STATE OF VERMONT
DEPARTMENT OF LABOR

Thomas Reynolds	Opinion No. 20-15WC
v.	By: Phyllis Phillips, Esq. Administrative Law Judge
Northwest Vermont Solid Waste Management District	For: Anne M. Noonan Commissioner
	State File No. FF-62593

OPINION AND ORDER

Hearing held in Montpelier on February 25, 2015
Record closed on April 24, 2015

APPEARANCES:

Claimant, *pro se*
Eric Johnson, Esq., for Defendant

ISSUES PRESENTED:

1. Did Claimant's work for Defendant cause the fungal infections in his finger- and toenails so as to render those conditions compensable?

2. If yes, to what workers' compensation benefits, if any, is Claimant entitled?

EXHIBITS:

Joint Exhibit I:	Medical records
Claimant's Exhibit 1:	2013 household hazardous waste "special events" schedule
Claimant's Exhibit 3:	List of personal protective equipment
Claimant's Exhibit 7:	Correspondence from John Leddy, April 30, 2014
Claimant's Exhibit 8:	Correspondence from John Leddy, May 14, 2014
Claimant's Exhibit 9:	Northwest Vermont Solid Waste Management District Supervisor's Report, 2012
Claimant's Exhibit 10:	Northwest Vermont Solid Waste Management District Supervisor's Report, 2013
Defendant's Exhibit A:	Programs Coordinator job description
Defendant's Exhibit B:	Claimant's timesheets, 4/28/13-12/21/13

Defendant's Exhibit C: Affidavit of John Leddy, April 17, 2015
Defendant's Exhibit D: Affidavit of Pamela Bolster, April 17, 2015

CLAIM:

Temporary total disability benefits retroactive to April 7, 2014 pursuant to 21 V.S.A. §642, with interest calculated in accordance with 21 V.S.A. §664
Medical benefits pursuant to 21 V.S.A. §640

Ruling on Claimant's Motion to Reopen Record and Reconvene Formal Hearing Proceedings:

In the course of the February 25, 2015 formal hearing, Defendant's Executive Director, John Leddy, testified as to the information depicted on Claimant's weekly timesheets (Defendant's Exhibit B), and specifically as to the handwritten annotations in the right margin of some of them. Mr. Leddy testified that Defendant's business manager routinely queried Claimant as to the number of hours he had spent each week performing household hazardous waste handling duties, and then noted it accordingly in the margin. This information was required to support an annual request for reimbursement from a grant funded by the Vermont Department of Environmental Conservation, the purpose of which was to support Defendant's household hazardous waste collection efforts.

Following the hearing, and after the record had closed, Claimant requested that Defendant be ordered to produce the original, unannotated timesheets. As grounds for this request, Claimant asserted that in reviewing the two sets of timesheets Defendant's attorney had sent him prior to the hearing (one on February 23, 2015 and one on February 24, 2015),[1] he had discovered a discrepancy. In one set of documents, the handwritten annotation on the timesheet for the week of July 7th through 13th, 2014 clearly depicted the number "22," presumably reflecting 22 hours of household hazardous waste handling duties. In the other set, the handwritten annotation had been partially altered, and now depicted either the number "32" or the number "2." Claimant questioned why only the first set of documents had been offered into evidence, and requested that the administrative law judge reopen the record and reconvene the formal hearing so that further testimony could be elicited as to the circumstances surrounding the apparent alteration reflected in the second set.

Noting that the discrepancy between the two sets of documents was only marginally relevant to the disputed issues in the case, the administrative law judge deferred a decision on Claimant's request to reconvene the formal hearing. Instead, she ordered Defendant to produce sworn affidavits from Mr. Leddy and/or others with personal knowledge of the circumstances surrounding the altered timesheet annotations.

[1] Apparently the first set of records Defendant sent were partially illegible, so it produced cleaner copies.

In compliance with the administrative law judge's order, Defendant produced two affidavits – one from Mr. Leddy, the other from Pamela Bolster, Defendant's business manager.[2] Taken together, the affidavits establish the following:

- That the first, unaltered timesheet for July 7th through 13th, 2014 reflected that Claimant had performed 22 hours of household hazardous waste handling duties during that week;

- That at some point during the process of submitting Defendant's grant reimbursement request to the Department of Environmental Conservation, Ms. Bolster made some additional markings on the timesheet, the purpose of which she no longer recalls;

- That sometime thereafter, Ms. Bolster interpreted her markings as reflecting 32 hours of household hazardous waste collection duties for the week, and therefore indicated that amount on Defendant's grant reimbursement request;

- That the grant reimbursement request was submitted on or about January 15, 2014, some three months prior to the date when Claimant initiated his workers' compensation claim;

- That having reviewed the timesheets more recently, Ms. Bolster now realizes that her markings could not have indicated 32 hours of household hazardous collection duties for the week in question, as the timesheet reflects that Claimant only worked 31.5 hours in total during that week;

- That possibly the additional markings reflect that Claimant spent two days, or 17 hours, during that week on household hazardous waste duties;

- That neither Ms. Bolster nor Mr. Leddy can definitively determine at this point what the additional markings were intended to depict, or how many hours of household hazardous collection duties Claimant actually performed during the week in question.

Upon receipt of Mr. Leddy's and Ms. Bolster's affidavits, Claimant renewed his request to reconvene the formal hearing.

As discussed *infra*, Finding of Fact No. 36, whether the handwritten notations on the timesheet in question reflect 22 hours of household hazardous waste duties, or 32 hours, or 2 days totaling 17 hours, is only marginally relevant to the question whether

[2] The affidavits, with accompanying attachments, have been admitted into evidence as Defendant's Exhibits C and D, respectively.

Claimant's finger- and toenail infections were causally related to his work activities. Given the timing of Ms. Bolster's additional markings, which occurred long before either she or Mr. Leddy had any knowledge that Claimant later would be asserting a workers' compensation claim related to his household hazardous waste duties, I am satisfied that the altered documents do not indicate any misleading or deceitful intent, furthermore. For that reason, I conclude that it is not necessary to reconvene the formal hearing for the purpose of taking additional testimony on this issue.

Claimant's motion to reopen the record and reconvene the formal hearing is hereby **DENIED**.

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 and correspondence contained in the Department's file relating to this claim.

3. Claimant began working as Defendant's programs coordinator in 2010. His duties included coordinating, planning and implementing outreach events and programs related to Defendant's solid waste collection efforts. Claimant had considerable contact with the public. He produced educational and promotional materials, ensured compliance with applicable permits, rules and safety procedures and reported on program progress to Defendant's board. He also had supervisory responsibilities as to temporary and seasonal staff, interns and contract workers.

Claimant's Prior Medical History

4. Claimant has a prior medical history of psoriasis dating back some twenty-plus years. The medical records in evidence, which date back only to November 2000, report complaints of chronic, worsening psoriasis in July 2009, a flare in January 2010 and psoriatic lesions on his legs, back and ears in September 2012.

5. Psoriasis is a chronic skin condition, thought to be an autoimmune disease and possibly genetically inherited. The condition can be controlled, but not cured. Periods of remission and flares are common; the latter can be triggered by stress, infections, alcohol and certain medications, or they can simply occur spontaneously. People who suffer from psoriasis are also at risk for developing psoriatic arthritis, or joint pain.

Claimant's Household Hazardous Waste Handling Activities and Use of Personal Protective Equipment

6. For the first two years of Claimant's tenure as Defendant's programs coordinator, an outside contractor was responsible for collecting, sorting and disposing of the hazardous waste materials that residents and certain small businesses brought to Defendant's collection sites; Claimant's involvement in the process consisted primarily of educating community members as they did so. In 2012, Defendant brought the operation in-house, and Claimant assumed a much more active role in its management. From May to October, Defendant scheduled various "special events," during which residents could bring their household hazardous waste to designated sites throughout the district. As a result of these and other efforts, Defendant processed almost 17,000 pounds of hazardous waste in 2012. In 2013, the program grew even more, with more than 41,000 pounds of hazardous waste collected.

7. Claimant handled much of the workload at these events. As materials were dropped off, he and his co-workers would sort them into categories – flammable liquids, paints, acids, bases, aerosols and "unknowns," for example. Later, they would "bulk" the materials in accordance with the handling protocols required by their chemical composition. Paint, oil and antifreeze containers were typically opened and their contents scraped or poured into larger drums. Other waste products, such as herbicides, insecticides, acids and bases were "lab packed," meaning that the containers in which they were dropped off were placed unopened in larger containers, spaced with vermiculite and then sealed and transported offsite for disposal. Neither Claimant nor his co-workers were directly involved in bulking more dangerous materials; these were referred to technical support for further handling, as were any "unknowns."

8. While engaged in bulking activities, Claimant always wore personal protective equipment (PPE), consisting of safety glasses, a half-face shield, a respirator with a cartridge, a frontal apron that hung from his neck to his ankles, chemical resistant rubber boots and two layers of chemical resistant gloves. Claimant credibly described being "sweaty as heck" whenever he wore this gear.

9. Claimant estimated that from May through October each year, he devoted as much as 70 to 80 percent of his time to the household hazardous waste program. In addition to the collection and bulking activities described above, some of his duties were purely administrative, for example, completing paperwork and responding to email and telephone inquiries. Other activities, such as compost education at area schools, were hands-on, but required only "casual" protective gear – a pair of lighter duty gloves rather than the head-to-toe PPE he wore when bulking hazardous waste.

10. Many of Claimant's activities for the other half of the year, from November through April, occurred indoors, primarily in an office environment, and as such

did not require him to wear any personal protective gear. He could recall only one instance when he performed bulking activities during these months; this was for three or four days in December 2013, and involved latex paint, for which he wore only regular gloves and an apron, but not full PPE.

11. Claimant's timesheets document that he performed household hazardous waste handling activities during 20 of the 28 weeks from April 28, 2013 through November 2, 2013, at a rate of approximately 20 hours per week and typically spread across three or four days.[3, 4] The number of hours per day ranged from a low of two (during the week ending August 17, 2013) to a high of 12 (during the weeks ending June 29, 2013 and September 21, 2013). As noted above, not all of Claimant's household hazardous waste duties involved bulking, and therefore it is unclear exactly how many of the hours allocated to that program were spent wearing full PPE. Based on the credible evidence, I find that it was likely more than 50 percent, but less than 100 percent.

Claimant's Medical Course Since July 2013

12. In July 2013 Claimant presented to his primary care provider, Anne Standish, a family nurse practitioner, complaining of a rash on the soles of his feet that had developed gradually over the previous two weeks. Claimant reported his history of psoriasis, noting that each year his psoriatic plaques progressed. Ms. Standish noted the new lesions on his feet, as well as extensive plaques on his knees, elbows and back. As treatment, she prescribed a topical steroid ointment, and referred Claimant to a dermatologist for possible ultraviolet light therapy and/or steroid injections.

13. On September 5, 2013 Claimant presented to Elizabeth Hughes, a physician assistant at Four Seasons Dermatology, complaining of a painful, moderately severe rash on his feet and hand. As reflected in the contemporaneous medical record, Ms. Hughes' examination included "inspection and palpation of [Claimant's] digits and nails." She did not report any findings in those areas, however; her diagnosis referred only to localized plaque psoriasis on Claimant's ear, feet, leg, arm and hand, for which she prescribed two topical steroid ointments. Notwithstanding Claimant's formal hearing testimony to the contrary, I find from this evidence that he likely was not yet suffering from any painful skin condition or infection in his finger- or toenails at this time.

14. Claimant returned to Ms. Hughes in mid-October 2013. Ms. Hughes reported that plaques were now present on his knees and great toes bilaterally, in addition to

[3] Given the evidence produced in conjunction with Claimant's request to reopen the record, *see* Defendant's Exhibits C and D, I acknowledge that the hours allocated on Claimant's timesheets to household hazardous waste activities may not be entirely accurate. Nonetheless, I find credible Mr. Leddy's testimony during formal hearing that they are "in the ballpark."

[4] Because Claimant did not wear full PPE while working at Defendant's household hazardous waste "special events," those hours are not reflected in this analysis.

those that remained on his ears, feet, leg, arm, elbows and hand. Still there was no mention of any findings specific to Claimant's finger- or toenails. Ms. Hughes described his psoriasis as "inadequately controlled," and suggested that oral therapy might be necessary if topical treatment proved unsuccessful.

15. The medical records do not reference any findings relative to Claimant's nails until November 25, 2013. On that date, he presented to Dr. Merena, a podiatrist, with concerns of skin and toenail changes on both feet that had become problematic over the past few months. On examination, Dr. Merena noted dry, cracked skin on Claimant's feet, with similar skin changes on his elbows, knees and behind his ears. In addition, his toenails were brittle, thickened, discolored and cracking, but of note, not painful. Dr. Merena diagnosed psoriasis, and recommended that Claimant continue with the topical steroid medications he already had been given "for actual psoriasis plaques as well as involving the toenails."

16. The medical records do not document any complaints of pain associated with Claimant's finger- and/or toenails until January 9, 2014. As reported by David Spence, a physician assistant in Ms. Standish's primary care practice, Claimant's psoriasis had worsened over the course of the previous two to three months "since severe stress at work with conflict with [a] coworker." His fingernails were now inflamed, infected and falling apart. As treatment for the infection, Mr. Spence prescribed an antibiotic; for the psoriasis, he recommended continued use of topical steroid ointments and referred Claimant back to the dermatologist for further evaluation.

17. On January 27, 2014, Claimant presented to Dr. Partilo, a dermatologist in Ms. Hughes' practice, with a very painful rash on his hands, and additional rashes on the soles of his feet and his finger- and toenails. Dr. Partilo diagnosed the rash as psoriatic, and recommended continued use of the topical steroid ointment Ms. Hughes had prescribed as treatment. As for Claimant's nails, which Dr. Partilo described as severely brittle, cracked and yellowed, the differential diagnosis was either psoriasis or onychomycosis, a fungal infection of the nail plate.

18. Fungal nail infections are very common in the general population, and the incidence is even higher in people who suffer from psoriasis. Continuous, long-term exposure to wet or humid conditions is also a significant risk factor. Particularly in the toenails, onychomycosis can occur concurrently with psoriasis, though each condition requires separate consideration and treatment. For onychomycosis, oral therapy is more effective than topical treatment, but the condition often recurs in any event.

19. Dr. Partilo next examined Claimant on February 21, 2014. By this time, microscopic analysis of a clipping he had taken in January from Claimant's right great toenail confirmed onychomycosis in that digit. On examination, Dr. Partilo noted that both finger- and toenails were discolored and detached from their nail

beds. Psoriatic plaques also were present "throughout" Claimant's body. As treatment for the latter condition, Dr. Partilo prescribed narrow band UVB therapy, which Claimant underwent with some success over the ensuing weeks.

20. For Claimant's onychomycosis, Dr. Partilo prescribed a three-month course of Lamisil (terbinafine), an oral medication. For reasons that are unclear, Claimant did not immediately commence taking the drug, and when he did, he experienced stomach pain and other side effects. In the meantime, the pain in his fingers and toes continued to worsen. The ends of his fingers were swollen and throbbing, and shoes and socks irritated his toes. As noted *infra*, Findings of Fact No. 45, Claimant found it difficult to work, primarily because of the pain in his hands, and for that reason he requested on more than one occasion that his treating providers support his claim for disability.

21. Despite his worsening pain, microscopic analysis of nail clippings taken from Claimant's left great toe and left index finger in mid-April 2014 showed no evidence of fungal elements, meaning that his onychomycosis had resolved, at least in those digits. At the same time, both clippings showed parakeratosis, a dry, scaly skin condition associated with psoriasis.[5] By this time, many of the psoriatic plaques on Claimant's body had almost completely cleared with UVB therapy except for the plaques on his feet, which had failed to respond. With that in mind, Dr. Licata, another dermatologist in Dr. Partilo's practice who had become involved in Claimant's care, theorized that his lingering symptoms might now be due to psoriatic arthritis rather than infection. She thus recommended that he consider a rheumatology consult. As for the remaining plaques, Dr. Licata suggested a trial of methotrexate, an oral medication.

22. Frustrated by his ongoing symptoms, and wary of additional medications, on April 23, 2014 Claimant underwent a second opinion evaluation with Dr. Callahan, a dermatologist. As documented in the medical record, subjectively Claimant described "stiffness and arthritic symptoms" in the morning, which seemed to improve as the day went on. He reported that his fingers were extremely painful, and that he had difficulty doing anything with his hands. Based both on this history, and on what Dr. Callahan described as "clinically classic" psoriatic changes in nine of ten fingernails, he diagnosed nail psoriasis, "possibly in conjunction with psoriatic arthritis" in Claimant's fingers. As to the toenails, he diagnosed onychomycosis, "possibly in conjunction with underlying nail psoriasis."[6]

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[5] *See* http://medical-dictionary.thefreedictionary.com/parakeratosis.

[6] Dr. Callahan's onychomycosis diagnosis appears to have been based on Claimant's report of the microscopic analysis completed in January 2014, *see* Finding of Fact No. 19 *supra*; at the time of his examination, the results of the April 2014 analysis, *see* Finding of Fact No. 21 *supra*, had not yet become available.

23. As for treatment, Dr. Callahan supported Dr. Partilo's and Dr. Licata's efforts, that is, methotrexate for Claimant's psoriasis and Lamisil for his onychomycosis. He also suggested a steroid injection into the base of Claimant's left index finger, which Claimant indicated was his most problematic nail. Claimant agreed to the procedure, and in his formal hearing testimony acknowledged that it was helpful, and that although it took many months, the nail eventually grew back "perfectly."

24. Still dissatisfied with conventional medical treatment, at his father's advice Claimant began treating with Dr. Warnock, a naturopath. Dr. Warnock did not testify at the hearing, and therefore it is unclear what his credentials are, particularly with respect to diagnosing and treating patients with psoriasis and onychomycosis.

25. Dr. Warnock first evaluated Claimant on April 29, 2014, and has continued to treat him regularly since. His diagnosis has remained constant throughout – dystrophic, or misshapen nails, and pain due to onychomycosis and paronychia, an infection of the folds of tissue surrounding the nail.[7] Dr. Warnock's treatment records also reference psoriasis and joint pain as concurrent problems from which Claimant suffers.

26. Upon first evaluating Claimant, Dr. Warnock recommended that he immediately discontinue Lamisil. Instead, as treatment for Claimant's finger- and toenail conditions he suggested supplements, a topical laquer and dietary changes, such as eliminating gluten and sugary sodas. Except for some of the dietary restrictions, Claimant has been compliant with these recommendations.

27. At the formal hearing, Claimant testified credibly that some of his nails remain swollen and infected, others have only partially regrown and all of them are still "in bad shape." As a result, he still has difficulty with fine motor tasks. His toes hurt constantly, though with the proper footwear the pain is manageable. I find from this evidence that Dr. Warnock's treatment plan has been only marginally successful. Nevertheless, Claimant remains committed to it.

Expert Medical Evidence

28. Claimant provided expert medical evidence from both Dr. Partilo and Dr. Warnock as to (a) the causal relationship between his work for Defendant and the fungal infections in his finger- and toenails; and (b) the extent to which he was disabled from working after April 7, 2014. Unfortunately, neither Dr. Partilo nor Dr. Warnock testified at formal hearing, and therefore it is difficult to discern the evidence upon which their respective opinions are based.

29. Defendant countered with expert evidence from Dr. Redlich, a board certified specialist in internal, occupational and environmental medicine. Dr. Redlich has

[7] *See* http://en.wikipedia.org/wiki/paronychia.

been a faculty member at Yale Medical School since 1990, and currently directs the school's occupational and environmental medicine program. Her opinions in this case were based on her review of Claimant's medical records, deposition testimony, written job description and timesheets, as well as relevant medical literature regarding the relationship between psoriasis and fungal nail infections. Dr. Redlich testified at formal hearing as to both her credentials and her analysis.

(a) Causal Relationship

(i) Dr. Partilo

30. Both Dr. Partilo and Dr. Warnock posited a causal relationship between Claimant's work for Defendant and his onychomycosis, though for different reasons. In Dr. Partilo's opinion (as reflected in his March 31, 2014 office note), Claimant's nail infection "started in August 2013," and was "most likely related to the wet work [he] does daily as his hands and feet are covered seasonally from May 1st to Oct 1st." In reaching this conclusion, Dr. Partilo relied primarily on the history Claimant had reported to him; he did not seek independent verification from other sources, such as prior medical records or timesheets.

31. In fact, as I have already found, the contemporaneous medical records document that Claimant's nails showed no signs of painful infection as of Ms. Hughes' September 5, 2013 examination, *see* Finding of Fact No. 13 *supra*, and therefore I cannot accept as valid Dr. Partilo's statement that the condition first occurred in August, which would have been in the midst of the household hazardous waste season. Claimant's timesheets, his written job description and his own testimony belie Dr. Partilo's assumption that he was performing "wet work" and/or wearing personal protective equipment on a daily basis, furthermore; I have found that he averaged only about 20 hours per week, typically spread across three or four days, *see* Finding of Fact No. 11 *supra*. For these reasons, I find that the necessary factual underpinnings for Dr. Partilo's causation theory are lacking.

(ii) Dr. Warnock

32. Dr. Warnock hypothesized a different relationship between Claimant's work and his onychomycosis. In his opinion, the abnormalities in Claimant's nails most likely resulted from a one-time exposure to toxic chemicals on September 19, 2013. On that date, Claimant experienced chest discomfort after opening a can of creosote-based wood preservative and inhaling some of its fumes through his respirator. As reflected in the contemporaneous medical records, he sought treatment within hours at the Northwestern Walk-In Clinic, complaining only of a dull ache in his chest. He denied any direct skin contact with the chemical, and physical examination revealed no other signs of exposure, including rash.

33. Dr. Warnock did not identify any medical or scientific basis for his conclusion that the dystrophy and infection in Claimant's nails were caused by a one-time

chemical inhalation exposure, nor does the evidence reflect that he has any specialized training or expertise in this area. Lacking any such foundation, I find his opinion speculative and unpersuasive.

(iii) *Dr. Redlich*

34. Dr. Redlich concluded that Claimant's onychomycosis was most likely causally related to his psoriasis, and therefore was not work-related in any way. The nail and skin changes from which psoriasis patients frequently suffer predisposes them to fungal infections; as a result, the condition is common in that population. As Dr. Redlich correctly noted, furthermore, in Claimant's case the contemporaneous medical records document a strong temporal relationship between his worsening psoriasis and the onset of onychomycosis in his finger- and toenails, which lends further support to her analysis.

35. Dr. Redlich acknowledged an association between fungal nail infections and so-called "wet work," but denied that Claimant's job duties qualified as such, even during the summer household hazardous waste handling season. Based on her review of the medical literature, workers who are exposed on a daily basis, over a period of months or even years, to unusually wet or extremely humid conditions – dishwashers, wet underground mineworkers, swimming pool attendants or well diggers, for example – are very prone to fungal infections. Even on hot, humid summer days, merely wearing personal protective equipment, including gloves and boots of the type Claimant wore, would not amount to the type of "wet work" that is likely to cause the condition, however. If it was, then the incidence of such infections among PPE wearers – attic insulators, for example – would be much higher. I find this analysis persuasive.

36. Dr. Redlich credibly testified that the exact number of hours or days Claimant spent wearing PPE at work was irrelevant to her causation opinion, because none of his duties constituted "wet work" of a type likely to be causative. For that reason, when confronted with evidence that Claimant's timesheets may not have been entirely accurate in this regard, *see* Finding of Fact No. 11 and n.3 *supra*, her opinion remained unchanged. She also found the timing of Claimant's symptoms to be inconsistent with a PPE-based causation theory, as the contemporaneous medical records do not document any infection in his nails until early January 2014, well after the household hazardous waste handling season had ended. I find this analysis credible.

37. Dr. Redlich discounted any causal relationship between Claimant's onychomycosis and his inhalation exposure to toxic chemicals on September 19, 2013. In her opinion, such an exposure would have caused respiratory symptoms only, as the contemporaneous medical records in fact document, but not any kind of fungal nail or skin problems. I find this analysis credible.

38. As to the exact cause of Claimant's finger- and toenail pain, Dr. Redlich was unsure. In her experience, fungal nail infections typically are not painful conditions. She suspected instead that Claimant might be suffering from psoriatic arthritis, which can be very painful. With that in mind, as both Dr. Licata and Dr. Callahan previously had suggested, *see* Finding of Fact Nos. 21 and 22 *supra*, her strongest treatment recommendation was that Claimant consult with a rheumatologist. To date, however, Claimant has declined to do so.

(b) *Work Capacity*

(i) *Dr. Partilo*

39. Dr. Partilo's opinion as to Claimant's ability to work comes in the form of two "To Whom It May Concern" letters, one issued on April 4, 2014 and the other on April 17, 2014. The April 4th letter stated:

> Mr. Reynolds has been seen in our dermatology office for painful fingernails and toenails consistent with a fungal infection, likely related to his work environment. He mentioned that he is scheduled to begin wet work from May 1st to October 31st but this will likely aggravate his condition. He is currently being treated with an oral medication for this condition. Should he resume wet work, the condition will likely recur.

40. The April 17th letter addressed essentially the same concern. It stated:

> Mr. Reynolds suffers from a distressing nail condition that is affecting his ability to work. I advise that he not work in an environment where his hands and feet are exposed to heat and moisture. It is my understanding that starting May 1st his job requires such responsibilities. In order for his painful nails to improve, I recommend that he not work in his current position.

41. I have already found that Claimant's job duties were varied. Even during the household hazardous waste season, he did not always wear personal protective equipment, *see* Finding of Fact No. 9 *supra*, and in the off-season he worked primarily in an office environment, *see* Finding of Fact No. 10 *supra*. For this reason, notwithstanding Dr. Partilo's recommendation that Claimant avoid "exposure to heat and moisture," I cannot accept either of his letters as credibly establishing Claimant's total disability from working.

(ii) *Dr. Warnock*

42. Dr. Warnock determined that Claimant was totally disabled from working on account of his "inability to use [his] hands for all activities" or to wear closed-toe shoes as of the date of his initial evaluation, April 29, 2014, and continuing

through subsequent evaluations as well. As stated in his December 4, 2014 "To Whom It May Concern" letter, in Dr. Warnock's opinion, the "pain and pressure associated with [Claimant's] nail dystrophy made it impossible for [him] to work." According to Dr. Warnock's most recent treatment note, also dated December 4, 2014, Claimant remained totally disabled from working pending his next reassessment on March 9, 2015.

43. As with Dr. Partilo's opinion, I find Dr. Warnock's blanket statement of total disability unconvincing, particularly in its failure to consider the degree of variation in Claimant's job duties. According to his own treatment notes, furthermore, the infection and dystrophy in Claimant's fingernails has improved significantly, such that his current disability relates primarily to his inability "to wear closed-toe shoes due to pain and pressure" in his toes. Yet Claimant testified at formal hearing that at least as of November 2014 he was able to wear steel-toed boots comfortably. For this reason as well, I find Dr. Warnock's statement of ongoing total disability unpersuasive.

(iii) *Dr. Redlich*

44. Dr. Redlich never personally examined Claimant, but based on her review of both his medical records and his written job description, she concluded that his finger- and toenail infections likely were not totally disabling. In her experience, patients who suffer concurrently from fungal infections and psoriasis still retain sufficient function to enable them to perform specific work activities. I find this analysis persuasive.

Claimant's Termination from Employment

45. As noted above, *see* Finding of Fact No. 16 *supra*, by early January 2014 Claimant's fingernails had become inflamed and painful. The contemporaneous medical records document that he sought medical approval for disability from work from both his primary care provider, David Spence, and from Dr. Partilo, his treating dermatologist. Neither provider agreed to his request for short-term disability status, and therefore he continued to work.

46. Defendant's executive director, John Leddy, who was also Claimant's direct supervisor, was generally aware of Claimant's health issues at least as of early fall 2013. In early 2014, Mr. Leddy allowed Claimant to adjust his work schedule to accommodate his medical appointments, particularly while he was undergoing UVB therapy for his psoriasis. In addition, rather than reimbursing Claimant for his out-of-pocket medical expenses on a quarterly basis, in accordance with Defendant's employee benefits package, in March or April 2014 Mr. Leddy advanced him the full maximum annual reimbursement.

47. By April 1, 2014 Claimant had exhausted his accumulated paid leave time. Rather than requiring that he take unpaid leave, Mr. Leddy agreed to allow him to

borrow against his future paid time off, so that he could continue to receive his full wages. Mr. Leddy credibly testified that he did so with the understanding that this was a "short-term situation" and that Claimant "would be working diligently to get back into the positive column."

48. Unfortunately, this did not occur. Instead, on April 4, 2014 Claimant advised Mr. Leddy that his finger- and toenails remained infected, and that his doctors believed the condition was work-related. Mr. Leddy responded appropriately, requesting only that Claimant keep him informed. The following Monday, April 7, 2014, Claimant delivered Dr. Partilo's first "To Whom It May Concern" letter, *see* Finding of Fact No. 39 *supra*, to Mr. Leddy, and then left for a medical appointment.

49. On each successive morning thereafter, from Tuesday, April 8th through Friday, April 11th, and then again on Monday, April 14th and Tuesday, April 15th, Mr. Leddy arrived at work in the morning to a voicemail message from Claimant, advising that he was in pain and would not be able to work that day. None of the messages indicated for how long Claimant expected to be out of work. Feeling the need for more information, on April 15th Mr. Leddy left Claimant a telephone message to that effect.

50. On Friday, April 18th Claimant delivered Dr. Partilo's second "To Whom It May Concern" letter, *see* Finding of Fact No. 40 *supra*, to Mr. Leddy. By this point, he had been absent from work for two weeks. His email and voicemail messages were accumulating, and in a small office environment no one else was available to attend to his assigned administrative tasks. Mr. Leddy clearly expressed that there was administrative work available for Claimant, and also that he would accommodate any restrictions his doctors advised, including shorter hours or open-toed shoes. Mr. Leddy requested that Claimant obtain more detailed information from his doctors so that they could craft appropriate modified duty work assignments.

51. Claimant and Mr. Leddy next met on Wednesday, April 23rd. Mr. Leddy again expressed that Claimant's work was piling up, that modified duty tasks were available and that he wanted him to come back. He reiterated that he needed additional information from Claimant's doctors as to when he would be able to return to work and with what specific functional restrictions. In response, Claimant stated that he was in too much pain to work, that he intended to heal from home and that it might be six weeks to a year before he could return.

52. By letter dated April 30, 2014 Mr. Leddy informed Claimant that the medical documentation he had provided to date was insufficient to excuse him from his "overall duties" as programs coordinator. Mr. Leddy further advised that if

Claimant did not either provide additional medical information or return to work by the following Monday,[8] his employment would be terminated.

53. In response to Mr. Leddy's correspondence, on May 7, 2014 Claimant faxed a letter from Dr. Warnock, stating:

> [Claimant] was seen in my office on 04/29/2014 for a fungal infection of the nails. His fungal infection is due to his exposure to hazardous materials and waste at his workplace. It is medically necessary that [Claimant] discontinues [sic] working until his symptoms fully resolve per my examination.

54. By letter dated May 14, 2014 Mr. Leddy informed Claimant that notwithstanding Dr. Warnock's letter, he still had failed to provide sufficient information as to what limitations, if any, precluded him from performing any of his job duties. For that reason, his employment was terminated effective May 16, 2014.

55. Claimant acknowledged at formal hearing that he fully understood why Mr. Leddy had repeatedly requested additional information regarding his functional restrictions and that "it made sense" for Mr. Leddy to inquire whether he could perform his administrative duties even if he was restricted from household hazardous waste handling tasks. When asked why he did not get clarifying information from his doctors, he responded that he felt his condition was too painful to allow for him to work and that he wanted to heal from home. While I accept that Claimant was sincere in this belief, I find that his testimony still does not adequately respond to the question posed.

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 primary disputed issue here is whether Claimant's work for Defendant caused the fungal infections in his finger- and toenails, so as to render those conditions compensable. As a layperson could have no well-grounded opinion on this

[8] The letter states the deadline for compliance as "Monday, 5/2." May 2nd was a Friday. Mr. Leddy's May 14, 2014 letter (Claimant's Exhibit 8) corroborates that the typographical error was as to the date and not the day.

question, expert testimony is the sole means of laying a foundation for an award of benefits. *Lapan v. Berno's, Inc.*, 137 Vt. 393, 395-96 (1979).

3. The parties offered conflicting medical opinions as to the causal relationship between Claimant's work and his onychomycosis. In such cases, 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).

4. I conclude here that Dr. Redlich's opinion is the most credible. Her qualifications were impressive, and although she neither treated nor examined Claimant personally, her review of his pertinent records, both medical- and employment-related, was far more thorough than either Dr. Partilo's or Dr. Warnock's. Dr. Redlich's analysis was based in large part on the contemporaneous medical records, which documented the temporal relationship between Claimant's worsening psoriasis and the onset of his nail infections. She also relied heavily on her own experience, corroborated by her review of the medical literature, which established that Claimant's so-called "wet work" was not of a type or extent sufficient to cause a fungal infection. Her opinion was thus clear, comprehensive and objectively supported.

5. In contrast, both Dr. Partilo and Dr. Warnock relied almost exclusively on Claimant's report, both as to the timing of his symptoms and as to the nature of his job duties. Neither made any attempt to corroborate the information he conveyed, by reviewing his earlier medical records or his written job description. Nor did they identify a medical or scientific basis for concluding that Claimant's infections were due either to his "wet work" and use of personal protective equipment, as Dr. Partilo theorized, or to his one-time inhalation exposure to toxic chemicals, as Dr. Warnock believed. Without any such objective support, I find both of their opinions unpersuasive.

6. Having concluded that Claimant's condition is not compensable, I need not address the extent, if any, to which he was totally disabled from working. I note only that it is axiomatic in the workers' compensation arena not only that injured workers be evaluated according to their functional abilities, but also that they be encouraged to work in a modified duty capacity whenever possible. *See, e.g., Maluk v. Plastic Technologies of Vermont,* Opinion No. 06-13WC (February 5, 2013). Viewed in this light, and given the particular circumstances of this case, I consider Dr. Warnock's blanket statement of disability unpersuasive.

7. I conclude that Claimant has failed to sustain his burden of proving that the fungal infections in his finger- and toenails are causally related to his work for

Defendant. For that reason, I further conclude that he has failed to establish his entitlement to either temporary total disability or medical benefits.

ORDER:

Based on the foregoing findings of fact and conclusions of law, Claimant's claim for workers' compensation benefits causally related to the fungal infections in his finger- and toenails is **DENIED**.

DATED at Montpelier, Vermont this ____ day of _____, 2015.

_____
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.