STATE OF VERMONT
DEPARTMENT OF LABOR

Barbara MacAskill

v.

Kelly Services

Opinion No. 04-09WC

By: Jane Gomez-Dimotsis, Esq.
Hearing Officer

For: Patricia Moulton Powden
Commissioner

State File No. X-01266

OPINION AND ORDER

Hearing held in Montpelier on September 8, 2008
Record closed on October 24, 2008

APPEARANCES:

Joe Galanes, Esq. for Claimant
David McLean, Esq. for Defendant

ISSUES:

1. Was the implantation of a spinal cord stimulator medically necessary and appropriate?

2. Was a nerve entrapment release medically necessary and appropriate?

EXHIBITS:

Claimant's Exhibit 1: Medical Records
Claimant's Exhibit 2: IME Report of Dr. Phillip J. Davignon

Defendant's Exhibit A: Medical Records
Defendant's Exhibit B: IME Report of Dr. Verne Backus
Defendant's Exhibit C: Audio Recordings of Clinical Interviews
Defendant's Exhibit D: *Curriculum Vitae* of Dr. Mary Willmuth
Defendant's Exhibit E: Two articles submitted by Dr. Davignon:
a. Differential Diagnosis for Complex Regional Pain Syndrome (CRPS)
b. Pain Disorder (Somatoform and CRPS (Reflex Sympathetic Dystrophy)
Defendant's Exhibit F: IPE Report of Dr. Mary Willmuth

CLAIM:

Medical benefits for a spinal cord stimulator and a nerve entrapment release pursuant to 21 V.S.A. §640;
Attorney's 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 forms and correspondence contained in the Department's files relating to this claim.

3. In August 2005 Claimant was employed by Defendant, a temporary job placement service, to provide secretarial assistance at a bank.

Claimant's Past Medical History

4. Claimant has a lengthy medical history beginning at seven years old when she underwent surgery for a urological problem. She also had occult spina bifida. Claimant was only thirteen years old when she was diagnosed with Hodgkin's disease, a form of lymph cancer. She had a recurrence of the cancer the following year. Claimant also suffered from thyroid cancer, which resulted in a thyroidectomy. She has had a hysterectomy as well as other necessary surgeries.

5. Claimant also has a history of conditions involving a psychological overlay, including anorexia nervosa, urinary retention and hysterical paralysis. Prior to the events giving rise to the current claim, medical professionals suggested that she suffered from reflex sympathetic dystrophy (RSD) and/or somatoform disorder as well. Claimant has been a frequent visitor to the emergency room, having presented there more than sixty times in approximately a five-year period. She has had prior falls, cuts and other issues. Claimant describes herself as accident prone. She refuses to speak about her family.

The Injury

6. On August 18, 2005 Claimant fell down a flight of stairs while at work for Defendant. Claimant does not remember the fall. She thinks she may have been transferring her purse from her right shoulder to her left. Claimant had some memory of falling on her backside; the next thing she recalled was being in a haze and sitting on the steps. A co-worker brought her to the emergency room. The fact that Claimant fell at work is not in dispute.

7. At the emergency room Claimant reported that she had multiple areas of pain. The medical records reflect that she injured her back, left hip and right ankle in the fall and that she had pain radiating down her buttocks. Later that evening Claimant noticed a bruise on her left lower leg that became painful.

8. A few days later Claimant presented to her primary care doctor, Dr. Mark Yorra, regarding the bump on her left lower shin. Dr. Yorra believed it to be a hematoma and noted that it was "new" since the fall down the stairs. Claimant had experienced prior problems with her left foot, but these had resolved well before her August 18th fall. She had experienced no new injuries since that fall.

9. Over the next few months Claimant's left calf became more painful and the lump would swell and turn red and the pain would travel down her leg into her ankle. Eventually, Dr. Yorra referred Claimant to Dr. Meriam, an orthopedist, for further evaluation and treatment.

Medical Treatment

10. X-rays of Claimant's left leg revealed a small round ossific body adjacent to her area of pain. Dr. Meriam diagnosed "some type of phlebolith or a nice calcification in the soft tissues." Because he did not examine Claimant until two months after her fall at work, Dr. Meriam could not determine if the contusion preexisted the fall down the stairs or was a result of the fall.

11. Dr. Meriam was concerned Claimant was developing Complex Regional Pain Syndrome (CRPS) and ordered that her left lower leg be put in a cast for four weeks.

12. CRPS, which was also known as Reflex Sympathetic Dystrophy (RSD), is a type of chronic pain syndrome. A key symptom can be continuous intense pain that gets worse rather than better over time and is disproportionate to the severity of the initial injury. It often affects arms, legs, hands or feet. CRPS is a difficult condition to diagnose. Typical features include sensitivity, swelling, changes of appearance in the skin surrounding the injury and burning pain. Some doctors agree that CRPS is most likely neurological in nature and that the sympathetic nervous system is involved. Because there is no cure for CRPS, the focus is on relieving painful symptoms. Some doctors believe spinal cord stimulators are effective for this purpose.

13. When the cast was removed from Claimant's leg in October 2005, the bump on her shin was smaller and she reported that it hurt her less. Dr. Meriam continued to suspect CRPS, however, and therefore referred Claimant to the anesthesia pain clinic for further evaluation and a bone scan. The bone scan was normal.

14. Claimant had lumbar epidural steroid injections and sympathetic blocks for her left leg pain at the clinic. She also had physical therapy. The pain was also now in her left ankle and heel. All conservative treatments were ineffective and Claimant was sent to the pain clinic at Dartmouth Hitchcock Medical Center (DHMC) where she saw Dr. Beasley on January 26, 2006.

15. Dr. Beasley received his medical degree in 1973. He is a member of the National Board of Medical Examiners and the American Board of Anesthesia. He is an Associate Professor of Anesthesiology at Dartmouth Medical College and Associate Director of Pain Medicine at DHMC. He was a consultant for Liberty Mutual Insurance Company from 1992 through 1998 and has published articles on RSD. He treats and has treated many RSD and CRPS patients over the years. Dr. Beasley is familiar with the International Association for the Study of Pain (IASP) and uses their approved criteria for diagnosing CRPS.

16. At the time of examination and treatment, Dr. Beasley noted sufficient objective findings, including skin and temperature changes, swelling, edema and allodynia, to confirm Claimant's diagnosis of CRPS based on the IASP's approved criteria. He stated that based on the objective findings he was confident in this diagnosis. Dr. Beasley also determined that the symptoms in Claimant's left lower leg, ankle and foot all were causally related to her August 2005 fall at work.

17. After many attempts at conservative treatment measures proved unsuccessful, Dr. Beasley finally recommended that a spinal cord stimulator be implanted. Dr. Beasley stated that CRPS is hard to treat and he believes, based on medical evidence, that a spinal cord stimulator is an appropriate and necessary treatment for CRPS. The stimulator does not "cure" CRPS. Rather, it interrupts the intensity of the pain a patient feels and presents it as more a vibration than a painful feeling. Sixty to seventy percent of those patients who undergo the treatment get at least a fifty-percent relief of their symptomatology. Dr. Beasley strongly believes that the sooner a stimulator is implanted, the better for the patient.

18. Medical procedures require that any patient contemplating spinal cord stimulator implantation first must undergo a psychological evaluation. To that end, Dr. Sussman, a DHMC psychologist, met with Claimant and subsequently approved her as an appropriate implantation candidate. At the time that he did so, however, Dr. Sussman did not have all of Claimant's prior medical records, at least some of which posited that she suffered from somatoform disorder.

19. Somatoform disorder is characterized by physical complaints that appear to be medical in origin and are not under the patient's physical control, but cannot be explained in terms of a physical disease, substance abuse or another disorder. Somatoform disorder is hard to diagnose, particularly in situations where the patient has a history of medical or surgical treatment that might account for at least some of the physical complaints exhibited. Nevertheless, it is possible for a patient to have both a physical reason for pain as well as a psychological one.

20. In February 2006 Claimant began behavioral medicine treatment with Laurence Thompson, M.S. Mr. Thompson noted that he had concerns about any invasive treatments for Claimant's pain symptoms given her psychological diagnosis of somatoform disorder, and recommended that any such treatments be based on objective findings. He later concluded that the spinal cord stimulator was a reasonable treatment for Claimant.

21. Claimant received a spinal cord stimulator in June 2006, following which she experienced sixty percent pain relief in her left lower leg. She continued to experience left ankle and heel pain, however.

22. In August 2007 Claimant was referred to Dr. John Bouillon for evaluation of her continued left heel pain. Dr. Bouillon determined that Claimant was suffering from various nerve entrapments in her left knee, ankle and foot, causally related to her August 2005 fall at work. He released the nerves surgically and his surgical findings confirmed this diagnosis. After surgery Claimant's ability to feel her heel and foot increased and her pain decreased. However, Dr. Bouillon noted that even though the nerve entrapment surgery was successful, the fact that Claimant had CRPS might delay or interrupt her progress after surgery.

Independent Medical Examinations

23. Defendant submitted evidence from two medical specialists, Dr. Mary Willmuth, a psychologist, and Dr. Verne Backus, an occupational medical specialist, both of whom conducted independent medical evaluations of Claimant at Defendant's request.

24. Dr. Willmuth is a licensed psychologist who has practiced for more than twenty years. She is certified by both the American Board of Rehabilitation Psychology and the American Board of Professional Psychology and is a Diplomate of Rehabilitation Psychology as well. Her present practice is one-third forensic work, evenly distributed between plaintiffs and defense. Dr. Willmuth's evaluation of Claimant included a significant amount of psychological testing.

25. Dr. Willmuth's initial opinion was that Claimant did not suffer from somatoform disorder. She stated that the fact that Claimant had had cancer treatment three times in her life would make this psychological diagnosis rare. Dr. Willmuth subsequently changed her opinion, however. She now believes that most likely there was a psychological component to the childhood ailments from which Claimant suffered prior to her diagnosis of Hodgkin's lymphoma and thyroid cancer. Dr. Willmuth testified that Claimant's somatization disorder has caused her complaints of pain and injuries, that they are psychological in origin and that Claimant likely would have exhibited them whether or not she had fallen down the stairs at work in August 2005. Therefore, Dr. Willmuth believes that there is no causal connection between Claimant's need for the spinal cord stimulator and her work injury.

26. Notwithstanding her diagnosis of somatoform disorder, Dr. Willmuth acknowledged that Claimant's fall at work either was or could have been a precipitating factor in the development of the psychological symptoms she exhibited thereafter. Dr. Willmuth also acknowledged that she reached her diagnostic conclusions with the benefit of hindsight, after reading about Claimant's significant medical history. Dr. Willmuth admitted that she herself struggled with the diagnosis of somatoform disorder.

27. At Defendant's request, Dr. Verne Backus, an occupational and rehabilitation specialist, saw Claimant on two occasions for independent medical evaluations. Initially Dr. Backus diagnosed Claimant with left lower extremity chronic pain syndrome. Dr. Backus disagreed with Claimant's CRPS diagnosis because he did not personally observe the requisite objective signs, although he acknowledged that these objective findings often wax and wane and therefore may not be readily apparent at every examination. Dr. Backus also stated that unlike some other practitioners in the CRPS field, he does not believe that spinal cord stimulators are an effective treatment for CRPS. For these reasons, Dr. Backus concluded that Claimant had reached end medical result for her work-related injury and that further treatment, including a spinal cord stimulator, was not reasonably necessary.

28. In his second report, after re-examining Claimant and reviewing additional medical reports, Dr. Backus reversed his prior diagnosis of chronic pain syndrome and instead diagnosed Claimant with somatoform disorder presenting as a left lower extremity and low back chronic pain syndrome.

29. Dr. Backus believes that CRPS is a diagnosis of exclusion, in the sense that it should only be diagnosed if there is no other more specific condition to account for the patient's symptoms. Because Dr. Backus determined that somatoform disorder adequately described Claimant's condition, he concluded that CRPS thereby was excluded from consideration as a diagnosis. In that respect his opinion contrasts sharply with that of Dr. Beasley. Dr. Beasley's opinion was that his medical decision was a good one and that he had adequate medical evidence to support it.

30. Dr. Beasley acknowledged that one of the criteria for a CRPS diagnosis is that "no other diagnosis better explains the [patient's] signs and symptoms." Nevertheless, he relied on the objective signs he observed, his interview of Claimant, the results of her psychological evaluation and his own experience to support his diagnosis of CRPS and to justify moving ahead with a spinal cord stimulator at the time that he did so.

31. Dr. Beasley testified that even in retrospect, after reading all of the later medical records and independent evaluations, including Dr. Willmuth's, he still believes that his diagnosis of CRPS was justified at the time and that his corresponding decision to implant the spinal cord stimulator was medically sound. He specifically rejected Dr. Willmuth's retrospective diagnosis of somatization disorder, stating, "If I felt it was all strictly somatization, yes, it would make some criteria different, but there [were] also definite physical signs that we saw. And we went through different – the diagnosis I felt was real, and diagnosis was not somatoform, it was complex regional pain syndrome."

32. Claimant also submitted the report of an independent medical evaluation conducted by Dr. Philip Davignon on August 18, 2008. Dr. Davignon concluded that all of the medical treatment Claimant had received up to the date of his evaluation was reasonably necessary based on the findings that were made at the time. In particular, Dr. Davignon stated that it would have been the natural course for Dr. Beasley to proceed with a spinal cord stimulator at the time that he decided to do so. As of the date of his evaluation, however, Dr. Davignon was unable to confirm a diagnosis of either CRPS or somatoform disorder.

33. Claimant's attorney has requested costs totaling $4,233.36 and attorney's fees totaling one third of Claimant's gross monetary award.

CONCLUSIONS OF LAW:

1. The key issue in this case is whether Claimant's medical treatment was reasonably necessary and causally related to her August 2005 work injury. Both parties agree that Claimant may now have somatization disorder. However, Defendant disputes the diagnosis of CRPS and questions the causal relationship of either that condition or somatoform disorder to Claimant's work injury.

2. 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).

3. Vermont's workers' compensation statute obligates an employer to pay only for those medical treatments that are determined to be both "reasonable" and causally related to the compensable injury. 21 V.S.A. §640(a). The Commissioner has discretion to determine what constitutes "reasonable" medical treatment given the particular circumstances of each case. The claimant bears the burden of proof on this issue. *P.M. v Bennington Convalescent Center*, Opinion No. 55-07WC (January 2, 2007).

4. The reasonableness of a medical procedure must be determined from the perspective of what was known at the time the decision was made. *Jacobs v. Beibel Builders*, Opinion No. 17-03 (March 21, 2003).

5. Where the causal connection between an accident and an injury 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). 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).

6. That Claimant's left lower leg injury was causally related to her August 2005 fall at work is credibly established by Dr. Yorra's medical records. Dr. Yorra saw Claimant regularly and first observed the bump on her shin just several days after the incident, noting that it was a "new" injury. There is no other evidence pointing to an alternative cause. I conclude, therefore, that the hematoma or ossification on Claimant's left lower leg resulted from her fall at work.

7. I find Dr. Beasley's opinion to be the most credible as to both the diagnosis of CRPS and its causal relationship to Claimant's work injury. Dr. Beasley is highly credentialed, teaches at Dartmouth Medical College and regularly treats CRPS patients. I find convincing his diagnosis of CRPS at the time it was made based on his objective findings. I find equally convincing Dr. Beasley's assertion that a spinal cord stimulator is a reasonably necessary treatment for CRPS because it helps to reduce pain and provide a reasonable degree of symptom relief. I conclude that Dr. Beasley had objective support for his CRPS diagnosis and deserves the benefit of the doubt as to his treatment decisions.

8. As evidenced by the articles submitted into evidence in conjunction with Dr. Davignon's testimony, significant differences of opinion exist among medical professionals as to the differential diagnosis of CRPS versus somatoform disorder. Indeed, both Dr. Willmuth and Dr. Backus struggled with their opinions, and both changed their positions over time. In contrast, even in hindsight Dr. Beasley remained convinced that his diagnosis of CRPS was correct at the time that he made it. It was based on objective findings and met the appropriate diagnostic criteria. The fact that other experts now believe that Claimant may have somatoform disorder does not negate the fact that the treatment she underwent in 2006 and 2007 was both reasonably necessary and causally related from the perspective of what was known at the time. *Jacobs, supra.*

9. As for Dr. Bouillon's nerve entrapment release surgery, Defendant argues that this treatment also resulted from Claimant's pre-existing somatoform disorder, was not caused by her August 2005 fall at work and therefore is not compensable. Dr. Bouillon's surgical findings fatally undercut this argument. Dr. Bouillon surgically observed that the nerves in Claimant's lower leg, ankle and foot were constricted and entrapped. These findings document a physical injury, not a psychological one, one that Dr. Bouillon credibly related to Claimant's August 2005 fall at work.

10. I conclude, therefore, that both Dr. Beasley's spinal cord stimulator treatment and Dr. Bouillon's nerve entrapment release surgery constituted reasonably necessary, causally related treatment for Claimant's August 2005 work injury. The medical expenses incurred in the context of both treatments are compensable.

11. As Claimant has prevailed, she is entitled to an award of costs totaling $4,233.36 and attorney's fees in accordance with Workers' Compensation Rule 10.1220.

ORDER:

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

1. All medical costs associated with Claimant's spinal cord stimulator implantation and nerve entrapment release surgeries and medical treatments, in accordance with 21 V.S.A. §640; and

2. Costs and attorney's fees in accordance with Conclusion of Law 12 above.

DATED at Montpelier, Vermont this 30th day of January 2009.

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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.