

E. H. v. Mack Molding Company

(May 13, 2009)

**STATE OF VERMONT
DEPARTMENT OF LABOR**

E. H.

Opinion No. 14-09WC

v.

By: Jane Gomez-Dimotsis
Hearing Officer

Mack Molding Company

For: Patricia Moulton Powden
Commissioner

State File No. Y-52409

OPINION AND ORDER

Hearing held in Montpelier on October 23, 2008.

Record closed on November 25, 2008.

APPEARANCES:

Richard Bowen, Esq. for Claimant

Keith Kasper, Esq. for Defendant

ISSUE:

Is Claimant's mental health condition causally related to the compensable injured he suffered to his thumb on August 31, 2006?

EXHIBITS:

Joint Medical Exhibit with supplemental file from Valley Regional Hospital

Claimant's Exhibit 1: Dr. Halikias' *Curriculum Vitae*

Claimant's Exhibit 2: Nurse Case Manager notes

Claimant's Exhibit 3: DSM-IV-TR attached to Dr. Batt's deposition

Defendant's Exhibit A: Dr. Mann's *Curriculum Vitae*

Defendant's Exhibit B: MMPI-2 Testing Manual

CLAIM:

Medical benefits, including hospitalization, pursuant to 21 V.S.A. §640

Temporary total disability benefits pursuant to 21 V.S.A. §642

Attorney's fees and costs pursuant to 21 V.S.A. §678

FINDINGS OF FACT:

Stipulated Facts

1. At all times relevant to these proceedings, Claimant was an employee and Defendant was an employer as those terms are defined in the Vermont Workers' Compensation Act.
2. Judicial notice is taken of all relevant forms and correspondence contained in the Department's files relating to this claim.
3. Claimant suffered a personal injury to his thumb arising out of and in the course of his employment with Defendant. Claimant tried to commit suicide approximately one year later.
4. Claimant's average weekly wage on the date of injury, August 31, 2006, was \$703.12. Claimant has no dependents.
5. On August 5, 2007 Claimant began receiving treatment for depression and Post Traumatic Stress Disorder (PTSD) as a result of an alleged suicide attempt.
6. Defendant has denied the compensability of all psychiatric-related bills and conditions associated with the alleged suicide treatment and all medical expenses directly associated therewith. Defendant has continued to pay all medical benefits otherwise associated with Claimant's compensable thumb injury and also has continued payment of Claimant's temporary total disability benefits after August 5, 2007.

Claimant's Background and Brief History

7. Claimant, now 75 years old, was born June 1, 1934 in Lebanon, New Hampshire and has lived in Windsor County, Vermont for most of his life. He was forced to quit school in the eighth grade when his father died. He did various jobs and worked for a paper company for twenty-four years until the company closed. After other employment, Claimant worked for Defendant for approximately twelve years until his accident.
8. Claimant has been married three times and has adult children. He was divorced from his first and second wives after many years of marriage. He separated from his third wife after less than three years of marriage and was living alone at the time of the accident. There is evidence from a Massachusetts General Hospital social worker that Claimant informed her he had experienced feelings of depression for about a year prior to his work accident due to his separation and expected divorce from his last wife.

The Accident

9. Claimant began work on August 31, 2006 at 11:00 p.m. as a machine operator at Defendant's company. When he began his shift, the machines were leaking oil onto the floor. However, the presses do not shut down during shift changes. After working for a short while, Claimant lost his footing due to the oil on the floor. When he put his hand out to break his fall he caught his thumb in the press.
10. With his thumb caught and almost severed from his hand, Claimant could not reach the buttons that would turn off the press. He began screaming for help, but because the machinery noise on the plant floor was so loud, no one heard him. Claimant remained caught in the machine for almost five minutes. Finally, a co-worker came to his aid, shut down the machine and released Claimant's thumb. Claimant was driven to Springfield Hospital, and then, because his injury was so serious, transported by ambulance to Massachusetts General Hospital. He did not receive treatment until 7:33 a.m. on September 1st, seven or eight hours after the accident had occurred.

Post- Accident Treatment

11. Claimant was diagnosed with a fracture of the proximal phalanx in his thumb. He had open reduction surgery to repair his digital artery and thumb.
12. After his hospitalization, on September 3, 2006 Claimant returned home with his thumb in a splint. Thereafter, he followed up with his doctors at Massachusetts General Hospital on a weekly basis. He was re-hospitalized after he developed a serious infection in his thumb that necessitated both intravenous and oral antibiotic treatment.
13. After some months, Claimant's treating physician at Massachusetts General Hospital, Dr. Obeng, became concerned both about Claimant's mental state and about the possibility that he might be developing reflex sympathetic dystrophy. Dr. Obeng referred Claimant to Dr. Fanciullo, a pain management specialist at Dartmouth Hitchcock Medical Center.
14. Dr. Fanciullo first evaluated Claimant on April 10, 2007 and diagnosed him with PTSD. Dr. Fanciullo did not enunciate the specific criteria he used to make this diagnosis, but did note that Claimant reported having nightmares of his thumb crush injury. Dr. Fanciullo treated Claimant until approximately September 2007. He prescribed Cymbalta to treat Claimant's depression and pain medications for his physical symptoms. Unfortunately, these proved not to be particularly helpful. In May 2007 Dr. Fanciullo noted that Claimant was not really any better. He continued to treat Claimant until approximately September 2007, at which point he reported that if Claimant chose not to pursue psychiatric treatment options he might soon be at end medical result.
15. Claimant next was referred to Dr. Rosen at Dartmouth Hitchcock Medical Center to help increase the function in his thumb and to reduce his pain. There was a question at this time as to whether Claimant's thumb should be amputated.

16. During the summer of 2007 Claimant became increasingly despondent over the pain and functional limitations caused by his thumb injury. He lived alone, and because the injury was to his dominant thumb, daily chores and simple activities that most of us take for granted – buttoning his shirts, for example – were problematic. Claimant also was unable to play the guitar, a pastime he had always enjoyed.

Suicide Attempt, Hospitalization and Treatment

17. On August 2, 2007 Claimant was reported missing to the Vermont State Police. He last had been seen in Bellows Falls, near the Connecticut River. Four days later, he was found near the river in Charleston, New Hampshire. Claimant was transported to the hospital emergency room and admitted to the intensive care unit. At that time, he was suffering from dehydration, chest pain, a possible pulmonary embolism and neck pain. In addition, he exhibited a high level of confusion and expressed feelings of uselessness and depression. Claimant admitted that he had attempted to commit suicide by drowning but was unsuccessful and had been wandering for days without food or water.
18. While hospitalized, Claimant treated with Dr. Burns, who reported symptoms of PTSD on his notes. Subsequently, he was referred to Dr. Mazur at the hospital's Valley Regional Behavioral Unit. Dr. Mazur diagnosed Claimant with a major depressive disorder. At their first interview, Claimant told Dr. Mazur he was depressed due to the separation from his third wife. Claimant expressed feelings of anger, uselessness due to his loss of employment and depression. However, there was no mention at all in Dr. Mazur's initial report of Claimant's 2006 thumb injury.
19. Dr. Mazur concluded that several stressors had built up to lead Claimant to want to kill himself. Among these were the thumb accident, the partial loss of its use and the pain related to it, his separation from his third wife and his inability to work. Dr. Mazur noted that Claimant had planned on continuing to work until he died.

Additional Psychiatric Treatment and Experts' Conclusions

20. At Dr. Mazur's referral, Claimant began treating with Dr. Batt in August 2007. Dr. Batt is a board certified forensic psychiatrist who has been in private practice for more than sixteen years. He frequently has treated patients suffering from PTSD, particularly military veterans.
21. Using the criteria adopted by the American Psychiatric Association in the DSM-IV-TR, Dr. Batt diagnosed Claimant with severe PTSD. The DSM-IV requires that six criteria, labeled A through F, be met in order for a PTSD diagnosis to be made. In Claimant's case Dr. Batt found that eleven criteria had been met.
22. The first diagnostic criterion is that the person must have been exposed to a traumatic event involving threatened death or serious injury, as a result of which he or she experienced intense fear, helplessness or horror. Dr. Batt concluded that the injury Claimant suffered at work, in which his thumb was caught for many minutes before anyone appeared to help him, qualified as such an event.

23. Criterion B requires that the person experience intrusive recollections of the traumatic event, such as distressing dreams, flashbacks or intense psychological distress when exposed to cues that resemble it in some way. In Claimant's case, Dr. Batt noted that he had recurrent distressing dreams about the way his thumb injury had occurred and reported intense psychological distress when he returned to his former work site. Dr. Batt found these symptoms sufficient to satisfy Criterion B.
24. Criterion C encompasses avoidant and/or numbing behaviors. Under this criterion, Dr. Batt noted that Claimant avoided activities, places or people that would arouse recollection of his trauma. He did not like to talk about the event, and avoided thoughts, feelings or conversations about it. He felt detached from others. He was unable to recall certain aspects of the event. He had a sense of a foreshortened future or career, because he had worked all his life and couldn't imagine life without work. Dr. Batt found these behaviors sufficient to satisfy Criterion C.
25. Criterion D requires evidence of hyper-arousal, for example, difficulty falling or staying asleep, difficulty concentrating, hyper-vigilance or an exaggerated startle response. Dr. Batt found sufficient evidence of these behaviors to meet this criterion as well.
26. Criterion E requires that the behaviors noted in B, C and D have lasted for more than one month, and Criterion F requires that they have caused significant distress or impairment in social, occupational or other important areas of functioning. Dr. Batt found both of these criteria to have been met in Claimant's case.
27. Dr. Batt acknowledged that Claimant was depressed about the dissolution of his third marriage, but in his opinion this was not the cause of his PTSD. Dr. Batt noted that Claimant had been separated from his wife for almost a year prior to his injury, but was able to work full-time.
28. Dr. Batt believed that Claimant had tried to commit suicide on the anniversary of his thumb accident. In fact, Claimant's suicide attempt occurred several weeks earlier than the actual anniversary date.
29. Dr. Batt was concerned that Claimant would attempt suicide again. In his opinion Claimant needed a complete treatment evaluation, including an evaluation with a neuropsychologist experienced with brain imagery. Dr. Batt believed that Claimant needed ongoing therapy, but that he did not understand either the seriousness of his condition or the value of psychotherapy. In Dr. Batt's opinion, it could take Claimant up to five years to reach end medical result. In the meantime, he did not think Claimant should try yet to return to work.
30. Dr. Batt began treating Claimant in August 2007. Claimant discontinued treatment in August 2008 after Defendant ceased paying for it. In Dr. Batt's opinion, Claimant's prognosis was guardedly optimistic only if he continued psychiatric treatment and medication management. Even with that, Dr. Batt felt that Claimant likely had suffered permanent and severe psychological trauma.

31. At the suggestion of Claimant's counsel, Claimant also saw Dr. Halikias for a mental health evaluation in December 2007. Dr. Halikias has a doctorate in forensic clinical psychology. He has practiced for many years. He is board certified in assessment psychology and is a member of the American Psychology Association. He now specializes in court evaluations, teaching doctoral students, consultations and assessments. Dr. Halikias teaches doctoral candidates in psychology how to administer MMPI assessments.
32. Dr. Halikias administered a battery of tests to Claimant. He found clear, robust symptoms of PTSD with all diagnostic criteria met. He also found Claimant was not a malingeringer but had a strong work ethic. He did not find Claimant exaggerated his pain or depression.
33. Claimant told Dr. Halikias that it would be too frightening for him to return to work for Defendant. He reported that it was stressful for him to be in small places like elevators since his injury. He also expressed problems with daily living activities and intrusive imagery of the workplace accident. He expressed feelings of worthlessness at having become unemployed for the first time in his life since 8th grade.
34. Claimant also informed Dr. Halikias of his vague recollection of his suicide attempt approximately a year after his thumb injury.
35. There is conflicting evidence as to what help Dr. Halikias gave Claimant during the course of his psychological test battery. At Claimant's request, when Dr. Halikias administered certain tests, such as the MMPI-2, he read some of the questions to him aloud. This was to account for Claimant's age and low level of formal education. In addition, because Claimant was experiencing pain in his hand, Dr. Halikias also may have assisted him by filling in the answers to certain questions, all at Claimant's direction. Dr. Halikias did not believe that the assistance he provided skewed Claimant's test results in any way.
36. In testimony, Dr. Halikias pointed out that the MMPI-2 does not have an index for PTSD. Although he administered the MMPI, he relied on the Trauma Symptom Inventory for part of his diagnosis.
37. As Dr. Batt had done, Dr. Halikias used the DSM-IV-TR for his diagnosis and concluded that Claimant presented a clear, convincing and robust portrait of a person suffering from PTSD. Unlike Dr. Batt, however, Dr. Halikias felt that vocational rehabilitation would be helpful to Claimant and that he should return to work when he could. Dr. Halikias recommended that Claimant continue with antidepressant medications and weekly mental health services.

38. At Defendant's request, Claimant underwent an independent psychological evaluation with Dr. Mann, a psychologist, in December 2007 and February 2008. Dr. Mann administered a battery of tests, including the MMPI-2, the BHI-2 and the VIP tests. Dr. Mann acknowledged that when taking the MMPI-2 test, Claimant expressed significant difficulties due to his limited formal education. Claimant needed additional time to complete the testing procedure, and for part of the testing Dr. Mann utilized an audiotape of the questions so that Claimant would not have to read them himself.
39. Based on his evaluation, Dr. Mann believes that Claimant is at least partially malingering, as reflected by evidence that he is "grossly exaggerating physical and psychological symptoms" for external incentives.
40. Dr. Mann believes that at one time Claimant may have met the diagnosis of PTSD, but that his condition had improved in the year between his initial injury and his suicide attempt. In Dr. Mann's opinion, Claimant's separation from his third wife was the intervening factor that caused him to attempt suicide. Dr. Mann reported that Claimant had expressed to him that he was now able to attend antique auctions and do more socializing than he had previously. This led Dr. Mann to conclude that Claimant was recovered from his PTSD. Dr. Mann also noted that Claimant had informed him that he wanted to get on with his life, disengage from psychiatric care and visit with family and friends. As Dr. Batt noted, however, it has always been clear that Claimant does not believe in psychology.
41. In reaching his conclusion that Claimant was recovered from PTSD and now partially malingering, Dr. Mann relied to some extent on Claimant's self-report that he is doing well and engaging more with people and activities. This seems at odds with his own interpretation of Claimant's personality profile, in which he described Claimant as someone who attempts to place himself in an overly positive light by minimizing his problems. As to Claimant's response to other test questions, in which he agreed with such statements as "things have been terrible at home," that he has problems sleeping and that he has "more concerns than most people," Dr. Mann's interpretation was that Claimant purposely had biased his answers in a negative manner.
42. In concluding that Claimant no longer suffered from PTSD, Dr. Mann did not use the DSM-IV-TR criteria. Instead, he used the PK scale contained within the MMPI-2. According to Dr. Mann, Claimant tested in the normal range for PTSD on that scale, meaning that he did not suffer from the disorder.
43. In reaching his diagnosis, Dr. Mann also relied heavily on Dr. Mazur's report that Claimant had advised him immediately after his suicide attempt that he was depressed about the dissolution of his marriage. Dr. Mann stated that he completely agrees with Dr. Mazur's conclusion that Claimant's suicide attempt was not related to his thumb injury. Dr. Mann concluded that Claimant had a major depressive disorder, which was in full remission by February 2008.

44. During their hearing testimony, both Dr. Mann and Dr. Halikias criticized each other regarding the manner in which each had tested Claimant, whether the test was appropriate for a man of Claimant's age and education and whether each knew all of the relevant facts regarding Claimant's history.
45. Claimant's request for attorney's fees and costs is unclear.

CONCLUSIONS OF LAW:

1. Claimant bears the burden of proof to establish all of the facts essential to the rights asserted. *Goodwin v. Fairbanks*, 123 Vt. 161 (1963).
2. To establish a so-called "physical-mental" claim, one involving a mental injury that results from a work-related physical injury, Claimant must prove a causal nexus between a compensable physical injury and a psychological impairment. *Merrill v. Town of Ludlow*, 147 Vt. 186 (1986); *Blais v. Church of Christ of Latter Day Saints*, Opinion No. 30-99WC (July 30, 1999).
3. When the injury is obscure and a lay person would have no well-grounded opinion as to causation, expert medical testimony is necessary to lay the foundation for an award. *Severinghaus v. Banner Publishing Company*, Opinion No. 14-98WC (March 13, 1998).
4. When faced with conflicting expert medical opinions the Department 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. Claimant submits the medical opinions of his treating psychiatrist, Dr. Batt, as well as the medical expert opinion of Dr. Halikias to establish the claim that he suffers from PTSD as a result of his August 2006 work injury. Dr. Mann disagrees. In his opinion, Claimant no longer suffers from PTSD and the psychological problems that led to his August 2007 suicide attempt are related to the dissolution of his third marriage.
6. The parties do not dispute that Claimant suffered a work-related physical injury when he caught his thumb in an industrial machine at work, and the experts agree that this event was indeed "traumatic." The dispute centers on whether Claimant's subsequent psychological impairment arose from the accident or from the dissolution of his third marriage.
7. All of the experts are well qualified. Dr. Batt had the longest treating relationship, and as a result was able to observe Claimant over a fifteen-month period. He was definite in his diagnosis of PTSD. Dr. Halikias was similarly definite in his diagnostic conclusions, commenting that Claimant presented clear, convincing and "robust" symptoms of PTSD.

8. Dr. Mazur, also a treating doctor in this claim, saw Claimant in the hospital immediately after his suicide attempt. Dr. Mazur himself stated that Claimant's insight was questionable and the records show that Claimant was confused at the time he was hospitalized. Dr. Mazur's reliance on Claimant's statements is questionable, therefore. For the same reasons, Dr. Mann's reliance on these reported statements in forming his opinions is suspect as well.
9. All of the evaluations were comprehensive. Dr. Mann did recite the history and records more thoroughly in his report than the other experts did, but that does not mean his conclusion is correct. He highlighted many of the positive things Claimant stated to him about his current social life and interests and relied on these statements as well as Dr. Mazur's conclusions regarding the reason for Claimant's suicide attempt. In doing so, however, he ignored Dr. Batt's conclusion that Claimant himself does not understand either the seriousness of his illness or the role that psychology could play in his recovery.
10. I am persuaded by the ordeal that Claimant went through regarding the severe injury to his thumb, the circumstances of that event, his isolating behaviors, nightmares and other psychological symptoms that Drs. Batt and Halikias were correct in their diagnosis of PTSD causally related to the August 2006 work injury. I am further convinced that Claimant's suicide attempt in August 2007 was precipitated by PTSD, not by depression over his divorce.
11. The final issue in dispute is Defendant's claim that the psychological injury is not compensable because Claimant's suicide attempt was willfully intended. Defendant claims that under 21 V.S.A. §649, compensation cannot be awarded for an injury that is caused by an employee's "willful intention to injure himself." In response, Claimant argues that his suicide attempt did not amount to a willful voluntary choice and therefore should not bar his right to workers' compensation benefits.
12. Claimant cites to *McKane v. Capital Hill Quarry Co.*, 100 Vt. 45 (1926), in support of his argument. The court in that case distinguished between a suicide that was a "voluntary, willful choice, with knowledge of the purpose and physical effect of the act," and one that resulted from "an uncontrollable impulse or in a delirium of frenzy." *Id.* at 47. The court found that a suicide that fit within the former category would not be compensable, but one that met the latter description would be. Applying that reasoning here, Claimant argues that his suicide attempt more properly fits the latter categorization.
13. This Department previously has noted that the continued viability of the court's reasoning in *McKane* is questionable given modern developments in both workers' compensation law and the study and treatment of mental illness. *Estate of Fatovich v. Burlington Free Press*, Opinion No. 19-97WC (July 29, 1997). The critical inquiry is not whether a suicide can be said to have been planned rather than impulsive. Rather, the key question is simply whether a subsequent injury – here, a suicide attempt – flowed naturally from the original compensable injury – here, Claimant's thumb injury and resulting PTSD. If it did, then it too should be found compensable. *See generally*, 2 *Larson's Workers' Compensation Law*, §§38.01-38.05 (stating that most jurisdictions have turned away from the type of analysis espoused in *McKane* in favor of the more modern causal connection analysis).

14. In *Fatovich* the Commissioner determined that the claimant's suicide was not compensable because it arose from an organically caused depression rather than from a work-related injury or condition. In contrast, in the current claim I have determined that the PTSD from which Claimant suffered as a result of his work-related thumb injury was what led to his suicide attempt. The causal connection has been established, from Claimant's thumb injury to his PTSD to his suicide attempt to his current mental state. The suicide attempt was not an intervening cause and does not bar Claimant from continuing workers' compensation coverage.
15. As Claimant has prevailed, he is entitled to an award of costs and attorney's fees pursuant to 21 V.S.A. §678. The invoice submitted by his attorney is unclear, however, as to the total amount requested. Claimant's attorney shall have thirty days from the date of this decision to resubmit his request.

ORDER:

Based on the foregoing findings of facts and conclusions of law, Claimant's claim for workers' compensation benefits is **GRANTED**. Defendant is hereby **ORDERED** to pay:

1. Temporary total disability benefits until Claimant either reaches an end medical result for his psychological injury or returns to work, whichever occurs first;
2. Medical benefits covering all reasonably necessary medical services and supplies causally related to Claimant's compensable psychological injury, including payment for the hospitalization and treatment following Claimant's suicide attempt;
3. Costs and attorney's fees in an amount to be determined in accordance with Conclusion of Law No. 15 above.

DATED at Montpelier, Vermont this 13th day of May 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.