

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

)	State File No. P-03745
)	
Henry Bennett)	By: Margaret A. Mangan
)	Hearing Officer
v.)	
)	For: R. Tasha Wallis
Triad Temporary Services/ Wausau Insurance Companies)	Commissioner
)	Opinion No. 03-03WC

Hearing held in Burlington on September 20, 2002
Record closed on November 12, 2002

APPEARANCES:

Henry Bennett, Claimant, Pro se¹
Frank E. Talbott, Esq. for the Defendant

ISSUES:

1. Is the Claimant permanently and totally disabled as a result of his December 3, 1999 accident and the erratic driving by Mr. O'Rourke?
2. If the Claimant is not permanently totally disabled, what degree of permanency does the claimant have as a result of the accident on December 3, 1999?
3. Did an employee of Edlund Company hit the Claimant with a board on January 15, 2000? If so, did the incident lead to interference with the Claimant's REM sleep and vocals?
4. Did Dr. Johansson's independent medical examination on June 1, 2000 lead to a groin pull?
5. Does Claimant need anger management as a result of a work-related injury with Triad Temporary Services?

¹ On several occasions the hearing officer suggested that Mr. Bennett could benefit from the assistance of counsel, but he chose to proceed pro se. At the pretrial conference, he was informed that workers' compensation benefits include temporary benefits for lost wages, medical benefits, permanency benefits, vocational rehabilitation benefits and attorney fees and costs. They do not include monetary damages for pain and suffering recoverable in a tort action.

CLAIMANT SEEKS:

1. Permanent total disability payments from July 1, 2000 and ongoing;
2. Transportation costs for bus transportation of \$5,000.00.
3. Medical benefits for loss of REM sleep totaling \$1 trillion plus \$100 million loss of creative writing ability, also allegedly due to lack of REM sleep;
4. For loss of vocals (singing): \$100 million;
5. Attorney fees of \$3,000.

EXHIBITS:

Claimant's Exhibit 1: Long Trail Physical Therapy Notes 2/14/02
Claimant's Exhibit 2: Lamb & Associates, Summation
Claimant's Exhibit 3: Appletree note 4.7/02
Claimant's Exhibit 4: Community Health Center letter with lab results 12/2/01
Claimant's Exhibit 5: Gene F. Moore, M.D. prescription note, 8/17/02
Claimant's Exhibit 6: Green Mountain Urology, Inc. 9/16/02
Claimant's Exhibit 7: Health Maintenance Examination

Defendant's Exhibit A: Transcript of deposition of Dr. Charles McLean
Defendant's Exhibit B: Memorandum from Tom Franklin re: hours and jobs Claimant worked at Edlund Co.
Defendant's Exhibit C: Medical Records
Defendant's Exhibit D: Computer notes from Triad Temporary Services re: phone calls from Claimant

FINDINGS OF FACT:

1. On December 3, 1999 Claimant was an employee and Triad Temporary Services (Triad) his employer within the meaning of the Workers' Compensation Act (Act). At that time, Claimant was working at the Edlund Company, where Triad had placed him.
2. On December 3, 1999, an Edlund Company employee was driving a forklift in the warehouse. As the driver slowly turned the corner, the Claimant stepped into its path and the pallet being carried hit the Claimant's right ankle. Although the incident was witnessed, no one saw the claimant fall.

3. Tom O'Rourke, Edlund employee and a trained First Responder, took the Claimant to the Immediate Health Care Center for medical attention where Dr. Philip Davignon diagnosed a sprained ankle. An x-ray of the claimant's right foot and ankle was negative for fracture or dislocation.
4. On December 6, 1999, Dr. Davignon treated the Claimant again for his sore and numb ankle, the only complaints he had at that visit.
5. On December 9, 1999 Claimant began treating with Dr. McLean, a chiropractor, for his ankle sprain. The notes reflect Claimant's report that he had been knocked down by the forklift, the first such report. Dr. McLean treated the Claimant primarily for back pain, although the claimant also complained of ankle, back, right arm and leg and calf pain. Dr. McLean diagnosed acute lumbar sprain/strain, lumbar segmental dysfunction and ankle sprain. Chiropractic treatment continued for five weeks.
6. Dr. McLean released Claimant to light duty work on December 17, 1999 and to normal duties as of January 3, 2000.
7. Dr. McLean released Claimant from his care on January 31, 2000, at which time he was at medical end result for his work-related injury with no permanent impairment, based on the AMA Guides to the Evaluation of Permanent Impairment, 4th edition, the edition in effect at that time.
8. At the time Dr. McLean released the Claimant from his care, Dr. McLean believed that Claimant was capable of lifting, and could ride in a car with no difficulty.
9. At the time Dr. McLean released the Claimant to return to work, Claimant expressed the concern that he could not work because of back pain. Dr. McLean suggested that Claimant see a specialist if he ever developed bowel or bladder problems.
10. Claimant returned to work at Edlund Company and worked a full schedule except for three days in December 1999 up until February 2, 2000.
11. Claimant alleges that sometime between January 15 and January 20, 2002 a co-worker, Mike Curavoo, hit him across the neck with a board. Mr. Curavoo testified that it did not happen. Mike De Guise, Claimant's supervisor, testified that he heard of no reports that the incident ever happened. Dr. McLean testified that throughout his treatment of the Claimant up until January 31, 2000, Claimant never had any complaints of neck pain. Therefore, I cannot accept the Claimant's uncorroborated testimony on this point.

12. On February 3, 2000, the day after he stopped working at Edlund, Claimant went to Health South Medical Clinic where Dr. Tim Fitzgerald treated him. At that visit, Claimant reported that he had pain in his right hip, neck and lower back from being hit with a forklift. Although the claimant requested that he not work for two weeks, Dr. Fitzgerald concluded that he was capable of full duty work and could use the over-the counter Aleve. When told that the doctor disagreed with his assessment, Claimant said he would find a doctor who agreed with him.
13. On June 1, 2000 Dr. Johansson saw the Claimant for an independent medical examination. After reviewing the medical records and examining the Claimant, Dr. Johansson opined that Claimant's diffuse symptoms in the ankle, knees, hip, back, elbow and neck were not related to the forklift incident. Dr. Johansson concurred with Dr. McLean that the treatment Dr. McLean provided was appropriate and medically necessary and that the Claimant had reached medical end result in January when he stopped treating with Dr. McLean.
14. Dr. Johansson concluded that the only injuries connected to the forklift incident were a strain of the ankle, back and possibly his hip. He opined that Claimant had reached medical end result in January 2000 for those injuries and had no impairment under the AMA Guides.
15. Claimant alleges that as a result of Dr. Johansson's examination he suffered a groin pull, yet there is no objective evidence to support that allegation.
16. Claimant continued to seek the treatment of various physicians to explain his escalating, migrating and exaggerated pain complaints. No medical provider has credibly connected any of Claimant's multiple complaints to the forklift injury. The physicians include Dr. Davignon at the Spine Institute (formerly at the Immediate Care Health Center), Dr. Ciongoli at Neurological Associates of Vermont, Dr. Upton at Vermont Neurosurgical Associates and Dr. Moskowitz at the Center for Scoliosis and Spine Disorders.
17. Claimant also alleges that he suffers from erectile dysfunction, vocal cord problems, "spastic paraplegia," bowel dysfunction and anger management problems due to the work-related injuries. However, there has been no medical evidence at all presented with respect to the alleged vocal cord problem. Dr. Upton found the bowel dysfunction and spastic paraplegia symptoms described by claimant incongruent with known pathology. Although Claimant sought care from Dr. Inker for erectile dysfunction and urinary leakage, no precise problem has been identified and no causal link to the work accident made. Finally, although there is a note from Dr. Moore regarding the need for anger management, there is no medical evidence proving that any such need is due to work at Edlund Company.

18. A September 30, 2002 report from psychologist Dr. Dennis Reichardt lists many of the Claimant's complaints as well as the diagnoses of delusional disorder and personality disorder with specific traits.

CONCLUSIONS OF LAW:

1. In workers' compensation cases, the claimant has the burden of establishing all facts essential to the rights asserted. *Goodwin v. Fairbanks*, 123 Vt. 161 (1963). The claimant must establish by sufficient credible evidence 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).
2. 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).
3. Where the causal connection between an accident and an injury is obscure, and a layperson would have no well-grounded opinion as to causation, expert medical testimony is necessary. *Lapan v. Berno's Inc.*, 137 Vt. 393 (1979).
4. As mentioned above, I reject as not credible the allegations that the claimant was hit on the neck with a board and that Dr. Johansson's examination resulted in a groin pull. This is not to say that the claimant has lied, because he has clearly convinced himself that such things occurred.
5. Furthermore, the credible evidence demonstrates that the Claimant reached medical end result for his work related injury in January 2000, with no resultant permanency. He has been paid the benefits due.
6. All of the other complaints alleged by the claimant are in medical areas for which expert evidence is essential under *Lapan*, 137 Vt. 393. Despite the voluminous records, Claimant has not proven with the requisite credible medical evidence that he suffered extensive injuries from his work-related incident or, if he did, that such injuries caused his actual and perceived problems. The records that purport to find such a link are based on the subjective reports of the claimant, which I find unreliable.

ORDER:

THEREFORE, based on the Foregoing Findings of Fact and Conclusions of Law, this claim is DENIED in its entirety.

Dated at Montpelier, Vermont this 7th day of January 2003.

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 court or questions of law to the Vermont Supreme Court. 21 V.S.A. §§ 670, 672.