Pamela McGinness v. OWL International (August 8, 2012)

STATE OF VERMONT
DEPARTMENT OF LABOR

Pamela McGinness	Opinion No. 20-12WC
v.	By: Phyllis Phillips, Esq. Hearing Officer
OWL International	For: Anne M. Noonan Commissioner
	State File No. Y-02436

OPINION AND ORDER

Hearing held in Montpelier on May 21, 2012
Record closed on June 14, 2012

APPEARANCES:

Joseph Paul O'Hara, Esq., for Claimant
Robert Cain, Esq. and Andrew Beerworth, Esq., for Defendant

ISSUES PRESENTED:

1. Was Claimant's tarsal tunnel syndrome and resulting surgery causally related to her January 21, 2005 compensable work injury?

2. If yes, to what workers' compensation benefits is she entitled?

EXHIBITS:

Joint Exhibit I:	Medical records
Claimant's Exhibit 1:	Deposition of James Michelson, M.D., March 27, 2012
Claimant's Exhibit 2:	Deposition of James Michelson, M.D., April 3, 2012
Claimant's Exhibit 3:	Dr. Michelson deposition exhibits
Defendant's Exhibit A:	*Curriculum vitae*, Marc Sarnow, D.P.M.
Defendant's Exhibit B:	Anatomic diagram of foot
Defendant's Exhibit C:	Textbook description of Haglund deformity

CLAIM:

Temporary total disability benefits pursuant to 21 V.S.A. §642
Medical benefits pursuant to 21 V.S.A. §640(a)
Interest, costs and attorney fees pursuant to 21 V.S.A. §§664 and 675

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 worked at Defendant's Northland Job Corps Center as a records specialist. Her duties were primarily secretarial. However, as was the case with all Job Corps Center staff, one of her job-related responsibilities was to participate in the weekly student activities day, held every Friday afternoon.

4. On Friday, January 21, 2005 Claimant experienced a sharp pain in her left heel while playing whiffle ball with a group of students in the gym. She reported the injury to Defendant and then sought medical treatment with her primary care provider, who diagnosed an Achilles tendon injury. The Achilles tendon runs down the back of the leg to the foot, where it inserts into the calcaneus, or heel bone.

5. When her heel pain failed to resolve with the passage of time, in early 2007 Claimant began treating with Dr. Michelson, a board certified orthopedic surgeon who specializes in conditions involving the ankle and foot. Dr. Michelson diagnosed retrocalcaneal bursitis, that is, inflammation of the fluid-filled sac (bursa) that sits between the back of the heel bone and the Achilles tendon. He also diagnosed a Haglund deformity, which is a bony enlargement on the back of the heel that can cause further inflammation in the area. The combination of these two conditions caused swelling and tenderness primarily on the posterior (back) and lateral (outer) aspects of Claimant's heel.

6. To address Claimant's symptoms, in May 2007 Dr. Michelson surgically debrided the inflamed tissue around her Achilles insertion and removed the Haglund deformity. The focal point of this procedure was squarely in the back of Claimant's foot and ankle. Defendant accepted the surgery as compensable and paid workers' compensation benefits accordingly.

7. Claimant ambulated with a walking boot on her left foot both prior to and following her May 2007 surgery. Unfortunately, her symptoms failed to resolve even after that procedure. She continued to experience pain and swelling in the back and lateral aspects of her heel, and also began to complain of hypersensitivity in the area. Dr. Michelson thought the latter symptom was indicative of sural nerve irritation, or neuritis. The sural nerve travels along the lateral aspect of the ankle, close to the Achilles tendon. It thus provides sensation to the outside portion of the heel and foot.

8. In October 2008 Claimant underwent repeat surgery, during which Dr. Michelson further debrided the Achilles tendon and removed some re-grown bone and scar tissue. As with the first surgery, the focal point of this procedure was in the back of Claimant's foot and ankle.

9. Claimant did no better following the second surgery than she had after the first procedure. She continued to experience pain, swelling and hypersensitivity in her heel and ankle, mostly in the posterior and lateral aspects.

10. Believing that her symptoms were more likely nerve-related than mechanical in origin, in August 2009 Dr. Michelson suggested that Claimant consider either acupuncture or anesthesia pain management. From late 2009 through mid-2011 Claimant underwent courses of therapy in both of these disciplines. Her symptoms improved only marginally, if at all, during this period.

11. In the meantime, at Defendant's request Claimant underwent two independent medical examinations with Dr. Sarnow, a podiatric surgeon. As a specialist in podiatry, Dr. Sarnow's medical education and training has focused exclusively on the foot and ankle. He is board certified in reconstructive rear foot and ankle surgery. Dr. Sarnow first evaluated Claimant in May 2009 and then again in February 2011.

12. Dr. Sarnow was the first to postulate tarsal tunnel syndrome as a possible cause of Claimant's ongoing symptoms. The tarsal tunnel is located on the medial, or inside, aspect of the ankle, approximately 1.5 to 2 centimeters forward from the Achilles insertion into the heel bone. It is bordered on the bottom by bone and on the top by a relatively inelastic band of fibrous tissue. The inside aspect of the Achilles tendon runs adjacent to the tarsal tunnel, but does not travel through it. Various nerves, tendons and blood vessels do pass through the tunnel, including the long flexor tendons to the toes and the posterior tibial nerve. When that nerve becomes compressed, symptoms indicative of tarsal tunnel syndrome may result.

13. Tarsal tunnel syndrome is physiologically similar to carpal tunnel syndrome in that it involves a condition of increased pressure on a nerve as it travels through a closed compartment. It differs from carpal tunnel syndrome, however, in that it is rarely caused by routine activities of daily living. This is because the foot and ankle are not typically subjected to the same type and degree of stress to which the wrist is often exposed. In the case of tarsal tunnel syndrome, damage to the posterior tibial nerve is a function of two key factors – pressure and time. When the other structures within the tunnel take up too much space, be it from nerve growth, tumor, venous pathology, inflammation or some other cause, the nerve becomes impinged. The more pressure that is exerted on the nerve, the less time it takes for damage to occur. With less pressure, the process may take far longer and symptoms may not become apparent for quite some time.

14. In Claimant's case, Dr. Sarnow initially theorized that post-operative inflammation and scarring around the site of her two previous surgeries may have caused tarsal tunnel entrapment. Electrodiagnostic testing confirmed that the posterior tibial nerve was in fact compressed, and in September 2011 Dr. Michelson surgically released it.

15. Later, upon reviewing Dr. Michelson's operative report, Dr. Sarnow revised his opinion as to the etiology of Claimant's tarsal tunnel syndrome. That report noted large veins within the tarsal canal, but made no mention of scar tissue. Dr. Sarnow concluded that these veins had likely encroached on the available space in the tunnel and caused Claimant's tibial nerve to become compressed.

16. Dr. Sarnow did not make any causal connection whatsoever between the existence of large veins in Claimant's tarsal canal and either her 2005 work injury or her subsequent surgeries. Large veins can develop for a variety of reasons, including injury, hypertension, renal disease and the aging process itself. To Dr. Sarnow's way of thinking, the fact that Claimant had undergone two surgeries to correct the damage occasioned by her work injury and yet her symptoms still persisted was reason enough to question whether an entirely different disease process might be at work. Once discovered, to attribute the cause of that condition back to those earlier events would be speculative.

17. Dr. Michelson applauded Dr. Sarnow's diagnostic acumen in identifying tarsal tunnel syndrome as the cause of Claimant's persistent symptoms. With the benefit of hindsight, he acknowledged that he himself had noted findings indicative of the condition, but had failed to connect the dots. Most notable among these were signs of generalized swelling, inflammation and tenderness on the medial aspect of Claimant's heel, all documented between October 2007 and August 2009. At least one finding, later confirmed by a February 2008 MRI study, documented tenderness and inflammation at the top of the long flexor tendon to Claimant's big toe, just at the point where it entered the tarsal tunnel. As Dr. Michelson explained, that an area directly adjacent to the tarsal tunnel was inflamed is strong evidence that there was inflammation within the tunnel itself as well. I find this reasoning persuasive.

18. Dr. Michelson now attributes Claimant's ongoing symptoms to three sources – first, the inflammation around her Achilles insertion that directly resulted from her work injury; second, the nerve irritation and hypersensitivity that developed along the sural nerve, in the area of her two subsequent surgeries; and third, the tarsal tunnel syndrome that Dr. Sarnow first suspected in May 2009, a suspicion later confirmed both electrodiagnostically and surgically.

19. Unlike Dr. Sarnow, who felt unable to identify the etiology of Claimant's tarsal tunnel syndrome, Dr. Michelson believes strongly that it is causally related to her work injury. To a reasonable degree of medical certainty, in his opinion her prolonged treatment for, and extended recuperation from, that injury caused chronic pain, swelling and inflammation to develop in the area of her tarsal tunnel. That combination of factors – chronic pressure over an extended period of time – ultimately caused the posterior tibial nerve to become damaged, to the point where tarsal tunnel syndrome developed and surgical release was necessitated.

20. Because Dr. Sarnow and Dr. Michelson differed as to the causal relationship between Claimant's work injury and her tarsal tunnel syndrome, they also differed as to end medical result. Dr. Sarnow concluded that Claimant had reached an end medical result by the time of his February 2011 independent medical examination, and on the basis of that opinion the Department approved Defendant's discontinuance of temporary disability benefits effective March 12, 2011. In contrast, Dr. Michelson believes that Claimant is continuing to recover from the September 2011 tarsal tunnel release surgery and therefore has not yet reached an end medical result.

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. The disputed issue in this claim concerns the causal relationship, if any, between Claimant's January 2005 compensable work injury and her tarsal tunnel syndrome. The parties presented conflicting medical evidence on this issue. 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 those factors here, I conclude that Dr. Michelson's opinion is the most persuasive. As Claimant's treating physician since 2007, he has had the best opportunity to understand the nature and extent of her chronic symptoms. His explanation as to why he failed to recognize signs indicative of tarsal tunnel syndrome until after Dr. Sarnow suggested it as a possible diagnosis was credible. Equally persuasive was the reasoning underlying his conclusion that the condition was causally related to the ongoing pain, swelling and inflammation Claimant experienced during her prolonged recuperation, first from the injury itself and later from her subsequent surgeries.

4. I respect Dr. Sarnow's expertise as a podiatric surgeon and, as Dr. Michelson did, I applaud him for making what was apparently an elusive diagnosis. However, by focusing on Claimant's large veins as the immediate cause of nerve compression within the tarsal tunnel, he failed to address Dr. Michelson's theory as to the root cause of her condition, that is, chronic inflammation precipitated by her work injury and subsequent surgeries. I find nothing in Dr. Sarnow's testimony that dissuades me from accepting Dr. Michelson's opinion on this issue as the most credible.

5. I conclude on the basis of Dr. Michelson's opinion that Claimant's tarsal tunnel syndrome was causally related to her January 2005 work injury and is therefore compensable. As she has not yet reached an end medical result from that condition, I further conclude that it was premature for Defendant to have terminated her temporary total disability benefits when it did. Thus, I conclude that Claimant is entitled to a resumption of benefits retroactive to the date when Defendant's discontinuance became effective, March 12, 2011.

6. As Claimant has prevailed on her claim for benefits, she is entitled to an award of costs and attorney fees in accordance with 21 V.S.A. §678. Defendant has requested and is hereby granted a period of two weeks from the date of this opinion within which to file any objections to Claimant's statement of itemized costs and fees.

ORDER:

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

1. Medical benefits covering all reasonable medical services and supplies causally related to treatment of Claimant's tarsal tunnel syndrome, in accordance with 21 V.S.A. §640;

2. Temporary total disability benefits[1] retroactive to March 12, 2011 and continuing until appropriately discontinued pursuant to Workers' Compensation Rule 18.0000, in accordance with 21 V.S.A. §642 and with interest calculated in accordance with 21 V.S.A. §664; and

3. Costs and attorney fees in amounts to be determined, in accordance with 21 V.S.A. §678.

DATED at Montpelier, Vermont this 8th day of August 2012.

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Anne M. Noonan
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.

[1] A credit in Defendant's favor totaling $1,403.57 is hereby acknowledged against such benefits, in accordance with the Commissioner's prior Ruling on Defendant's Motion for Credit/Offset, Opinion No. 11-12WC (April 4, 2012).