Cathy Chartier v. Central Vermont Medical Center (June 26, 2009)

STATE OF VERMONT
DEPARTMENT OF LABOR

Cathy Chartier	Opinion No. 22-09WC
	By: Jane Dimotsis, Esq.
v.	Hearing Officer
Central Vermont Medical Center	For: Patricia Moulton Powden
	Commissioner
	State File No. X-05232

OPINION AND ORDER

Hearing held in Montpelier on December 12, 2008
Record closed on January 21, 2009

APPEARANCES:

William Skiff, Esq. for Claimant
John Valente, Esq. for Defendant

ISSUE:

Did Claimant suffer a work-related injury on November 28, 2005 and if so, to what benefits is she entitled?

EXHIBITS:

Joint Exhibit I: Joint Medical Exhibit

Claimant's Exhibit 1: *Green's Operative Hand Surgery* (4th ed. 1999-2000), CRPS chapter
Claimant's Exhibit 2: *Curriculum Vitae*, Stephanie Landvater, M.D.
Claimant's Exhibit 3: Claimant's fee agreement
Claimant's Exhibit 4: Deposition of Stephanie Landvater, M.D.

Defendant's Exhibit A: Dr. Ensalada Independent Medical Evaluation report
Defendant's Exhibit B: *Curriculum Vitae*, Leon Ensalada, M.D.
Defendant's Exhibit C: Photographs of Claimant's hands

CLAIM:

Temporary disability benefits pursuant to 21 V.S.A. §§642 and 646
Medical benefits pursuant to 21 V.S.A. §640

Interest pursuant to 21 V.S.A. §664
Attorney fees and costs pursuant to 21 V.S.A. §678

FINDINGS OF FACT:

1. At all times relevant to these proceedings, Claimant was an employee and Defendant was an employer as those terms are defined in Vermont's Workers' Compensation Act.

2. Judicial notice is taken of all relevant forms and correspondence contained in the Department's file relating to this claim. Judicial notice also is taken of relevant portions of the *AMA Guides to the Evaluation of Permanent Impairment (*5th ed.) (the *"AMA Guides"*).

3. Claimant is now 43 years old. She has worked as a registered nurse for Defendant for approximately nineteen years. Her regular work schedule has always been 32 hours per week plus "on-call" emergency work.

4. On November 28, 2005 Claimant was working in the post-operative unit when she had an emergency situation with a young patient. In order to keep the child's airway open and clear, she had to hold his jaw open, thrust it forward and keep his tongue out of his breathing path. Usually this procedure lasts only three or four minutes, but in this case Claimant had to maintain her position, using both hands with some strain, for fifteen to twenty minutes. Claimant alleges that her left arm and hand were strained and that the injury later developed into reflex sympathetic dystrophy (RSD).[1]

Claimant's 1997 Work Injury

5. Claimant suffered a work-related left arm strain while employed by Defendant in July 1997. When the pain from this injury increased, she treated primarily with Dr. Landvater, an orthopedic surgeon, but also saw Drs. Abajian and Rathmell, both pain specialists. During the course of their treatment Claimant's doctors all agreed that her condition had developed from a musculotendonous injury or ulnar neuropathy to RSD in her left upper extremity. All observed objective symptoms indicative of that condition, including temperature changes in her left arm, red and mottled skin, sensitivity to palpation and loss of grip strength.

6. Over the following months, Claimant's symptoms waxed and waned. Dr. Abajian administered stellate ganglion blocks, an injection of local anesthetic into the sympathetic nerve tissue, which afforded her some pain relief. At various times Claimant also was prescribed medications such as Flexeril, Ultram, Nortriptyline and Vicodin to address her left upper extremity pain issues. She found these medications to be helpful, but her pain still persisted. Ultimately, Dr. Rathmell performed a cervical catheter treatment, following which her pain symptoms dramatically decreased. Claimant reached an end medical result shortly after concluding this treatment. She returned to work successfully in 1998.

[1] The *AMA Guides* now refer to RSD as complex regional pain syndrome (CRPS), Type I.

7. Defendant accepted Claimant's July 1997 injury as compensable and paid workers' compensation benefits accordingly. Claimant did not treat for her left arm area again until the incident that gave rise to the current claim, some seven years later.

Diagnosis and Treatment of Claimant's November 2005 Injury

8. As noted above, Claimant claims to have suffered a new work-related injury on November 28, 2005 when she had to maintain her arms and hands in a strained position for an extended period of time in order to keep a young patient's airway open.

9. Claimant testified that after the November 2005 incident her left arm was red and swollen, and she was experiencing burning pain. She believed her symptoms were the same as those she had experienced in the aftermath of her 1997 work injury.

10. As she had in 1997, Claimant treated again primarily with Dr. Landvater. Dr. Landvater is a board certified practicing orthopedic surgeon. Over the course of her career, she has diagnosed and treated many patients with RSD. Dr. Landvater has been Claimant's treating physician for approximately nine years.

11. Dr. Landvater confirmed that Claimant's symptoms were in fact the same as the ones she had experienced in 1997. She observed objective signs of RSD, including temperature changes in Claimant's left upper extremity, left hand discoloration, significant loss of grip strength, extreme skin sensitivity and complaints of burning pain.

12. In Dr. Landvater's opinion, Claimant suffered a left upper extremity strain as a result of the November 2005 work incident, which resulted in ulnar neuritis that in turn triggered a recurrence of RSD. In making this diagnosis Dr. Landvater relied in part on the chapter relating to CRPS in *Green's Operative Hand Surgery* (4^{th} ed. 1999-2000). According to that treatise, it is proper to diagnose CRPS clinically. To do so, the practitioner should evaluate the patient's pain, trophic changes, autonomic dysfunction and functional deficits. Dr. Landvater testified that according to the signs and symptoms she observed Claimant met the text's criteria for a diagnosis of CRPS.

13. Dr. Landvater's treatment plan mirrored what had proven successful when Claimant had suffered from RSD in 1997 – stellate ganglion blocks, acupuncture, physical therapy and other modalities as needed for pain.

14. As she had done in 1997, Claimant underwent a series of stellate ganglion blocks with Dr. Abajian beginning in November 2005. These provided only temporary relief, however. Dr. Abajian concurred with the diagnosis of RSD.

15. From January through March 2006 Claimant treated with Dr. Tarver, a pain specialist. Dr. Tarver noted that Claimant's left upper extremity was very red and swollen from her fingertips to her mid-forearm. He initially agreed that Claimant possibly was suffering from RSD or CRPS triggered by underlying ulnar neuropathy, as Dr. Landvater had concluded. Later, however, Dr. Tarver discounted the RSD diagnosis and concluded that the only appropriate diagnosis was ulnar neuropathy.

16. Claimant also underwent a neurological evaluation with Dr. Krantz, in February 2006. Dr. Krantz agreed with Dr. Landvater's diagnosis of both ulnar neuropathy and RSD. Among the objective findings she observed were mottling, redness and mild swelling in the left upper extremity and diminished sensation in the left ulnar distribution.

17. Last, Claimant's primary care provider, Dr. Atkinson, also evaluated Claimant in early 2006 and concurred with Dr. Landvater's RSD diagnosis. Dr. Atkinson observed objective symptoms in Claimant's left arm, noting that her skin was mottled and that she was unable to wear rings on her left hand because it was swollen. Dr. Atkinson agreed that Claimant's RSD had resulted from the November 2005 work incident.

18. In summary, then, all of Claimant's treating physicians – Drs. Landvater, Abajian, Tarver, Krantz and Atkinson – observed objective signs of RSD in the months following the November 2005 work incident. Except for Dr. Tarver, all concurred in the diagnosis of RSD stemming from ulnar neuropathy caused by that event.

Independent Medical Evaluation

19. At Defendant's request, Claimant underwent an independent medical evaluation with Dr. Ensalada in May 2007. Dr. Ensalada has extensive academic training and experience treating pain syndromes, and is a specialist in RSD and CRPS. He authored the section on CRPS and co-authored the chart used to rate permanency for that condition in the *AMA Guides*.

20. According to Dr. Ensalada, the mechanism that allegedly caused Claimant's November 2005 injury – holding a young patient's jaw open for fifteen to twenty minutes – was a simple procedure that should not have caused left arm neuropathy or ulnar neuritis. In his opinion, that activity may have resulted in a soft tissue injury, which should have resolved quickly thereafter.

21. Dr. Ensalada believes that Claimant now suffers from left ulnar neuropathy due to entrapment of the ulnar nerve around the elbow, but that that condition was neither caused nor aggravated by her work activities. With reference to the current medical literature, Dr. Ensalada stated that Claimant did not engage in the type of repetitive movements or high-force use of her arm at work that would cause ulnar nerve entrapment.

22. Dr. Ensalada believes that Claimant is engaging in somatization, consciously or unconsciously displaying symptoms for psychological purposes or secondary gain. In his opinion, she has no current impairment or disability causally related to her work for Defendant.

23. Dr. Ensalada does not believe that the November 2005 incident caused either RSD or CRPS. Under the *AMA Guides*, in order to make a proper diagnosis of CRPS a patient must exhibit at least eight of eleven listed criteria, including changes in skin color, temperature or texture, swelling, joint stiffness and hair or nail changes. Dr. Ensalada stated that at the time of his examination Claimant did not exhibit any of the listed criteria. On those grounds he determined that it would be inappropriate to diagnose her with RSD or CRPS.

24. Dr. Ensalada admitted that the manifestation of RSD is quite variable and that its symptoms can wax and wane over time.

25. The stated purpose of the *AMA Guides* is to rate work-related permanent impairments. The fifth edition updated the diagnostic criteria and evaluation process used in impairment assessment, incorporating both available scientific evidence and prevailing medical opinion. The authors were encouraged to use the latest scientific evidence.

26. The *AMA Guides* are statutorily designated as the standard to use for rating the extent of an injured worker's permanent impairment. Treating doctors do not necessarily refer to the *AMA Guides* to diagnose patients, however. None of Claimant's treating physicians did so in making their diagnoses.

Claimant's Periods of Temporary Disability

27. Neither Claimant nor Defendant addressed specifically the dates that Claimant was taken out of work following the November 28, 2005 incident. From the available evidence, it appears that Claimant was disabled from working during the following periods:

- Totally disabled from November 29, 2005 until April 3, 2006;
- Returned to work half-days from April 4, 2006 until April 17, 2006;
- Returned to work full-time from April 17, 2006 until March 8, 2007;
- Totally disabled from March 9, 2007 until July 31, 2007;
- Returned to work half-days from August 1, 2007 until August 14, 2007.

28. Claimant returned to her regular 32-hours-per-week work schedule on August 15, 2007 and added her normal on-call duties in September 2007. She has not missed any additional time since then.

29. Claimant continues to treat for her left upper extremity pain and symptoms with medication and acupuncture.

30. Citing Dr. Ensalada's independent medical evaluation as support, Defendant discontinued both indemnity and medical benefits on July 6, 2007.

CONCLUSIONS OF LAW:

1. In workers' compensation cases, the claimant has the burden of establishing all facts essential to the rights asserted. *King v. Snide*, 144 Vt. 395, 399 (1984). He or she must establish by sufficient credible evidence the character and extent of the injury as well as the causal connection between the injury and the employment. *Egbert v. The Book Press*, 144 Vt. 367 (1984). 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 resulting disability, and the inference from the facts proved must be the more probable hypothesis. *Burton v. Holden Lumber Co.*, 112 Vt. 17 (1941); *Morse v. John E. Russell Corp.*, Opinion No. 40-92WC (May 7, 1993).

2. Where expert medical opinions are conflicting, 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. 37-03WC (Sept. 17, 2003).

3. Claimant relies primarily on Dr. Landvater's diagnosis of ulnar neuropathy, triggered by the November 2005 work incident and later developing into RSD, as support for her claim. Defendant relies on Dr. Ensalada's opinion to establish first, that Claimant's ulnar neuropathy was not caused by work and second, that she does not meet the diagnostic criteria for CRPS.

4. Dr. Landvater has enjoyed a lengthy treating relationship with Claimant, one that includes a previous diagnosis and successful treatment of RSD in 1997. Dr. Abajian as well had the opportunity to treat Claimant both in 1997 and again in 2005. These providers' familiarity with Claimant's presentation over time gives them an advantage in terms of being able to observe symptoms that wax and wane. In contrast, Dr. Ensalada's evaluation was limited to a single visit.

5. Although Dr. Ensalada's credentials are impressive, in this case I find Dr. Landvater's conclusions to be more credible. I conclude, therefore, that Claimant has sustained her burden of proving that the November 2005 work incident caused left ulnar neuropathy and RSD, as a result of which she is entitled to both indemnity and medical benefits.

6. As Claimant has prevailed, she is entitled to an award of costs and attorney fees.

ORDER:

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

1. Temporary disability benefits in accordance with Findings of Fact Numbers 27 and 28 above, with interest from the date such benefits became due and payable in accordance with 21 V.S.A. §664;

2. Medical benefits covering all reasonably necessary medical services and supplies causally related to Claimant's compensable injury;

3. Costs and attorney fees in an amount to be determined based on Claimant's timely submission.

DATED at Montpelier, Vermont this 26th day of June 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.