

**STATE OF VERMONT  
DEPARTMENT OF LABOR**

Robin Brown-Williams

Opinion No. 02-10WC

v.

By: Phyllis Phillips, Esq.  
Hearing Officer

General Electric Transportation

For: Patricia Moulton Powden  
Commissioner

State File No. Y-05206

**OPINION AND ORDER**

Hearing held in Montpelier, Vermont on July 29, 2009

Record closed on October 2, 2009

**APPEARANCES:**

Michael Green, Esq., for Claimant

John Valente, Esq., for Defendant

**ISSUE PRESENTED:**

1. Did Claimant develop an overuse injury to her right upper extremity and/or cervical spine as a result of her employment for Defendant on or about May 15, 2007?
2. If yes, to what workers' compensation benefits is she entitled?

**EXHIBITS:**

Joint Exhibit I: Medical records

Joint Exhibit II: Photographs (subject to Protective Order as to confidentiality)

Claimant's Exhibit 1: Excerpts from Claimant's personnel file

Claimant's Exhibit 2: Preservation deposition, Dr. Richard Baker, June 16, 2009

**CLAIM:**

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

Medical benefits pursuant to 21 V.S.A. §640

Permanent partial disability benefits pursuant to 21 V.S.A. §648

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

## **FINDINGS OF FACT:**

1. At all times relevant to these proceedings, Claimant was an employee and Defendant was her employer as those terms are defined in Vermont's Workers' Compensation Act.
2. Judicial notice is taken of all relevant forms contained in the Department's file relating to this claim.
3. Claimant has worked as a "bencher" for Defendant since 2000. Defendant manufactures metal blades for jet engines and turbines. Claimant's job requires her to use grinding and polishing wheels to remove imperfections from the blades and bring them within engineering tolerances for size and shape. The task is repetitive and involves elements of both force and vibration into the upper extremity.
4. From 2000 to 2005 Claimant also worked at times at the "bow-warp" station. This job required her to grip tools and use them to twist and bend a blade to the appropriate engineering tolerance.

### *Claimant's 2005 Injury*

5. In June 2005 Claimant briefly was assigned to a different station, following which she complained of pain, swelling, numbness and tingling in her right hand, wrist, fingers and thumb. By August 2005 her symptoms extended up her arm and into her shoulder.
6. Claimant's condition was variously diagnosed by Dr. Baker, her primary care physician, as tendinitis of the wrist and thumb; by Dr. Ryder, Defendant's company physician, as deQuervain's tendinitis/carpal tunnel syndrome; and by Dr. Stein, her treating orthopedist, first as an "acute inflammatory response to overuse at work," then later as biceps tendinitis and inflammation of the right hand. Following a course of physical therapy for her hand as well as a cortisone injection in her right shoulder Claimant's symptoms resolved. In September 2005 she returned to full-time work at her regular benching and bow-warp stations.
7. Defendant's internal injury monitoring records indicate that it initially denied that Claimant's condition was causally related to her work. It is unclear whether it ultimately accepted the claim as compensable or not.

### *Claimant's May 2007 Injury*

8. In August 2006 Defendant reassigned Claimant from its small engine division to its large engine division. There, Claimant continued her benching job, but the blades upon which she worked were larger, measuring four to six inches long as opposed to the one- to two-inch small engine blades she previously had benched.

9. Claimant found her new assignment problematic. The large engine blades were more difficult to work with, and benching out their defects required more forceful pressure against the grinding wheel. Claimant testified that after only a few months on the job she began to experience headaches and pain in her right shoulder and neck. Her hands began swelling as well.
10. Claimant did not initially seek medical treatment for these symptoms. Instead she used the home exercise program she had learned in the context of her 2005 injury. Claimant also worked with her supervisors to try to find alternative assignments that would be less likely to induce her symptoms. Unfortunately, neither Claimant nor her supervisors were able to identify any alternatives that Defendant's medical staff deemed appropriate given both her prior injury and her current complaints.
11. By May 2007 Claimant's arms and shoulders were feeling so sore that she feared she would not be able to continue performing all of her assigned job tasks. Claimant testified that on Friday, May 11<sup>th</sup> she left work early because of pain in her neck and arms. On Monday, May 14<sup>th</sup> she benched large blades all day, and that evening was very sore. Tuesday morning, May 15<sup>th</sup>, she awoke with a very stiff and sore neck. She went to work and tried to bench, but her neck pain was severe. After advising her supervisor, she presented first to the company nurse and then to Dr. Baker, her primary care provider, for evaluation and treatment.
12. Both the company nurse's record and Dr. Baker's office note report that Claimant "woke up with a stiff neck" that morning. Initially, neither record indicates any possible connection to Claimant's work activities. A month later, however, after cervical spine films failed to reveal any herniated discs, Dr. Baker stated that in his opinion Claimant's "cervical strain and pain is from muscle spasm secondary to 'overuse injury' at work."
13. Aside from a failed return-to-work trial at the end of May, Claimant was unable to work from May 15, 2007 until early November 2007. A functional capacities evaluation completed in September 2007 "highly recommended" that she undergo a gradual return to work benching small blades. Notwithstanding this recommendation, upon her return Defendant assigned Claimant once again to the large engine benching job she had been doing at the time of her injury. Defendant's company physicians, Drs. Ryder and Timura, both determined that the tasks involved were "reasonably light duty" and would be unlikely to cause any significant neck, shoulder or upper extremity injury. Both physicians qualified their remarks, however. Dr. Timura noted that the large engine benching job would not cause any significant neck or shoulder stress "provided [Claimant] follows proper technique and posture." This followed Dr. Ryder's earlier suggestion that Claimant may have had a habit of tensing up and holding the blades too tightly.

14. Initially Claimant's return to large engine benching appeared to be reasonably successful. She still found that the large engine blades had more imperfections, and required more forceful grinding, than the small engine blades had necessitated. Fortunately, she was able to rotate her assignments so as to avoid having to bench all day, every day. Once her modified-duty restrictions were lifted, however, Claimant spent most of her time benching. After that, Claimant testified, her symptoms recurred.
15. Claimant missed twelve days from work in February 2008, including the entire last week, for personal reasons. Approximately three weeks after her return she presented again to Dr. Baker with complaints of neck and shoulder pain. As he had previously, Dr. Baker determined that Claimant's condition was attributable to work-related overuse. He disabled Claimant from working as of March 19, 2008. Claimant has not returned to work since.
16. As she had in 2005, Claimant again treated with Dr. Stein, an orthopedic surgeon, for her neck and right upper extremity symptoms. Dr. Stein consulted with Dr. Boynton, another orthopedist, who determined that Claimant's shoulder most likely was not the primary pain driver. Dr. Boynton suggested that Claimant's neck and carpal tunnel symptoms be addressed first.
17. In October 2008 Claimant underwent nerve conduction studies, which were positive for both carpal tunnel syndrome in her right wrist and ulnar nerve entrapment in her right elbow. Dr. Stein addressed both of these conditions surgically in March 2009. Thereafter, Claimant's shoulder and arm pain decreased substantially. Her neck pain has persisted, however. Although diagnostic studies have revealed evidence of cervical degenerative disc disease, those findings alone do not account adequately for Claimant's symptoms.

*Medical Opinions as to Causation*

18. According to Dr. Baker, Claimant's primary care physician, Claimant's job tasks caused her entire right upper extremity to become inflamed, from her wrist up to her neck. Claimant's physical therapist, Scott Tommola, concurred. In his opinion, the symptoms Claimant exhibited in May 2007 arose from the increased volume and intensity of the work she had been performing since being assigned to large engine benching. That job required more physical force, and possibly a different physical posture as well, resulting in musculoskeletal strains in her neck and shoulders.
19. Dr. Bucksbaum, the physiatrist to whom Dr. Baker referred Claimant in August 2007, also believed Claimant's condition to be work-related. In addition to his medical qualifications, Dr. Bucksbaum is a biomechanical engineer. As such, he testified to an understanding of the forces attendant in Claimant's large engine benching job, even though he has never viewed the work station itself, only photographs.

20. According to Dr. Bucksbaum, the medical fact pattern Claimant exhibited in the context of her 2005 injury was very similar to the one she experienced in 2007. In essence, Claimant's benching job required her to maintain her upper extremity in a fairly static posture from the elbow to the shoulder, while at the same time applying force repetitively with her hands and fingers against a vibrating grinding wheel. This combination of activities – sustained posturing, repetitive motion, force and vibration – was consistent with a mechanism of injury likely to result in cervical sprain, tendinitis and overuse inflammation.
21. Dr. Bucksbaum testified that Claimant had not yet reached an end medical result as of his most recent evaluation of her in May 2009. He expects that she probably has a work capacity. Given Claimant's exposure to both repetitive motion and vibration in the context of her prior job assignment for Defendant, however, Dr. Bucksbaum would recommend against her returning to this position again.
22. At Defendant's request, Claimant underwent an independent medical evaluation with Dr. Johansson, an osteopathic physician, in February 2008. Dr. Johansson also evaluated Claimant in September 2008 and again in June 2009.
23. According to Dr. Johansson, the medical evidence is insufficient to establish a work-related cause either for Claimant's neck pain or for her carpal tunnel syndrome. As to Claimant's neck pain, Dr. Johansson found significant the fact that her symptoms had failed to improve even during periods when she was not working. In his experience, most soft tissue injuries caused by overuse tend to resolve with physical therapy, rest and medication. That Claimant's injury did not follow this pattern indicates that work-related overuse was not the cause. Dr. Johansson did not otherwise identify the etiology of Claimant's cervical symptoms with any certainty.
24. As for Claimant's carpal tunnel syndrome, according to Dr. Johansson's review the medical records did not mention any symptoms indicative of this condition until July 2008, when Claimant already had been disabled from working for approximately four months. In his opinion, this gap in time effectively disqualified Claimant's work as the cause of her symptoms. Contrary to Dr. Johansson's assertion, however, Defendant's company physician, Dr. Ryder, previously had diagnosed Claimant with possible carpal tunnel syndrome in the context of her 2005 injury.
25. Dr. Johansson determined that Claimant had reached an end medical result for her cervical condition as of his June 1, 2009 evaluation. He suggested another functional capacities evaluation to clarify her work capacity, but stated that she likely could perform at least sedentary- to light-capacity work.

26. Dr. Timura, another of Defendant's company physicians, also discounted any relationship between Claimant's symptoms and her work. He testified that he observed Claimant performing her large engine benching assignment, and even palpated her neck and shoulder muscles while she did so, and found that the movements required to bench the blades did not involve those muscles at all. Claimant strongly disputed this testimony. She recalled that Dr. Timura had observed her co-employee performing the benching job, but insisted that to her knowledge he had never personally observed her benching, much less palpated her muscles while she did so.
27. Dr. Timura acknowledged that Claimant's 2005 injury had involved her entire right upper extremity and agreed that it had been caused by the forceful repetitive work necessitated by her job assignments at the time. In his opinion, however, Claimant's large engine benching assignment did not involve the same type of forceful gripping and presented no risk factors for work-related stress to her neck, shoulder or upper extremity.

### **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 (September 17, 2003).
3. Applying this test to the expert medical opinions offered in the current claim, I find Dr. Bucksbaum's to be the most credible. With training as both a medical doctor and a biomechanical engineer, Dr. Bucksbaum is well-qualified to evaluate and understand the mechanical forces involved in Claimant's benching activities and the attendant risk factors for developing an overuse injury to her neck and upper extremity. I find persuasive his observation that Claimant's job involved not just repetitive motion, but also sustained posturing, force and vibration. In that context, I am convinced that the neck pain Claimant noted on May 15, 2007 was not an isolated event. To the contrary, it comprised a symptom of work-related overuse involving her entire right upper extremity.

4. I am likewise convinced that Claimant's carpal tunnel syndrome was work-related. Contrary to Dr. Johansson's assertion, this condition had been diagnosed by Dr. Ryder as early as 2005. Given that prior history, and the known risk factors for repetitive stress to which Claimant continued to be exposed in her job thereafter, I am persuaded that the symptoms she exhibited in 2008 also were work-related.
5. I conclude, therefore, that Claimant has sustained her burden of proving that her work for Defendant caused her to develop an overuse injury in her neck, right upper extremity, elbow and wrist. As a result of this injury, Claimant was disabled from working full time from May 15, 2007 until November 15, 2007. Claimant again was disabled from working on March 19, 2008; that disability was ongoing as of the formal hearing.
6. Claimant has submitted a request under 21 V.S.A. §678 for costs totaling \$3,760.22 and attorney fees totaling \$8,883.00. An award of costs to a prevailing claimant is mandatory under the statute, and therefore these costs are awarded. As for attorney 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 is hereby **ORDERED** to pay:

1. Temporary total and/or temporary partial disability benefits for the periods specified in Conclusion of Law 5 above, with credit for any amounts previously paid pursuant to the Department's interim orders and with interest in accordance with 21 V.S.A. §664; such payments to continue until appropriately terminated in accordance with 21 V.S.A. §643a;
2. Medical benefits covering all reasonable and necessary medical services and supplies causally related to treatment of Claimant's compensable injury;
3. Permanent partial disability benefits, if proven, in amounts to be established in accordance with 21 V.S.A. §648;
4. Costs totaling \$3,760.22 and attorney fees totaling \$8,883.00.

**DATED** at Montpelier, Vermont this 20<sup>th</sup> day of January 2010.

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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.