

**STATE OF VERMONT
DEPARTMENT OF LABOR**

Barbara Grimes

Opinion No. 17-12WC

v.

By: Jane Woodruff, Esq.
Hearing Officer

City of Burlington

For: Anne M. Noonan
Commissioner

State File No. AA-59038

OPINION AND ORDER

Hearing held in Montpelier, Vermont on March 27, 2012

Record closed on May 1, 2012

APPEARANCES:

Patrick Biggam, Esq., for Claimant

Wesley Lawrence, Esq., for Defendant

ISSUES PRESENTED:

1. Is Claimant's right shoulder pain and discomfort causally related to the compensable work injuries that she suffered on October 16, 2008?
2. If so, to what workers' compensation benefits is Claimant entitled?

EXHIBITS:

Joint Exhibit I: Medical records

Claimant's Exhibit 1: Photo of steps

Claimant's Exhibit 2: *Curriculum vitae*, Philip Davignon, M.D.

Claimant's Exhibit 3: First Report of Injury, October 17, 2008

Defendant's Exhibit A: Photo of steps

Defendant's Exhibit B: *Curriculum vitae*, George White, M.D.

CLAIM:

Medical benefits pursuant to 21 V.S.A. §640

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.
3. Claimant is the general manager of Defendant's electric department. She has held this position for the last 12 years.

Claimant's October 16, 2008 Work Injuries

4. On October 16, 2008 Claimant attended a work-related meeting at the Farmhouse, which is off-site from the electric department. When she left, it was raining. She slipped on the top concrete step and fell down the other two. She landed on a concrete walkway on her outstretched arms. She skinned her right wrist and bruised her right elbow and knees.
5. Claimant got up and brushed herself off. She did not seek medical treatment that day and she did not lose any time from work. In fact, she continued with the rest of her work day. At the time, she was mainly embarrassed. Claimant filed a First Report of Injury with Defendant the next day.
6. Claimant's right arm became uncomfortable in the ensuing weeks. In addition, her right wrist swelled to the point where she could not wear her bracelets. However, the Thanksgiving holiday was approaching and her family planned to gather in California. Thereafter, she hosted her family for the Christmas holiday here in Vermont. Therefore, she delayed seeking medical treatment until her life calmed down. I find this explanation very credible.

Claimant's Course of Treatment

7. Claimant first sought treatment from her primary care provider, Dr. Moore, on December 30, 2008. She complained of bilateral elbow and neck pain. Claimant underwent x-rays of her cervical spine, which revealed moderate multilevel degenerative disc changes. Dr. Moore referred her for physical therapy.
8. Claimant attended physical therapy during January and early February. She experienced a notable reduction in her pain levels in all areas. Defendant referred Claimant to Champlain Valley Urgent Care, its workers' compensation medical provider, on February 6, 2009. Dr. Fitzgerald ordered x-rays of Claimant's right wrist and elbow. Additionally, he referred her for more physical therapy. Defendant accepted this claim and paid benefits accordingly.

9. Claimant continued her physical therapy with a different therapist on February 27, 2009. During her initial assessment, Claimant indicated that her wrist felt better but that her right upper arm was bothering her. Claimant had no prior injuries to her right shoulder. She described the pain as a “noogie,” like knuckles rotating into the skin.
10. Dr. Fitzgerald ordered an MRI scan of Claimant’s right wrist. The results suggested a tear of the scapholunate ligament, which joins two bones in the wrist. Dr. Fitzgerald referred Claimant to Dr. Frenzen, an orthopedist who specializes in hand, wrist and elbow surgery.
11. In May 2009 Claimant underwent surgery to repair her right wrist, followed by another course of physical therapy. At her August 2009 follow up appointment with Dr. Frenzen, Claimant indicated that she was pleased with the course of treatment for her wrist. However, she reported continuing problems with her right shoulder and elbow. X-rays taken that day revealed a well located shoulder joint with no evidence of osteoarthritis. There was evidence of osteoarthritis with bone spurs in the elbow.
12. Claimant’s shoulder was still symptomatic at her next follow up visit with Dr. Frenzen, in October 2009. Dr. Frenzen referred her for physical therapy for her shoulder. Defendant denied coverage for this therapy, on the grounds that Claimant’s right shoulder symptoms were not causally related to the accepted wrist and elbow injuries, but rather were the result of pre-existing degenerative conditions.
13. Dr. Frenzen advised otherwise. In a letter to the Department he stated that Claimant’s shoulder pain was likely due to altered motion resulting from the pain in her elbow and wrist. Therefore, it was causally related to the accepted injuries. He also indicated that the physical therapy to date was effectively treating Claimant’s shoulder. The Department upheld Defendant’s denial.
14. In February 2010, Dr. Moore referred Claimant to Dr. Libman, a rheumatologist, for further evaluation of her continued complaints of pain. Dr. Libman ordered lab tests and bilateral x-rays of Claimant’s wrists, elbows and shoulders. Based on the results of those tests, she diagnosed Claimant with rheumatoid arthritis. As treatment, Claimant began a course of medication.
15. One of the classic symptoms of rheumatoid arthritis is joint stiffness upon awakening in the morning. People who suffer from the disease report that it typically takes one to two hours to work the stiffness out. Claimant does not experience morning stiffness in her shoulder, elbow or wrist. To the contrary, she credibly testified that she feels great in the morning and as the day wears on she gets sore.
16. In July 2010 Claimant underwent surgery on her right elbow. During the course of the surgery Dr. Frenzen observed loose bodies and large osteophytes, or bone spurs, in the joint, which he removed with no complications. Thereafter, he referred Claimant to physical therapy for her elbow.

17. In an August 2010 post-operative appointment, Claimant reported to Dr. Frenzen that she was not experiencing any pain in her elbow or her shoulder.
18. Claimant was persuasive in her testimony that the pain from the rheumatoid arthritis was a “slight throbbing” pain. In contrast, the pain she felt from her right shoulder was like a knife in the joint, what she termed a “noogie.”

Expert Medical Opinions

19. The parties presented conflicting expert opinions as to the causal relationship, if any, between Claimant’s October 2008 work injuries and her right shoulder pain.
 - (a) Dr. Frenzen
20. Dr. Frenzen testified by deposition. He credibly testified to the following: (a) Claimant’s wrist injury was caused by the October 2008 fall because rheumatoid arthritis does not cause a torn ligament; and (b) what he observed during Claimant’s elbow surgery, the large osteophytes, are not consistent with rheumatoid arthritis.¹
21. Dr. Frenzen opined to a reasonable degree of medical certainty that Claimant’s right shoulder pain and discomfort were caused by her wrist and elbow injuries for the following reasons:
 - Claimant compensated for the pain she was experiencing from her wrist and elbow injuries by altering the way she moved her shoulder to reduce the possibility of increasing her pain; and
 - This altered way of moving her shoulder caused Claimant to develop a right shoulder pain syndrome.

I find Dr. Frenzen’s reasoning persuasive.

¹ Rheumatoid arthritis typically has few osteophytes. If they do appear in a joint, they are very small, akin to rice.

22. Dr. Frenzen further opined to a reasonable degree of medical certainty that Claimant's right shoulder pain and discomfort were not caused by the later diagnosed rheumatoid arthritis. He based his opinion on the following:
- Rheumatoid arthritis affects the joints;
 - Rheumatoid arthritis does not cause muscle spasms;
 - He observed muscles spasms near Claimant's right biceps tendon at her January 2010 office visit;
 - Biceps tendonitis is caused by an overuse or altered use injury;
 - The August 2009 x-ray of the right shoulder showed there was no arthritis; and
 - The type of pain Claimant was describing, a stabbing pain in the joint, is not a classic complaint of rheumatoid arthritis patients.

I find this reasoning persuasive as well.

23. In Dr. Frenzen's opinion, although it was possible that Claimant's shoulder injury was the result of a "FOOSH" fall, that is, a fall on outstretched hands, he could not state that to the required degree of medical certainty.
24. Dr. Frenzen acknowledged that Claimant's rheumatoid arthritis likely contributed to her shoulder pain, but doubted that it was the sole cause.

(b) Dr. Davignon

25. Dr. Davignon is board certified in occupational medicine, and also has training in orthopedics. At Claimant's request, he performed an independent medical examination in February 2011. While Dr. Davignon did not have Claimant's rheumatology reports at the time of his evaluation, he did review them prior to his testimony at the formal hearing. He also reviewed all of Claimant's other pertinent medical records. Dr. Davignon has treated patients with rheumatoid arthritis in the past.

26. Dr. Davignon opined to a reasonable degree of medical certainty that Claimant's right shoulder symptoms are causally related to her October 2008 work injury. He based his opinion on the following:
- Claimant suffered a traumatic fall, resulting in injuries to both her right wrist and elbow and necessitating surgery on both joints;
 - Claimant's right shoulder was asymptomatic prior to the work injury;
 - After each surgery, Claimant altered the way she moved her shoulder to protect against increasing her wrist and elbow pain; and
 - Claimant's August 2009 x-ray showed no abnormal pathology in her right shoulder.

Dr. Davignon's testimony concurs with that of Dr. Frenzen and I find it credible.

27. In Dr. Davignon's opinion, it was conceivable that Claimant had suffered a FOOSH fall.
28. Dr. Davignon did note that it was possible that Claimant's rheumatoid arthritis could have contributed to her right shoulder symptoms. However, he could not opine to the requisite degree of medical certainty that rheumatoid arthritis actually caused Claimant's right shoulder symptoms. I find this testimony credible.
29. Dr. Davignon also testified to a reasonable degree of medical certainty that physical therapy can correct Claimant's symptoms and it did so. Therefore it was reasonable and necessary medical treatment. I find this reasoning persuasive.

(c) Dr. White

30. Dr. White is board certified in occupational medicine. At Defendant's request he performed two independent medical examinations of Claimant, each with individual addenda. His first examination occurred in November 2009; the second was performed in March 2011. Dr. White interviewed Claimant, examined her and reviewed the pertinent medical records.
31. In November 2009 Dr. White diagnosed Claimant with a torn ligament in her right wrist, osteoarthritis in her right hand, wrist and elbow and right shoulder pain of unknown etiology. Significantly, Dr. White acknowledged that Claimant had no history of right upper extremity problems.
32. In March 2011 Dr. White evaluated Claimant again to ascertain if she suffered any impairment from her work injuries. He opined that she was at end medical result and that she suffered a 15 percent whole person impairment with respect to her wrist and elbow injuries.

33. In October 2011 Dr. White supplemented his March 2011 report. In the new report Dr. White opined that Claimant's rheumatoid arthritis was unrelated to her work injuries. He based his opinion on the fact that rheumatoid arthritis is not a disease that is caused by either trauma or overuse.
34. During his formal hearing testimony, Dr. White attributed all of Claimant's right upper extremity problems to her rheumatoid arthritis, including her wrist and elbow injuries. Dr. White's reasoning was that with the now known diagnosis of rheumatoid arthritis, there was one diagnosis to explain all three injuries.
35. Dr. White did not see Claimant after she was diagnosed with rheumatoid arthritis. He conceded that he did not ask Claimant how any of her pain manifested itself. Dr. White further conceded that knowing the type of pain from which Claimant was suffering at a given point in time would be an important tool in diagnosing the underlying problem. Thus, Dr. White did not know that Claimant's shoulder pain manifested as a knife-like jab or "noogie" and that her rheumatoid arthritis pain manifested itself as a slight throbbing.
36. I find that this lack of knowledge as to how Claimant's pain manifested itself undermines Dr. White's conclusions. In addition, his review of the medical records was deficient in that he thought all of Claimant's symptoms occurred simultaneously. In fact, the first mention of right shoulder pain occurred in February 2009. This was two months after her first medical appointment for her pain.

CONCLUSIONS OF LAW:

1. In workers' compensation cases, the claimant has the burden of establishing all facts essential to the rights asserted. *King v. Snide*, 144 Vt. 395, 399 (1984). He or she must establish by sufficient credible evidence the character and extent of the injury as well as the causal connection between the injury and the employment. *Egbert v. The Book Press*, 144 Vt. 367 (1984). There must be created in the mind of the trier of fact something more than a possibility, suspicion or surmise that the incidents complained of were the cause of the injury and the resulting disability, and the inference from the facts proved must be the more probable hypothesis. *Burton v. Holden Lumber Co.*, 112 Vt. 17 (1941); *Morse v. John E. Russell Corp.*, Opinion No. 40-92WC (May 7, 1993).
2. The disputed issue in this case is whether Claimant's right shoulder pain and discomfort are causally related to her accepted work injuries of October 16, 2008. Claimant argues that her right shoulder symptoms were caused either at the time of her original FOOSH fall, or as a result of altered motion to compensate for her right wrist and elbow pain. Defendant contends that Claimant's shoulder pain is the result solely of her rheumatoid arthritis.

3. The parties presented conflicting expert opinions on the issue of causation. In such cases, the commissioner traditionally uses a five-part test to determine which expert's opinion is the most persuasive: (1) the nature of treatment and the length of time there has been a patient-provider relationship; (2) whether the expert examined all pertinent records; (3) the clarity, thoroughness and objective support underlying the opinion; (4) the comprehensiveness of the evaluation; and (5) the qualifications of the experts, including training and experience. *Geiger v. Hawk Mountain Inn*, Opinion No. 37-03WC (September 17, 2003).
4. Here I conclude that the first factor favors Dr. Frenzen. He performed two surgeries on Claimant's right upper extremity. Thus he was the only medical professional who had occasion to view Claimant's pathologies from the inside. His opinion carries great weight. *Matheny v. Best Food Baking Co.*, Opinion No. 17-11WC (July 20, 2011).
5. The second factor disfavors Dr. White. His review of the medical records failed to reveal that Claimant's shoulder pain did not occur simultaneously with her wrist and elbow pain, as he assumed, but rather presented two months later.
6. I conclude that the third factor favors Dr. Frenzen. The presence of the torn ligament in the wrist and the large osteophytes in the elbow were objective support for Dr. Frenzen's opinion that Claimant's pain was not caused solely by rheumatoid arthritis. Rather, her pain was caused by altering the movement of her shoulder to minimize wrist and elbow pain. The August 2009 x-ray of Claimant's right shoulder, which failed to reveal any evidence of arthritis, provides further objective support for this opinion.
7. The fourth factor disfavors Dr. White. Once he knew of Claimant's diagnosis of rheumatoid arthritis, he did not ask Claimant how her pain manifested itself. Even Dr. White conceded this information is an important tool in diagnosing what a patient's underlying problem is.
8. The fifth factor favors Dr. Frenzen. His training as an orthopedic surgeon, with a particular focus on hand, wrist and elbow injuries, lends extra weight to his opinion in this case.
9. As neither Dr. Frenzen nor Dr. Davignon could state to a reasonable degree of medical certainty that Claimant's shoulder injury was the direct result of a FOOSH fall, I cannot conclude that her injury occurred in this manner. I do conclude, however, that Dr. Frenzen's opinion is more credible than Dr. White's as to the causal relationship between Claimant's elbow and wrist pain and her altered shoulder motion. I therefore conclude that Claimant has sustained her burden of proving the compensability of her right shoulder injury.
10. I further conclude that Claimant has sustained her burden of proving that the course of physical therapy she underwent for her right shoulder symptoms constituted reasonable treatment and is therefore compensable.

11. As Claimant has prevailed on her claim for benefits, she is entitled to an award of costs and attorney fees. In accordance with 21 V.S.A. §678(e), Claimant shall have 30 days from the date of this opinion within which to submit her itemized claim.

ORDER:

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

1. Medical benefits covering all reasonable medical services and supplies causally related to treatment of Claimant's right shoulder injury, in accordance with 21 V.S.A. §640; and
2. Costs and attorney fees in amounts to be determined in accordance with 21 V.S.A. §678.

DATED at Montpelier, Vermont this 6th day of June 2012.

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.