J. B. v. Two Go Dry Cleaning, Inc. and Robert Mitiguy dba Discount Medical Supply (January 24, 2008)

STATE OF VERMONT
DEPARTMENT OF LABOR

J. B.	Opinion No. 02-08WC
v.	Phyllis Phillips, Esq. Contract Hearing Officer
Two Go Dry Cleaning, Inc. and Robert Mitiguy d/b/a Discount Medical Supplies	Patricia Moulton Powden Commissioner
	State File No. X-03039

OPINION AND ORDER

Hearing held in Montpelier on October 22, 2007.

APPEARANCES:

Craig Jarvis, Esq. for Claimant
Bonnie Shappy, Esq. for Defendant Two-Go Dry Cleaning, Inc.
Robert Mitiguy, *pro se*

ISSUES PRESENTED:

1. Whether Claimant's left arm neuropathies are work-related;
2. If so, to what workers' compensation benefits is Claimant entitled, and which employer is obligated to pay them.

EXHIBITS:

Joint Exhibits:

Joint Exhibit I: Medical Records

Claimant's Exhibits:

Claimant's Exhibit 1: Preservation deposition of Dr. Adam Shafritz, October 2, 2007
Claimant's Exhibit 2: Photographs
Claimant's Exhibit 3: Medical bills and billing summary

Defendant Two Go Dry Cleaning, Inc.'s Exhibits:

Defendant's Exhibit A: Wage statement
Defendant's Exhibit B: *Curriculum vitae* of Dr. John Peterson
Defendant's Exhibit C: *Curriculum vitae* of Dr. Richard Levy

Defendant’s Exhibit D: *Curriculum vitae* of Dr. John Johansson

CLAIM:

Temporary total disability benefits under 21 V.S.A. §642
Permanent partial disability benefits under 21 V.S.A. §648
Medical benefits under 21 V.S.A. §640(a)
Attorney's fees, costs and interest under 21 V.S.A. §§664 and 678

FINDINGS OF FACT:

1. Claimant began working for Defendant Two Go Dry Cleaning, Inc. (hereinafter "Two Go") on October 28, 2005. At all times relevant to these proceedings Two Go was an employer within the meaning of the Vermont Workers' Compensation Act.

2. Claimant's job responsibilities involved operating the machines that pressed shirts. There were three machines – one to press collars and cuffs, one for the bodice of the shirt, and one for sleeves. Claimant had to position each shirt on the proper machine, push and hold the appropriate buttons while the machine pressed, then remove the shirt and either position it on the next machine or button it onto a hanger. Although the machines did the actual ironing, moving the shirts through the pressing process required a significant amount of repetitive upper extremity motion.

3. Claimant testified that she pressed 500 to 600 shirts daily, working 9 hours per day and 5 days per week. However, the wage statement submitted by Two Go contradicts this testimony. It documents that Claimant worked between 35 and 41 hours per week during the term of her employment there.

4. Within 2 weeks after starting this job, Claimant began experiencing troublesome symptoms in her neck and arms, including tenderness in her neck, radiating pain into her arms (left worse than right) and occasional numbness in her hands and fingers. Claimant sought medical treatment for these symptoms with Dr. Paul Reiss, a general practitioner, on November 27, 2005. Subsequently, on December 5, 2005 Claimant began treating with Dr. Stephanie Bellomo, her primary care provider. Dr. Bellomo diagnosed muscle strains and probable upper extremity and forearm tendonitis (left greater than right), with a "suggestion" of cubital tunnel syndrome.

5. Cubital tunnel syndrome is a condition involving inflammation or impingement of the ulnar nerve at the point where it crosses the elbow. Symptoms include numbness and tingling along the outer aspect of the hand and in the small and ring fingers. In its early stages, cubital tunnel syndrome can be reversible, such that symptoms resolve with conservative management. Once the condition becomes chronic, however, surgery is necessary to relieve the nerve compression.

6. Dr. Bellomo advised Claimant to speak to her employer about possible temporary job reassignment, but no such position was available. Claimant stopped working for Two Go on or about December 5, 2005. In all, therefore, Claimant worked for Two Go for approximately 5 weeks.

7. Dr. Bellomo next examined Claimant on December 27, 2005. Claimant reported some dysthesias in her hands at night, though less than previously. Dr. Bellomo diagnosed multiple muscle strains. She prescribed pain medications and anti-inflammatories, and referred Claimant for physical therapy.

8. Claimant underwent physical therapy from January 6, 2006 until May 10, 2006. At the outset, the physical therapist reported Claimant's chief complaint to be bilateral elbow pain, left hand numbness and left shoulder pain. As treatment progressed, the therapist reported decreased pain in the elbows and fewer episodes of numbness in the hands. By the time physical therapy concluded, the therapist reported that Claimant estimated her neck and shoulder pain to be "80% better," and her elbows "90% better." The therapist also reported that Claimant "[hasn't] had any hand tingling/numbness for quite a while." In her formal hearing testimony, Claimant maintained that the physical therapist misunderstood Claimant's report of her subjective status. She testified that her elbows were not 90% improved and that the episodes of tingling and numbness in her hand had continued.

9. Dr. Bellomo also reported improvement in Claimant's symptoms during this time. In January 2006 she noted that Claimant continued to experience troublesome symptoms in her left elbow, with some radiation of pain into her forearm, but that the "tingling and numbness seem to have resolved." In March 2006 Dr. Bellomo reported that physical therapy was now focused primarily on Claimant's shoulder pain, and that her arms and elbows were "much better," with only occasional tingling and numbness. Dr. Bellomo's assessment at that time was "improved hand/forearm tendonitis" and "chronic shoulder weakness/muscular tightness left shoulder [status post] dry cleaning work."

10. On April 21, 2006 Claimant was involved in a motor vehicle accident when her car was rear-ended and pushed into the car ahead of her. Claimant treated with Dr. Bellomo on that day. Dr. Bellomo diagnosed muscular strains and spasm in the neck and lower back. There is no evidence that Claimant injured her left shoulder or elbow in any way in the accident.

11. At Defendant Two Go's referral, Dr. John Johansson, an osteopath, performed an independent medical evaluation on May 1, 2006. Dr. Johansson reported that his physical examination of Claimant's neck, shoulders, arms, elbows, wrists and hands was completely unremarkable. Specifically, Dr. Johansson found no evidence of nerve compression at the elbow, which would have been a symptom of cubital tunnel syndrome, or at the wrist, which would have indicated carpal tunnel syndrome. Dr. Johansson concluded that Claimant had suffered a bilateral forearm strain that had fully resolved with no residual permanent impairment.

12. On May 7, 2006 Claimant began working for Defendant Robert Mitiguy, doing business as Discount Medical Supplies. At all times relevant to these proceedings Defendant Mitiguy was an employer within the meaning of Vermont's Workers' Compensation Act. Defendant Mitiguy did not maintain workers' compensation insurance coverage in accordance with the Act, however.

13. Claimant's job responsibilities for Defendant Mitiguy involved taking telephone orders and entering them on the computer as well as waiting on customers in the store. Business was very slow and Claimant's workload was very light. In a typical day Claimant would take in about 6 telephone orders. To enter an order into the computer accounting system took only a few keystrokes, such that in total Claimant spent only twenty minutes or so, spread out over the course of the day, doing data entry work. As for walk-in customers, there were only 1 or 2 per week. With such a light workload, Claimant was free to move about the store as she pleased, to change positions at will and to take frequent breaks.

14. On May 31, 2006 Claimant returned to see Dr. Bellomo. The office note for that visit reflects that it having been 6 months since Claimant had stopped working for Two Go, she believed it was time to assess the extent of her permanent impairment for workers' compensation purposes. Interestingly, there is no mention in Dr. Bellomo's note of Dr. Johansson's IME, which ostensibly had been conducted for exactly that purpose. Claimant reported that she had stopped physical therapy when she started her new job working for Defendant Mitiguy, and that since then she was experiencing tightness in her shoulder again as well as increasing pain symptoms. She reported that using her left arm bothered her "to about 60-80% of the time" and that the tingling in her hands had returned "on and off." Because Dr. Bellomo did not do formal permanency evaluations, she suggested that Claimant contact her workers' compensation insurance adjuster to discuss how best to proceed.

15. At Claimant's request, Defendant Two Go scheduled a "second opinion IME" with Dr. John Peterson, an osteopath, on June 14, 2006. Dr. Peterson reported that Claimant's physical exam was troublesome in that she exhibited signs of symptom magnification, including vocalizations, bracing and inconsistent sensory findings. In addition, Dr. Peterson reported that Claimant had not been truthful when questioned about her prior medical history. Specifically, Claimant denied having been involved in any prior motor vehicle accidents despite having been treated for injuries suffered in a rear-end collision barely a month before. Claimant also denied any prior history of similar orthopedic complaints, when actually Dr. Peterson's review of Dr. Bellomo's medical records revealed that Claimant had treated numerous times for a variety of musculoskeletal problems, including right arm and elbow pain and chronic neck, upper back and shoulder pain. Dr. Peterson found Claimant's lack of candor "quite disturbing," and concluded that it "raise[d] serious questions about the veracity of [Claimant's] ongoing complaints as well as her physical presentation."

16. Dr. Peterson diagnosed Claimant with "multiple somatic complaints" from her injury at Two Go. He remarked that in his twenty-two years of practice he could not recall a case in which overuse complaints such as those Claimant reported while working at Two Go had not resolved completely some six months after stopping work, particularly after months of physical therapy as well. With that in mind, Dr. Peterson concluded that Claimant had reached an end medical result from her injury at Two Go and had no permanent impairment.

17. On July 31, 2006 Claimant returned to Dr. Bellomo, complaining of weakness and discomfort with use of her left hand, swelling and prickling and numbness in her ring and small fingers "pretty much chronically at this time." Claimant reported that the pain was accentuated if she placed her elbow on her desk while working. Such a position likely would compress the ulnar nerve and thereby elicit pain in a patient with cubital tunnel syndrome. Claimant also complained of shoulder pain radiating from her neck. Dr. Bellomo questioned whether her symptoms might be cervical in origin and therefore referred her for a cervical spine MRI.

18. Claimant underwent a cervical spine MRI on August 9, 2006 and subsequently was evaluated by Dr. Rayden Cody. Dr. Cody determined that Claimant's symptoms probably did not originate in her neck but rather most likely represented cubital tunnel syndrome.

19. Claimant's employment for Defendant Mitiguy terminated in early September 2006 for performance reasons unrelated to any claimed medical condition or injury.

20. In October 2006 Claimant underwent an EMG/nerve conduction study which confirmed the diagnosis of left cubital tunnel syndrome of mild to moderate severity. Such electrodiagnostic studies are conclusive – they cannot be faked or manipulated in any way. The study also confirmed that Claimant suffered from borderline to mild left carpal tunnel syndrome.

21. On October 25, 2006 Dr. Adam Shafritz, an orthopedic surgeon, examined Claimant. Dr. Shafritz confirmed the diagnosis of left cubital tunnel syndrome. Because Claimant had ongoing symptoms despite conservative management, Dr. Shafritz recommended surgery.

22. Dr. Shafritz also confirmed the diagnosis of borderline to mild left carpal tunnel syndrome. Dr. Shafritz recommended that this condition be surgically addressed at the same time as the cubital tunnel syndrome, but more as a matter of surgical economy than because of troubling symptoms.

23. At some point in October or November 2006 Claimant worked briefly at a data entry job for The Medical Store. When questioned under oath at the formal hearing about this employment, Claimant first testified that she did not recall working for this employer. After further questioning, Claimant admitted that she had worked at The Medical Store and that her employment there had been the subject of some serious legal difficulties for her. These difficulties were unrelated to the medical condition at issue in this claim. It does not appear, furthermore, that Claimant's employment at The Medical Store caused or contributed in any relevant way to her cubital tunnel syndrome.

24. Following her employment at The Medical Store, which lasted for only 2 or 3 weeks, Claimant worked at a temporary data entry position for Vermont Central Vacuum in December 2006.

25. Claimant underwent the surgery recommended by Dr. Shafritz on January 3, 2007 following which she reported complete resolution of her left elbow symptoms as well as the paresthesias in her left hand and fingers.

26. Following the January 3, 2007 surgery Claimant underwent physical therapy until April 10, 2007. She has not treated since that time. Dr. Shafritz testified that Claimant would have been totally disabled from working following the surgery for approximately 3 months, or until April 2007.

27. Dr. Shafritz determined that Claimant had reached an end medical result for her condition by August 3, 2007. He has not yet rated the extent of Claimant's permanent impairment, if any.

28. Defendant Two Go's workers' compensation insurance carrier accepted Claimant's initial injury claim – reported as bilateral arm pain occurring on November 28, 2005 – and paid temporary disability benefits beginning on November 29, 2005 and continuing presumably until Claimant began working for Defendant Mitiguy. Based on Dr. Peterson's IME report, Defendant Two Go denied responsibility for any further workers' compensation benefits when Claimant resumed treatment with Dr. Bellomo in July 2006.

Causation

29. Cubital tunnel syndrome is believed to be multifactorial in origin, with no one definitive cause in most cases. Repetitive use has not been proven conclusively to cause cubital tunnel syndrome, although it may be a factor in one who is genetically predisposed, particularly if the repetitive use involves back-and-forth elbow motions. Repetitive keyboarding has *not* been proven to cause or aggravate cubital tunnel syndrome, according to the most recent scientific studies.

30. All of the doctors who treated or evaluated Claimant have rendered opinions as to both diagnosis and causation. These can be summarized as follows:

(a) Dr. Bellomo has opined that Claimant's work at Two Go "was the original cause of her painful muscle strains and tendonitis," and that these symptoms ultimately progressed to include forearm pain, swelling, hand tingling and weakness.

(b) Dr. Johansson believed that Claimant suffered a forearm strain causally related to her employment at Two Go that had resolved by the time of his IME in May 2006. Dr. Johansson concurred in the ultimate diagnosis of cubital tunnel syndrome as of October 2006, but opined that Claimant exhibited no signs of such injury in May. Therefore, Dr. Johansson concluded that Claimant must have developed cubital tunnel syndrome at some point during the intervening months. Dr. Johansson hypothesized that Claimant's work for Defendant Mitiguy may have caused the syndrome to develop, but when advised as to the minimal amount of data entry work Claimant did during this employment, he testified that such a causal relationship was "much less likely."

(c) Like Dr. Johansson, Dr. Peterson found no evidence of cubital tunnel syndrome as of his IME in June 2006. Dr. Peterson diagnosed multiple somatic complaints causally related to Claimant's employment at Two Go but all of which Dr. Peterson believed should have long since resolved. Dr. Peterson agreed that the work Claimant did at Two Go involved the type of repetitive motion that could cause or aggravate cubital tunnel syndrome, but as noted above, maintained that Claimant did not have cubital tunnel syndrome as of June 2006. Dr. Peterson also agreed that the minimal amount of data entry work Claimant did while employed by Defendant Mitiguy probably would not cause or contribute to her injury.

(d) Dr. Cody diagnosed Claimant with cubital tunnel syndrome in September 2006. As for causation, Dr. Cody opined that Claimant's symptoms were "most likely directly related to the activity she was doing at dry cleaning if what she tells me is the correct scenario." Notably in this regard, however, Dr. Cody's report states that Claimant advised her symptoms first arose "during three months of working at a dry cleaning business." In actuality Claimant's employment at Two Go lasted only 5 weeks.

(e) Dr. Shafritz confirmed the diagnosis of cubital tunnel syndrome in October 2006. Dr. Shafritz believes that Claimant probably was predisposed genetically to developing cubital tunnel syndrome and that the condition probably was exacerbated and "brought to light" while working at Two Go. Dr. Shafritz testified that he believed this was the case notwithstanding that Claimant may not have worked at Two Go for as many hours per day or as many weeks in total as she led him to believe.

(f) Last, Dr. Richard Levy, a neurologist, conducted an IME on February 26, 2007 and concluded that Claimant suffered from a "generalized overuse syndrome of the left upper extremity resulting in epicondylitis and probable left cubital tunnel syndrome." Dr. Levy agreed with Dr. Shafritz' opinion that Claimant probably had a genetic predisposition to upper extremity complaints, but concluded that it was impossible to state to the required degree of medical certainty which job or life activities might have caused or aggravated her cubital tunnel syndrome. As with Dr. Peterson, Dr. Levy testified that Claimant's work at Two Go involved the type of repetitive motion that could cause or aggravate cubital tunnel syndrome in one predisposed to it. Dr. Levy also testified that the limited keyboarding work Claimant did for Defendant Mitiguy was less likely to be a causative factor than the dry cleaning work she did at Two Go.

31. All of the doctors' opinions as to causation suffer from marked inconsistencies in Claimant's reporting of important details as to the duration of her employment for Two Go, the nature of her employment duties both there and while working for Defendant Mitiguy and the progression of her symptoms. For example, Claimant reported to various medical providers that she had worked at Two Go for 3 months, when in fact her employment there lasted for only 5 weeks. She repeatedly reported that she worked 9 hours a day, 5 days a week while employed there, when actually most weeks she worked less than forty hours. She failed to mention either her relevant prior medical history or her prior motor vehicle accident even when asked directly by both Dr. Johansson and Dr. Peterson. She led both Dr. Shafritz and Dr. Levy to believe that her work for Defendant Mitiguy involved a significant amount of data entry when in fact it was minimal.[1]

CONCLUSIONS OF LAW:

Causation

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).

[1] Claimant also lied under oath about her employment at The Medical Store. Although not directly relevant to the causation issue, Claimant's lack of truthfulness in this regard demonstrated her willingness to play fast and loose with the facts in order to suit her own purposes. As a result, one cannot help but question the veracity of both the information she gave to her medical providers and her testimony at formal hearing.

2. At issue in the current claim is whether Claimant has sustained her burden of proof as to the causal relationship between her work for Two Go and her cubital tunnel syndrome. Claimant argues that her employment at Two Go caused the symptoms that ultimately led to the definitive diagnosis of cubital tunnel syndrome in October 2006. Two Go argues that whatever injury Claimant sustained while working there had fully resolved by June 2006, and that the chain of causation was broken thereafter.

3. Where the causal connection between an accident and an injury is obscure, and a lay person would have no well-grounded opinion as to causation, expert medical testimony is necessary. *Lapan v. Berno's, Inc.*, 137 Vt. 393 (1979).

4. When considering conflicting expert medical opinions, the Commissioner traditionally uses a five-part test to determine which 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).

5. As noted above, to the extent that all of the medical providers who treated or evaluated Claimant assumed her to be an accurate and honest historian, all of their opinions necessarily must suffer from the fact that she was no such thing. Notwithstanding Claimant's lack of truthfulness, however, certain facts do stand out and are supported by credible evidence:

   (a) The results of the October 2006 electrodiagnostic studies cannot be faked or manipulated. As of that date, therefore, Claimant suffered from documented, verifiable cubital tunnel syndrome;

   (b) Cubital tunnel syndrome is caused or exacerbated by activities involving repetitive motion at the elbow, particularly in one who is genetically predisposed to developing compressive neuropathies;

   (c) Repetitively positioning shirts on pressing machines and then buttoning them onto hangers involves the type of repetitive elbow motions that can cause cubital tunnel syndrome;

   (d) Minimal data entry work such as that Claimant performed while working for Defendant Mitiguy is unlikely to cause or exacerbate cubital tunnel syndrome.

6. It is important to highlight these facts, first because they bear directly on the causation issue, second because they are unaffected by Claimant's lack of truthfulness, and third because all of the medical experts agreed as to their accuracy. In fact, upon close examination the expert opinions are not altogether contradictory. They differ only as to the degree of medical certainty to which the causation issue can be resolved. Drs. Johansson, Peterson and Levy all point to Claimant's employment at Two Go as a possible cause of her condition, but are unwilling to state that it is a probable cause. Drs. Bellomo and Shafritz believe the evidence is sufficient to do so.

7. Although it is a close question, I conclude that Dr. Shafritz' opinion is the most persuasive. He was Claimant's treating surgeon and he is well skilled in evaluating and treating upper extremity neuropathies. When confronted with the inaccuracies in Claimant's description of her job duties at Two Go he explained credibly why they did not alter his opinion as to causation. His analysis was clear and concise. As compared with the other experts, Dr. Shafritz provided the most credible explanation for the progression of Claimant's condition and its relationship to her employment at Two Go.

Aggravation

8. Defendant Two Go argues that even if Claimant reported symptoms consistent with cubital tunnel syndrome causally related to her employment there, her condition had stabilized by May 2006. It contends that the further progression of her injury must have been causally related to her employment for Defendant Mitiguy.

9. Two Go is correct that if the medical evidence establishes that Claimant's work for Defendant Mitiguy "aggravated, accelerated or combined with a preexisting impairment or injury" to produce a disability greater than what otherwise would have occurred, Defendant Mitiguy would become solely responsible for her current condition. *Farris v. Bryant Grinder*, 177 Vt. 456, 458 (2005), citing *Pacher v. Fairdale Farms*, 166 Vt. 626, 627 (1997). In order to determine if such an aggravation has occurred, the Department historically has used a five-part test: (1) whether a subsequent incident or work condition destabilized a previously stable condition; (2) whether the claimant had stopped treating medically; (3) whether the claimant had successfully returned to work; (4) whether the claimant had reached an end medical result; and (5) whether the subsequent work contributed independently to the final disability. *Trask v. Richburg Buliders*, Opinion No. 51-98WC (August 25, 1998).

10. Applied to the facts of this claim, the key factor is the fifth one. Essentially, it embodies the concept that, just as in the case of an initial injury, to establish an aggravation requires medical evidence causally connecting the claimant's work with his or her disability. That evidence is lacking here. Although all of the medical experts initially opined that significant data entry work might cause or aggravate cubital tunnel syndrome, all conceded on cross-examination that the work Claimant did for Defendant Mitiguy was so minimal as to have been unlikely to do so.

11. We are left, therefore, with a chain of causation that began with Claimant's employment for Two Go, resulting in symptoms that abated with treatment but never fully resolved, and then recurred and worsened. Two Go is responsible for whatever workers' compensation benefits are proven to be owed.

Benefits

12. Claimant is entitled to temporary total disability benefits from the date of her surgery, January 3, 2007, until April 10, 2007, when her physical therapy concluded and she stopped treatment. Claimant also is entitled to payment of all medical bills associated with treatment of her cubital tunnel syndrome.

13. Claimant is entitled to permanency benefits related to her cubital tunnel syndrome if any ratable impairment is found. Claimant did not establish to the requisite degree of medical certainty that her work at either Two Go or for Defendant Mitiguy caused her left carpal tunnel syndrome, and therefore she is not entitled to permanency benefits related to that condition.

14. Under 21 V.S.A. §664, an award of interest is mandatory from the date on which the employer's obligation to pay compensation began. Claimant is entitled to interest on the temporary total disability benefits awarded from January 3, 2007 until April 10, 2007.

15. Claimant has submitted a request under 21 V.S.A. §678 for costs totaling $2,692.81 and attorney's fees totaling $4,644.00. An award of costs to a prevailing claimant is mandatory under the statute, and therefore these costs are awarded. As for attorney's fees, these lie within the Commissioner's discretion. I find they are appropriate here, and therefore these are awarded as well.

ORDER:

Based on the foregoing findings of fact and conclusions of law, Defendant Two Go is ORDERED to pay:

1. Reasonably necessary medical and hospital benefits causally related to treatment of Claimant's cubital tunnel syndrome;

2. Temporary total disability benefits from January 3, 2007 until April 10, 2007, plus interest at the statutory rate;

3. Permanency benefits causally related to Claimant's cubital tunnel syndrome, in an amount to be determined based on the extent of her ratable impairment, if any;

4. Costs of $2,692.81 and attorney's fees of $4,644.00.

DATED at Montpelier, Vermont this 24th day of January 2008.

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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.