

chains.

2. Claimant injured his back while at work for Pewag on May 25, 1990, and on June 21, 1990.

3. Claimant started to receive temporary total disability benefits on June 30, 1990. He received these benefits until October 17, 1991.

4. Pursuant to a Form 22 dated October 17, 1991, claimant was paid permanent partial disability for a 15 % disability to the spine (49.5) weeks based on a rating provided by John Johannson, D.O.

5. Claimant received an additional four weeks of benefits in August-September 1992.

FINDINGS

1. The defendant was an employer within the meaning of the Vermont Workers' Compensation Act.

2. The claimant's injuries on May 25, 1990, and on June 21, 1990, arose out of and in the course of employment with the defendant. The injury on June 21 occurred in Gary, Indiana while the claimant was installing a tire chain without assistance.

3. The claimant's average weekly wage at the time of his second injury (June 21, 1990) was \$230.38, resulting in his entitlement to temporary total disability at \$182.00 (the state minimum as of that date).

4. The claimant's injury on May 25, 1990, resulted in a period of temporary total disability of two weeks. Following his injury on June 21, 1990, claimant stayed out of work until shortly after August 8, 1990 when he was released to return to work by John Johannson, D.O. Claimant worked at Pewag until September 6, 1990, when he refused to return to Gary, Indiana to install another tire chain without assistance. At that time he was dismissed.

5. Claimant returned to Pewag on October 29, 1990. He was dismissed after three days because he refused to sign an agreement identifying himself as an independent contractor.

6. The claimant has not been employed since October 29, 1990. By letter dated September 29, 1992, Dr. John Johannson advised that Mr. Reome is "100 % disabled from any occupation ... due to the disability he sustained from his lower back injury."

Medical History

7. No evidence was offered that any prior medical condition contributed to the claimant's disability. His testimony at the hearing indicates that prior to his back injury he was a strong and physically active worker. He described himself as a "bull worker."

8. The first medical treatment for claimant's back injury occurred on May 29, 1990, when plaintiff was treated at the Fanny Allen Hospital for low back pain radiating to the level of his knees.

9. Claimant was then treated by John Johannson, D.O. who saw him at intervals throughout 1990. He was treated for lower back pain with injections, an epidural block, and physical therapy. By letter dated January 25, 1991, Dr. Johannson reported that the claimant was not progressing and that he would refer him to an orthopedist due to his worsening symptoms.

10. On April 9, 1991, the claimant was seen for an IME by Dorothy Ford, M.D. at the request of the workers compensation carrier. Dr. Ford diagnosed mechanical back pain and strongly recommended admission to the Spine Institute of New England. Dr. Ford also noted the presence of a "fairly significant depression." She did not believe that he was capable of working in any capacity due to the depression, difficulty in sleeping, and his lack of skills.

11. The claimant was admitted into the Spine Institute and attended the three-week intensive program between April 29, 1991, and May 17, 1991. On discharge he was found to be improved.

12. On follow up with Rowland Hazard, M.D., the claimant's condition worsened. On May 29, 1991, Dr. Hazard noted "an increase in his previous pattern of back pain after doing very well for a few weeks in rehabilitation." On June 27, 1991, Dr. Hazard noted continuing pain "on a stable basis" with "some increase in pain severity gradually over the past month." At this visit, Dr. Hazard concluded that the claimant was at a medical end result.

13. On October 24, 1991, Dr. Hazard noted that the claimant "continues with the same thoracic back pain he has had right along." The claimant was looking for work without success. Dr. Hazard observed that "he seems desperate and depressed today to me but does not want to go into this further." In a subsequent note dated November 6, 1991, Dr. Hazard recommended that the claimant receive "ongoing psychological counselling with his apparent problems with anxiety and depression." Dr. Hazard termed these problems "largely situational." The claimant was given a prescription for Darvocet. At the visit on October 24, 1991, Dr. Hazard determined that the PPD rating was 11.5 %.

14. John Johannson, D.O. referred the claimant to Timberlane Counseling

& Psychological Services where he was treated by Barbara van Drimmelen. Dr. van Drimmelen saw the claimant for 20 sessions commencing on May 19, 1992. In a report letter dated October 2, 1992, Dr. van Drimmelen reported that the claimant was suffering from a major depressive disorder which was severe in nature and caused symptoms including weight loss, problems sleeping, and recurrent suicidal ideation. Dr. van Drimmelen concluded that the claimant's "depressive state has been brought about by his back injury which he incurred as an employee of Pewag Inc. This resulted in severe chronic pain and the loss of his capacity to be gainfully employed. In turn his physical reaction to this stress and depression results in agitation which exacerbates the pain." She concluded that he suffers from chronic depression which disables him from employment "due to a combination of the psychological experience of severe chronic pain and the decreased ability to concentrate resulting in significant depression."

15. Treatment by Timberlane Counseling & Psychological Services ended due to the insurance carrier's refusal to pay for this treatment.

16. In a report letter dated January 17, 1994, Dr. van Drimmelen reported that the claimant continued to be severely depressed. In her opinion, "treatment was terminated prematurely and ... [the claimant] continues to need psychological interventions to address his ability to cope with his chronic pain and resulting emotional responses."

17. Dr. Johansson has continued to seek a clearer explanation for the claimant's chronic pain. In a report letter dated February 11, 1994, he reported some findings of a potential S1 radiculopathy but stated that he "was as frustrated as ... [the claimant] is with this condition, because I believe he truly has something causing his unremitting pain, but we have been as of yet, unable to determine where exactly his S1 nerve root is being irritated or compressed."

Factual Conclusions

18. The claimant suffered a low back injury while employed at Pewag. Despite the absence of a specific diagnosis of a disc injury at a particular location, it is clear that the injury has resulted in severe, chronic pain.

19. The chronic back pain and resulting inability to work have resulted in a serious depression which further disables the claimant from employment. The depression has not been adequately treated due to the premature termination of treatment at Timberlane Counseling & Psychological Services. The termination of this treatment did not occur through any fault or design on the part of the claimant.

20. The claimant has not reached a medical end result because he requires further treatment for his depression. He has been disabled from employment since the termination of TTD on October 17, 1991.

21. The claimant has been placed at a medical end result and paid PPD benefits prematurely and in error. The carrier shall receive full credit for any PPD benefits paid to date when these benefits are recharacterized as TTD benefits.

Conclusions of Law

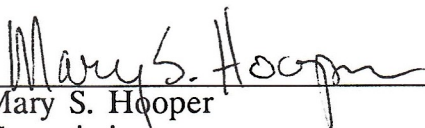
22. The claimant is entitled to payment of temporary total disability benefits from October 17, 1991, to the present. These payments should be reduced by any benefits (including amounts previously characterized as permanent partial disability benefits) paid during this period.

23. The outstanding medical expenses for medical and psychological care as well as prescription reimbursements must be paid immediately.

24. Upon completion of any necessary psychological treatment or other medical treatment for the chronic pain condition, the claimant shall be evaluated with respect to permanent partial disability.

25. The claimant's attorney shall be awarded attorney's fees in an amount not to exceed \$3,000 together with reasonable costs upon filing of an affidavit confirming the existence of a contingency fee agreement providing for payment of a fee of at least 20 % of the amounts recovered by the claimant and detailing the costs incurred.

DATED in Montpelier, Vermont this 29th day of July, 1994.



Mary S. Hooper
Commissioner

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