

**STATE OF VERMONT  
DEPARTMENT OF LABOR**

Patricia Fales	)	Opinion No. 13-06WC
	)	
	)	By: Margaret A. Mangan
v.	)	Hearing Officer
	)	
Herald Association/ Rutland Herald	)	For: Patricia A. McDonald
	)	Commissioner
	)	
	)	State File No. U-16549

Pretrial conference held on April 11, 2005  
Hearing Held in Montpelier on November 14, 2005  
Record closed on January 13, 2006

**APPEARANCES:**

Patrick Biggam, Esq., for the Claimant  
Amy McLaughlin, Esq. and Barbary E. Cory, Esq., for the Defendant

**ISSUES:**

1. Whether Claimant’s prolapsed bladder of April 2004 was caused or aggravated by work activities.
2. If so, to what benefits is Claimant entitled?

**EXHIBITS:**

Joint I: Medical Records

Claimant:

1. Form 25
2. Discovery deposition of John Bisson, M.D.
3. Preservation deposition of Dr. Bisson
4. Medical Bills

Defendant:

- A. Rutland Regional Medical Center (RRMC) records with personal history
- B. Discovery deposition of Elizabeth Perez, M.D.
- C. Preservation deposition of Dr. Perez
- D. Deposition of Michael Comstock

**FINDINGS OF FACT:**

1. Claimant was an employee and the Rutland Herald her employer within the Workers' Compensation Act in April 2004. State National provided workers' compensation insurance coverage to the Rutland Herald at that time.
2. Claimant worked as a Mail Room Clerk. Her duties included lifting heavy bundles of newspapers from a table and placing them onto a machine that inserted sheets of advertisements into the papers.
3. When later questioned by physicians, Claimant estimated that she was lifting as much as 50 pounds. The weight was actually closer to 15 or 20 pounds.
4. Some time after midnight on her April 29, 2004 shift, Claimant felt a sudden sharp pain and pressure in her lower abdomen while lifting a heavy bundle of newspapers. She grabbed her abdomen and showed signs of pain. However, the symptoms lessened and she finished her shift. Her team leader saw her grab her abdomen and asked if she was okay. In response to his specific question, Claimant specifically denied that the problem was work-related, stating that it was a long-standing problem.
5. When Claimant arrived home, she noticed a protrusion in her perineum. Suspecting a tumor, she went to the Rutland Regional Medical Center (RRMC) ED where a prolapsed bladder was diagnosed. The note for that visit records Claimant's report of a two-week history of "pressure" in the pelvic area.
6. The physician in the ED noted Claimant's history of a bladder prolapse with surgical repair in the early 1980s.
7. Claimant mentioned nothing to care providers or coworkers about a work related injury until more than a week after the incident when she was being treated at Dartmouth. At the May 7, 2004 visit, Claimant insisted that the injury was "workers' comp" after hearing that causes were multifactorial.
8. Claimant's condition has been diagnosed as "recurrent cystocele."

9. Claimant tried, but felt she was unable to work. Urologist Dr. Bove took her out of work on May 6, 2004 until she saw a gynecologist. The next day, May 7, 2004, she received a note from the gynecologist's office excusing her from work until May 27, 2004. On May 26<sup>th</sup>, she received a modified duty work release with a 5 pound lifting restriction, 10 minute standing restriction, and bending restricted to 5 minutes per hour. She was instructed not to work unless those restrictions could be met.
10. Surgery to repair the prolapse was repaired on August 24, 2004 by Dr. Strohbehn who recommended a six-week post-operative period with no lifting followed by two months with a twenty-pound lifting restriction. He opined that she would need three to four months off if those restrictions could not be accommodated.
11. Factors that cause or contribute to a prolapsed bladder include heavy lifting, childbirth, lack of estrogen, connective tissue disorder and prior hysterectomy. With the exception of connective tissue disorder, claimant had all of the listed factors.

#### Medical Expert Opinions

12. Kristopher Strohbehn, M.D., the surgeon who surgically repaired the prolapse opined that the lifting at work "more likely than not" caused the prolapse, although he could not state that opinion with certainty.
13. Dr. John Bisson, urologist, agreed that the lifting episode more likely than not contributed to the prolapse. He agreed that Claimant had a 30% chance of a recurring cystocele following her surgery in 1983. Dr. Bisson has had years of experience in the practice of urology, although most recently that work has primarily been with men. He is also experienced in the use and application of the AMA Guides to Permanent Impairment (Guides). He rated Claimant's permanent partial impairment at 15% whole person, based the assumption that Claimant is restricted in heavy lifting. That rating follows moderate impairment guidelines for hernias since the *Guides* does not contain information about cystocele.
14. Dr. Bisson expected that Claimant could have returned to work 12 weeks after her surgery and perform activities of daily living.
15. Defense expert Dr. Elizabeth Perez, also a board certified urologist, opined that the lifting event was one of several factors that contributed to the prolapse in this case, although she could not single out one sole cause. Dr. Perez has operated on more than 200 patients with cystocele. She noted that many women with the risk factors Claimant has suffer a prolapse with no lifting at all. At the time Dr. Perez examined the Claimant she did not evaluate her for permanency. Nor at that time did she have any familiarity with the *Guides*.
16. Later, after comparing her physical findings to the *Guides*, Dr. Perez determined that Claimant has no impairment from the cystocle because she can perform activities of daily living, has no cystocle postoperatively, has no pain, can work and has no urinary

leakage. Finally, Dr. Perez opined that Claimant required no work restrictions after six weeks.

### TTD

17. Claimant seeks temporary total disability benefits for 24.6 weeks, from April 30, 2004 until 8 weeks after her surgery, October 19, 2004. This claim is supported by her surgeon and supported with the opinion of Dr. Bisson.

### Attorney fees and costs

18. Claimant has submitted a copy of her contingency fee agreement with her attorney and evidence of \$4,755.94 in necessary costs.

### **CONCLUSIONS OF LAW:**

19. In workers' compensation cases, the claimant has the burden of establishing all facts essential to the rights asserted. *Goodwin v. Fairbanks*, 123 Vt. 161 (1962). 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).
20. Claimant cannot prove her case with mere possibility, suspicion or surmise. She must prove that it was more probable than not that the lifting incident caused or aggravated the cystocele. See *Burton v. Holden & Martin Lumber Co.*, 112 Vt. 17 (1941).
21. Testimony from the claimant and coworkers establish that claimant experienced abdominal pain at work on April 29, 2004. The next question is whether work duties contributed or caused the cystocele.
22. Defendant emphasizes the multifactorial aspects of a cystocele. Claimant was working with many of the other factors. Her musculature was weak, making the prolapse more likely. She overestimated the weight of the bundles.
23. It is black letter law that an employer takes a claimant as it finds her. 1 Larson's Workers' Compensation Law § 9.02. A work incident that causes, aggravates or contributes to an underlying condition is compensable. That incident need not be the sole cause of the injury, if it was a contributing cause.
24. This case falls squarely under that legal standard. Claimant's risk factors may have predisposed her to the problem, but it is undisputed that lifting generally contributes to such a prolapse. Therefore, Claimant's failure to properly estimate the weight of the bundles does not defeat this claim. Nor does not matter that the problem may have occurred on its own at some other time. Claimant reported to work without a cystocele. After lifting 20-pound bundles, she felt something grab in her abdomen. After the shift she noticed the cystocele. It is more probable than not that the lifting caused the prolapse. As such, the cystole is compensable.

25. Next is the question of what benefits follow this finding of compensability. Claimant is entitled to the medical benefits claimed for the treatment of the cystole pursuant to 21 V.S.A. § 640(a) within the limitation of WC Rule 40.
26. She is also entitled to TTD benefits for the period claimed based on her surgeon's opinion. Although Dr. Perez may not have kept Claimant out of work as long, she was not treating Claimant at the time those decisions were made.
27. On the question of the percentage of permanent partial disability benefits due are the opinions of Dr. Perez at 0% and that of Dr. Bisson for 15%. Assuming that the Guides section on hernia is applicable to this case, Claimant would have to be in Class 2 for Dr. Bisson's rating to apply. Therefore, she would have to prove a palpable defect and frequent or persistent protrusion at site of defect with increased abdominal pressure or frequent discomfort precluding heavy lifting. Guides, 5<sup>th</sup> Ed. Table 6-9 at 136. The release from the surgeon and independent medical examinations belie Claimant's contentions that she is precluded from heavy lifting. Further, there is no evidence to support her suggestion of a persistent protrusion. The basis for the 15% rating fails. I therefore accept Dr. Perez's 0% rating.

#### Fees and costs

28. Having prevailed in this case on the issues of compensability and temporary disability, claimant is entitled to a mandatory award of necessary costs and discretionary award of reasonable attorney fees. 21 V.S.A. § 678 (a); WC Rule 10.000. A contingency fee award of 20% not to exceed \$9,000 is hereby awarded under Rule 10 as well as the costs incurred.

**ORDER:**

Therefore, based on the foregoing findings of fact and conclusions of law, Claimant is awarded:

1. Medical and surgical benefits for treatment of the cystocle;
2. Temporary total disability benefits for 24.6 weeks;
3. Fees of 20% not to exceed \$9,000 and costs of \$4,755.94.
4. Interest from the date each benefit would have been due had this claim been accepted, until paid. § 664.

The claim for permanent partial disability benefits is DENIED.

Dated at Montpelier, Vermont this 17<sup>th</sup> day of March 2006.

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Patricia A. McDonald  
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.