall at work, claimant has submitted abundant substantiating evidence. An inmate who witnessed the incident, claimant's immediate supervisor, the work crew supervisor, and claimant's boyfriend all verify, in a consistent manner, the occurrence of the fall. This evidence was highly credible. Therefore, it is evident that during March 1998, while performing her employment duties, claimant slipped on ice and fell to the ground, landing on her right knee.

B. THE CAUSE OF CLAIMANT'S INJURIES:

4. Where the causal connection between an accident and an injury is obscure and a lay-person would have no well grounded opinion as to causation, expert medical testimony is necessary. *Lapan v. Berno's Inc.*, 137 Vt. 393 (1979). There must be created in the mind of the trier of fact 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 & Martin Lumber Co.*, 112 Vt. 17 (1941).
5. In addressing the compensability of this claim, the parties dispute the cause of claimant's knee condition as it existed in May 1998. Claimant maintains that the March 1998 fall caused her knee injuries. Whereas, defendant avers that claimant's medical problems are associated with a long-standing, chronic degenerative knee condition. Each party has proffered opposing expert medical opinions as evidence in this matter.
6. When evaluating and choosing between conflicting medical opinions, the Department has traditionally considered several factors: (1) the nature of treatment and length of time there has been a patient-provider relationship; (2) whether accident, medical, and treatment records were made available to and considered by the examining physician; (3) whether the report or evaluation at issue is clear and thorough and included objective support for the opinions expressed; (4) the comprehensiveness of the examination and (5) the qualifications of the experts, including professional training and experience. *Miller v. Cornwall Orchards*, Opinion No. 20-97WC (Aug. 4, 1997); *Martin v. Bennington Potters*, Opinion No. 42-97WC (Dec. 30, 1997).

7. Consistent with the initial factor of this analysis, Dr. Howard, as claimant's treating physician, should be granted greater deference when evaluating the cause of claimant's injuries. *See Mulinski v. C & S Wholesale Grocers*, Opinion No. 34-98WC (June 11, 1998); *Mills v. Windham Supervisory Union*, Opinion No. 45-96WC (July 23, 1996) (concluding that greater weight should be granted to a treating physician when deciding between conflicting medical opinions). Dr. Howard physically examined the claimant's knee on numerous occasions, noting the condition of her knee both prior to and following the arthroscopic procedure. Conversely, Dr. White, an independent medical evaluator selected by the defendant, has never personally evaluated claimant. In fact, Dr. White conceded that a treating physician is generally better equipped with the ability to furnish a causal opinion on a patient's injuries. In light of this evidence, Dr. Howard's opinion should clearly be given greater credence.
8. Since both Dr. Howard and Dr. White reviewed all relevant and pertinent accident, medical, and treatment records, an analysis of the second factor of the inquiry affords equal weight to the disputing medical opinions.
9. Defendant, however, by discrediting the basis of Dr. Howard's opinion, attempts to prove that the second factor actually commands a finding in favor of Dr. White. Specifically, defendant asserts that Dr. Howard was unaware of the "twinge" incident and, therefore, the reliability of his opinion must evaporate. However, as illustrated by the preceding Finding of Fact ¶18, since the evidence relied upon by defendant does not substantially advance such a contention, defendant's argument must be rejected as speculation and conjecture.
10. Proceeding with an analysis of the five factor inquiry, an examination of the third element mandates a finding in favor of Dr. Howard. A review of Dr. Howard's deposition transcript reveals an exhaustive, logical, precise, and discerning causal explanation, which was based on the doctor's personal examination, exploration during arthroscopy, and experience. Conversely, Dr. White's opinion was primarily based upon claimant's subjective pain perceptions. Moreover, although Dr. White also relies upon the absence of a bone bruise on the MRI to conclude that the injuries did not result from trauma, he admitted that an MRI may not, in fact, reveal an existing bone bruise. In addition, Dr. White did not adequately explain how a degenerative condition alone would create symptoms on only one side of a person's body. Finally, Dr. White further conceded that Dr. Howard's causal opinion was certainly possible. Consequently, in accordance with the third factor, Dr. Howard's opinion should be granted greater credibility.
11. Comparably, the fourth factor, which probes into the comprehensiveness of the physicians' examinations, also endorses a finding in favor of Dr. Howard. Since Dr. Howard performed the surgical procedure on the claimant's injured knee, he had the opportunity to inspect the knee and make his determinations based upon actual observations and first hand experience. *See Pettee v. Rock River Renovations*, Opinion No. 17-95WC (April 20, 1995). Whereas, Dr. White was neither present during the surgery, nor has he ever physically examined claimant's knee. Accordingly, Dr. Howard unequivocally had a more comprehensive understanding of claimant's condition and as

such, his opinion should prevail.

12. The final factor, the qualifications of the experts including professional training and experience, accords equal weight to both Dr. Howard and Dr. White, as evidenced by Stipulation ¶9.
13. In summation, after conducting a thorough evaluation of the delineated factors, it is manifestly evident that Dr. Howard's opinion, that claimant's right knee injuries were caused by the March 1998 fall at work, must be accepted as the more probable hypothesis.
14. Pursuant to 21 V.S.A. § 678, claimant seeks an award of attorney fees and costs. In correlation with this statute, Workers' Compensation Rule 10(d) provides that a claimant shall proffer evidence establishing the amount and reasonableness of attorney fees and/or costs within the time which the proposed submissions are to be filed. In this case, claimant has failed to comply with this rule. Consequently, her claim for attorney fees and costs must be denied.

**ORDER:**

1. Defendant to pay claimant temporary total disability compensation for the period of May 8, 1998 through October 5, 1998;
2. Defendant to pay claimant permanent partial disability compensation at a rate to be determined;
3. Defendant to pay claimant's medical expenses associated with her right knee injury.

DATED in Montpelier, Vermont, this 15th day of April 1999.

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Steve Janson  
Commissioner