

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

)	State File No. D-06334
)	
John Kent)	By: Margaret Mangan
)	Hearing Officer
v.)	
)	For: R. Tasha Wallis
Proctor Elementary School)	Commissioner
)	
)	Opinion No. 30-01WC

Hearing held in Montpelier on January 17, 2001 and in Rutland on January 23, 2001
Record closed on March 5, 2001

APPEARANCES:

John J. Welch, Esq. for the claimant
John W. Valente, Esq. for the defendant

EXHIBITS:

Joint Exhibit I a and b:	Medical Records (two volumes)
Claimant's Exhibit 1:	Transcript of Deposition of Edward S. Horton, M.D.
Claimant's Exhibit 1a:	Videotape of Deposition of Edward S. Horton, M.D.
Deposition Exhibits:	Horton #1: Dr. Horton's Curriculum Vitae
	Horton #2: Social Security Claim
	Horton #3: Dr. Horton's examination record
	Horton #4: Dr. Horton's report

ISSUE:

Did the claimant suffer an aggravation of his diabetic neuropathy from his on-the-job exposure to poison ivy and subsequent treatment resulting in the claimant's permanent total disability?

STIPULATION OF UNCONTESTED FACTS:

1. Claimant was born on May 2, 1945.
2. Claimant has had diabetes since at least 1973.

FINDINGS OF FACT:

1. Claimant has had Type 1 diabetes since 1971. Claimant was first diagnosed with diabetes at age 26. Since that time he has been insulin dependent.
2. Claimant was gainfully employed full-time from before the onset of his diabetes and through September 13, 1990 respectively at Mal-Tool and General Electric in Rutland and finally with the Proctor School System.
3. The claimant was actively being treated by a number of doctors for his diabetes prior to contracting poison ivy.
4. Claimant had been working full-time as a maintenance-janitorial person for the Proctor School System for a year or so prior to September 13, 1990. His duties involved ground maintenance, lawn mowing, localized building repair work, sweeping, mopping floors and so forth.
5. On Thursday September 13, 1990, while on the job for the Proctor School System, claimant unknowingly came in contact with poison ivy plants on the school property. The poison ivy primarily involved the claimant's face, arms, chest and right ear.
6. On September 16, 1990 the Claimant was treated in the Emergency Department of the Rutland Regional Medical Center and released. His blood sugar was 590 mg/dl on admission. He had marked atrophic dermatitis on his face, ears, chest and forearms and a dime size lesion on the right second toe.
7. A few days later, he returned to the Rutland Regional Medical Center where he was admitted and treated from September 18th to the 23rd. By that time he had developed cellulitis of his left arm. Treatment included intravenous antibiotics and intravenous steroids. Although his skin lesions had improved, they were extensive on the thorax, arms and face. During the course of his hospitalization, his blood sugars ranged from 173 to 239.
8. On October 24, 1990 the parties filed a Form 21 Agreement for Temporary Total Disability Compensation, a form this department approved on December 17, 1990. The agreement specified that on September 13, 1990 while in the employ of Proctor Elementary School the claimant suffered an accident causing the following injury: "body covered by poison ivy," resulting in total disability beginning on September 17, 1990.
9. During the course of his employment with the Proctor School System the claimant evidenced virtually no missed work prior to September 13, 1990, even though he was then suffering the effects of diabetic neuropathy involving his legs.

10. Microvascular changes related to poor blood sugar control can cause, among other things, diabetic neuropathy.
11. Diabetic neuropathy in the limbs of a person with diabetes often initially manifests itself in a “glove and stocking” manner and causes numbness and tingling in affected bodily areas. These symptoms can become so severe as to render limbs dysfunctional.
12. An indication of sensory nerve damage is a complaint of numbness, loss of sensation or burning feeling. Absence of ankle jerks is also an indication of this type of sensory nerve damage.
13. A peripheral artery evaluation conducted by Dr. Pisanelli in December of 1989 indicated the claimant was experiencing a claudication type of pain in leg, including numbness of feet and loss of muscle control.
14. The claimant’s expert evidence was obtained through the testimony of Edward Horton, M.D. and writings of Muriel Nathan, M.D., Ph.D. Dr. Horton is a full professor at Harvard Medical School and a specialist in diabetes who was past Medical Director of the Joslin Clinic, a center for diabetes research and treatment. He is presently Head of Research for the Clinic. Dr. Nathan specializes in diabetes and endocrinology at the University of Vermont, College of Medicine. Both Dr. Horton and Dr. Nathan examined the claimant.
15. The defendant’s expert evidence was obtained through Mark Friedman, M.D., a consultant in medico-legal matters who was certified in internal medicine in 1979 and Dr. Bucksbaum, a psychiatrist with a background in according impairment ratings. Only Dr. Bucksbaum examined claimant.
16. Dr. Edward Horton, the claimant’s medical expert, acknowledged that that the claimant has had manifestations of peripheral and autonomic neuropathy since 1985, several years prior to his poison ivy exposure. According to Dr. Horton, Dr. Friedman and Dr. Bucksbaum, preceding the claimant’s exposure to poison ivy claimant had exhibited a wide range of blood sugar levels. Prior to 1990, the claimant had suffered severe hypoglycemic reactions due to his unstable diabetes and his blood sugar not well under control.
17. However, Dr. Horton noted that prior to the claimant’s exposure to poison ivy, the claimant had not experienced severe pain associated with his neuropathy which was manifesting itself in the form of paresthesias, numbness and a loss of ankle reflexes.
18. On June 1, 1988, Dr. Brittain conducted an electromyogram which indicated a history of long time diabetes and an impression of wide spread polyneuropathy of mild to moderate severity with mixed features.

19. On December 19, 1989, Dr. Pisanelli indicated that the claimant was suffering from numbness of the feet and legs and some loss of muscle control. His finding was that the symptoms were probably from a neuropathy.
20. On February 27, 1989, the admitting record at the Rutland Regional Medical Center indicates the claimant was suffering from poorly controlled diabetes mellitus, and peripheral neuropathy secondary to that diabetes.
21. On February 28, 1989, Dr. Brittain performed a consultation and indicated that the claimant had poorly controlled blood sugars. He also indicated that the claimant has a history of fluctuating tingling and numbness in his feet, sometimes just above the ankles and sometimes going up almost to the knee.
22. Dr. Horton stated it was common for a person with poorly controlled diabetes for 30 year to have manifestations of neuropathy, including ulcers of the feet.
23. The claimant also presented with autonomic neuropathy, which required surgical intervention in 1987.
24. Dr. Horton put forth two situations where one sees the development of acute painful neuropathy. The first is in patients who are in very poor control and suddenly are brought under very good control with insulin therapy. The second situation is where the blood sugar acutely goes out of control for a period of time. Dr. Horton stated that the claimant would fall under the second situation.
25. Dr Horton testified that it was his opinion that blood glucose levels above the 250- 300 range would be very poor control of diabetes. If blood glucose levels were above the 250- 300 range over a period of two to three week, that could be associated with a material aggravation of neuropathy.
26. Dr. Horton testified that the claimant began to suffer a marked worsening of an underlying diabetic neuropathy while in the Rutland Regional Medical Center being treated for his encounter with poison ivy at work for the Proctor School System on September 13, 1990.
27. After being exposed to poison ivy, claimant was hospitalized at Rutland Regional Medical Center. Claimant suffered from infection in some areas of his body afflicted with poison ivy and remained hospitalized in the Intensive Care Unit for approximately two weeks.
28. While in the hospital, claimant came to develop severe pain throughout his lower legs.
29. During the course of the claimant's hospitalization and afterwards, the claimant was administered and prescribed doses of steroid medications as treatment for the poison ivy reaction. The claimant also received antibiotics for infection.

30. Dr. Horton testified that steroids cause marked elevations in blood sugar levels of diabetics and such elevations materially aggravate underlying diabetic neuropathy conditions in diabetics. He also stated that infections in diabetics make blood sugar levels increase severely.
31. Dr. Friedman, an expert witness for the defense, is of the opinion that it is unlikely the exposure to poison ivy or treatment of poison ivy by steroids contributed or caused the polyneuropathy. Dr. Friedman opined that the claimant had a pre-existing peripheral neuropathy that is clearly documented; secondly, a short course of steroids and even a brief elevation of blood glucose would be unlikely to materially affect peripheral neuropathy; and thirdly, that it is unlikely that his pain or neuropathy was made worse by this event because of the nature of neuropathy.
32. Dr. Friedman also indicated that science has not determined the precise cause of painful neuropathy and that neuropathy is a consequence of long-term poor control of diabetes.
33. Furthermore, Dr. Friedman was of the opinion that on a physiologic basis, logic and scientific literature do not support a finding that poison ivy or short-term exposure to steroids caused or worsened the claimants problem and secondly, the claimant's blood glucose level was improved while receiving treatment for his poison ivy exposure.
34. Dr. Bucksbaum, another expert witness for the defense, further indicated that the claimant was managed appropriately when he came to the emergency room after the poison ivy exposure in order to keep his blood glucose levels under control. Dr. Bucksbaum opined that the poison ivy is not the causative factor in any worsening of the claimant's condition. In his experience and training as well as reading in the area, poison ivy is not an explanation and a scientific basis for a worsening of the diabetes or a creation of a painful sensory neuropathy. In his opinion, it is more likely than not that the claimant's disability is the natural progression of a very long-standing disease that was documented with both autonomic and peripheral nerve system involvement long before the poison ivy exposure ever occurred.
35. Dr. Bucksbaum also concluded that the claimant has a work capacity and has had a work capacity. Dr. Bucksbaum believes the claimant would have a sedentary work capacity and might require reasonable accommodations to protect him from the environment.
36. Upon his discharge from the hospital, the condition of the claimant's legs left him completely unable to resume employment with the Proctor School System.

37. In 1992, claimant was found to be 100% totally and permanently disabled by an Administrative Law Judge passing on his claim for Social Security Disability Benefits.
38. Claimant is as far restored as the permanent nature of his injury will permit and Dr. Horton opinionated that the claimant will never be employable again.
39. After the claimant's exposure to poison ivy, he engaged in making wood lawn ornaments in his garage workshop. The claimant sold some of these ornaments to neighbors and friends.
40. The claimant was able to help his wife around the house. He assists her with cleaning and is able to take a rest whenever he feels he cannot continue.

CONCLUSIONS OF LAW:

1. The burden of establishing facts showing that a claimant's injury comes within the scope of the Worker's Compensation Act is on the claimant, and he has the burden of showing the causal connection between the accident causing the injury and his employment. *Goodwin v. Fairbanks, Morse & Co.*, 123 Vt. 161, 166 (1962).
2. When 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. Burno's Inc.*, 137 Vt. 393 (1979).
3. The expert testimony must meet a standard of "reasonable probability" or a "reasonable degree of medical certainty." *Campbell v. Heinrich Savelberg, Inc.*, 139 Vt. 31, 34 (1980).
4. When evaluating and choosing between conflicting medical opinions, this Department has traditionally considered several factors: 1) whether the expert has had a treating physician relationship with the claimant; 2) the professional education and experience of the expert; 3) the evaluation performed, including whether the expert had all the medical records in making the assessment; and 4) the objective basis underlying the opinion. *Yee v. IBM*, Op. No. 38-00 WC; *Miller v. Cornwall Orchards*, Op. No. 20-97 WC (1997).

5. There are several factors that suggest that this department should accept the opinions of the claimant's medical experts. First of all, neither of the defendant's experts has the credentials demonstrating an understanding of the workings of diabetes and its effects as compared to Dr. Horton. While the defendant is adamant that the claimant's experts did not have the opportunity to review the all of the claimant's medical records, there is nothing in the record that demonstrates that Dr. Horton's medical opinions would have been affected or influenced by any further information. He testified knowledgeably about the claimant's history of poor glucose control. Additionally, Dr. Horton as well as Dr. Nathan examined the claimant.
6. However, Dr. Horton's opinion is based on the premise that claimant's glucose levels rose in response to treatment with steroids. As a result, he reasoned, the claimant's neuropathy worsened. That theory is well supported by Dr. Horton's extensive experience treating patients with diabetes. It is not supported by the facts in this case. During the time claimant was in the hospital for the treatment of poison ivy, his blood sugar levels ranged from 173 to 239, indicating good control for this claimant. Dr. Horton testified that levels in 250- 300 range over a period of two to three week would be associated with a material aggravation of neuropathy. Because this claimant's glucose levels did not rise to that level, Dr. Horton's own testimony undermines claimant's position.
7. There must be created in the mind of the trier of fact something more than a possibility, suspicion or surmise that the incident complained of was the cause of the injury and the inference from the fact proved must be the more probable hypothesis. *Burton v. Holden & Martin Lumber Co.*, 112 Vt. 17, 20 (1941). By taking into consideration all of the evidence, not only the expert testimony but also all the circumstances of the case as shown by the evidence can causation be determined. *Id.*
8. Prior to the claimant's poison ivy hospitalization, the neuropathy in the claimant's lower limbs revealed itself through numbness and tingling, but not debilitating pain. At the time he was seen in the emergency department for poison ivy, he had severely elevated blood glucose levels, skin lesions from the poison ivy and an ulcer on a toe. There was no testimony or medical record linking the toe lesion with any poison ivy exposure. Claimant argues that the critical event occurred when the claimant developed a very significant aggravation of his underlying diabetic neuropathy with the development of severe pain. It was the straw that broke the camel's back. It flared up while he was in the hospital being treated for his poison ivy with steroids and for the subsequent infection. This was the significant episode that resulted in his not being able to continue or return to work.

9. There is ample medical evidence demonstrating that steroids make blood sugars levels rise. Infections in persons with diabetes do the same. Claimant received steroid medications in the Rutland Regional Medical Center to treat his poison ivy as well as antibiotics to fight the ensuing infection. But his blood sugar levels were not markedly elevated; in fact they were well controlled.
10. Up until the date of the incident, September 13, 1990, the claimant had good attendance and a continuous work record. After the incident, the claimant has not been able to work at all. Claimant argues that but for the exposure to poison ivy, he would have been able to continue working. But given his history of uncontrolled diabetes and the well-controlled blood sugar levels while the claimant was in the hospital, it is more likely that his current condition is due to the natural progression of his diabetes, not to the poison ivy incident.
11. Claimant clearly suffered a compensable injury when he was exposed to poison ivy. However, he has not proven that the exposure caused an aggravation of his diabetic neuropathy that rendered him permanently totally disabled.

ORDER:

Therefore, based on the foregoing Findings of Fact and Conclusions of Law, this claim for permanent total disability based on an aggravation of diabetic neuropathy is DENIED.

Dated at Montpelier Vermont this 28th day of August 2001.

R. Tasha Wallis
Commissioner

Appeal:

Within 30 days after copies of this opinion have been mailed, either party may appeal questions of fact or mixed questions of law and fact to a superior (county) court or questions of law to the Vermont Supreme Court. 21 V.S.A. §§ 670, 672.