

**STATE OF VERMONT  
DEPARTMENT OF LABOR**

S. H.

Opinion No. 19-06WC

v.

By: Margaret A. Mangan  
Hearing Officer

State of Vermont, AHS-PATH

For: Patricia A. McDonald  
Commissioner

State File No. W-00730

Hearing held in Montpelier on February 13, 2006

Record Closed on March 6, 2006

**APPEARANCES:**

Steven A. Bredice, Esq., for the Claimant

Keith J. Kasper, Esq., for the Defendant

**ISSUES:**

1. Did Claimant suffer a personal injury by accident arising out of and in the course of her employment with Defendant?
2. If so, then for what period of time is Claimant entitled to temporary total disability benefits, and was all of Claimant's medical and counseling treatment reasonable, necessary and causally related to her work injury?

**EXHIBITS:**

Joint I: Medical Records

Joint II: Environmental Reports

Claimant's Exhibit 1: Miscellaneous Department Forms and Related Correspondence.

Claimant's Exhibit 2: Medical Bills

Claimant's Exhibit 3: Deposition of John Saia, M.D.

Claimant's Exhibit 4: Deposition of Sharon E. Hurlburt

Claimant's Exhibit 5: Affidavit of John Saia, M.D.

Claimant's Exhibit 6: Bill of Powell Orr & Bredice PLC

**CLAIM:**

1. A determination of compensability
2. Medical benefits under 21 V.S.A. § 640
3. Attorney fees and costs under 21 V.S.A. § 678(a)

**STIPULATIONS:**

1. Claimant has been an employee of Defendant within the meaning of the Vermont Workers' Compensation Act (the Act) since July 6, 1994.
2. Defendant has been Claimant's employer within the meaning of the Act during this same time frame.
3. On April 26, 2004, Claimant alleges that she suffered a personal injury by accident arising out of and in the course of her employment with Defendant due to the allegedly poor indoor air quality at her place of employment.
4. On April 26, 2004, Claimant had an average weekly wage of \$715.60 resulting in an initial compensation rate of \$477.07.
5. On April 26, 2004, and at all times thereafter, Claimant has had no dependents within the meaning of the Act.
6. Claimant began losing time from work as a result of this alleged work-related injury on July 12, 2004 until November 28, 2004.
7. Claimant seeks temporary total disability benefits from July 12, 2004 to November 28, 2004, medical benefits pursuant to WC Rule 40 for all reasonable and necessary treatment of her condition including psychological counseling arising out of her work-related exposure, and, if successful, an award of attorney fees and costs of the litigation process.

**FINDINGS OF FACT:**

1. Claimant's employment at all times relevant to this case was the Thayer Building, 1193 North Avenue Burlington, Vermont, at the State of Vermont PATH office.
2. The Thayer Building was formerly a school, originally constructed in 1947, with an addition in 1967; it also houses numerous other state offices.
3. Following Claimant's father's death in 2003, Claimant sought counseling and took about a month from work. Grief from that loss has persisted.
4. Claimant smoked a pack of cigarettes a day for years, until 2005.

5. Claimant's son sold her family's homestead, much to her consternation. That incident also caused grieving, although she was out of work at the time.
6. In September of 2003, Claimant sought medical treatment for a fainting episode at work. In December of the year she had an electroencephalogram to investigate the source of the problem. The test was normal.
7. In this action, Claimant alleges she became ill from poor indoor air quality at the Thayer Building in July 2004. The building was the subject of air quality-related complaints from several occupants, primarily those working in the same area as the Claimant.
8. Indoor air quality assessments were conducted at the Thayer Building by two separate entities, P & K Microbiology Services, Inc. in 1995 and Crothers Environmental Group in 2004.
9. The studies found that the fiberglass lining of the ducts was eroding. Further, there was dust, back drafting of tobacco, and other debris in air ducts, suggesting the need for regular duct maintenance and improved housekeeping. Those substances had the potential of causing allergic reactions in sensitive individuals. However, no levels of unsafe air quality were found and levels of toxic substances, carbon monoxide, asbestos, formaldehyde and mold were all within national standards.
10. Although endotoxins were present in the Thayer Building, they were in areas of the building far from Claimant's work area in concentrations similar to what is found outdoors, suggesting that endotoxins, while present, did not adversely affect the health of those working in the building.
11. No medical evidence correlates endotoxin exposure with Claimant's fainting episodes.
12. Claimant's alleged April 26, 2004 injury, which pre-dated the Crothers' report by nine days, involved a syncopal (fainting) episode and chest tightness while working at the Thayer Building. This episode was the most acute in a series of similar incidents since 1995, in which the Claimant had experienced such symptoms, along with headaches, dizziness and memory problems. She claims these symptoms only presented in the Thayer Building or shortly after leaving the building. However, she also experienced such episodes outside of work.
13. Following the April 26, 2004 episode, which required that she be transported by ambulance to the Emergency Department at Fletcher Allen Health Care, Claimant's treating general practitioner, John J. Saia, M.D., ordered a battery of tests to rule out other potential causes of her episodes of chest tightness, dizziness, headaches and syncope; including neurological, pulmonary and cardiac workups. All of these tests provided negative results, while Claimant was still reporting to Dr. Saia that she continued to experience similar symptoms at work. However, Claimant did not undergo any allergy testing at this or any other time. She continued to smoke.

14. Melissa LaFrance, Terry Delmore, Lynn (Forcier) Labonte, Linda Gilbert and Natalie Santamore, present and/or former co-workers of the Claimant, supported her assertions that Claimant was experiencing headaches, syncope, and chest tightness at work. These individuals stated they also experienced similar, allergy-type symptoms while working in the Thayer Building, but had never had syncope or sought treatment for these symptoms.
15. By mid-summer of 2004, Claimant became increasingly apprehensive and anxious about going to work based on her symptoms while she was in the building. She expressed these feelings to Dr. Saia; he opined that she should not return to the Thayer Building. Following Dr. Saia's orders, Claimant remained out of work from July 12, 2004 until November 28, 2004; her employer sought alternative placements that would not require her to return to the Thayer Building.
16. In addition to seeking medical attention from Dr. Saia, Claimant sought treatment from Ed Handy, at Dr. Saia's request, to address the emotional reaction Claimant was having to her physical symptoms. Claimant received immersion therapy from Mr. Handy for six, 45-minute sessions in the summer and fall of 2004.
17. Following Dr. Saia's recommendation that Claimant not return to the Thayer Building, her employer secured another position for her in a different location. Claimant initially declined this offer due to the anxiety for which she was being treated by Ed Handy, a master's-level counselor. However, she was eventually able to take this position and return to full work capacity in November of 2004.

### **Medical Testimony**

#### John J. Saia, M.D.

18. Dr. Saia is a highly skilled general practitioner who has treated Claimant for many years. However, his medical records for the Claimant only go as far back as 2000. He has little experience with environmental or occupational medicine.
19. Dr. Saia opined that the cause of Claimant's respiratory and psycho-emotional problems was her need to work at the Thayer Building. He based this conclusion on his review of the Crothers study, subjective reports by the Claimant and the negative results of Claimant's neurological, pulmonary, and cardiac testing. He noted that her employer should find a different address for her to carry out her job because it would be extremely counter productive to attempt to force her to work at her previous address.

Edward W.S. Handy, M.S., L.C.M.H.C.

20. Mr. Handy's professional training consists of a Masters Degree in psychological counseling. His area of concentration in the mental health field is anger management. Mr. Handy had limited access to Claimant's medical records, and specifically focused on the last two office visit notes from Dr. Saia and Claimant's subjective reports.
21. Mr. Handy opined that the "root" cause of Claimant's anxiety during the summer and fall of 2004 was "environmental factors" and the need for a change of work site. He later clarified this statement by noting that he did not believe the building itself was making Claimant ill, but that her reaction to the physical symptoms was causing her some anxiety. He cited Claimant's decrease in anxiety symptoms since changing her work site as support for his opinion.

Verne Backus, M.D., M.P.H.

22. Dr. Backus has had experience with environmental medicine. Through his residency program at Harvard and his current practice, which includes issues of indoor air quality. He is Board Certified in Occupational Medicine.
23. Dr. Backus opined that Claimant's primary diagnosis of syncope was not causally related to the air quality in the Thayer Building. He noted that a diagnostic work-up failed to find a diagnosis that explained the presentation of symptoms in light of any work relatedness. Dr. Backus recognized that the Crothers' report suggests the majority of the buildings occupant complaints and adverse reactions could be dirty air ducts with eroding fiberglass liners since it was their objective to try and identify any possible responsible factors. Dr. Backus qualified this opinion, however, by noting that Crothers can only suggest a causal relationship, not conclude with any reasonable degree of medical certainty, as the majority of the complaints are very nonspecific and common and the interpretation of cause of medical symptoms is outside the area of their expertise. Though it made good sense to cleanup or replace these air ducts for any possibility they were contributing to any problems as a good faith precaution, a causal relationship was only suggested, not concluded.
24. Dr. Backus concluded that Claimant's major depression and anxiety disorder were more likely the cause of her symptom presentation than an unidentified environmental exposure. He opined that once she focused her anxiety on the workplace it seemed to have a real physical basis. Therefore, it would not be surprising that she would feel less anxiety away from work. However, he opined it was not the workplace itself that was causing the anxiety until Claimant herself focused the anxiety on the workplace.

Stephen Mann, Ph.D.

25. Dr. Mann is a psychologist with Board Certifications in Pain Management, Rehabilitation Psychology, and Forensic Psychology. His private practice specializes in treating patients who are in recovery following some form of physical injury. After reviewing all of Claimant's medical records on this matter, the depositions of Dr. Saia and Mr. Handy, administering well-founded psychological tests, and evaluating the Claimant, Dr. Mann concluded that Claimant suffers from Undifferentiated Somatoform Disorder.
  
26. This is a largely unconscious process by which the Claimant converts stress into bodily symptoms. Dr. Mann cited to Claimant's physicians' inability to account for physical symptoms that were far in excess of medical findings or seemed to have no medical cause at all. He noted that headaches, weakness, fatigue, pain shifting, fainting and syncope are all commonly viewed by the psychological community as an expression of emotional pain through bodily felt sensation. Dr. Mann further noted Claimant's personal stressors such as conflicts within her family and the death of her father as potential sources for this disorder, even though she did not frame these issues as stressors during his evaluation. Dr. Mann expressed concern that Claimant withheld important information during his evaluation, specifically citing to previously documented psychological issues requiring treatment, her denial of the significant negative impact of her father's death, and subsequent sale of his home as a stressor. Prior to Dr. Mann's evaluation, Dr. Saia and Mr. Handy had noted in their records that the events surrounding her father's death were significant stressors.

**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 Morse & Co.*, 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).
  
2. Where the causal connection between an injury and an incident 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). 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 probable hypothesis. *Burton v. Holden & Martin Lumber Co.*, 112 Vt. 17 (1941).

3. The Workers' Compensation Act, having benevolent objectives is remedial in nature and must be given liberal construction; no injured employee should be excluded from coverage under the Act unless the law clearly intends such exclusion or termination of benefits. *Montgomery v. Brinver Corp.*, 142 Vt. 461 (1983).
4. The Claimant asserts the appropriate legal standard for this case to be one of a physical-mental injury, thereby by applying the analysis established in *Blais v. Church of Jesus Christ of Latter Day Saints*, Opinion No. 30-99WC (1999). The Defendant argues this case requires the higher standard of a mental-mental injury analysis as provided in *Bedini v. Frost*, 165 Vt. 167 (1996). However, under either standard, this claim fails to establish by sufficient credible evidence the character and extent of a physical or mental injury and the disability as well as the causal connection between the injury and the indoor air quality of the Thayer Building at that time. *Egbert*, 144 Vt. at 367.
5. The prerequisites for personal injury compensation are provided in 21 V.S.A. § 618, which allows for compensation to a worker injured by accident "arising out of and in the course of...employment by an employer subject to the workers' compensation laws."
6. The environmental studies identified the need for some cleaning and they suggest that some sensitive people can become allergic. However, environmental assessments fall short of establishing a causal connection between Claimant's symptoms and the indoor air quality. Despite the suggestions of the environmental assessors, Claimant's medical experts were only able to recognize a temporal correlation between Claimant's symptoms and her time spent in the Thayer building, which does not satisfy the causal connection requisite requirement of probability. See *Norse v. Melsur*, 143 Vt. 241 (1983); *Lapan* 137 Vt. 393.
7. The Claimant's experts' conclusions regarding causation were not the more probable hypothesis available, but the recognition of a mere coincidence of subjectively reported symptoms occasionally corresponding with Claimant's work schedule and Claimant's firm conviction of work relatedness.
8. Moreover, Claimant's medical experts failed to address and eliminate the effects of allergies or smoking almost a pack of cigarettes a day for years prior to the acute onset of her physical symptoms in 2004. The environmental assessors specifically noted that sensitive individuals might experience allergy-type symptoms as a result of dirty air ducts in their quest to find a cause of the employee's complaints regarding the air quality in the Thayer Building. Claimant's medical experts neglected to explore this avenue.

9. Further, these expert opinions were primarily based on subjective reports from the Claimant. The Department has long recognized the importance of consistency in Claimant's subjective reports regarding symptoms, especially when their medical experts have little other evidence with which to make a diagnosis. *Worthen v. Newton Gas*, Opinion No. 48-04WC (2004); *Geiger v. Hawk Mountain Inn*, Opinion No. 37-03WC (2003); *Walker v. Johnson Fuels*, Opinion No. 39-00WC (2000). Unfortunately, the Claimant's subjective reports to all medical experts on the severity and locations of her symptoms were inconsistent, as she characterized potential stressors differently and completely omitted pertinent information regarding her mental stability. Consequently, the indoor air quality of the Thayer Building has not been established by the expert medical opinions to be the more probable cause of Claimant's physical or mental symptoms. *Burton*, 112 Vt. 17.

**ORDER:**

Therefore, based on the foregoing Findings of Fact and Conclusions of Law, this claim is DENIED.

Dated at Montpelier, Vermont this 21<sup>st</sup> day of April 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.