

Madelyn Sinon v. State of Vermont

(April 1, 2009)

**STATE OF VERMONT
DEPARTMENT OF LABOR**

Madelyn Sinon

Opinion No. 10-09WC

v.

By: Jane Gomez-Dimotsis
Hearing Officer

State of Vermont

For: Patricia Moulton Powden
Commissioner

State File No. R-15007

OPINION AND ORDER

Hearing held in Montpelier on October 14, 2008

Record closed on November 17, 2008

APPEARANCES:

Patricia Turley, Esq. for Claimant
William Blake, Esq. for Defendant

ISSUES:

Is Claimant's ongoing medical treatment, including medications, reasonably necessary and causally related to her work injuries?

EXHIBITS:

Joint Medical Exhibit (657 pages)

CLAIM:

Medical benefits under 21 V.S.A. §640(a)
Attorney's fees and costs under 21 V.S.A. §678

FINDINGS OF FACT:

1. On the date of injury Claimant was an employee of Defendant and Defendant was an employer within the meaning of Vermont's Workers' Compensation Act.
2. Judicial notice is taken of all forms and correspondence contained in the Department's files relating to this claim.

Claimant's Work-Related Injuries

3. Claimant began working for the State of Vermont as an administrative assistant in May 1986. In May 1997 Claimant reported a work injury to her neck, shoulder and trapezius muscle caused by her daily repetitive activities, such as filing and answering the phone. Defendant accepted her claim as compensable and began paying workers' compensation benefits accordingly.
4. Claimant suffered a second injury, causally related to the first, on July 7, 1999. She was undergoing treatment at the Spine Institute when she injured her sacroiliac joint. Claimant also alleged right shoulder blade and rib cage pain while participating in physical therapy. Again, Defendant accepted all of these injuries as compensable and paid benefits accordingly.

Diagnosis, Treatment and Resolution of Original Injury Claims

5. Both Claimant's original injury in 1997 and her second injury in 1999 were diagnosed as musculoskeletal and mechanical in origin. Neither MRI scanning nor electrophysiological studies revealed any cervical radiculopathy or brachial plexopathy that would account for her back, shoulder or rib cage pain.
6. Claimant underwent extensive conservative therapy for her pain complaints, including acupuncture, chiropractic manipulation, pool therapy, injections and physical therapy. When her pain complaints continued, Dr. Cove, her primary care physician, prescribed a number of narcotic pain medications.
7. Claimant saw Dr. Lapinsky in 1998, who recommended conservative treatment for her pain complaints, including exercise therapy, smoking cessation, weight loss and back and neck strengthening. Dr. Lapinsky also recommended that Claimant discontinue all psychoactive drugs, including Valium, narcotics, and muscle relaxants.
8. Dr. Lefkoe also evaluated Claimant in 1998. According to Dr. Lefkoe, when he refused to prescribe narcotic pain medications, Claimant terminated her care with him.
9. In August 2000 Dr. Fenton performed an independent medical examination. Dr. Fenton diagnosed Claimant with a mild chronic pain disorder and suggested that she have her hormone levels checked for an imbalance, as abnormalities of estrogen, progesterone, thyroid or pituitary adrenal axis can be a maintaining factor for such pain syndromes. Dr. Fenton stated that it was unlikely that any physical medicine would improve Claimant's condition. The record does not reflect whether Claimant ever underwent the hormone level testing Dr. Fenton recommended.

10. In July 2001 Dr. Pizzo, a chiropractor, evaluated Claimant. He diagnosed soft tissue complaints without any hard, confirmatory orthopedic or neurological signs. Dr. Pizzo attributed at least some of Claimant's problems to poor physical conditioning. In his opinion, there was no ratable impairment causally related to either the 1997 or the 1999 work injuries. As for ongoing medical treatment, Dr. Pizzo stated that further chiropractic care was not reasonably necessary and would not further improve Claimant's condition. In fact, Dr. Pizzo noted that Claimant was overly dependent on health care providers. He also advised that Claimant's regimen of narcotic pain medications be reevaluated.
11. In 2001 the parties agreed that Claimant had reached an end medical result for her 1997 injury, with a 5% whole person permanent impairment. The parties executed a Form 22 Agreement for Permanent Partial Disability Compensation to that effect and Defendant paid permanency benefits accordingly.
12. In 2003 the parties executed a second Form 22, in which they agreed that Claimant had reached an end medical result for her 1999 injury, and now had a 7.5% whole person permanent impairment. Taking credit for the 5% already paid in conjunction with the 1997 injury, Defendant paid the additional 2.5% owed.

Post-Form 22 Medical Treatment

13. Claimant continued to treat with Dr. Cove, her primary care physician, for the next twelve years. Her treatment consisted primarily of a regimen of drugs. Claimant has taken, and still takes, the following medications: Oxycodone for pain relief, Topamax for pain control, Mobic, a non-steroidal anti-inflammatory, and Glycolax, for constipation caused by the other medications. Dr. Cove also prescribed Wellbutrin and Buspar, antidepressants, and Diazepam, a sleep aide. Earlier in her treatment Claimant was on methadone and tried other pain medications as well, but she discontinued those drugs when Topamax was added to her medication regimen. Despite this extensive and ongoing regimen of narcotic pain medications, Claimant has realized no real improvement in her pain complaints over the past twelve years.
14. Dr. Cove has acknowledged that it would be reasonable to attempt to schedule a taper of Claimant's Oxycodone. In his opinion, this would take up to six months to accomplish. Claimant has reduced her use of Oxycodone down from as many as twenty-four 5 mg pills per day. She still remains on a dosage of ten per day, however, in addition to the other pain medications Dr. Cove continues to prescribe.

New Degenerative Condition

15. In March 2006 Dr. Cove noted that Claimant was reporting not only increased pain but new symptoms as well, including electrical jolts down her left upper extremity, numbness in the back of her right knee and increased lumbar pain. Dr. Cove ordered an MRI to identify the source of Claimant's new complaints.

16. The MRI confirmed cervical and lumbar disc disease caused by natural degeneration. This is undisputed by the parties. Previous MRI scans taken of Claimant's back in both October 1998 and February 2000 had been normal. The newly discovered degenerative condition is known to cause pain in the cervical and lumbar regions of the back.
17. In June 2006 Claimant sought treatment for pain in her sacroiliac region allegedly related to her work injuries. She received an injection for pain on June 26, 2006. The bill for this treatment remains outstanding and has had an adverse effect on Claimant's credit rating. Defendant did not file a Form 27 terminating its responsibility for such treatment until October 2006, some four months later.

Expert Medical Opinions

18. Dr. Backus first saw Claimant for an independent medical examination in April 2003. His diagnosis was chronic myofascial cervical trapesial pain syndrome, or in other words, muscle pain.
19. In April 2006 Dr. Backus conducted a second IME. Based in part on the new MRI findings, Dr. Backus diagnosed spinal stenosis, cord impingement at C5-6 and C6 radiculopathy. In his opinion, these conditions all resulted from age-related degenerative changes in Claimant's spine, neither caused nor aggravated by either of her prior work injuries. Dr. Backus attributed all of Claimant's current symptoms to these degenerative conditions. As a result, he concluded that the ongoing treatment and medications Claimant continues to undergo is no longer related to her work injuries.
20. Dr. Rinehart conducted a medical records review in July 2007 and an independent medical evaluation in September 2007. In his opinion, Claimant's pain had been caused from the beginning by degenerative changes in her spine, and not by either of her work injuries.¹ Dr. Rinehart theorized that these degenerative changes were mild initially, and therefore did not show up on earlier MRI scans. With time, however, they became overt and recognizable on the 2006 MRI. Dr. Rinehart firmly believes that Claimant's symptoms were not caused by any work injury, and that her current treatment and need for pain medications are caused by the age-related degeneration of her spine, and exacerbated by tobacco use, not by any work injury.
21. Dr. Rinehart also believes that there has been a significant psychological component to Claimant's condition. He noted what he considered to be excessive dependence on medical providers, citing records to establish that over a ten-year period Claimant saw a physician on an average of 4.6 visits per month. Dr. Pizzo had raised similar concerns as early as 2001.

¹ Notwithstanding Dr. Rinehart's opinion, the parties agree that causation of the original injuries is not at issue in the current claim.

22. Even Dr. Cove, Claimant's treating physician for more than twelve years, now admits that he cannot state to the required degree of medical certainty that Claimant's cervical and lumbar disc disease was either caused or aggravated by her work injuries. Nevertheless, in Dr. Cove's opinion Claimant still would need all of the pain medications he has prescribed even absent her cervical and lumbar disc disease. There is no objective support for this opinion.
23. With Dr. Rinehart's opinion as support, Defendant filed a Form 27 terminating all medical benefits as of July 20, 2007. The Department approved the termination.

CONCLUSIONS OF LAW:

1. When an employer seeks to terminate coverage for medical benefits, it has the burden of proving that the treatment at issue is not reasonable. *Scranton v. The Book Press*, Opinion No. 06-07WC (February 22, 2007). A treatment can be unreasonable either because it is not medically necessary or because it is not related to the compensable condition or injury. *See, e.g., Morriseau v. State of Vermont Agency of Transportation*, Opinion No. 8-00WC (May 17, 2004).
2. In this case, Defendant argues that Claimant's current symptoms and need for ongoing medical treatment is causally related to her degenerative disc disease, and not to any work-related or compensable condition. Therefore, Defendant argues it is no longer responsible for any further treatment, including pain medications.
3. It is well accepted that when a compensable work-related injury occurs, all of the medical consequences and sequelae that flow from it are compensable as well. *Larson's Workers Compensation Law §10.01*. Determining which medical consequences flow from the work injury and which do not requires expert testimony. *Lapan v. Berno's, Inc.*, 137 Vt. 393 (1979). Establishing the connection requires more than conjecture, surmise or mere possibility. The inference from the facts proved must be the more probable hypothesis. *Burton v. Holden & Martin Lumber Co.*, 112 Vt. 17 (1941).
4. In claims involving conflicting medical evidence from expert witnesses, the Commissioner traditionally uses a five-part test to determine which expert's opinion is the most persuasive: (1) the nature of treatment and the length of time there has been a patient-provider relationship; (2) whether the expert examined all pertinent records; (3) the clarity, thoroughness and objective support underlying the opinion; (4) the comprehensiveness of the evaluation; and (5) the qualifications of the experts, including training and experience. *Geiger v. Hawk Mountain Inn*, Opinion No. 3-03WC (Sept. 17, 2003).

5. Applying this test to the instant claim weighs in favor of the two orthopedic experts, Dr. Backus and Dr. Rinehart. It is their particular training and expertise in the field of work injuries involving orthopedics, pain and occupational medicine that makes them the most credible. Both doctors have made this type of medicine their specialty for many years and both are employed doing this particular work on a daily basis. With this training and experience as a backdrop, both performed comprehensive reviews of Claimant's medical records in addition to their examinations.
6. While admittedly Dr. Cove has had a longstanding treatment relationship with Claimant, he does not have the same specialty credentials in the spine, pain or orthopedic medicine.
7. I can find no objective basis for any work-related connection that would render Claimant's ongoing treatment compensable. Until the 2006 MRI, there was little, if any, objective explanation for the fact that Claimant continued to suffer pain from what had been diagnosed as a soft tissue or mechanical injury. Treatment remained the same for more than ten years and Claimant's condition did not improve. Ultimately, the 2006 MRI provided a reasonable, non-work-related explanation for Claimant's persistent symptoms and current condition. This condition is strictly related to the natural progression of her disc disease, and has been neither caused nor aggravated by her work injuries. Its treatment, therefore, is not compensable.
8. Having concluded that Claimant's current condition is not related to either of her prior accepted injury claims, it is not up to me to determine whether the treatment she continues to receive, including pain medications, is reasonably necessary. This is a matter I must leave to Claimant, in consultation with her treating physician. The medications he has prescribed, including those to treat Claimant's depression, may well be reasonable and necessary for chronic pain. As the source of that pain is no longer work-related or compensable, however, neither are the medications. My inquiry can go no further than that.
9. I do find, however, that the outstanding bill for the pain injection Claimant received on June 26, 2006 is Defendant's responsibility. The Form 27 Defendant filed in October 2006 cannot be applied retroactively.
10. As Claimant has not prevailed, she is not entitled to an award of costs or attorney's fees.

ORDER:

Based on the foregoing findings of facts and conclusions of law, Defendant is hereby **ORDERED** to pay:

1. All outstanding medical charges related to the June 26, 2006 injection procedure.
2. All other claims made by Claimant for medical services and supplies, including pain medications, are hereby **DENIED**.

DATED at Montpelier, Vermont this 1st day of April 2009.

Patricia Moulton Powden
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.