STATE OF VERMONT
DEPARTMENT OF LABOR

Theresa Westover

v.

North Country Hospital

Opinion No. 19-12WC

By: Jane Woodruff, Esq.
Hearing Officer

For: Anne M. Noonan
Commissioner

State File No. BB-01023

OPINION AND ORDER

Hearing held in Montpelier, Vermont on March 29 and 30, 2012
Record closed on May 4, 2012

APPEARANCES:

Charles Powell, Esq., for Claimant
David Berman, Esq., for Defendant

ISSUES PRESENTED:

1. Does Claimant suffer from complex regional pain syndrome causally related to her August 16, 2009 work injury and if so, what is the appropriate medical treatment for this condition?

2. Is Claimant's lumbar pain causally related to her August 16, 2009 work injury and if so, what is the appropriate medical treatment for this condition?

3. Were Claimant's medical and temporary total disability benefits appropriately discontinued on November 11, 2011 on the grounds that she had reached an end medical result?

4. Has Claimant had a work capacity at any time since August 30, 2010?

EXHIBITS:

Joint Exhibit I:	Medical records
Claimant's Exhibit 1A:	Illustration of the Lisfranc joint complex
Claimant's Exhibit 1B:	Illustration of axial loading at the Lisfranc joint complex
Claimant's Exhibit 1C:	X-ray of the Lisfranc joint complex
Claimant's Exhibit 2:	Claimant's statement, November 17, 2011
Defendant's Exhibit A:	Email from Attorney Johnson to Attorney Powell, November 30, 2011
Defendant's Exhibit B:	Deposition of George Holmes, M.D., March 19, 2012
Defendant's Exhibit C:	Deposition of Kern Singh, M.D., March 22, 2012

CLAIM:

Temporary total disability benefits pursuant to 21 V.S.A. §642
Medical benefits pursuant to 21 V.S.A. §640
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 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 started working for Defendant in September 2005 as a certified nurse assistant and unit clerk. Her duties included ambulating patients, giving them snacks, getting them ready for bed and assisting the nurses with any procedures they needed to perform.

Claimant's August 16, 2009 Work Injury

4. On August 16, 2009 Claimant was assisting a nurse to transfer a patient from one unit to another. As she was pulling the patient's bed through some sliding glass doors, the doors began to close. She put her arm up to stop the doors, but the nurse on the other end of the bed continued pushing. The bed struck the back of Claimant's right foot, pushed her heel up and crushed her foot forward into the floor, causing her to lunge forward. Claimant's description of this mechanism of injury was credible in all respects.

5. Claimant immediately felt excruciating pain at the back of her right heel, the top of her right foot and her toes. A nurse helped her to a chair and gave her ice to apply to her foot. Thereafter, she was transferred via wheelchair to Defendant's emergency department for assessment. X-rays revealed a possible fracture of her fifth metatarsal (the long bone on the outside of the foot that connects to the little toe), but this later was determined to be an old, likely unrelated finding. Claimant was diagnosed with a right foot sprain and contusion and discharged home, first with crutches and later with an equalizer boot.

6. Defendant accepted Claimant's injury as compensable, and began paying workers' compensation benefits accordingly.

Claimant's Course of Treatment

7. From August through December 2009, Claimant treated with Dr. Peer, an orthopedist, and his physician's assistant. During that time, Claimant wore a splint, was assigned only sedentary duties at work and was unable to resume her regular daily living activities. She continued to experience swelling, and also complained of tenderness at the Lisfranc joint complex, the area between the mid- and forefoot that includes the five metatarsal joints. The joint appeared intact on x-ray, however.

8. In November 2009, Dr. Peer's physician's assistant first mentioned the possibility that Claimant might be suffering from reflex sympathetic dystrophy. Now commonly referred to as complex regional pain syndrome (CRPS), Type I, this neurological pain disorder is characterized by an abnormal increase in nervous system activity resulting from an inciting event such as controlled or accidental trauma.

9. At Dr. Peer's referral, in February 2010 Claimant underwent an evaluation with Dr. Michelson, an ankle and foot specialist. Though read by the radiologist as normal, to Dr. Michelson's eye an MRI study demonstrated increased signal at the base of the third tarsometatarsal joint. Dr. Michelson interpreted this finding as indicative of a ligamentous injury to the Lisfranc joint, in precisely the area where Claimant was most tender. This analysis was also consistent with Claimant's report of the mechanism of her right foot injury, which involved axial loading to that joint.

10. As treatment for her ongoing symptoms, Dr. Michelson proposed surgery, specifically a third tarsometatarsal fusion at the Lisfranc joint. Defendant agreed to pay for this procedure, which Claimant underwent in March 2010. Among Dr. Michelson's operative findings, he observed that the joint was grossly unstable, which can be indicative of an injury in that area.

11. Unfortunately, Claimant's symptoms failed to resolve with surgery. To the contrary, her right foot and ankle pain worsened, to the point where her right leg became affected as well. She developed lower bone density at the fusion site, and when her walking boot was removed in July 2010 she was unable to bear any weight on her right foot.

12. Despite her ongoing symptoms, in mid-July 2010 Dr. Michelson released Claimant to return to work in a modified duty position. To accommodate her restrictions, Defendant fashioned a job for her as a greeter at the front of the hospital. Claimant could sit, stand, elevate her leg and/or use a wheelchair as necessary.

13. Claimant worked at this position for approximately one month, until August 23, 2010 when she suffered a severe flare-up of pain in her right foot. After a week of half-time work, on August 30, 2010 Dr. Michelson determined that she was again totally disabled from working. Defendant resumed paying temporary total disability benefits accordingly.

14. Dr. Michelson questioned whether Claimant's pain might be due to neuritis, that is, nerve inflammation emanating from her foot but originating in her spine. He thus referred her to Dr. Rinehart, a spine specialist, for further evaluation.

15. Dr. Rinehart evaluated Claimant in September 2010. By this point, she was still unable to weight bear on her right foot, and her pain was worse than it had been at the time of her fusion. Dr. Rinehart concluded that Claimant's symptoms were not the result of neuritis, but rather likely represented reflex sympathetic dystrophy.

16. Shortly after Dr. Rinehart's evaluation, Claimant and her husband moved to the Chicago area to be closer to family. They had made the decision to do so some time earlier, because Claimant's husband was suffering from a debilitating disease and could no longer take care of their Vermont property. The sale of their house, which had been on the market since February, closed on September 15, 2010. Claimant was credible in her testimony as to the reasons for, and timing of, her move. I find that Dr. Michelson's determination that by this point she was again unable to work was based entirely on her need for further medical evaluation and treatment, and therefore completely unconnected to this personal and family development.

17. To continue with her care in Illinois, Claimant first treated with Dr. Salvino, a podiatrist. Dr. Salvino diagnosed right lower extremity neuropathic pain and CRPS. Given the level of Claimant's pain, Dr. Salvino referred her to Dr. Glaser for further evaluation. Dr. Glaser is a board certified anesthesiologist and specialist in interventional pain management, with a particular area of expertise in diagnosing and treating CRPS.

18. Claimant first saw Dr. Glaser on October 1, 2010. She reported numerous symptoms indicative of CRPS, including sharp, burning pain, swelling and increased sweating in her right foot and/or ankle, hypersensitivity to socks and sheets, and a constant hot feeling in her right foot but cold feeling in her right toes. Dr. Glaser also observed various signs of CRPS in Claimant's right foot during his evaluation, such as allodynia (a painful response to a non-painful stimulus), hyperalgesia (a heightened response to a painful stimulus), moderate hypersensitivity to light touch and some limited range of motion.

19. To a reasonable degree of medical certainty, and based both on the symptoms she reported and the signs he has observed since he began treating her, Dr. Glaser has concluded that Claimant suffers from CRPS and neuropathic pain. His analysis comports with the so-called "Harden criteria" for diagnosing CRPS. These criteria, which were developed at an invitation-only conference held in Budapest in 2003, are designed to better define the condition and refine a practitioner's ability to diagnose it. Under the Harden criteria, a patient must report at least three from a list of qualifying symptoms and exhibit at least two from a list of qualifying signs to establish a diagnosis of CRPS.[1]

20. As treatment for Claimant's CRPS, Dr. Glaser has recommended a five-week course of sympathetic nerve blocks, followed by a course of physical therapy and combined with prescription pain medications. Sympathetic nerve blocks are minimally invasive steroid injections designed to provide therapeutic relief. Should these prove ineffective, in Dr. Glaser's opinion the next course of treatment likely would involve consideration of a spinal cord stimulator. To be considered for that device, Claimant first would have to undergo a psychological evaluation to determine if she is an appropriate candidate.

21. Dr. Glaser has treated Claimant on a monthly basis since October 2010. Aside from a short course of physical therapy, his treatment has consisted solely of pharmaceutical pain management. Despite his active advocacy, Defendant has refused to authorize payment of the sympathetic nerve blocks Dr. Glaser has recommended.

22. At Defendant's request, in November 2010 Claimant underwent an independent medical examination with Dr. Holmes, a board certified orthopedic surgeon who specializes in foot and ankle injuries. In preparation for his examination, Dr. Holmes reviewed Claimant's medical records through September 7, 2010. Of note, however, he did not have or review the operative report relative to Dr. Michelson's February 2010 Lisfranc joint fusion surgery.

23. Dr. Holmes acknowledged that the mechanism of Claimant's injury was axial loading at the Lisfranc joint complex, though he stopped short of identifying the August 2009 incident at work as the inciting event. He attributed her ongoing symptoms to delayed and/or non-union of the third tarsometatarsal fusion and neuritis. However, according to his interpretation of Claimant's diagnostic imaging studies no abnormalities were apparent, and therefore he could not justify Dr. Michelson's fusion surgery as reasonable and necessary treatment. I find that Dr. Holmes' opinion in this regard is weakened by the fact that he failed to review the operative report from that surgery.

24. Dr. Holmes opined that Claimant was not suffering from CRPS when he examined her.

[1] The Harden criteria are to be distinguished from the more stringent criteria for diagnosing CRPS as enunciated in the fifth edition of the *AMA Guides to the Evaluation of Permanent Impairment*.

25. Dr. Holmes determined that Claimant had a sedentary work capacity. With that opinion as support, Defendant filed a Notice of Intention to Discontinue Benefits (Form 27), terminating Claimant's temporary total disability benefits effective December 13, 2010 on the grounds that notwithstanding her relocation to Chicago the hospital greeter position she previously had held fit her restrictions and was still available to her. Ultimately the Department rejected the discontinuance and ordered that benefits be reinstated retroactively.

26. In addition to the ongoing symptoms in her right foot, in early 2011 Claimant began to complain of low back pain. As the year progressed, the pain began radiating into her buttocks, hips and below her left knee. Dr. Glaser has attributed these symptoms to lumbar radiculopathy and lumbar facet syndrome without myelopathy. Like most people her age, Claimant likely had preexisting degenerative disc disease, but the condition was entirely asymptomatic. As a consequence of her work injury and increasingly severe right foot pain, she altered the dynamics of her gait and bore virtually all of her weight on her left side. In Dr. Glaser's experience over the past twenty years, it is common for patients with suddenly altered gait mechanics to develop low back pain, and in his opinion this was what caused Claimant's low back pain as well. I find this analysis persuasive.

27. Dr. Glaser has recommended facet joint injections as treatment for Claimant's low back pain.

Expert Medical Opinions

28. The parties have offered various expert medical opinions as to (a) whether Claimant suffers from CRPS and if so, whether it is causally related to her August 2009 work injury; (b) whether her low back pain is causally related to her work injury; (c) whether the proposed treatments for either condition are reasonable and necessary; and (d) whether and when Claimant should have been able to return to work.

(a) CRPS Diagnosis and Causation

29. As noted above, Finding of Fact No. 19 *supra*, Dr. Glaser has diagnosed Claimant with CRPS. He did not apply the stringent criteria mandated by the fifth edition of the *AMA Guides to the Evaluation of Permanent Impairment* to make this diagnosis. In his opinion, those criteria are specific to evaluating impairment in a forensic setting and are not useful for diagnosis in a doctor-patient relationship. I find that Dr. Glaser's analysis in this regard comports with the commissioner's prior precedent on this issue. *Jacobs v. Metz and Associates, Ltd.*, Opinion No. 02-12WC (January 13, 2012); *Brown v. W.T. Martin Plumbing & Heating*, Opinion No. 14-10WC (April 15, 2010); *cf.*, *Bruno v. Directech Holding Co.*, Opinion No. 18-10WC (May 19, 2010).

30. At Dr. Glaser's referral, in January 2012 Claimant underwent a second opinion evaluation with Dr. Lubenow, a board certified anesthesiologist and specialist in interventional pain management. Dr. Lubenow was one of the invitees to the Budapest conference in 2003 at which the Harden criteria for diagnosing CRPS were developed. Currently he is the medical director at the Rush Hospital Pain Center.

31. Dr. Lubenow concluded that Claimant had been appropriately diagnosed with CRPS. In making this diagnosis, Dr. Lubenow noted many of the same symptoms that Claimant had reported to Dr. Glaser, including burning, sharp pain in her right foot, hypersensitivity to touch and increased sweating. He also observed many of the same signs, including allodynia, swelling, skin mottling, temperature changes and reduced range of motion. His diagnosis comported with the Harden criteria and I find it both credible and well supported.

32. According to Dr. Lubenow, Claimant's CRPS was most likely causally related to her March 2010 tarsometatarsal fusion surgery. In his opinion, this surgery constituted reasonable and necessary treatment for her August 2009 work injury, which he characterized as involving axial loading with consequent damage to the Lisfranc joint. I find Dr. Lubenow's analysis credible.

33. Other doctors have disagreed with Dr. Glaser's and Dr. Lubenow's assessment. As noted above, Finding of Fact No. 24 *supra*, Dr. Holmes determined that Claimant was not suffering from CRPS at the time of his November 2010 independent medical examination.

34. Dr. Ensalada also disputes Claimant's CRPS diagnosis. Dr. Ensalada is board certified in anesthesiology and pain management. At Defendant's request, he reviewed Claimant's medical records in October 2011. Based on that review, he concluded that Claimant at most sustained a minor soft tissue injury to her right foot as a result of the August 2009 work incident. Dr. Ensalada based this opinion largely on the fact that neither Dr. Holmes nor the interpreting radiologist for Claimant's 2010 MRI study noted any abnormal findings at the base of her metatarsals.

35. As for CRPS, upon review of Claimant's medical records Dr. Ensalada found insufficient evidence to justify a diagnosis under either the Harden diagnostic criteria or the criteria mandated by the 5th edition of the *AMA Guides*. From my reading of Dr. Glaser's records, however, I find that sufficient symptoms and signs were in fact reported to establish CRPS in accordance with the Harden criteria. Therefore, I find Dr. Ensalada's reasoning in this regard unpersuasive.

36. Last, Dr. Pasquale also rendered an opinion as to Claimant's CRPS diagnosis. Dr. Pasquale is board certified in physical, rehabilitation and pain medicine. At Defendant's request, he performed an independent medical examination of Claimant in March 2012. He also reviewed Claimant's medical records. Significantly absent from this review was Dr. Lubenow's report, however.

37. Dr. Pasquale determined that although Claimant did not meet the diagnostic criteria for CRPS under the 5th edition of the *AMA Guides*, she did meet the Harden criteria. Consistent with Dr. Lubenow's opinion, Dr. Pasquale concluded that Claimant's CRPS most likely occurred as a result of her March 2010 tarsometatarsal fusion surgery. He based this conclusion on the fact that his review of the medical records did not reveal any signs or symptoms of CRPS prior to that surgery, and also on his belief that the treating surgeon would not have proceeded had CRPS been suspected, as surgery would only have made it worse. I find this analysis credible.

(b) Low Back Pain Diagnosis and Causation

38. As noted above, Finding of Fact No. 26 *supra*, Dr. Glaser has diagnosed Claimant's low back pain as lumbar radiculopathy and facet syndrome. He attributes these conditions to the altered gait she adopted as a consequence of her increasingly severe right foot pain.

39. Both Dr. Singh and Dr. Ensalada have disputed this analysis. Dr. Singh is a board certified orthopedic surgeon who specializes in the spine. At Defendant's request, he conducted an independent medical examination in October 2011.

40. In Dr. Singh's opinion, there was no objective evidence that Claimant's lumbar spine condition was causally related in any way to her August 2009 work injury. She had a normal neurological exam and her diffuse pain complaints did not correlate, because there was no anatomic sensory loss in either lower extremity. Dr. Singh also disputed Dr. Glaser's conclusion that Claimant's low back symptoms were attributable to her altered gait. I find his reasoning in this regard unpersuasive.

41. Dr. Ensalada also disputed the causal relationship between Claimant's low back pain and her August 2009 work injury. In his opinion, her preexisting degenerative disc disease adequately accounted for her symptoms, and there was no basis for concluding that the work injury aggravated it in any way.

42. In contrast to Dr. Ensalada's opinion, Dr. Pasquale concluded that Claimant's altered gait could in fact be the source of her low back pain. I find his testimony in this regard credible.

(c) Proposed Medical Treatment

43. As noted above, Finding of Fact No. 20 *supra*, Dr. Glaser has recommended a combination of sympathetic nerve blocks, physical therapy and pharmaceutical pain management as the first step in treating Claimant's CRPS. As treatment for her low back pain, he has recommended facet joint injections, *see* Finding of Fact No. 27 *supra*.

44. Dr. Lubenow concurs with Dr. Glaser's proposed CRPS treatment plan. Should the combination of nerve blocks, physical therapy and pain medications fail to provide adequate relief, he also concurs that the next step would be consideration of a spinal cord stimulator. I find Dr. Lubenow's testimony in this regard very credible.

45. Dr. Pasquale also concurred with Dr. Glaser's CRPS treatment plan, at least with respect to the proposed sympathetic nerve blocks. He credibly testified that if he was treating Claimant for her CRPS that would be his recommended course of treatment.

46. Because in Dr. Ensalada's analysis Claimant is not suffering from CRPS, he concluded that it is not medically reasonable for her to undergo treatment for that condition. Therefore, in his opinion neither sympathetic nerve blocks nor physical therapy nor prescription pain medications are warranted.

47. Dr. Ensalada also concluded that it was not medically reasonable for Claimant to undergo any treatment for low back pain causally related to her August 2009 work injury.

(d) Claimant's Work Capacity

48. As noted above, Finding of Fact No. 25 *supra*, Dr. Holmes determined in November 2010 that Claimant had a sedentary work capacity.

49. Dr. Glaser disagreed, both then and now. In his opinion, the fact that Claimant had been unable to continue in the hospital greeter position Defendant had crafted for her in July 2010, despite significant accommodations, was proof that she lacked a work capacity at that time. At this point, she is experiencing severe, chronic pain on a daily basis that interferes with her sleep and is poorly controlled even with increasing dosages of pain medications. In Dr. Glaser's opinion, which I find credible, this precludes her from working at even a sedentary capacity.

50. Dr. Lubenow also believes that Claimant currently lacks a work capacity. In his opinion, it is imperative that Claimant be allowed time to heal, and she is more likely to have a better outcome if her CRPS is treated first, before she returns to work. Dr. Lubenow also cautioned that the longer Claimant's CRPS goes untreated, the longer it will take for the condition to respond, and the more likely that it will lead to chronic disability, more invasive treatment and greater impairment. I find Dr. Lubenow's reasoning on this issue very persuasive.

51. Dr. Singh concluded that Claimant had a full time, full duty work capacity as of the date of his evaluation in October 2011, but solely as it related to her lumbar spine. He rendered no opinion as to work capacity with respect to Claimant's right foot or ankle.

52. On the basis of his March 2012 independent medical examination, Dr. Pasquale concluded that Claimant has a sedentary work capacity, and so long as she is provided with a wheelchair, is capable of performing duties similar to those of the hospital greeter position Defendant had offered her in July 2010. In fact, however, the credible medical evidence establishes that Claimant did not tolerate this job well enough to continue in it beyond August 30, 2010, *see* Findings of Fact Nos. 13 and 16, *supra*. Dr. Pasquale's opinion on this issue is significantly undermined, therefore.

53. Dr. Ensalada concluded that Claimant has a full time, light duty work capacity. He also concluded that Claimant had reached an end medical result as of the date of his examination, October 14, 2011. Dr. Ensalada rated Claimant with a three percent whole person permanent impairment, based solely on her unresolved pain complaints.

54. With Dr. Ensalada's opinion as support, and with the Department's subsequent approval, Defendant terminated Claimant's temporary total disability benefits on end medical result grounds, effective November 11, 2011.[2] It also discontinued payment for her prescription pain medications on the grounds that these were not necessitated by her work injury. Claimant disputes both of these determinations.

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 issues in this case are (a) whether Claimant suffers from CRPS and low back pain causally related to the August 2009 work injury and if so, what is reasonable and necessary treatment for each condition; (b) whether she has reached an end medical result for her work-related injuries; and (c) whether she has a work capacity.

3. The parties presented conflicting expert opinions on all of these issues. 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).

[2] Presumably in the event that its discontinuance on end medical result grounds was deemed unsupported, Defendant also sought to discontinue benefits on the grounds that Claimant had a work capacity and had failed to seek suitable work. Claimant acknowledged at hearing that she has not undertaken a work search since moving to Chicago in September 2010.

4. At the outset, I must determine precisely what injury Claimant suffered as a result of the August 2009 work incident. I conclude, as both Drs. Lubenow and Holmes acknowledged, that the mechanism of injury was axial loading of the Lisfranc joint complex in her right foot. I further conclude that the August 2009 work incident was the inciting event, and that Defendant is thus responsible for all of the direct and natural consequences of that injury. *See Bower v. Mount Mansfield*, Opinion No. 03-12WC (January 18, 2012), citing 1 Lex K. Larson, *Larson's Workers' Compensation* §10 (Matthew Bender, Rev. Ed.), at p. 10-1. Whether this includes responsibility for the consequences of Dr. Michelson's March 2010 tarsometatarsal fusion surgery requires consideration of both medical and legal factors.

5. The parties presented conflicting medical evidence as to whether Dr. Michelson's surgery constituted reasonable and necessary treatment for Claimant's work injury. Dr. Lubenow concluded that the surgery was justified. Noting the lack of any readily apparent abnormalities on diagnostic imaging studies, Dr. Holmes concluded that it was not.

6. With particular reliance on the second and third factors listed above, I conclude that Dr. Lubenow's opinion on this issue carries the greatest weight. He reviewed Dr. Michelson's operative report and particularly, his observation of instability at the Lisfranc joint complex. This was objective support, not only for the injury, but also for the need to repair it. Dr. Holmes did not even review this critical report, and as a result his opinion on the issue is less persuasive.

7. Therefore, I conclude from the more credible medical evidence that Dr. Michelson's March 2010 fusion surgery constituted reasonable and necessary treatment causally related to Claimant's compensable work injury.

8. Even if the credible medical evidence had pointed otherwise, having long ago accepted and paid for Claimant's fusion surgery I consider Defendant to have waived the right to contest responsibility for the medical complications that developed subsequently. This is not a case where an employer has paid for relatively inexpensive medical supplies simply because the cost of doing so was less than the cost of denying responsibility. *Smiley v. State of Vermont*, Opinion No. 12-12WC (April 15, 2012); *Hastings v. Green Mountain Log Homes*, Opinion No. 03-09WC (January 1, 2009). Nor is it a case where the employer paid medical bills in good faith before it was certain whether or not the claimed injury was actually compensable, *see Brace v. Vergennes Auto, Inc.*, Opinion No. 42-06WC (October 9, 2006). Here, Defendant acknowledged its liability for the injury to Claimant's Lisfranc joint complex by paying for a significant, presumably costly surgical intervention. Had it wanted to question the reasonableness of that treatment, it should have done so *before* the surgery occurred, not many months afterwards.

Does Claimant suffer from CRPS, is it causally related, and if so, what is reasonable and necessary treatment?

9. Having concluded that Defendant bears responsibility for the direct and natural consequences of Claimant's March 2010 tarsometatarsal fusion surgery, I next must consider whether she now suffers from CRPS causally related to that surgery. The most credible medical evidence on this issue overwhelmingly favors Claimant's experts. As her treating physician, Dr. Glaser was best positioned to evaluate the reported symptoms and observe the required signs of CRPS over an extended period of time. His diagnosis was later confirmed by Dr. Lubenow, a highly credentialed expert in the field. Indeed, even Defendant's expert, Dr. Pasquale, concurred both that a CRPS diagnosis was appropriate under the Harden criteria and that it likely was causally related to Claimant's March 2010 surgery. In contrast to these opinions, both Dr. Holmes' and Dr. Ensalada's conclusions lacked the objective support necessary to render them persuasive.

10. As noted above, Finding of Fact No. 29 *supra*, the commissioner's prior precedent has established that under Vermont's workers' compensation statute the criteria for diagnosing CRPS as reflected in the 5th edition of the *AMA Guides* must be used in the context of determining "the existence and degree" of a claimant's permanent impairment, but are not necessarily determinative on other issues. 21 V.S.A. §648; *Jacobs, supra; Bruno, supra; Brown, supra* at Conclusion of Law No. 7, n.4. As to the disputed issues here – whether Claimant suffers from CRPS causally related to her March 2010 surgery – I conclude that she has met the appropriate diagnostic criteria, that her CRPS is causally related to a surgery necessitated by her work injury and that it is therefore a compensable condition.

11. As for the appropriate treatment for that condition, I conclude from the credible evidence that Dr. Glaser's proposed treatment plan is reasonable, necessary, causally related and therefore compensable. Dr. Glaser has been treating chronic pain patients for more than twenty years. Both Dr. Lubenow and Dr. Pasquale have endorsed the sympathetic nerve blocks he has proposed as the appropriate next step in Claimant's treatment plan. I am persuaded by their opinions on this issue.

12. Having concluded that Claimant's CRPS is causally related to her work injury, I further conclude that it was inappropriate for Defendant to discontinue payment for the pain medications prescribed by Dr. Glaser as treatment for that condition. To the extent that Dr. Glaser determines that medically reasonable and appropriate pharmaceutical pain management is still warranted, Defendant is obligated to pay for this treatment as well.[3]

[3] It is as yet premature to impose responsibility upon Defendant for additional physical therapy, as even Dr. Glaser has recommended that this treatment be delayed for the time being. Similarly, although the prospect of a spinal cord stimulator has been raised, it has not yet been definitively recommended, and therefore it also would be premature to rule on the efficacy of that treatment at this point.

Are Claimant's low back pain and related symptoms causally related to the work injury?

13. I accept Dr. Glaser's opinion on this issue as the most credible. He has been treating Claimant for the past eighteen months, and has treated patients with chronic pain and CRPS for twenty years. Based on that experience, I find credible his observations as to the frequency with which patients who walk with altered gait mechanics also develop low back pain. Here again, Dr. Glaser's opinion was endorsed by Defendant's own expert, Dr. Pasquale. I conclude Claimant's low back pain and related symptoms are causally related to her work injury.

14. I also conclude that Dr. Glaser's proposed facet joint injections constitute reasonable and necessary treatment for Claimant's low back pain and related symptoms. In reaching this conclusion, I accept Dr. Glaser's opinion as more credible than Dr. Ensalada's. He is Claimant's treating physician, and also is well versed in treating patients with similar symptoms.

Has Claimant reached an end medical result for her work-related injuries?

15. Having concluded that Claimant suffers from CRPS and low back pain causally related to her work injury and is in need of further treatment, I further conclude that she is not at end medical result. *Bruno v. Directech Holding Co., supra.* Defendant's November 11, 2011 discontinuance of temporary total discontinuance on those grounds was unjustified, therefore.

Has Claimant had a work capacity at any time since August 30, 2010?

16. Last, as to Defendant's argument that Claimant is capable of working, at least in a position similar to the hospital greeter job she left on August 30, 2010, I conclude that the credible medical evidence establishes otherwise. In reaching this conclusion, I acknowledge that a provider's status as the treating doctor is not necessarily determinative on this issue. Here, however, Claimant's reports as to the extent of her pain and her resulting inability to perform even the limited duties she had been assigned as a hospital greeter was entirely credible. For Drs. Michelson and Glaser to have relied on those reports as the basis for their conclusion that she was totally disabled from working was appropriate.

17. Dr. Lubenow's opinion on this issue was persuasive as well, particularly as to the risk that Claimant's CRPS will worsen if she attempts to return to work before the condition is fully treated.

18. Therefore, I conclude from the most credible medical evidence that Claimant has been totally disabled from working since August 30, 2010. As she has lacked a work capacity since that time, she has never become obligated to conduct a search for suitable work. Defendant's discontinuance on those grounds must fail as well.

19. 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. Temporary total disability benefits retroactive to November 11, 2011 and ongoing, in accordance with 21 V.S.A. §642, with interest as calculated in accordance with 21 V.S.A. §664;

2. Medical benefits covering all reasonable medical services and supplies causally related to treatment of Claimant's CRPS and low back pain, in accordance with 21 V.S.A. §640; and

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

DATED at Montpelier, Vermont this 20th day of July 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.