

Retez Johnson v. Oly Equinox Holding Company

(August 5, 2010)

**STATE OF VERMONT
DEPARTMENT OF LABOR**

Retez Johnson

Opinion No. 25-10WC

v.

By: Phyllis Phillips, Esq.
Hearing Officer

Oly Equinox Holding Company

For: Valerie Rickert
Acting Commissioner

State File No. W-52247

OPINION AND ORDER

Hearing held in Montpelier, Vermont on February 5, 2010

Record closed on May 14, 2010

APPEARANCES:

Amy Palmer-Ellis, Esq., for Claimant

Corina Schaffner-Fegard, Esq., for Defendant

ISSUE PRESENTED:

Is Claimant entitled to a spinal cord stimulator trial as reasonable and necessary medical treatment for his September 5, 2004 work-related injury?

EXHIBITS:

Joint Exhibit I: Medical records

Claimant's Exhibit 1: Preservation deposition of Dr. Al-Botros, February 2, 2010

Defendant's Exhibit A: *Curriculum vitae*, Leon Ensalada, M.D., M.P.H.

Defendant's Exhibit B: Dr. Ensalada diagram

Defendant's Exhibit C: Preservation deposition of Dr. Drukteinis, February 25, 2010

CLAIM:

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

Costs and attorney fees 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 his 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 worked for Defendant as a sous chef at the Equinox Resort. On September 5, 2004 he was injured when a 300-pound warming cart toppled out of a catering truck and struck him in the area of his right hip, upper thigh and groin.

Claimant's Prior Medical and Psychological History

4. Prior to his employment for Defendant, Claimant had both a varied work history and a fairly extensive history of work-related injuries as well. The most significant of these occurred in July 1997, when he was working on a Mississippi River cruise ship, the Delta Queen. According to the contemporaneous medical records, Claimant fell approximately 6 to 8 feet from the boat to the water, striking his head on the way down. Bystanders reported that he was pulled from the water within one minute, and remained alert throughout.
5. Initially Claimant was diagnosed with a post-concussive headache syndrome as a result of the Delta Queen incident. Later, in August and September 1997 he underwent an evaluation by Dr. Whatley, a clinical neuropsychologist, who diagnosed post-traumatic stress disorder as well.
6. Dr. Whatley administered a number of psychological tests in the course of his 1997 evaluation, including the Minnesota Multiphasic Personality Inventory-2 (MMPI-2). Notably, Dr. Whatley observed that individuals with MMPI-2 personality profiles similar to Claimant's "often react to stress by developing physical symptoms," and "demonstrate an extreme concern over their bodily functions." Dr. Whatley concluded that Claimant was suffering from severe emotional distress and likely would need long-term individual psychotherapy.
7. Notwithstanding Dr. Whatley's recommendations, Claimant appears not to have sought treatment for any emotional or psychological symptoms until June 1999, nearly two years later. At that point, he complained to Dr. Smalley, the neurologist who had treated him in the months following his 1997 injury, of insomnia, headaches, anxiety, depression, panic attacks and memory loss. Claimant also reported nighttime "spells," but EEG monitoring revealed these to be pseudo seizures attributable to behavioral and emotional issues rather than to any abnormal brain activity. Dr. Smalley prescribed various psychotropic medications, including Xanax, Zoloft and Seroquel, to address Claimant's symptoms, and referred him again to Dr. Whatley for further psychiatric treatment.

8. Claimant underwent individual psychotherapy with Dr. Whatley from November 1999 through March 2000, and with another psychiatrist, Dr. Dancer, from August 2000 until January 2001.

Claimant's Medical Course following the September 5, 2004 Work Injury

9. Claimant initially treated at the Southwestern Vermont Medical Center Emergency Department following his September 5, 2004 work injury. He complained of severe right hip pain and was diagnosed with a hip contusion. Extensive imaging studies were negative for any fractures. Clinical examination did not reveal any signs of trauma around Claimant's abdomen, genitals or peroneal region.
10. By October 2004, however, Claimant had begun to complain of worsening groin pain, radiating to his testicles, penis and upper thigh. The etiology of these symptoms has remained unclear. Most diagnoses have focused on a neuropathic source, likely related to ilioinguinal nerve damage that occurred as a result of the September 2004 work injury.
11. Claimant has undergone an extensive course of treatment for his symptoms, including physical therapy, epidural steroid injections, nerve blocks, acupuncture, inguinal hernia surgery and behavioral medicine counseling, all to no avail. At this point, his pain has become chronic. Claimant has been prescribed large dosages of Neurontin to treat his nerve pain, as well as various narcotic medications for pain management, but still routinely quantifies his pain as a 9 on a 10-point analog pain scale. He has not worked since the injury. He walks with a cane and testified that his life is stressful and painful.
12. In June 2007 the Department approved the parties' Form 14 Settlement Agreement. This resolved Claimant's claim for indemnity benefits on a full and final basis, but left open his entitlement to further medical and/or vocational rehabilitation benefits causally related to the September 2004 work injury.

Treatment Recommendation for Spinal Cord Stimulator

13. During the summer of 2007 Claimant and his wife moved to Oklahoma so that they could be closer to family and friends. Once there, Claimant began treating with Dr. Alhaj, a board-certified pain management specialist.
14. Among Dr. Alhaj's initial treatment recommendations was that Claimant be considered for a spinal cord stimulator trial. A spinal cord stimulator is a surgically implanted electronic device that blocks the transmission of painful sensations from a peripheral nerve to the brain by transmitting a tingling sensation up the spinal cord instead.

15. Prior to implantation of a spinal cord stimulator, candidates first must undergo a psychological evaluation to determine if any psychological or emotional factors exist that might reduce the device's efficacy. At Dr. Alhaj's referral, Claimant underwent the required psychological evaluation with Dr. Hawkins, a clinical psychologist, in September 2007. Dr. Hawkins administered both the MMPI-2 and a pain inventory test. Based on this testing, he concluded that while Claimant exhibited clinical levels of anxiety and depression, these were "within normal limits for pain patients." In Dr. Hawkins' opinion, therefore, these findings did not disqualify Claimant from consideration for a spinal cord stimulator.
16. Dr. Hawkins did not provide the raw test data from which his conclusions were drawn, nor did he describe Claimant's test results in any detail. There is no indication, furthermore, that he was aware of Claimant's past medical or psychiatric history, particularly his diagnosis and treatment for post-traumatic stress disorder in the years following the 1997 Delta Queen incident.

Expert Medical Opinions in Opposition to Spinal Cord Stimulator

17. At Defendant's request, both Dr. Ensalada and Dr. Drukteinis conducted medical records reviews and rendered opinions as to whether Claimant is an appropriate candidate for a spinal cord stimulator. Dr. Ensalada is board certified in anesthesiology and pain management and has substantial experience with a range of interventional treatments for chronic pain, including spinal cord stimulators. Dr. Drukteinis is board certified in psychiatry and neurology. Neither doctor personally evaluated Claimant prior to rendering their opinions, but both did review his complete medical file dating back to 1988.
18. In Dr. Ensalada's opinion, Claimant is not an appropriate candidate for a spinal cord stimulator trial. In support of this opinion, Dr. Ensalada enumerated both scientific and individual factors that he feels effectively disqualify Claimant from consideration.
19. According to Dr. Ensalada, there is as yet no scientific basis for concluding that a spinal cord stimulator is a safe and effective treatment for the symptoms from which Claimant suffers. The device has been well-studied primarily in conjunction with two conditions – failed back surgery syndrome and complex regional pain syndrome – but there is no evidence to support its use for treatment of genitourinary or groin pain. Given the anatomy of the spinal cord, the stimulator works well for patients who have nerve root pain radiating to a single extremity, be it an arm or a leg. In Dr. Ensalada's opinion, however, it would be very difficult to implant the device's electrodes in such a way as to obtain coverage in the trunk, groin or pelvic area.

20. Beyond that concern, from his review of the medical records Dr. Ensalada concluded that individual factors related to Claimant's psychological and behavioral makeup also made him an inappropriate candidate for a spinal cord stimulator. Dr. Ensalada noted what he believed to be evidence of Claimant's long-standing tendency to exaggerate his response to physical injuries. He characterized this tendency as a somatoform disorder – a mental or behavior disorder in which a person unconsciously uses physical symptoms for psychological purposes.¹ In Dr. Ensalada's opinion, treatment with a spinal cord stimulator is specifically contraindicated in patients with that psychological profile.
21. Based on his own review of the medical records, Dr. Drukteinis also concluded that Claimant was not a suitable spinal cord stimulator candidate. In his opinion, Claimant's treatment records suggested a strong psychosomatic component to his symptoms. In addition, the psychological tests that Dr. Whatley had administered following Claimant's 1997 injury showed both a "significant psychological disturbance" and a "troubling personality makeup." According to Dr. Drukteinis, this information warranted "extreme caution" for any invasive treatment, including a spinal cord stimulator.
22. In Dr. Drukteinis' opinion, a longitudinal history of the patient is crucial to understanding how best to treat a pain disorder. For that reason, he specifically discounted Dr. Hawkins' report in favor of a spinal cord stimulator trial. Because Dr. Hawkins apparently was not aware of Claimant's extensive prior medical and psychological history, Dr. Drukteinis found his assessment incomplete and his conclusions unsustainable.
23. Claimant presented evidence from his current treating psychiatrist, Dr. Al-Botros, who testified that in his opinion Claimant does not suffer from somatoform disorder and that his current psychological state is "quite stable." Dr. Al-Botros acknowledged, however, that his only role in Claimant's current treatment is to prescribe and monitor his medication regimen. He does not provide psychotherapy. Dr. Al-Botros also acknowledged that he has not reviewed Claimant's prior medical records and was not aware of any previous injuries or psychological treatment. Dr. Al-Botros was not identified as an expert on the specific question whether Claimant was an appropriate candidate for a spinal cord stimulator, and therefore did not express any opinion on that issue.

¹ Somatoform disorder is not malingering. Malingering involves the *voluntary* manipulation of physical symptoms for external gain. With somatoform disorder, the manipulation is unconscious, involuntary and internally motivated.

CONCLUSIONS OF LAW:

1. At issue in this claim is whether Defendant should be obligated to pay for Claimant's proposed spinal cord stimulator trial. 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 injured worker's 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. *MacAskill v. Kelly Services*, Opinion No. 04-09WC (January 30, 2009); *P.M. v. Bennington Convalescent Center*, Opinion No. 55-06WC (January 2, 2007).
2. Here, Claimant relies on the opinions of his treating physician, Dr. Alhaj, and Dr. Alhaj's consulting psychologist, Dr. Hawkins, in support of his assertion that a spinal cord stimulator is an appropriate treatment option for him to pursue. Defendant relies on the opinions of its expert medical witnesses, Dr. Ensalada and Dr. Drukteinis, to establish that Claimant is not an appropriate candidate for the device.
3. 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).
4. I find Dr. Ensalada's and Dr. Drukteinis' opinions to be the most credible here. Dr. Ensalada clearly described both the scientific and the individual factors that, taken together, disqualify Claimant as an appropriate spinal cord stimulator candidate. Dr. Drukteinis concurred, and pinpointed specific elements in Claimant's psychological history to corroborate his opinion. Although neither doctor personally examined or evaluated Claimant, I find that their conclusions are well-supported nonetheless.
5. In contrast, the summary nature of both Dr. Alhaj's and Dr. Hawkins' conclusions makes it difficult for me to understand the basis for their opinions. The fact that neither undertook any comprehensive review of Claimant's previous medical and psychological history prior to stating their positions further undermines their credibility. I do not doubt that they have their patient's best interests at heart. Nevertheless, I cannot impose upon Defendant the obligation to pay for an invasive medical procedure that, based on the evidence before me, appears unlikely to succeed.
6. I conclude, therefore, that Claimant has failed to sustain his burden of proving that a spinal cord stimulator trial constitutes reasonable and necessary treatment for his September 5, 2004 work injury.

ORDER:

Based on the foregoing findings of fact and conclusions of law, Claimant's claim for medical benefits associated with a proposed spinal cord stimulator trial is hereby **DENIED**.

DATED at Montpelier, Vermont this _____ day of August 2010.

Valerie Rickert
Acting 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.