STATE OF VERMONT
DEPARTMENT OF LABOR

Donald Collette

v.

Hannaford Bros. Co.

Opinion No. 12-17WC

By: Phyllis Phillips, Esq.
Administrative Law Judge

For: Lindsay H. Kurrle
Commissioner

State File No. BB-02652

OPINION AND ORDER

Hearing held in Montpelier on April 10, 2017
Record closed on September 1, 2017

APPEARANCES:

Cristina Rousseau, Esq., for Claimant
J. Justin Sluka, Esq., for Defendant

ISSUE PRESENTED:

Whether Claimant is entitled to temporary total and/or temporary partial disability benefits for various dates retroactive to September 2015 as causally related to his March 7, 2010 compensable low back injury and its sequelae.

EXHIBITS:

Joint Exhibit I:	Medical records from March 2000 through February 2017
Joint Exhibit II:	Stipulation to payroll records
Claimantôs Exhibit 1:	Deposition of David Lunardini, MD, May 2, 2017

CLAIM:

Temporary total disability benefits pursuant to 21 V.S.A. §642
Temporary partial disability benefits pursuant to 21 V.S.A. §646
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 his employer as those terms are defined in the Vermont WorkersôCompensation Act.

2. Judicial notice is taken of all forms and correspondence in the Departmentôs file relating to this claim.

3. Claimant is a 72-year-old man who has worked for Defendant as a meat cutter for thirteen years. His typical day includes meat cutting, grinding and packaging. His regular job duties include lifting boxes of meat as heavy as 80 to one hundred pounds and standing on his feet for extended periods of time.

4. Claimant has a history of degenerative disc disease including surgeries to his lumbar spine in 2005 and 2007. After each of those surgeries, he returned to full time work for Defendant without any restrictions.

Claimant's Work Injury and Subsequent Medical Course

5. Claimant sustained a compensable work injury to his lower back on March 7, 2010, when he attempted to remove an 80-pound box of pork loins off the top of a delivery pallet. Defendant accepted the injury as compensable and paid both medical and indemnity benefits accordingly.

6. As treatment for his injury, in June 2010 Claimant underwent L4-5 decompression surgery. Thereafter, he engaged in a seven-month course of physical therapy. At the conclusion of this treatment, he rated the average intensity of his pain at eight out of ten. In February 2011 he underwent an epidural steroid injection, which provided little or no pain relief.[1]

7. In August 2011 Claimant began treating with an osteopathic doctor, Jonathan Fenton, DO. Dr. Fenton administered a course of Sarapin injections. Sarapin is a plant derivative delivered in a solution containing dextrose, testosterone and local anesthetic. Dr. Fenton noted in Claimantôs record that Sarapin injections, when effective, can stimulate healing and regeneration and thereby permanently improve a patientôs pain and function. *Joint Exhibit I (JME)* at 261. In Claimantôs case, however, the injections provided only short-term relief. Nor did osteopathic manipulation provide any lasting effect. In March 2012 Dr. Fenton began a series of five platelet rich plasma injections, which provided only a modest benefit. Claimant remained symptomatic, with low back pain radiating into his left leg.

8. At Defendantôs request, Claimant underwent an independent medical examination with Dr. Davis, a neurosurgeon, on July 26, 2012. Dr. Davis thought it would be reasonable for Claimant to undergo additional decompression surgery at the L5-S1 level, but Claimant did not wish to do so. Dr. Davis therefore placed Claimant at an end medical result, with a 13 percent whole person impairment under the *AMA Guides to the Evaluation of Permanent Impairment* (5th ed.) (the ñ*AMA Guides*ò).[2]

[1] Claimant testified that the steroid injection ñhelped me some,ò but the contemporaneous medical records reflect that the injection provided no relief.

[2] Dr. Davis initially assessed Claimantôs permanent impairment under the sixth edition of the *AMA Guides*. He later obtained a copy of the fifth edition and re-assessed Claimantôs impairment accordingly.

9. Having decided against more surgery, Claimant signed an Agreement for Permanent Partial Disability Compensation (Form 22), which the Department approved on October 25, 2012. He continued to work for Defendant with restrictions that included reduced work hours of 28 to 38 hours per week and a weight handling limitation of 20 pounds.

10. Claimant received his final platelet rich plasma injection in October 2012. He did not seek additional medical treatment for his work-related injury for almost three years thereafter. During that time, his pain symptoms continued, but he managed them with over-the-counter medications.

Claimant's Worsened Symptoms

11. On September 1, 2015, Claimant presented to the Emergency Department at Porter Medical Center, reporting the acute onset of increased back and leg pain with no specific triggering event. He explained that his pain was always present, but it had gotten worse, especially when standing for an extended time. Hospital staff diagnosed him with chronic low back pain, and he followed up with his primary care provider. Physician Assistant Maria Collette noted:

> I offered to send him to Spine Institute to see what they felt best management might be as I suspect [physical therapy] may help (though [patient] has said and reiterates today it never has) and injection may help (again, [patient] states injection has never helped) and I am not convinced anyone would say for sure this is a surgical case. *JME* at 300.

12. In October 2015 Physician Assistant Robert Hemond at the Spine Institute evaluated Claimant. He outlined various treatment options, including physical therapy, oral steroids, a lumbar epidural steroid injection or another surgical intervention. Claimant opted for oral steroids as his first course of treatment.

13. On November 25, 2015, at Defendant's request, Claimant underwent an independent medical examination with Dr. Kircher, an orthopedist. Dr. Kircher concluded that Claimant was not yet at an end medical result, and recommended physical therapy, conditioning and diagnostic and therapeutic injections.

14. Claimant underwent an epidural steroid injection in December 2015. This procedure attempts to control pain by injecting a local anesthetic to numb the pain temporarily, and a steroid to calm any inflammation directly at the nerve root. Claimant obtained two days of mild pain relief from the anesthetic, but no relief from the steroid.

15. In January 2016, Claimant returned to the Spine Institute. PA Hemond again discussed treatment options, including another epidural steroid injection or a surgical consultation. Claimant opted for another injection. He underwent that injection in February 2016, but garnered only three days of pain relief from it.

16. Claimant returned to the Spine Institute in February 2016 for a consultation with Dr. Lunardini, a spine surgeon, about his ongoing back and leg pain. He told Dr. Lunardini that 80 percent of his pain was low back pain and 20 percent was leg pain. Dr. Lunardini recommended that Claimant undergo diagnostic medial branch blocks[3] and, if those proved successful, a radiofrequency ablation.[4] Dr. Lunardini suggested that if these injection therapies failed to provide long term pain relief, he might consider surgical fusion ñas a last resort.ò However, he cautioned that surgery is a better option for patients who have a higher percentage of leg pain compared to back pain and that the expected results for relief of low back pain from fusion surgery are typically modest. When Claimant saw Dr. Lunardini again in May 2016, the doctor reiterated his expectation for modest results at best from fusion surgery and emphasized injection therapies as the best option.

17. Claimant underwent medial branch blocks in May and August of 2016 with good results, indicating that he was a candidate for radiofrequency ablation. However, when he underwent the radiofrequency ablation on October 25, 2016, he obtained only mild improvement of his pain symptoms.[5] By January 2017, he reported that his back pain had returned to a level of seven out of ten.

18. In February 2017, Dr. Bronner, a pain medicine physician at the UVM Medical Center, recommended that Claimant try a sacroiliac (SI) joint injection to treat his pain. At the time of the hearing, Claimant had an appointment pending for that procedure.

19. Defendant accepted Claimantôs resumed medical treatment in September 2015 as causally related to his March 2010 compensable work injury, and has paid the associated medical bills at least through the date of the formal hearing.[6]

Expert Testimony Concerning End Medical Result

20. The parties presented expert medical testimony as to whether Claimant has reached an end medical result following his resumed medical treatment in September 2015.

(a) Dr. Lunardini

[3] A medial branch block is a diagnostic procedure in which the physician injects an anesthetic into the sensory nerves that supply the facet joints. If the injection provides significant temporary pain relief, then the physician will conclude that the facets joints are a pain source.

[4] Radiofrequency ablation is a therapeutic procedure that alleviates pain by destroying the sensory nerves that supply the facet joints, so those nerves will not transmit pain signals to the brain.

[5] Claimant testified that radiofrequency ablation provided about four weeks of pain relief, after which his pain returned. Medical records reflect that the procedure provided 80 percent relief for two weeks and 50 percent relief for a short time thereafter.

[6] Although Defendant initially exercised its option to obtain an expert review of the proposed radiofrequency ablation prior to preauthorizing the procedure, it failed to raise any objection thereafter. It also agreed to pay for the SI joint injection without prejudice, pending the Commissionerôs decision.

21. Dr. Lunardini is an orthopedic spine surgeon. After medical school, he completed an orthopedic surgical residency and a spine surgery fellowship. He has been a practicing spine specialist at the UVM Medical Center since 2014. He also trains orthopedic surgical and neurosurgical residents at the UVM Medical School.

22. Dr. Lunardini evaluated Claimant in February and May 2016 in the capacity of a treating physician. He viewed Claimantôs x-rays and CT scan, reviewed the medical history obtained by his resident, and advised Claimant on his best treatment options. He testified on Claimantôs behalf by preservation deposition in May 2017.

23. Dr. Lunardini credibly testified that with epidural steroid injections for low back pain, short-term pain relief is a common outcome, with average pain relief from the procedure ñin the ballparkò of three months. *Claimant's Exhibit 1 ("Lunardini deposition")* at 33. He acknowledged that in Claimantôs case, the injections provided only ñvery short-term relief.ò *Id.* at 10.

24. Dr. Lunardini also credibly testified that back surgery is effective for alleviating leg pain but does not have a high success rate for treating low back pain. Given that Claimantôs pain is predominantly in his low back rather than his leg, Dr. Lunardini has not recommended additional surgery and would only consider it only as a last resort.

25. As noted in Finding of Fact No. 16 *supra*, Dr. Lunardini recommended medial branch blocks and radiofrequency ablation for Claimant in February 2016. In his opinion, radiofrequency ablation offered the prospect of longer-term pain control because the procedure achieves ña more permanent disconnection between the brain, basically, and the facet joints.ò *Lunardini deposition* at 12. Dr. Lunardini further testified that radiofrequency ablation carried a reasonable expectation of providing significant functional improvement and long term pain relief for six months to a year, or longer.

26. Dr. Lunardini initially understood the term ñmaximum medical improvementò to mean that the patient has ñreached a point at which everything that could have been done has been done.ò *Lunardini deposition* at 17. After Claimantôs counsel read him the definition of ñmaximum medical improvementò (or end medical result) from Workersô Compensation Rule 2.2000,[7] the following exchange took place:

> Q: In your opinion, Doctor, an individual undergoing epidural injections, medial branch blocks, radiofrequency ablation, SI joint injections, is that somebody you would consider at a medical endpoint?
>
> A: No. I ï It ï We were attempting to diagnose and treat his symptoms. Thatôs the point of those therapies.

Id. at 18.

[7] Workersô Compensation Rule 2.2000 defines end medical result as ñthe point at which a person has reached a substantial plateau in the medical recovery process, such that significant further improvement is not expected, regardless of treatment.ò

27. Dr. Lunardiniôs opinion on end medical result did not address whether significant further improvement was expected or whether the attempt to treat Claimantôs symptoms was merely palliative. Accordingly I find his testimony on this issue incomplete and conclusory. With regard to radiofrequency ablation, however, Dr. Lunardiniôs opinion that the procedure could reasonably be expected to offer Claimant the prospect of significant, longer-term improvement of his pain symptoms and his functioning was clear, well supported and credible.

(b) Dr. Davignon

28. Dr. Davignon is an occupational medicine physician. After medical school, he completed residencies in orthopedics, general surgery, radiology and anesthesia. He practiced occupational medicine in a clinical setting until 2001, when he opened a consulting practice consisting primarily of independent medical examinations and permanent impairment evaluations.

29. At Defendantôs request, Dr. Davignon performed a medical records review[8] and produced a written report on October 8, 2016. *JME* at *465-477*. His review included Claimantôs medical records from January 2001 through August 2016.

30. Dr. Davignon characterized the epidural steroid injections and medial branch blocks that Claimant underwent after September 2015 as palliative treatments designed to control his pain, rather than curative treatments intended to address the underlying condition of his spine. Surgical fusion would address the condition of Claimantôs spine, but Dr. Davignon did not recommend surgery for Claimant because the procedure was ñfraught with a low likelihood of resolution of his back symptoms.ò *JME* at *476*. On this point he expressly agreed with Dr. Lunardiniôs assessment.

31. Dr. Davignon also testified about radiofrequency ablation. He explained that the procedure involves burning the sensory nerves so that the nerves ñwill not work and not cause pain.ò With regard to the expected outcome of the procedure, he opined that hopefully radiofrequency ablation would ñtake care ofò a patientôs problem. Dr. Davignonôs testimony concerned radiofrequency ablation in the abstract; he did not testify about the procedureôs appropriateness or expected results in Claimantôs case specifically.[9]

[8] Defendant scheduled Claimant for an independent medical examination with Dr. Davignon. When Claimant arrived for the examination, he indicated his intent to video-record it. However, because he had not provided the required notice of his intent to do so, Dr. Davignon declined to perform the examination and instead performed a medical records review.

[9] Because he reviewed Claimantôs medical records only through August 2016, Dr. Davignon did not know whether the medial branch blocks were successful, nor whether Claimant had undergone radiofrequency ablation.

32. Finally, Dr. Davignon testified to his understanding of maximum medical improvement. Quoting the *AMA Guides*, he described maximum medical improvement as ña condition or state that is well stabilized and unlikely to change substantially in the next year with or without treatment. Over time, there may be some change; however, further recovery or deterioration is not anticipated.ò This definition is not the same as the workersô compensation definition of end medical result,[10] but the concept is similar: both definitions focus on the patientôs condition being stable and unlikely to either change substantially or improve significantly.

33. In applying the concept of end medical result to Claimantôs condition, Dr. Davignon considered Claimant's various medical treatments from a retrospective vantage point. Under his analysis, because none of the treatments Claimant underwent after September 2015 substantially changed his condition, he therefore remained at end medical result. In particular, when asked whether Claimantôs having undergone radiofrequency ablation would change his end medical result opinion, Dr. Davignon testified, ñIt depends on what the results were.ò

34. In Dr. Davignonôs opinion, all of Claimantôs treatments since September 2015 were palliative, as they did not address the underlying condition of his spine. However, his opinion failed to take into account his own description of radiofrequency ablation, which he described as burning the sensory nerves in the hope that the procedure would ñtake care ofò a patientôs problem. *See* Finding of Fact No. 31 *supra*. His description implies that the procedure addresses the condition of a patientôs spine and carries an expectation for significant improvement. Further, his testimony that radiofrequency ablation could negate a finding of end medical result, depending on the results of the procedure, further implies that the procedure had the potential to significantly improve Claimantôs medical condition. Dr. Davignonôs failure to account for these factors in his analysis undermines his opinion.

35. I find that Dr. Davignonôs testimony was largely in accord with Dr. Lunardiniôs as to whether *at the time it was contemplated*, radiofrequency ablation was reasonably expected to offer Claimant the prospect of significant functional improvement and long-term pain relief.

[10] *See* Workersô Compensation Rule 2.2000, cited in Finding of Fact No. 26 *supra*, n. 7.

CONCLUSIONS OF LAW:

1. In workersô 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, *see, e.g., Burton v. Holden & Martin Lumber Co.*, 112 Vt. 17, 20 (1941), as well as the causal connection between the injury and the employment. *Egbert v. The Book Press,* 144 Vt. 367, 369 (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, supra,* 112 Vt. at 20; *Morse v. John E. Russell Corp.*, Opinion No. 40-92WC (May 7, 1993).

2. Claimant here seeks additional temporary disability benefits retroactive to September 2015, when he began treatment for an acute worsening of his lower back pain. *See* Finding of Fact No. 11 *supra*. He contends that his treatment course carried a reasonable expectation of significant improvement in both pain and function and therefore negated his previous, August 2012 end medical result determination. Defendant counters that Claimantôs treatment since September 2015 has been palliative and therefore did not negate his end medical result status.

3. The Workersô Compensation Rules define ñend medical resultò and ñpalliative careò as follows:

> ñEnd medical resultò . . . means the point at which a person has reached a substantial plateau in the medical recovery process, such that significant further improvement is not expected, regardless of treatment. *Workers' Compensation Rule 2.2000.*
>
> ñPalliative careò means medical services rendered to reduce or moderate temporarily the intensity of an otherwise stable medical condition, but does not include those medical services rendered to diagnose, heal or permanently alleviate or eliminate a medical condition. *Workers' Compensation Rule 2.3400.*

The point of end medical result accordingly signals a shift in treatment from curative interventions to palliative ones. *See, e.g., Marsh v. Koffee Kup Bakery, Inc.*, Opinion No. 15-15WC (July 6, 2015).

4. In most cases, an injured worker attains the point of end medical result only once ï he or she reaches a plateau following treatment and does not treat or become disabled again. Not every case follows this path, however. Even after reaching an end medical result, an injured workerôs condition might still worsen to the point where additional curative treatment becomes necessary, and along with it, an additional period of temporary disability. 21 V.S.A. §650(c); *Dobson v. Ethan Allen Interiors, Inc*., Opinion No. 18-15WC (August 21, 2015), Conclusion of Law No. 5.

5. The Vermont Supreme Court has applied these concepts to establish a test for whether a claimant is at an end medical result by considering ñwhether the treatment contemplated at the time it was given was reasonably expected to bring about significant medical improvement.ò *Brace v. Vergennes Auto, Inc.*, 2009 VT 49 at ¶11, citing *Coburn v. Frank Dodge & Sons*, 165 Vt. 529, 533 (1996).

6. In cases decided after *Brace*, ñthe Commissioner has ruled that a defined course of treatment that (a) offers long-term symptom relief rather than just a temporary reprieve; and (b) is reasonably expected to provide significant functional improvement can, in appropriate circumstances, negate a finding of end medical result.ò *Marsh v. Koffee Kup Bakery, Inc.*, Opinion No. 15-15WC (July 6, 2015), Conclusion of Law No. 7. The Commissioner reasoned that this approach is in keeping with the ñbenevolent objectives and remedial nature of Vermontôs workersô compensation law.ò *Id.*

7. Under this standard, an open-ended treatment that is likely to provide only short term symptom relief does not negate a claimantôs end medical result. To find otherwise would effectively extend the claimantôs right to temporary disability benefits indefinitely. *Luff v. Rent Way*, Opinion No. 07-10WC (February 16, 2010), Conclusion of Law No. 7; *see also Coburn, supra* at 533 (holding that chiropractic treatment, while helpful for short term symptom relief, did not negate end medical result). In contrast, ñrelatively discrete, finite courses of treatment with anticipated long-term resultsò offer the reasonable expectation of significant improvement in a claimantôs medical recovery process. *Luff, supra* at Conclusion of Law No. 8; *see also M.A. v. Ben & Jerry's*, Opinion No. 44-08WC (November 5, 2008). Most recently, in *Mansfield v. TPW Management, LLC*, Opinion No. 08-17 (May 8, 2017), the Commissioner found that the claimant was not at end medical result because her treating physician recommended radiofrequency ablation, a discrete and finite treatment with the potential for longer-lasting pain control and significantly improved function. *Mansfield, supra* at Conclusion of Law Nos. 23-25.

8. Claimantôs treatment here since September 2015 has included oral steroids, epidural steroid injections, medial branch blocks and radiofrequency ablation. *See* Finding of Fact Nos. 12, 14-18 *supra*. Significantly, no doctor has opined that further surgery would offer him the prospect of long-term symptom relief or significant functional improvement, nor has any doctor recommended further surgery.

9. In the workersô compensation context, expert medical testimony has long been required to establish whether a particular course of treatment is curative or palliative. *Brown v. Casella Waste Management*, Opinion No. 19-15WC (September 3, 2015).

10. The parties here presented conflicting expert medical opinions on whether Claimantôs treatment since September 2015 has been curative or palliative. In such cases, the Commissioner traditionally uses a five-part test to determine which expertôs 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).

11. Dr. Lunardini is an orthopedic spine surgeon, and Dr. Davignon is an occupational medicine physician who completed a residency in orthopedics. Dr. Davignon has more experience, but in general their qualifications and training are comparable. Dr. Lunardini was a treating physician who met with Claimant in person, but his involvement was limited to a consultation, giving his opinion at best a slight advantage.

12. It is the third *Geiger* factor that often provides the most useful means of differentiating one expertôs opinion from anotherôs. Here, unfortunately, neither expertôs end medical result analysis was as clear, thorough and objectively supported as one might hope. Dr. Lunardini failed to address whether Claimantôs treatments offered the expectation of significant medical improvement and therefore was conclusory and lacking in objective support. Dr. Davignon ignored his own description of radiofrequency ablation as potentially curative and took a retrospective approach to the determination of end medical result, an analysis that conflicts with Vermont law. *See* Conclusion of Law No. 5 *supra*.

13. Nevertheless, considering the credible elements of both doctorsô testimony, I conclude that Claimantôs status as of September 2015, when his previously stable low back condition acutely worsened, negated his prior, August 2012 end medical result determination. The course of treatment upon which he embarked thereafter was not merely palliative, but rather carried with it the expectation of significant medical improvement. It culminated in the October 25, 2016 radiofrequency ablation procedure, which *at the time it was contemplated* offered a reasonable expectation of both significant functional improvement and long term pain relief. These are the hallmarks of curative treatment as defined under Vermontôs workersô compensation law, *see Brace, supra* at ¶11; *Marsh*, *supra* at Conclusion of Law No. 7.

14. I thus conclude that Claimant undertook a course of curative treatment on September 1, 2015 from which he did not reach an end medical result until October 25, 2016.

15. Under Vermont law, a claimant is entitled to temporary disability compensation until reaching an end medical result or successfully returning to work. *Coburn v. Frank Dodge & Sons,* 165 Vt. 529, 532 (1996). Thus, to the extent that Claimant was still functionally restricted from full employment as a consequence of his work injury after September 1, 2015, and until such time as he reached an end medical result, he was once again eligible for temporary disability compensation. *Dobson v. Ethan Allen Interiors, Inc*., Opinion No. 18-15WC (August 21, 2015).

16. Claimant has established his entitlement to temporary disability benefits for the periods of time between September 1, 2015 and October 25, 2016 during which he was either totally or partially disabled as a result of his work-related injury, as set forth in the partiesô stipulation. *Joint Exhibit II.* Claimant is entitled to temporary total and temporary partial disability benefits accordingly, pursuant to 21 V.S.A. §§642 and 646.

17. As Claimant has substantially prevailed on his claim for benefits, he is entitled to an award of costs and attorney fees. In accordance with 21 V.S.A. §678(e), Claimant shall have 30 days from the date of this opinion within which to submit his itemized claim. Defendant shall have 30 days thereafter within which to file any objections thereto.

ORDER:

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

1. Temporary total disability benefits for applicable disability periods from September 1, 2015 through October 25, 2016, in accordance with 21 V.S.A. §642 and with credit for any amounts paid without prejudice during this period;[11]

2. Temporary partial disability benefits for applicable disability periods from September 1, 2015 through October 25, 2016, in accordance with 21 V.S.A. §646 and with credit for any amounts paid without prejudice during this period;

3. Interest on the above amounts, in accordance with 21 V.S.A. §664; and

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

DATED at Montpelier, Vermont this 1st day of September, 2017.

_____
Lindsay H. Kurrle
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.

[11] Although the record does not specifically reflect it, apparently Defendant paid some temporary disability benefits without prejudice during the period covered by this Order, for which it is entitled to credit.