STATE OF VERMONT
DEPARTMENT OF LABOR

Semka Mujic

v.

Vermont Teddy Bear Factory

Opinion No. 04-12WC

By: Phyllis Phillips, Esq.
Hearing Officer

For: Anne M. Noonan
Commissioner

State File No. AA-56037

OPINION AND ORDER

Hearing held in Montpelier on November 2, 2011
Record closed on December 13, 2011

APPEARANCES:

Christopher McVeigh, Esq., for Claimant
Keith Kasper, Esq., for Defendant

ISSUES PRESENTED:

1. Did Claimant's work for Defendant cause or aggravate her current cervical spine condition?

2. Does Dr. Jewell's proposed fusion surgery represent reasonable medical treatment under 21 V.S.A. §640(a)?

EXHIBITS:

Joint Exhibit I:	Medical records
Joint Exhibit II:	Stipulation
Claimant's Exhibit 1:	Deposition of Ryan Jewell, M.D., November 2, 2011
Defendant's Exhibit A:	Personnel file
Defendant's Exhibit B:	Site visit video, May 20, 2011
Defendant's Exhibit C:	Video evaluation by Dr. Sobel
Defendant's Exhibit D:	*Curriculum vitae*, Jonathan Sobel, M.D.
Defendant's Exhibit E:	*Curriculum vitae*, George White, Jr., M.D., M.S.

CLAIM:

Medical benefits pursuant to 21 V.S.A. §640
Temporary total disability benefits pursuant to 21 V.S.A. §642
Permanent partial disability benefits pursuant to 21 V.S.A. §648
Vocational rehabilitation benefits pursuant to 21 V.S.A. §641
Costs and attorney fees pursuant to 21 V.S.A. §678

FINDINGS OF FACT:

1. At all times relevant to these proceedings, Claimant was an employee and Defendant was her employer as those terms are defined in Vermont's Workers' Compensation Act.

2. Judicial notice is taken of all relevant forms contained in the Department's file relating to this claim.

Claimant's Work from 1996 to 2010

3. Claimant, a Bosnian native, immigrated to the United States in 1996 and settled in Vermont. She began working as a sewer for Defendant in November 1996. Her job was to assemble component parts for teddy bears. The work was fast-paced and somewhat strenuous. It required her to force thick material through an industrial sewing machine for the whole of her eight-hour day. Claimant testified that sitting in a bent-over position as she worked the sewing machine she often felt strain in her neck, upper back and shoulders. She never reported any injury to her supervisors, however, and never sought medical treatment for these complaints during her tenure at this job.

4. Claimant worked at the sewing job for three years. In September 1999 she left to take a job assembling cable at Huber+Suhner. Claimant found this job to be much easier, as it was not as fast-paced or as stressful physically as her work for Defendant had been.

5. Claimant worked at Huber+Suhner for two years. She was laid of in September 2001. Thereafter, she was unemployed for approximately one year. In October 2002 she again sought employment at Defendant's facility and was rehired.

6. Upon returning to work for Defendant, initially Claimant resumed her old job sewing teddy bear parts. In May 2004 she transferred to the order fulfillment department. Claimant welcomed the transfer, as she anticipated that this job would be less taxing physically.

7. Claimant's duties in order fulfillment were varied.[1] Her primary responsibility was packing pajamas. As a cardboard shipping box containing whichever products a customer had ordered came down the conveyor belt from the picking line, Claimant would remove the products, fold and place them into a decorative organza container, then return them to the shipping box and send it down the line to the shipping department. Claimant typically spent six to eight hours daily at this task, and typically met the expected quota of 20 boxes packed per hour.

8. During her tenure in the order fulfillment department, Claimant spent most of her time on the pajama packing line. Depending on Defendant's needs, at times she worked on the bear packing line instead. This was a similar process, with the added step of dressing the bears in accordance with the customer's order prior to sending the box down the line to be shipped.

9. At other times Claimant worked on the picking line – on busy days, for up to three or four hours, less on slower days. This task involved manually moving several shipping boxes at a time down a conveyor belt, picking the products required to fulfill each customer's order as she went. The products were stored in cardboard boxes arranged on shelves to her side, from floor level to above-shoulder height. Once each order was completed, Claimant would move its shipping box from the manual conveyor to a mechanical one, where it would travel to the packing line.

10. With cross-training, Claimant sometimes performed other functions as well. One or two days per week she worked in the print room, printing and sorting incoming order forms. Other assignments included hand-checking boxes for quality control, embroidering personalized bears and hand-wrapping boxes for storage. Monthly she would have to assist with inventory, which required removing the boxes in the picking area from their shelves, counting the product inside and then placing the boxes back on the shelves.

11. One of the tasks with which Claimant experienced the most difficulty was stocking product in the picking area. She used a small box cutter to open the front of each box so that it could be accessed easily from the picking line. The cardboard was thick, and cutting through it caused pain in her right arm. It is unclear from the evidence presented how often Claimant had to perform this task.

12. Claimant worked in the order fulfillment department from May 2004 until October 1, 2010. She terminated her employment with Defendant on that date and moved to Massachusetts, where her husband had taken a job. She has not worked since. In July 2011 she was determined eligible for social security disability benefits on account of an unrelated medical condition.

Claimant's Prior Medical History

[1] Some of Claimant's job assignments were depicted on Defendant's Exhibit B, a videotaped demonstration by her supervisor of the various tasks involved on each line, albeit not at the same pace that Claimant would have had to perform them. Claimant described other job assignments, not depicted on the video, in her formal hearing testimony.

13. As documented by her medical records, Claimant has a history of neck and right upper extremity complaints dating back at least to July 2000. The symptoms she reported at that time included constant neck pain, discomfort extending into her right shoulder and arm, headaches and right-sided facial numbness. Notably, during the time when Claimant underwent evaluation and treatment for these symptoms, from July 2000 through July 2001, she was working not for Defendant but in her cable assembly job at Huber+Suhner. Claimant herself described this job as lacking the stress and strain on her neck, upper back and right arm that she had attributed to her sewing job.

14. Despite diagnostic testing, the etiology of Claimant's symptoms was never definitively established. An MRI study in April 2001 revealed a degenerative C5-6 disc herniation, which the evaluating physician thought could account for her neck pain, but likely was not the cause of her right-sided facial numbness. Nor did either the MRI findings or subsequent electrodiagnostic studies explain her right shoulder and upper extremity complaints, which were diffuse rather than radicular in nature.

15. As treatment for her neck pain, Claimant underwent a cervical epidural steroid injection, but this failed to provide any significant relief. Given the diffuse nature of her symptoms, she was deemed not to be an appropriate surgical candidate. Rather, in light of her "broad spectrum of discomfort," the evaluating physician recommended instead that she consider evaluation by a physiatrist or rheumatologist. From the medical records, it does not appear that Claimant ever pursued this recommendation.

16. Claimant next sought treatment for symptoms similar to those described above between February and November 2004. By this time she had been back to work for Defendant for more than a year. Claimant complained of right-sided neck pain, occasional weakness in her right arm and right-sided headaches and head numbness. Dr. Siegel, her primary care physician, diagnosed her neck pain as an "exacerbation of [her] C5-6 disc." Her headache pain and numbness Dr. Siegel attributed to occipital neuralgia, an irritation of the occipital nerve. This nerve extends from one of the upper nerve roots in the cervical spine up into the base of the skull. Dr. Siegel did not attribute the cause of either of the conditions she diagnosed to Claimant's work for Defendant.

17. Claimant did not treat again for neck, shoulder or right upper extremity pain until May 2007. During the intervening years, she did seek treatment for other medical issues, including low back pain, abdominal pain, asthma and sinusitis. Among the symptoms she reported at times were headaches, right ear pain and right-sided numbness and discomfort in her throat, ear and head. The medical records do not document that either Claimant or her providers related these symptoms in any way to her work for Defendant.

Claimant's May 2007 Injury Claim

18. In May 2007 Claimant sought treatment with Dr. Fitzgerald for complaints of right-sided pain and numbness in her neck, head and face, as well as pain, numbness and occasional paresthesias in her right hand and wrist. Dr. Fitzgerald is board certified in both family practice and urgent care medicine. At the time he was Defendant's designated physician for treatment of its occupationally injured employees. In that capacity Dr. Fitzgerald had toured Defendant's facility on at least two occasions, though not more recently than 2004.

19. Dr. Fitzgerald reported that Claimant's symptoms began in February 2007, around the busy Valentine's Day holiday, and that her job duties involved "repetitive packaging." Based in part on his familiarity with the type of work performed at Defendant's facility, Dr. Fitzgerald determined that Claimant's condition was causally related to repetitive overuse at work. Defendant thus accepted it as compensable and began paying medical benefits accordingly.

20. Of note, Claimant reported to Dr. Fitzgerald that she had no prior history of neck or upper extremity injury, and it does not appear that Dr. Fitzgerald ever reviewed her prior medical records. Apparently he did not know, therefore, that at least some of the symptoms of which Claimant complained in May 2007 had been troubling her on occasion for several years.

21. At Dr. Fitzgerald's referral, in June 2007 Claimant underwent electrodiagnostic studies with Dr. Roomet, a neurologist. These studies failed to reveal any discrete nerve damage or entrapment in Claimant's right arm, such as carpal tunnel syndrome or ulnar neuropathy, nor any clear evidence of cervical radiculopathy. Dr. Roomet concluded that Claimant's symptoms were multi-factorial, with elements of cervical pain, right-sided occipital neuralgia and possibly tendonitis. As treatment for her neck, head and shoulder symptoms he recommended trigger point injections and an occipital nerve block. For her forearm, hand and wrist pain he recommended workplace modifications, rest, anti-inflammatory medications and physical therapy.

22. Claimant continued to work over the course of the ensuing months, albeit with modified-duty limitations imposed by Dr. Fitzgerald. These included restrictions against lifting more than twenty pounds or reaching above her shoulders.

23. Consistent with Dr. Roomet's recommendation, in October 2007 Claimant underwent a right occipital nerve block. By this time she was reporting that her right arm symptoms, which previously had extended from her shoulder down into her hand, thumb and first two fingers, had resolved. Following the injection Claimant reported 80 percent relief of her neck pain.

24. In November 2007 Dr. Fitzgerald determined that Claimant's occipital neuralgia had resolved. He therefore placed her at end medical result, with no permanent impairment and no further work restrictions.

Claimant's September 2008 Exacerbation

25. Ten months later, in September 2008 Claimant returned to Dr. Fitzgerald, again complaining of symptoms consistent with occipital neuralgia, including neck and right shoulder pain and right-sided numbness in her face and head. As before, Dr. Fitzgerald noted that Claimant "does repetitive use at work." He characterized her symptoms as an exacerbation of her 2007 work-related injury.

26. In the months that followed Claimant underwent numerous evaluations, diagnostic studies and courses of treatment. If nothing else, the results appear to support Dr. Roomet's analysis in 2007 – that Claimant's condition was multi-factorial and therefore not amenable to singular diagnosis or treatment. Among the findings reported:

- In addition to the symptoms she reported to Dr. Fitzgerald, during the course of her physical therapy and work hardening sessions Claimant complained of such varied symptoms as tingling in the third and fourth fingers of her right hand, occasional dizziness when moving her head or neck away from a neutral position, numbness around and behind her right ear, shooting pain down her right arm, achiness in her right hand, pain in her right shoulder blade and constant "whole body fatigue."

- A cervical MRI study in November 2008 documented moderate degenerative disc space narrowing at C5-6 and mild narrowing of the spinal canal at this level as well, but no disc herniation or spinal cord compression;[2]

- As was the case with Dr. Roomet's diagnostic studies, electrodiagnostic testing conducted by Dr. Haq in December 2008 was negative for both cervical radiculopathy and carpal tunnel syndrome;

- A third electrodiagnostic study, this one conducted by Dr. Starr in July 2009, again failed to reveal sufficient evidence of carpal tunnel syndrome, radiculopathy or plexopathy to explain Claimant's right shoulder, arm or hand complaints, and instead suggested an underlying myofascial pain syndrome as more likely causative;

- Evaluation and treatment by Dr. Landrigan, an ear, nose and throat specialist, in 2009 revealed that Claimant likely suffered from chronic rhinosinusitis, a condition that might account for at least some of her craniofacial pain complaints.

27. In June 2010 Claimant requested that her primary care physician, Dr. Siegel, refer her for an evaluation with Dr. Jewell, a neurosurgeon whom her attorney had suggested she consult. Dr. Siegel complied, and made the requested referral for evaluation of Claimant's reported neck, right shoulder and right upper extremity symptoms.

[2] Unfortunately, this MRI study was not compared with the earlier one completed in 2001, so there is no way to know whether or to what extent the degeneration at this level had advanced in the intervening years.

28. In preparation for Dr. Jewell's evaluation, in July 2010 Claimant underwent a third cervical MRI study. The results described more advanced degeneration at the C5-6 level than what was apparent on Claimant's 2008 MRI study, and for the first time revealed a small dent, or effacement, in the spinal cord itself.

29. Dr. Jewell diagnosed Claimant with both cervical radiculopathy and early myelopathy. The two diagnoses describe different conditions, though in Dr. Jewell's analysis both arose from the same source, namely, Claimant's C5-6 disc. Radiculopathy refers to the condition that results when the nerve at a particular level of the spine becomes pinched, resulting in symptoms that radiate down an extremity. A pinched nerve at the C-6 level can cause pain from the neck, down the arm and into the thumb and forefinger. Dr. Jewell characterized the symptoms Claimant described as a "classic distribution" of C-6 radiculopathy.

30. In contrast, myelopathy refers to the condition that results when the spinal cord itself becomes pinched. In its early stages myelopathy can be asymptomatic, but it can become a serious problem over time. In Claimant's case, Dr. Jewell found evidence of myelopathy in two aspects of his clinical examination, both of which indicated spinal cord compression.

31. Both radiculopathy and myelopathy are to be distinguished from occipital neuralgia, the diagnosis given previously by Drs. Siegel, Roomet and Fitzgerald to account for at least some of Claimant's head and neck symptoms. Dr. Jewell did not mention occipital neuralgia in either his evaluation or in his deposition testimony, and thus did not explain how that diagnosis might fit into his analysis of Claimant's symptomatology, if at all.

32. Dr. Jewell attributed the cause of both Claimant's C-6 radiculopathy and her early myelopathy to the C5-6 disc herniation indicated on her July 2010 MRI study. He did not offer any explanation as to how the herniation occurred, nor did he state any opinion as to whether it was causally related to Claimant's work for Defendant. Notably, he was unaware that Claimant had been complaining of neck, shoulder and right arm symptoms as far back as 2000, and that prior MRI studies had documented degenerative changes at the C5-6 level as early as 2001. To the contrary, from the history that Claimant reported to him, he understood that her symptoms first arose in 2008.

33. As treatment for Claimant's condition Dr. Jewell has recommended C5-6 fusion surgery. The purpose of this surgery is both to halt the further progression of her myelopathy and to take the pressure off of the C-6 nerve. Relieving the pressure will not "fix" the nerve itself, but hopefully it will alleviate Claimant's radicular pain.

34. Claimant has not treated for her neck, right shoulder or arm symptoms since moving to Massachusetts in October 2010. At the formal hearing, she described her current symptoms as including pain in her right shoulder and neck, pain and weakness throughout her right arm and numbness in her palm and first three fingers on her right hand. As recently as July 2011 she also was complaining of constant facial numbness and numbness and tingling on the right side of her head.

35. Claimant testified that she left her job not only because her husband had moved but also because due to her pain she could no longer tolerate the work. No medical provider ever disabled her totally from working, however, and there is no evidence that Defendant was not accommodating the modified-duty restrictions that Dr. Fitzgerald imposed after her 2008 exacerbation.

Expert Medical Opinions

36. The parties each presented expert medical opinions as to (1) whether Claimant's current condition is causally related to her work for Defendant; and (2) whether Dr. Jewell's proposed fusion surgery is reasonable and necessary.

(a) Dr. Fitzgerald

37. Dr. Fitzgerald was Claimant's treating physician from May 2007 until August 2009. As noted above, Finding of Fact No. 18 *supra*, he was familiar with Defendant's operation, having toured the facility previously, and presumably understood the general nature of Claimant's job duties there. He was less familiar with Claimant's medical history, however, and as noted above, Findings of Fact Nos. 19-20 *supra*, was unaware that her symptoms did not originate in 2007 but rather dated back at least to 2000.

38. Dr. Fitzgerald asserted that the repetitive nature of Claimant's work for Defendant caused or contributed to her current condition. In stating this conclusion, Dr. Fitzgerald did not specify which of Claimant's job tasks were so repetitive as to result in the particular injury from which she now suffers. This is a significant omission. The undisputed evidence showed that Claimant's job responsibilities were diverse and varied. As demonstrated on the video (which Dr. Fitzgerald did not view), Claimant clearly had to use her right upper extremity throughout her work day in order to accomplish her assigned job tasks. Dr. Fitzgerald did not offer any explanation, however, as to the mechanism by which using her right arm repetitively translated either to advanced degeneration in Claimant's cervical spine or to inflammation of her occipital nerve.

39. Dr. Fitzgerald did not voice an opinion as to whether Dr. Jewell's proposed fusion surgery is reasonable and necessary. Rather than making specific treatment recommendations, he has suggested instead that Claimant be retrained for an occupation that does not require repetitive use of her right arm.

(b) Dr. White

40. At Defendant's request, in April 2009 Claimant underwent an independent medical examination with Dr. White, a board certified specialist in occupational medicine. Dr. White conducted a physical examination and initially, reviewed Claimant's medical records dating back to Dr. Fitzgerald's May 2007 examination. Later, he reviewed additional records dating back to April 2005. Dr. White also viewed the videotaped demonstration of Claimant's primary job responsibilities.

41. In Dr. White's opinion, it is impossible to state to the required degree of medical certainty that Claimant's work for Defendant caused or contributed to her current cervical condition. Chronic neck pain is a relatively common ailment, and the degenerative disc disease in Claimant's cervical spine is typical for her age. Her job duties did not involve activities typically associated with cervical spine injury, such as sustained static neck posture, high static loads or repetitive heavy overhead lifting. Thus, while anything is possible, there is no basis for concluding definitively that Claimant's C5-6 disc herniation was in any way work-related. I find Dr. White's analysis in this regard to be credible.

42. As for the etiology of the symptoms in Claimant's right arm, hand and fingers, Dr. White was unconvinced that they represented C5-6 radiculopathy. To him they appeared somewhat non-specific, and were not verified electrodiagnostically. Nevertheless, he acknowledged the possibility that they still could be radicular in origin, as Dr. Jewell had concluded.

43. Dr. White stopped short of characterizing Dr. Jewell's proposed fusion surgery as an unreasonable treatment option for Claimant, although that would not have been his recommendation. If in fact Claimant's right arm, hand and finger symptoms represent radiculopathy, then surgery might alleviate them. Given its chronic nature, however, surgery likely will not resolve her neck pain.

(c) *Dr. Sobel*

44. At Defendant's request, in July 2011 Claimant underwent an independent medical examination with Dr. Sobel, a board certified orthopedic surgeon. Dr. Sobel described his current practice as a general orthopedic one. Cervical conditions are not a particular focus, and in fact he has not performed a cervical spine surgery for at least ten years. At least 50 percent of his practice involves independent medical evaluations.

45. Dr. Sobel physically examined Claimant and reviewed her medical records dating back to 2001. He also viewed the video demonstration of her primary job assignments. According to his analysis of the medical evidence:

- Claimant's hand pain does not correlate entirely with her cervical spine symptoms, and has never been definitively diagnosed;
- Claimant's shoulder and neck pain is likely referred rather than radicular in nature, meaning that although the body perceives it as radiating it does not follow a specific dermatomal pattern along the nerve root itself;
- Claimant exhibited signs of symptom magnification during her physical examination, including non-specific pain complaints and facial grimacing;
- Claimant's work activities did not consist of a single repetitive motion but rather involved multiple varied movements, most of which were conducted at waist level; and
- Despite not having worked for almost a year at the time of his examination, Claimant still complained of pain with motion of her neck or shoulder.

46. I find credible Dr. Sobel's observations regarding the nature of Claimant's work and the absence of repetitive activities typically associated with cervical spine injury or disease. I find less credible his determination that Claimant was exaggerating her symptoms. Neither Claimant's primary care physician, Dr. Siegel, nor Dr. Fitzgerald, who treated her neck and shoulder symptoms for more than two years, ever reported evidence of symptom magnification over the course of their many office visits with Claimant.

47. Dr. Sobel conceded that Claimant likely suffered a work-related overuse injury to her shoulder in 2007, which he diagnosed as an episode of subacromial bursitis or tendonitis.[3] In his analysis, however, her current symptoms most likely represent cervical degenerative disc disease, which according to the medical records has been progressing for many years. In Dr. Sobel's opinion, to a reasonable degree of medical certainty, this condition is not causally related in any way to Claimant's work activities for Defendant.

48. Dr. Sobel does not believe that Dr. Jewell's proposed fusion surgery is medically indicated, and doubts that Claimant will realize any long-term relief of symptoms from it. In his opinion, therefore, the surgery is neither reasonable nor necessary.

[3] Of note, in June 2007 Dr. Roomet posited a similar diagnosis as one component of what he considered to be a multi-factorial problem. *See* Finding of Fact No. 21 *supra.*

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 in this claim is whether Claimant's work for Defendant either caused or aggravated her current cervical condition. If it did, then the secondary disputed issue is whether Dr. Jewell's proposed fusion surgery represents reasonable and necessary medical treatment.[4] Claimant bears the burden of proof on both of these issues. *Egbert, supra; Johnson v. Oly Equinox Holding Company*, Opinion No. 25-10WC (August 5, 2010).

3. As to the first issue, the parties presented conflicting expert medical evidence. Where expert medical opinions are conflicting, the Commissioner traditionally uses a five-part test to determine which expert's opinion is the most persuasive: (1) the nature of treatment and the length of time there has been a patient-provider relationship; (2) whether the expert examined all pertinent records; (3) the clarity, thoroughness and objective support underlying the opinion; (4) the comprehensiveness of the evaluation; and (5) the qualifications of the experts, including training and experience. *Geiger v. Hawk Mountain Inn*, Opinion No. 37-03WC (September 17, 2003).

4. I conclude here that the Dr. Fitzgerald's causation opinion was not sufficiently credible to sustain Claimant's burden of proof. In reaching this conclusion, I acknowledge his familiarity both with the type of work that Defendant's employees generally perform and with Claimant's medical course over the two years during which he treated her. Ordinarily this would lend significant weight to his opinion.

5. Here, however, Dr. Fitzgerald's familiarity with Claimant's condition was undermined by his failure to acquaint himself with her prior medical history. As a result, he did not consider how the complaints she presented as work-related from May 2007 forward may have fit into the broader context of similar, non-work-related complaints documented some years earlier.

[4] Claimant seeks other workers' compensation benefits as well, though primarily these all flow from her claim that Dr. Jewell's surgery is compensable.

6. Perhaps more disturbing, despite Dr. Fitzgerald's general familiarity with the type of work Defendant's employees perform he failed adequately to explain how Claimant's specific job tasks either caused or aggravated the cervical condition for which she now requests surgery. Given Claimant's complicated medical history and multi-factorial symptom presentation, to say simply that Claimant's "repetitive work" caused her injury raises more questions than it answers. How do job tasks that involve primarily upper extremity use cause or aggravate cervical disc degeneration? Is Claimant's occipital neuralgia related to repetitive work as well? Where do her complaints of right-sided head and facial numbness fit in? If her symptoms are work-related, why have they not improved in the year since she left her job? Without answers to these questions, Dr. Fitzgerald's opinion is so conclusory as to be unpersuasive.

7. In contrast, both Dr. White and Dr. Sobel analyzed Claimant's specific job activities for the purpose of identifying whether they involved any of the stressors typically associated with cervical injury or disease, and found none. I accept as credible their determination that absent such a link, there is no basis for concluding to the required degree of medical certainty that Claimant's cervical condition is work-related.

8. I conclude that Claimant has failed to sustain her burden of proving that her work for Defendant caused or aggravated either her C5-6 disc herniation or her occipital neuralgia. Neither of these conditions is compensable, therefore.

9. As for the proposed fusion surgery, based on Dr. Jewell's expertise as a neurosurgeon I accept as credible his determination that medically it is a reasonable and necessary treatment option for Claimant to pursue. In the workers' compensation arena, however, to be reasonable a treatment must be causally related to a compensable work injury as well. *Pelissier v. Hannaford Brothers*, Opinion No. 26-11WC (September 9, 2011). That is not the case here. I conclude, therefore, that Dr. Jewell's proposed surgery does not represent reasonable treatment for which Defendant can be held responsible under 21 V.S.A. §640(a).

10. Having failed to prevail on her claim for benefits, Claimant is not entitled to an award of costs and attorney fees.

ORDER:

Based on the foregoing findings of fact and conclusions of law, Claimant's claim for workers' compensation benefits causally related to her current cervical condition is hereby **DENIED**.

DATED at Montpelier, Vermont this 7th day of February 2012.

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Anne M. Noonan
Commissioner

Appeal:

Within 30 days after copies of this opinion have been mailed, either party may appeal questions of fact or mixed questions of law and fact to a superior court or questions of law to the Vermont Supreme Court. 21 V.S.A. §§670, 672.