

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

Tammy Bockus)	Opinion No. 14-05WC
)	
)	By: Margaret A. Mangan
v.)	Hearing Officer
)	
Datatrac Information Services)	For: Laura Kilmer Collins
)	Commissioner
)	
)	State File No. S-15942

Pretrial conference held on August 13, 2004
Hearing held in Montpelier on December 12, 2004
Record Closed on February 2, 2005

APPEARANCES:

Vincent Illuzzi, Esq., for the Claimant
Eric N. Columber, Esq., for the Defendant

ISSUE:

Is claimant temporarily totally disabled from a work-related physical-mental injury?

EXHIBITS:

- Joint I: Medical Records
- Joint II: Mr. Short's deposition
- Joint III: Ms. Bockus's deposition
- Joint IV: Dr. Manchester's deposition

- Claimant 1: Employee Workplace Injury Report
- Claimant 2: "Diagnoses"
- Claimant 3: "Lost work time for 2002"
- Claimant 4: Dr. Manchester's MER report
- Claimant 5: Disability forms
- Claimant 6: Transcript of interview

- Defendant A: Curriculum vitae of Dr. Mann
- Defendant B: Curriculum vitae of Dr. White
- Defendant C: Curriculum vitae of Dr. Johansson

CLAIM:

1. Unpaid temporary total disability benefits from February 25, 2002 until claimant reaches medical end result or is deemed permanently and totally disabled.
2. Payment of all unpaid medical bills from February 25, 2002 to the present and ongoing.
3. A \$10.00 per week dependency benefit requested, but not paid, for each week of disability.
4. Necessary costs, reasonable attorney fees and interest.

FINDINGS OF FACT:

1. Claimant was an employee and Datatrac Information Services her employer within the meaning of the Workers' Compensation Act from August 2000 to September 2002.
2. In February 2002, claimant felt pinching in her neck while picking up boxes weighing approximately 20 pounds at work. About a week later, she reported the incident to her employer and sought medical attention.
3. After a short time out of work, claimant returned part-time. She maintained that status from March 2002 to September 16, 2002.
4. Claimant treated with Dr. Johansson at the Vermont Center for Occupational Rehabilitation where psychologist, Mary Ellen Giroux, also evaluated her. Treatment included massage and group therapy from August to mid September 2002, but was not successful.
5. Claimant also treated with Dr. Zelazo who prescribed Paxil, a medication claimant discontinued on her own after a few days because she did not think it was helping.
6. Claimant first treated with Dr. Manchester on April 4, 2003. She arrived at that visit with the diagnoses of depression and fibromyalgia. Dr. Manchester found her presentation consistent with a cervical spine injury. In addition, he noted multiple tender points.
7. In August 2003, claimant was driving 50 miles per hour from her home in Swanton when a car pulled out in front of her. She was unbelted. On impact claimant's car careened into a ditch and she hit her head on the steering wheel.

8. Frank Short, the mental health counselor claimant has been seeing, opined that claimant has depression related to her pain. He also noted that she regressed psychologically after the 2003 accident, which precipitated general anxiety and panic attacks.
9. On March 24, 2004 this Department approved the carrier's Form 27 Notice of Intention to Discontinue Temporary Total Disability Benefits based Dr. White's determination that she had reached medical end result.
10. Claimant smokes a pack to pack and a half of cigarettes a day.
11. Claimant has had stressful experiences with her children

Expert opinions

12. John Johansson, D.O. treated claimant as part of a multidisciplinary pain program at the Vermont Center for Occupational Rehabilitation. In August of 2002, he diagnosed a "diffuse myofascial pain syndrome," made worse with massage. He suspected pain amplification and referred her to Mary-Ellen Giroux, psychologist in his program. Dr. Johansson last saw the claimant on September 11, 2002 when he noted that she showed no signs of any benefit from the program. At that time, she had no signs of an orthopedic strain injury. Dr. Johansson determined that claimant had reached medical end result and that she could return to work. He referred claimant to her primary care physician for follow-up treatment. Dr. Johansson found a temporal, but not a causal, relationship between her work-related injury and her symptoms.
13. Psychologist Mary-Ellen Giroux also interviewed and tested the claimant at the Center for Occupational Medicine in September of 2002. Ms. Giroux noted the "significant psychological/behavioral component [that] appears to have accompanied Ms. Bockus' medical condition." Specifically, she noted claimant's phobia against taking medication her treating physicians prescribed and a distorted view of her medical condition with an amplified and reactive perception of her injury and pain.
14. Stewart Manchester, M.D., Family Physician, started treating the claimant in April of 2003. Based on his examinations and history from the claimant, he diagnosed a work related neck injury, secondary fibromyalgia and depression, reactive to the injury. Dr. Manchester opined the claimant's pain and depression are linked to her work related injury by time and her history. He also opined the motor vehicle accident of 2003 exacerbated her symptoms but that she had returned to baseline by January of 2004. In his opinion, claimant is totally disabled because of medical, psychological and pain symptoms.

15. Steven Mann, Ph.D., clinical psychologist and Director of the Occupational and Disability Management Center, offered an opinion for the defense based on his review of her medical records. He confirmed the diagnosis of depression, but rejected the suggestion it is work-related. He noted that testing displayed important illness behavior and secondary gain. She has gotten progressively worse.
16. On January 23, 2004, George White, M.D., Occupational Medicine Expert, found a possible, but not a probable, relationship between claimant's work duties and her neck pain. In fact, he opined that her chronic neck pain is likely not related to her work. More likely causes are degenerative joint disease, and her cigarette smoking. Given her work related injury, Dr. White found that a medical end result two years afterwards was reasonable.

CONCLUSIONS OF LAW:

1. Claimant alleges that her depression and pain condition are related to her work related injury, entitling her to an indefinite period of temporary total disability benefits and medical benefits. On this issue, she has the burden of establishing all facts essential to the rights asserted. *Goodwin v. Fairbanks*, 123 Vt. 161 (1962). She 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. While it is true that every natural consequence that flows from a work-related injury is compensable, it is also true that an independent intervening cause breaks the chain of causation and ends the compensability of the injury. 1 Larson's Workers' Compensation Law, ch. 10 at 10-1.
4. The dispute is one for which medical evidence is essential and one in which the familiar conflict among expert opinions arises. I evaluate those opinions by asking whether the expert had treated the claimant and for what period of time, the professional education and experience of the experts and whether the expert reviewed all relevant records. Finally, I consider the objective bases underlying the opinions. See *Yee v. IBM*, Opinion No. 38-00WC (2000); *Miller v. Cornwall Orchards*, Opinion No. 20-97WC (1997). In addition, I look to expert opinions for common area of agreement.

5. Claimant relies on opinions from Dr. Manchester, Mr. Short and Dr. Zelazo, the defendant on the opinions from Dr. Mann, Dr. Johansson, Ms. Giroux and Dr. White.
6. Mr. Short found a relationship between claimant's pain and the work-related injury. Yet he also found that the motor vehicle accident aggravated her condition. Zelazo presumed that claimant has fibromyalgia, a diagnosis with no known etiology that is temporally related to her work injury. Dr. Manchester supports claimant's theory of causation based on the history provided to him. However, it was more than a year after the injury that he saw the claimant. He did not review all of her medical records. At most, he could identify a mere temporal relationship between the claimant's pain condition and her minor work related injury.
7. Those most experienced in the area of pain management, Ms. Giroux, Dr. Mann and Dr. Johansson, produced opinions that support the defense in this matter. Those opinions are based on a thorough review of medical records, psychological testing and years of experience. Claimant had a minor work related injury, had recovered sufficiently to return to work, albeit part time. Simultaneously she was coping with difficult family challenges with two of her children. The opinions on which her current claim rests are based on her self-described disability. However, even those supportive opinions support only a temporal relationship, impermissible *post hoc ergo propter hoc* reasoning, which is an insufficient basis for an award. See *Norse v. Melsur Corp.*, 143 Vt. 241, 244 (1983). Furthermore, the motor vehicle accident of 2003 severed any causation with the work related injury from the perspectives of claimant's pain and her psychological injury, as evidence by her worsening after that event.

ORDER:

Accordingly, this claim is DENIED.

Dated at Montpelier, Vermont this 8th day of February 2005.

Laura Kilmer Collins
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.