

**STATE OF VERMONT
DEPARTMENT OF LABOR**

Kaisun Huang

Opinion No. 17-18WC

v.

By: Stephen W. Brown
Administrative Law Judge

Progressive Plastics, Inc.

For: Lindsay H. Kurrle
Commissioner

State File No. KK-62071

RULING ON DEFENDANT'S MOTION FOR SUMMARY JUDGMENT

APPEARANCES:

Kaisun Huang, *pro se*
Jason Ferreira, Esq., for Defendant

ISSUES PRESENTED:

- 1) Were all of Claimant's present claims for injuries released under the terms of the Compromise Agreement (Form 16) and general release that the Department approved on November 14, 2016?
- 2) To the extent that any of Claimant's present claims for injuries were not released by his prior settlement, can he establish that any of his unreleased claims are work-related?

EXHIBITS:

Defendant's Statement of Undisputed Facts filed October 1, 2018

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|------------------------|--|
| Defendant's Exhibit 1: | Medical Record from Dr. Anthony Williams, dated August 19, 2014 |
| Defendant's Exhibit 2: | Medical Record from Dr. Anthony Williams, dated August 28, 2014 |
| Defendant's Exhibit 3: | Radiology Report from Dr. Robert Johnson, dated August 28, 2014 |
| Defendant's Exhibit 4: | Radiology Report from Dr. Benjamin Lange, dated November 17, 2014 |
| Defendant's Exhibit 5: | Medical Record from Dr. Anthony Williams, dated September 12, 2014 |
| Defendant's Exhibit 6: | Physical Therapy Outpatient Evaluation from Linda Helms, PT, dated September 17, 2014 |
| Defendant's Exhibit 7: | Medical Record from Dr. Anthony Williams, dated September 26, 2014 |
| Defendant's Exhibit 8: | Physical Therapy Outpatient Treatment Note from Linda Helms, PT, dated October 8, 2014 |

Defendantø Exhibit 9: Medical Records from Dr. Anthony Williams, dated October 10, 2014

Defendantø Exhibit 10: Medical Records from Dr. Anthony Williams, dated October 17, 2014

Defendantø Exhibit 11: Medical Records from Dr. Anthony Williams, dated October 22, 2014

Defendantø Exhibit 12: Physical Therapy Summary from Linda Helms, PT, dated November 6, 2014

Defendantø Exhibit 13: Medical Records from Dr. Anthony Williams, dated November 12, 2014

Defendantø Exhibit 14: Medical Records from Dr. Anthony Williams, dated December 3, 2014

Defendantø Exhibit 15: Physical Therapy Outpatient Treatment Note from Linda Helms, PT dated October 22, 2014

Defendantø Exhibit 16: Physical Therapy Summary from Linda Helm, PT dated November 6, 2014

Defendantø Exhibit 17: Radiology Report from Dr. Benjamin Lange, dated December 5, 2014

Defendantø Exhibit 18: Medical Record from Kristie Oliver, PA-C, dated April 14, 2015

Defendantø Exhibit 19: Medical note from Rebecca A. Scholl, PA-C, dated January 8, 2015

Defendantø Exhibit 20: IME Report by Dr. John M. Peterson, dated March 6, 2015

Defendantø Exhibit 21: Medical Record from Kristie Oliver, PA-C, dated April 14, 2015

Defendantø Exhibit 22: Medical Record from Dr. Anthony Williams, dated December 28, 2015

Defendantø Exhibit 23: Medical Record from Dr. Anthony Williams, dated February 22, 2016

Defendantø Exhibit 24: Medical Record from Dr. Garth Garrison, dated April 11, 2016

Defendantø Exhibit 25: Medical Record from Dr. Anthony Williams, dated April 18, 2016

Defendantø Exhibit 26: Approved Form 16 Compromise Agreement, dated November 14, 2016

Defendantø Exhibit 27: Approved Form 16 Full and Final Settlement Addendum, dated November 14, 2016

Defendantø Exhibit 28: Medical Record from Eliza Anti, NP, dated March 19, 2018

Defendantø Exhibit 29: Statement from Claimant entitled "Fact," dated March 25, 2018

Defendantø Exhibit 30: Medical Record from Dr. Anthony Williams, dated April 18, 2018

Defendantø Exhibit 31: Radiology Report from Dr. Joseph Pekala of Central Vermont Medical Center, dated April 23, 2018

Defendantø Exhibit 32: Medical Record from Eliza Anti, NP, dated April 26, 2018

Defendantø Exhibit 33: Ortho Spine New Patient Consult from Dr. John Braun, dated June 12, 2018

Defendantø Exhibit 34: Medical Record from Dr. Anthony Williams, dated July 2, 2018

Defendantø Exhibit 35: Progress Note from Sarah Britton, NP, dated July 11, 2018

Claimant's Statement in Response to Defendant's Motion for Summary Judgment, filed October 30, 2018

- Claimant's Exhibit 1:¹ Correspondence from the Department of Labor to Claimant dated October 1, 2018
- Claimant's Exhibit 2: Progress Note from Sarah Britton, NP, dated July 11, 2018 (same as Defendant's Exhibit 35)
- Claimant's Exhibit 3: Physician Work Activity Status Report from Rebecca Scholl, PA-C dated February 16, 2015
- Claimant's Exhibit 4: Correspondence from Dr. Anthony Williams M.D., addressed "To Whom It May Concern," dated February 28, 2018, regarding Claimant's work restrictions
- Claimant's Exhibit 5: Correspondence from Dr. Anthony Williams M.D., addressed "To Whom It May Concern," dated August 13, 2018, regarding Claimant's work restrictions
- Claimant's Exhibit 6: Medical Record from Dr. Anthony Williams, dated August 19, 2014 (same as Defendant's Exhibit 1)
- Claimant's Exhibit 7: Medical Record from Eliza Anti, NP dated March 19, 2018
- Claimant's Exhibit 8: Medical Record from Eliza Anti, NP dated March 22, 2018

Email correspondence from Claimant to the Department dated November 3, 2018 supplementing his Statement in Response to Defendant's Motion for Summary Judgment

FINDINGS OF FACT:

Considering the evidence in the light most favorable to Claimant as the non-moving party, *State v. Delaney*, 157 Vt. 247, 252 (1991), I find the following facts:

1. Claimant is a 72-year old man with a prior history of degenerative changes in his neck. *See* Defendant's Statement of Undisputed Facts ("SUF") Nos. 1 and 4. As of March 16, 2018, he worked for Defendant as a machine operator. SUF No. 2.

Claimant's 2014 Injury

2. On or about July 23, 2014, Claimant fell from a box at work and hit a table with his left chest and forearm. SUF No. 5. Approximately four weeks later, he complained to his primary care physician, Dr. Anthony Williams, of pain in his chest and left side. SUF No. 6; Defendant's Exhibit 1. During follow-up treatments, he also reported pain in his upper back, right shoulder, and neck. *See* SUF Nos. 7, 9, 11; Defendant's Exhibits 2, 5, 7. Subsequent diagnostic imaging showed that Claimant had suffered multiple rib fractures. *See* SUF No. 8; Defendant's Exhibits 3-4.

¹ Claimant's Exhibits were unnumbered when submitted. They were attached to his Response to Defendant's Motion for Summary Judgment in the order listed above.

3. Claimant underwent multiple physical therapy sessions for his neck, shoulders, and shoulder blades between approximately September 17 and November 6, 2014. SUF No. 10, 12, 14, 15; Defendant's Exhibits 6, 8, 15, 16.
4. Claimant continued to report pain in his right neck and right upper back to Dr. Williams through December 2014. *See* SUF No. 13; Defendant's Exhibits 9-14.
5. Claimant continued to complain of upper back pain and right shoulder pain through at least April 2016. SUF No. 22; Defendant's Exhibits 23-25.
6. Dr. Williams placed him at end medical result for his upper back pain on December 28, 2015. SUF No. 21; Defendant's Exhibit 22.
7. Rebecca Scholl, PA-C released Claimant to work with a 15-pound lifting restriction on February 16, 2015. *See* Claimant's Exhibit 3.

Degenerative Changes Noted in Claimant's Treatment Records Following His 2014 Injury

8. Many of Claimant's treatment records following his 2014 fall note his degenerative spinal conditions.
9. For instance, on December 5, 2014, a cervical and thoracic x-ray showed that Claimant suffered from degenerative disc disease in his neck. SUF No. 16; Defendant's Exhibit 17.
10. Kristie Oliver, PA-C of the Tilly Pain Clinic noted on April 14, 2015 that this x-ray showed "advanced facet arthrosis," "uncovertebral spurring," and "moderate bony neural foraminal narrowing" in his neck. SUF No. 17; Defendant's Exhibit 18.
11. Additionally, on January 8, 2015, Rebecca A. Scholl, PA-C of Concentra Medical Centers noted that Claimant's thoracic and cervical x-rays showed "arthritic changes which happen as we age and were not the result of the fall." She told Claimant that if he felt unable to perform his regular duties because of these issues, he would need a note from his primary care physician, but "this will not be under workers comp." SUF No. 18; Defendant's Exhibit 19.
12. On February 20, 2015, Dr. John M. Peterson performed an independent medical examination of Claimant. He concluded, among other things, that Claimant's upper back pain was related to underlying and long-standing degenerative changes. *See* SUF No. 19; Defendant's Exhibit 20.
13. In April 2015, Claimant told Ms. Oliver that immediately after his fall, he started having left chest wall pain but slowly developed right mid thoracic/periscapular pain. *See* SUF No. 20; Defendant's Exhibit 21 at 1. She indicated that he had "multilevel thoracic spine degeneration" and "advanced multilevel cervical disc degeneration" as well as "advanced facet arthrosis" and "uncovertebral spurring." Defendant's Exhibit 21 at 2 and 5.

The 2016 Settlement of Claimant's 2014 Workers' Compensation Claim

14. Claimant accepted a full and final settlement of \$5,169.52 to resolve his 2014 workers' compensation claim. He signed a Form 16 Compromise Agreement memorializing that settlement, which the Department approved on November 14, 2016. SUF No. 23; Defendant's Exhibit 26.
15. The approved Form 16 listed the covered injuries as "left chest pain and rib fractures, upper back, right shoulder, lung nodules, occupational exposure/asthma and all natural sequelae." SUF No.24; Defendant's Exhibit 26. It specified that the compromise was for the settlement of "any and all workers' compensation benefits causally related to the above referenced injury." SUF No.25; Defendant's Exhibit 26. Every benefit option available on the Form 16 was checked off, including the "other" option, with a notation specifying that the settlement covered "all past, present, and future benefits under the workers compensation Act." [sic]. SUF Nos. 26-27; Defendant's Exhibit 26.
16. The parties' settlement agreement included an Addendum stating that the settlement would close out "all past, present, and future workers' compensation benefits (including future aggravations, recurrences or flare-ups to any of the alleged work injuries)." SUF No. 29; Defendant's Exhibit 27.

Claimant's Allegations of a New Work-Related Injury in March 2018

17. On or about February 28, 2018, Dr. Williams wrote a note addressed "To Whom It May Concern" indicating that Claimant "should not lift over 20 pounds for medical reasons." Claimant's Exhibit 4.
18. Claimant alleges that notwithstanding that restriction, Defendant required him to perform strenuous work activities that resulted in various injuries. On or about March 25, 2018, he wrote a statement entitled "Fact," alleging that he was injured after performing the following "heavy jobs":
 1. I make Concept 2 fly wheel plastic parts, which are put in a big black plastic box. The box is a folding box. In order to do that, I have to lift four 50-inch folding board from the bottom of the box. I have to stoop down and lift the box boards to a big box. Then I can put the fly wheel into the box. At least, I have to use a lot of energy to lift the box boards (60 lb).
 2. I also make valve protect plastic parts. There are 50 pieces of parts in one box. One box is more than 20 lb. Then I have to stack these boxes to 3 levels. The total is 5 feet high.
 3. I make grill gas cap. One box is more than 20 lb. Then I have to stack these boxes to 4 levels. The total is 6 feet high.

Defendant's Exhibit 29.

19. Claimant's "Fact" statement alleges that after performing these tasks, he experienced pain in the "right side of [his] neck, chest, and right shoulder." *Id.* The statement claims further that "[t]his time, the injured position is still the same position as the previous work [sic] compensation," but asserts that his right shoulder is weaker than it was after his previous injury, making it difficult for him to write properly. *Id.*

Claimant's Complaints and Medical Treatment Following His Alleged March 2018 Heavy Lifting Activities

20. On March 19, 2018, Claimant complained to Eliza Anti, N.P. of pain radiating from his neck down his right arm. He told her that this pain "started in 2014 after work related injury, improved some, then worsened on 3/4/18 after another work incident." SUF No. 30; Defendant's Exhibit 28 at 1. She diagnosed him with cervical spondylosis and neck pain that same day. *See* Claimant's Exhibit 7.
21. On April 18, 2018, Claimant saw Dr. Williams, complaining of "continued pain" in his upper back and right chest as well as weakness in his right hand. *See* SUF No. 32; Defendant's Exhibit 30.
22. On April 23, 2018, Claimant underwent an MRI that revealed degenerative changes including disc osteophyte complex, degenerative facet disease with moderate spinal canal narrowing, and slight cord flattening as well as severe bilateral neural foraminal narrowing. The MRI showed further degenerative changes to his neck in the C4/5, C5/6, and C6/7 levels. *See* SUF No. 33; Defendant's Exhibit 31.
23. On April 26, 2018, Ms. Anti noted that Claimant continued to suffer from pain, weakness, and numbness in his neck, upper back, and right shoulder. She discussed his MRI with him and explained that "while work may have contributed some to the neck issues, it may not be the cause, but that his shoulder issues are very likely related to repetitive motions and lifting at work and that both issues impact one another as they change the way he uses his body." Defendant's Exhibit 32.
24. On June 12, 2018, Claimant underwent an evaluation at CVMC Orthopedics & Spine Medicine with Dr. John Braun. Dr. Braun noted that Claimant's right neck pain and right arm weakness "could be related to an underlying cervical spine condition." He also noted degenerative changes at various points along Claimant's spine. SUF No. 35; Defendant's Exhibit 33.
25. On July 2, 2018, Dr. Williams recommended that Claimant quit work due to his neck issues, but stated, "I do not feel the neck issue is a work-related issue and let him know this." SUF No. 36; Defendant's Exhibit 34.

26. On July 11, 2018, Sarah Britton, N.P., after reviewing Claimant's diagnostic workup, noted that Claimant's neck and right upper extremity symptoms were consistent with degenerative changes. SUF No. 37; Defendant's Exhibit 35. She also stated that he had stenosis and a disc bulge at the C5-6 level on the right side. Her notes indicate that "with respect to causation[,] these conditions "certainly could have occurred after the heavy lifting incident that occurred at his place of work on 3/16/2018." Defendant's Exhibit 35. However, she did not affirmatively assert that Claimant's alleged heavy lifting in 2018 *actually caused* these conditions. *See generally id.*

Additional Claims Relating to Blood Pressure and Nerve "Oppression"

27. In addition to his allegations of pain in his neck, chest, and shoulder, Claimant asserted in response to Defendant's Motion for Summary Judgment that his alleged 2018 lifting activities caused him to develop high blood pressure. *See* Claimant's Statement in Response to Defendant's Motion for Summary Judgment ("Response") at 1. He did not mention this condition in his "Fact" statement and appears to have first mentioned it in his appeal from Defendant's denial of his 2018 claim, on July 11, 2018.
28. Also, Claimant alleged for the first time in his response to Defendant's present Motion that his alleged 2018 heavy lifting activities "caused [his] right cervical vertebra oppressed the nerve[.] [*sic*]" *See* Claimant's Response at 1.
29. On November 3, 2018, Claimant submitted an email to the Department amending his response to Defendant's Motion for Summary Judgment, stating in material part as follows:

Somebody doesn't keep the responsibility that it is same logic. I want to explain that people who has degenerative disc disease of cervical spine might not result in oppressing the nerve. The patient has high blood pressure might not die of cerebral hemorrhage or myocardial infarction. The systolic pressure is high because the cervical vertebra has new patient's condition suddenly. The diastolic pressure is high because that is heart disease. My BP 210/94 on March 19th, 2018. The systolic pressure is high suddenly. My cervical spine caused high pressure suddenly! The situation which happened in March 16th 2018. My systolic pressure suddenly increased, because the cervical spine immediately caused high pressure from the heavy lift from March 6th, 2018 to March 16th, 2018.

See Correspondence from Claimant to the Department dated November 3, 2018.

30. Claimant has not cited any medical records or other evidence asserting that any change in his blood pressure resulted from his alleged heavy lifting in March 2018. His medical records show that he was diagnosed with hypertension at least as early as August 28, 2014. *See, e.g.,* Defendant's Exhibit 2.

31. There is no medical record in evidence that makes specific reference to any nerve being oppressed,ö either by cervical vertebrae or otherwise.
32. In his November 3, 2018 correspondence, Claimant cites no medical records or other evidence supporting his assertion that any of his claims are causally related to his work for Defendant.

CONCLUSIONS OF LAW:

Summary Judgment Standard

1. To prevail on a summary judgment motion, the moving party must show that there exist no genuine issues of material fact, such that it is entitled to judgment in its favor as a matter of law. *Samplid Enterprises, Inc. v. First Vermont Bank*, 165 Vt. 22, 25 (1996). In ruling on such a motion, the non-moving party is entitled to the benefit of all reasonable doubts and inferences. *State v. Delaney*, 157 Vt. 247, 252 (1991); *Toys, Inc. v. F.M. Burlington Co.*, 155 Vt. 44, 48 (1990). Summary judgment is appropriate only when the facts in question are clear, undisputed, or unrefuted. *State v. Heritage Realty of Vermont*, 137 Vt. 425, 428 (1979). It is unwarranted where the evidence is subject to conflicting interpretations, regardless of the comparative plausibility of the facts offered by either party or the likelihood that one party or the other might prevail at trial. *Provost v. Fletcher Allen Health Care, Inc.*, 2005 VT 115, ¶ 15.
2. In determining whether there is a genuine issue as to any material fact, the Department must accept as true öthe allegations made in opposition to the motion for summary judgment, **so long as they are supported by affidavits or other evidentiary material.**ö *Gauthier v. Keurig Green Mountain, Inc.*, 2015 VT 108, ¶ 45 (emphasis added). However, when a party fails, after adequate discovery, to make a sufficient showing to establish an element essential to its case and on which it has the burden of proof, summary judgment is required. *Estate of George v. Vermont League of Cities & Towns*, 2010 VT 1, ¶ 13 (2010).

Claimant's 2016 Settlement Precludes His Claims for Chest, Back, and Shoulder Pain

3. A workersöcompensation settlement becomes enforceable according to its terms when it is memorialized on Form 16 and approved by the Commissioner. See 21 V.S.A. § 662; WorkersöCompensation Rule 13.1500; *Clayton v. J.C. Penney Corp.*, 2017 VT 87, ¶¶ 16-17, as amended (Oct. 17, 2017), *reargument denied* (Oct. 23, 2017). An approved settlement agreement may even effectuate a claimantö release of future claims that are causally related to the settled claim. See *Clayton*, 2017 VT 87 (remanding to Commissioner for determination of whether claimantö then-present injuries were causally related to injuries she had released in her prior settlement that included a release of future claims for sequelae).

4. In this case, Claimant settled his 2014 claim in exchange for \$5,169.52. Finding of Fact No. 14. The parties memorialized that settlement on a Form 16, and the Commissioner approved it on November 14, 2016. Finding of Fact No. 15. Thus, the parties' settlement agreement became enforceable according to its terms on that date. 21 V.S.A. § 662.
5. In that settlement agreement, Claimant released all claims "causally related" to his then-existing left chest, upper back, and right shoulder injuries. He specifically released any claims for "natural sequelae"² of those injuries, including any "aggravations, flare ups, or recurrences."³ Findings of Fact Nos. 15-16.
6. Thus, Defendant is entitled to summary judgment on any aspects of Claimant's present claim that are causally related to those injuries identified in his 2016 settlement.
7. Claimant's present complaints relating to his chest, back, and shoulder regions are facially the same complaints he voiced following his 2014 injury. His own descriptions of his injuries to his providers and to the Department characterize his 2018 symptoms in these regions as either a recurrence or an aggravation of his previous injury. For instance, he told Ms. Anti in March 2018 that these symptoms "began after his 2014 work injury, improved some, and then worsened on March 4, 2018 after another work incident." See Finding of Fact 20. Similarly, his "Fact" statement of March 25, 2018 indicated that his recent injuries were in the same "position" as his 2014 injuries, but that his arm pain was greater than it was when he asserted his prior claim. Finding of Fact No. 19. When he saw Dr. Williams in April 2018, he complained of "continued pain in right upper back" and "continued right chest pain." Finding of Fact No. 21.
8. Notwithstanding these descriptions, Claimant states that he does not "want to make the connection between this year's [2018] injury at work and 2014 injury at work." Claimant's Response at 1-2. He claims that it is only Defendant's counsel who "want[s] to make the connection between this year's injury at work and 2014 injury at work[.]" *Id.* at 2. Claimant does not cite any evidence supporting his general denial of his present claims being precluded by his 2016 release.

² A "sequela" refers to any "condition which is the consequence of a previous disease or injury." See English Oxford Living Dictionary, entry for "sequela" available at <https://en.oxforddictionaries.com/definition/sequela> (last visited December 7, 2018 at 3:46 P.M.).

³ Workers' Compensation Rule 2.1200 defines "aggravation" as "an acceleration or exacerbation of a pre-existing condition caused by some intervening event or events." *Id.* Workers' Compensation Rule 2.3900 defines "recurrence" as the "return of symptoms following a temporary remission." *Id.* Rule 2.2300 defines "flare up" as "a temporary worsening of a pre-existing condition caused by a new injury for which a new employer or insurance carrier is responsible, but only until the condition returns to baseline and not thereafter." *Id.*

9. A review of the evidentiary record reveals only one record that might conceivably support Claimant's contention that some portion of his current chest, back, and shoulder claims are not subject to his release. Specifically, Ms. Anti noted on April 26, 2018 that "while work may have contributed some to the neck issues, it may not be the cause, but that his shoulder issues are very likely related to repetitive motions and lifting at work and that both issues impact one another as they change the way he uses his body." See Defendant's Exhibit 32. Ms. Anti did not, however, specifically assert any causal relationship between Claimant's present chest, back, or shoulder symptoms and his alleged March 2018 heavy lifting activities. Nor did she contradict any causal relationship between his current symptoms and his 2014 injuries.
10. Even if his present shoulder injuries are work-related, he has released any claims for work-related injuries that are causally-related to the injuries described in the parties' settlement. As such, evidence of work-relatedness alone does not go to the question of whether a claim for a given injury is subject to that release. Ms. Anti's indication that Claimant's present shoulder issues are likely work-related thus sheds no light on whether those conditions were causally related to Claimant's shoulder injuries as they existed at the time of his 2016 settlement. It therefore does not create a genuine issue of fact as to whether those conditions are sequelae of the injuries described in that settlement. To create a triable question of fact on his claim for shoulder injuries, Claimant would at least need to present some evidence that his present shoulder condition arose from a work-related incident *independent of* his shoulder conditions as they existed at the time that the Commissioner approved his settlement agreement.
11. Defendant has presented ample evidence that Claimant's present chest, back, and shoulder injuries are causally-related sequelae of his 2014 injuries to those same body parts. See, e.g., Findings of Fact Nos. 19-21; Conclusions of Law Nos. 3-7, *supra*. Claimant has presented no evidence that genuinely undermines or contradicts that causal relationship. While I must resolve all doubts and inferences in his favor, he cannot rest on unsupported denials or the mere possibility of facts that might allow recovery. Since Claimant has not established any genuine issue of material fact to be tried as to his chest, back, or shoulder injuries, Defendant is entitled to summary judgment on those claims.

Claimant's 2016 Settlement Does Not, By Itself, Preclude His Claim for Neck Pain

12. However, completely absent from the parties' 2016 settlement agreement is any reference to Claimant's neck injuries, even though he had complained about neck pain prior to settling his earlier case. While the scope of Claimant's release is substantially all-inclusive with respect to the *types of benefits* within its scope, see Findings of Fact Nos. 14-16, it is quite specific with respect to the enumerated *injuries* it covers. Specifically, Claimant only released his claims for the following injuries: "left chest pain and rib fractures, upper back, right shoulder, lung nodules, occupational exposure/asthma and all natural sequelae." See Finding of Fact No. 15.

13. The language of a release must ðbe narrowly interpreted, and if the parties did not include certain terms this should be interpreted as intentional exclusion of those terms.ö *Inv. Properties, Inc. v. Lyttle*, 169 Vt. 487, 497 (1999).
14. Defendant urges that the generally broad scope of Claimant's 2016 release combined with his pre-settlement complaints of neck pain make it clear that the parties intended to include neck injuries within the release's scope. However, the parties could have included language to make clear that claims for neck symptoms were included, but they did not. I decline to insert terms into a release that the parties did not supply themselves.
15. Defendant also argues that Claimant's current neck pain is a natural sequela of the injuries identified in the 2016 settlement agreement. In support of this argument, Defendant cites Ms. Anti's April 26, 2018 note indicating that Claimant's neck and shoulder issues ðimpact one another as they change the way he uses his body.ö Defendant's Exhibit 32. However, in the very same paragraph, Ms. Anti expresses ambivalence about whether Claimant's neck conditions have any work-related origin at all, noting that ðwhile work may have contributed some to the neck issues, it may not be the cause.ö *Id.* Given that Ms. Anti has not committed to any causal origin for Claimant's neck complaints, her statements cannot prove as a matter of law that those complaints are the natural sequelae of anything. Her note therefore does not establish that Claimant's neck pain is causally related to the work-related injuries identified in the 2016 release.
16. Defendant has not proven that Claimant's 2016 release precludes his claim for neck pain as a matter of law.

Claimant Has Failed to Produce Any Evidence that His Alleged Neck Pain is Work-Related

17. Although Claimant's 2016 release does not preclude his present claim for neck pain, that claim fails because he has produced no evidence that his neck pain was work-related.
18. Claimant has the burden to prove that his injury arose out of and occurred in the course of his employment. *See* 21 V.S.A. § 618. An employee's injury ðarises out ofö his employment only if it would not have occurred ðbut for the fact that the conditions and obligations of the employment placed claimant in the position where claimant was injured.ö *Miller v. I.B.M. Corp.*, 161 Vt. 213, 214 (1993) (cits. & punct. omitted).
19. Claimant has the burden of showing a causal connection between the injury and his employment. *Egbert, supra*, 144 Vt. at 369. Where the causal connection between an accident and an injury is obscure and a layperson would have no well-grounded opinion as to causation, expert medical testimony is necessary. *Id.*; *accord Brown v. E.G. and A.C. Whiting and University of Vermont*, Opinion No. 07-97WC, (June 13, 1997).
20. The causal origin of Claimant's neck symptoms is beyond the ken of the ordinary layperson, and therefore requires expert medical opinion.

21. Claimant's medical records overwhelmingly show that his neck symptoms are age-related degenerative changes. *See generally* Findings of Fact Nos. 8-13, 20-26. Claimant's x-rays after his 2014 injury showed advanced cervical degenerative disc disease. Findings of Fact Nos. 9-11. Ms. Oliver, in reviewing those images, found that he had age-related osteoarthritis, joint cartilage deterioration (advanced facet arthrosis), and bone spurs (uncovertebral spurring) in his neck region. *See* Finding of Fact No. 10. Ms. Scholl indicated that the findings on his thoracic and cervical x-rays are arthritic changes that happen as we age and were not the result of the fall. Finding of Fact No. 11. Claimant's independent medical examination further noted his underlying and long-standing degenerative changes. Defendant's Exhibit 20 (capitalization omitted); Finding of Fact No. 12. Additionally, while Dr. Williams recommended that Claimant quit his work because of his neck issue, he expressly told him that his neck issue was not work-related. Finding of Fact No. 25.
22. The only statement in the medical records that might potentially suggest that Claimant's neck conditions are work-related is Sarah Britton, N.P.'s July 11, 2018 statement that Claimant's stenosis and a disc bulge at the C5-6 level "certainly could have occurred after the heavy lifting incident that occurred at his place of work on 3/16/2018." *See* Finding of Fact No. 26. However, this statement only asserts a possible temporal sequence. Ms. Britton does not say that any of Claimant's neck conditions were in fact caused by, or even *probably* caused by, any of his work activities.
23. Proof of causation "must be such as to suggest 'probability' rather than mere 'possibility,' precisely to guard against raw speculation by the fact-finder." *See Blanchard v. Goodyear Tire & Rubber*, 2011 VT 85, ¶ 5 (2011). In *Blanchard*, the plaintiff in a toxic tort case suffered from a rare form of cancer. He claimed that he used to play baseball in a field next to a tire plant, and that benzene released from that plant caused his cancer. There was evidence from an environmental investigation that benzene could have been released in the course of the plant's operations. There was also a gully that ran by the plant that could have carried benzene. The plaintiff offered expert testimony concerning the increased risks of benzene exposure for his type of cancer. The expert acknowledged that there was no way to know whether any benzene actually contaminated the ballfield, although it was possible. However, the plaintiff also produced another medical expert who ruled out at least one other known cause of his type of cancer. On this record, the Vermont Supreme Court affirmed summary judgment in the defendant's favor, holding that "[a]ssuming that we accept all of [the plaintiff's] evidence as true, it falls well short of what plaintiff would be required to show in order to prevail in a jury trial." *Id.* It reached this conclusion because the plaintiff's suspicion that exposure to benzene caused his cancer was "purely speculative." *Id.*, ¶ 11.

24. The evidence of causation in *Blanchard* was significantly stronger than in this case. In *Blanchard*, the plaintiff offered expert testimony excluding another potential cause of his illness, whereas here, Claimant has offered no evidence undermining the degenerative etiology of his neck complaints asserted throughout his medical records. More importantly, the proof Claimant offers concerning the alleged occupational origin of his neck injury simply does not rise above the level of a possibility. Like the expert in *Blanchard* who could not raise the likelihood of benzene contamination in the ballfield beyond a possibility, Ms. Britton here has only said that Claimant's neck injuries *could* have arisen after Claimant's heavy lifting. Neither she nor any of Claimant's other providers has asserted that Claimant's neck injuries *probably* resulted from his work activities. To leap from a possibility of a temporal sequence to an inference of probable causation would epitomize the sort of "raw speculation" that the *Blanchard* court sought to guard against. *See id.*, ¶ 5; *see also Travelers Ins. Companies, supra* 2005 VT 53, ¶ 10 (establishment of a "mere possibility" of causation insufficient to create a genuine issue of material fact); *Egbert, supra*, 144 Vt. at 369 (affirming commissioner's denial of workers' compensation benefits where claimant provided no expert testimony causally linking his work-related back strain with his hernia; claimant had established only a possibility of causation).
25. I therefore conclude that Claimant has not established a genuine issue of material fact as to whether his current neck complaints are causally related to his 2018 alleged lifting activities.

Allegations Concerning Blood Pressure and Nerve "Oppression"

26. Claimant asserts that his alleged 2018 lifting activities caused an increase in blood pressure. He never asserted this as a basis for relief in his Initial Report of Injury, or in his "Fact" Statement. He first raised this issue in his appeal of Defendant's denial of his claim on July 11, 2018. Additionally, his medical records show that his hypertension long predates his alleged 2018 lifting activities, *see* Finding of Fact No. 30 and Defendant's Exhibit 2 (diagnosing hypertension in 2014).
27. There is no medical evidence connecting any changes in Claimant's blood pressure to any work injury. The causal origin of any putative change in blood pressure is sufficiently beyond the ken of a layperson that expert medical evidence would be necessary to establish causation. Given the absence of such evidence here, Claimant's allegations concerning his blood pressure do not establish any genuine issue of material fact. *See generally Egbert, supra*, 144 Vt. at 369; *Miller, supra*, 161 Vt. at 214; *Brown, supra*, Opinion No. 07-97WC.
28. Additionally, Claimant alleged for the first time in his response to Defendant's Motion for Summary Judgment that his 2018 heavy lifting activities caused his right cervical vertebra to "oppress" a nerve. *See* Claimant's Statement in Response to Defendant's Motion for Summary Judgment ("Claimant's Response"). Claimant did not use this language in his "Fact" statement or any prior document articulating his claim.

29. Claimant has not produced any medical records referring to any nerve being "oppressed," either by cervical vertebrae or otherwise. It is not clear whether Claimant intends to articulate a claim for the degenerative changes to his cervical spine discussed above, *see* Conclusions of Law Nos. 17-25, or a separate neurological claim. In either case, however, he has failed to put forth any medical evidence asserting any causal relationship between his work activities and any putative nerve oppression.
30. The causal origin of any putative nerve oppression is sufficiently beyond the ken of a layperson that expert medical evidence would be necessary to establish causation. Given the absence of such evidence here, Claimant's allegations concerning nerve "oppression" do not create any genuine issue of material fact. *See generally Egbert, supra*, 144 Vt. at 369; *Miller, supra*, 161 Vt. at 214; *Brown, supra*, Opinion No. 07-97WC.

ORDER:

Based on the foregoing findings of fact and conclusions of law, Defendant's Motion for Summary Judgment is hereby **GRANTED**. Claimant's claim is dismissed.

DATED at Montpelier, Vermont this 21st day of December 2018.

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.