

Diana Farnham v. Shaw's Supermarkets

(March 29, 2013)

**STATE OF VERMONT
DEPARTMENT OF LABOR**

Diana Farnham

Opinion No. 11-13WC

v.

By: Jane Woodruff, Esq.
Hearing Officer

Shaw's Supermarkets

For: Anne M. Noonan
Commissioner

State File No. X-61625

OPINION AND ORDER

Hearing held in Montpelier, Vermont on November 16, 2012

Record closed on January 14, 2013

APPEARANCES:

Charles Powell, Esq., for Claimant

Christopher Callahan, Esq., for Defendant

ISSUES PRESENTED:

1. Did Claimant suffer a compensable psychological injury as a result of her May 3, 2006 work-related accident?
2. If yes, is her treatment medically reasonable?

EXHIBITS:

Joint Exhibit I: Medical records

Claimant's Exhibit 1: Video of Dr. Rater's examination

Defendant's Exhibit A: *Curriculum vitae*, Dr. Rater

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.

Claimant's May 2006 Work-Related Accident

3. Claimant began working in the deli department of Defendant's supermarket. Later she moved to the produce department. Subsequently she was promoted to the front of the store, where she oversaw the cashiers. Her most recent position was that of inventory manager.
4. Claimant's duties as inventory manager required her to traverse the store with a barcode scanning device, which she used to count the products on the shelves in each aisle. As she did so throughout the day, she regularly encountered and conversed with customers. Claimant credibly described how much she enjoyed interacting with people in this way.
5. On May 3, 2006 Claimant slipped and fell while climbing a set of recently waxed stairs. As she did so, her right hand caught in the railing bracket. She immediately felt pain in her right wrist, thumb and ankle. At her supervisor's direction, she completed her shift, and then sought treatment at the emergency department. X-rays revealed no fractures. Claimant was diagnosed with right wrist and ankle sprains and fitted with Ace bandages. She was discharged with instructions to follow up with her primary care provider.
6. Claimant attempted to work the following three or four days, but was unable to do so successfully. According to her credible testimony, her supervisor changed her job duties to include lifting heavy items, something her injuries prevented her from doing. Claimant has not returned to work since May 2006.

Claimant's Post-Injury Medical Treatment

7. One week after her injury, on May 10, 2006 Claimant followed up with her primary care provider, Kim Ladue, a family nurse practitioner. She continued to complain of pain in her right wrist, thumb and ankle. Initially Ms. Ladue prescribed a wrist splint and a walking boot. Claimant showed no improvement over the course of several subsequent office visits, whereupon Ms. Ladue referred her for both a course of physical therapy and an evaluation by a hand specialist.
8. In the years since her injury, Claimant has undergone a variety of treatments to address her persistent wrist, thumb and ankle pain. As Ms. Ladue had suggested, she consulted with a hand therapist at Dartmouth-Hitchcock Medical Center. She underwent courses of physical and occupational therapy, injections, nerve blocks and medications. None of these conservative therapies were successful. Her pain became chronic, and she could not move her thumb at all.

9. Claimant has undergone two surgeries to address her right ankle symptoms, one in 2007 and the other in 2010. Though not completely resolved, her ankle pain became manageable after the second surgery and remains so today.
10. Unfortunately, the pain in Claimant's thumb has proven far more difficult to manage. In October 2008 she underwent "trigger release" surgery, which her surgeon deemed successful, but she did not regain full range of motion subsequently and her thumb became increasingly painful. Over time, the focus of Claimant's pain complaints came to involve primarily her right thumb.
11. Many treatment providers have tried to address Claimant's chronic thumb pain. She now has been diagnosed with very focal chronic regional pain syndrome in the right thumb. Recently she underwent a successful spinal cord stimulator trial to address her chronic pain. As of the formal hearing, she was awaiting permanent implantation of the device.¹

Claimant's Pre-Injury Psychosocial History

12. Claimant grew up in the Randolph, Vermont area. She endured no physical or emotional abuse. There were no serious conflicts between her and either her parents or her older sister. She graduated high school at an accelerated rate at the age of sixteen.
13. After graduation Claimant married her current husband. Their relationship has been strong and supportive. Prior to her work injury, Claimant enjoyed four-wheeling and spontaneous trips with her husband. She also helped him in his contracting business by cutting the wood for his jobs. Together they have raised three children.
14. Claimant did not enter the work force until her youngest child was eight years old. First she worked for a food service company, then for a retail store and finally for Defendant. Claimant was productive at her previous two employments, but she clearly preferred the more social interactions that her positions with Defendant afforded her.
15. Prior to her work injury, Claimant enjoyed doing yard work and taking walks around the neighborhood. These activities gave her the opportunity to socialize with neighbors and get caught up with what was going on in their lives.
16. Claimant loves animals. Prior to her work injury, three or four times annually she would travel by herself to SeaWorld, to enjoy the dolphins and the manatees there. She became familiar with the animals' names, as well as those of SeaWorld's staff. Claimant credibly described these trips as very relaxing and fulfilling. In addition to these trips, during the summers she and her husband would travel by car to Jackson Hole, Wyoming to enjoy the bison, fox and other animals in the canyon. Claimant found these vacations very relaxing as well.

¹ With this treatment still pending, as of the date of the formal hearing Defendant stipulated that Claimant had not yet reached an end medical result for her physical injuries.

17. In general, prior to her work injury Claimant enjoyed good mental health, with stable family relationships, rewarding social interactions and satisfying recreational activities.

Claimant's Post-Injury Psychiatric Condition and Treatment

18. Claimant has been experiencing chronic pain since her May 2006 injury. Nevertheless, until her first ankle surgery in March 2007 she was able to cope reasonably well with her condition. Her recovery from that surgery was protracted, however. With the pain and restricted movement in her right thumb, she could not ambulate with crutches. As a result, she was both wheelchair- and house-bound for months.
19. During this period, Claimant began feeling depressed and anxious. She had trouble sleeping and experienced recurrent nightmares, in which she saw herself in a casket. She cried frequently, often for no discernable reason. She had difficulty concentrating while reading a newspaper or watching television. She had no energy, felt hopeless and often thought of suicide. As her husband credibly described, when he looked into her eyes it was as if "she [was] not there."
20. Most notably, Claimant shied away from social interactions, avoided leaving the house and took no joy in what were previously pleasurable pursuits. Once a very independent person, she no longer felt able to take her trips to SeaWorld, nor did she want to. She traveled there on one occasion with her husband, but credibly testified that it was not an enjoyable experience for her. She and her husband also returned one time to Jackson Hole after her injury, but she cried all the way there and described the trip as "miserable."
21. From March 2007 on, Claimant's psychological symptoms worsened. Her primary care provider prescribed antidepressants and an anti-anxiety medication, but these were ineffective. Finally, in May 2009 she was referred to Robert Vaillancourt, a licensed psychologist masters. He diagnosed Claimant with major depressive disorder.
22. Claimant has been in treatment with Mr. Vaillancourt continuously every one or two weeks since 2009. She has made some progress, but remains severely disabled by her depression. In April 2012 both Mr. Vaillancourt and her primary care provider referred her to the Treatment Resistant Depression Clinic at Dartmouth-Hitchcock Medical Center for a diagnostic interview. The providers there reaffirmed the diagnosis of major depressive disorder, which they characterized as severe. As treatment, they recommended that her medication regimen be reviewed for possible dosage increases and also that she continue therapy with Mr. Vaillancourt.
23. Since her May 2006 work injury Claimant has gained more than fifty pounds. Her current psychiatric prescriptions include Wellbutrin, Effexor and amitriptyline for depression, Klonopin for anxiety and Prazosin for persistent nightmares. Claimant credibly testified that she still struggles with thoughts of suicide.

Expert Psychiatric Opinions

(a) Dr. Drukteinis

24. Dr. Drukteinis is a board certified psychiatrist and Diplomate in the American Academy of Pain Management. At her attorney's request, he reviewed Claimant's pertinent medical records in December 2011, and then conducted an in-person evaluation in January 2012.
25. Dr. Drukteinis diagnosed Claimant with (a) a pain disorder associated with both psychological factors and a general medical condition; and (b) major depressive disorder with features of agoraphobia. In his opinion, the latter condition is causally related to Claimant's May 2006 work injury.²
26. According to the *Diagnostic and Statistical Manual of Mental Disorders* (4th ed., text rev., 2000), to establish a diagnosis of major depressive disorder a patient must be found to have a depressed mood or loss of interest or pleasure for more than a two-week period, plus five out of the following nine additional symptoms:
 - Depressed mood for most of the day;
 - Diminished interest or pleasure in all or most activities;
 - Significant weight loss when not dieting, or weight gain;
 - Insomnia;
 - Psychomotor agitation or retardation;
 - Fatigue or loss of energy;
 - Feelings of worthlessness or excessive guilt;
 - Inability to think or concentrate; and
 - Recurrent thoughts of death or suicidal ideation.

² Dr. Drukteinis did not state a specific opinion as to whether Claimant's pain disorder was causally related to her work injury, though this seems self-evident.

27. In Dr. Drukteinis' opinion, over the course of the three years preceding his evaluation Claimant has exhibited all of these symptoms in varying degrees of intensity. For example:
- She has lost interest in pleasurable things, such as conversing with neighbors and customers at the supermarket or taking trips to SeaWorld;
 - She has difficulty sleeping, and experiences recurrent nightmares;
 - She has gained a significant amount of weight, lacks energy and cannot concentrate while reading a newspaper; and
 - She expresses feelings of worthlessness and frequently has suicidal thoughts.
28. Dr. Drukteinis' diagnosis comports with the diagnostic criteria for major depressive disorder, and is consistent with the diagnostic conclusions that both Mr. Vaillancourt and the Dartmouth-Hitchcock evaluators reached. For these reasons, I find his analysis very persuasive.
29. In Dr. Drukteinis' opinion, though precipitated by her physical injury and chronic pain, Claimant's major depressive disorder has now taken its own course. According to his analysis, Claimant spiraled down into her current depressive state over the course of several years. At this point, even if her chronic pain abates, and/or if she makes further psychological progress through counseling and medication, the diagnosis of major depressive disorder will remain. I find this analysis credible.
30. Dr. Drukteinis believes that the psychological treatment Claimant has been receiving is reasonable and appropriate. Claimant is severely depressed with passive suicide ideation at times. Ongoing psychological and psychiatric support is necessary for her support and maintenance. The medications she has been prescribed have been at least somewhat helpful in relieving her symptoms. A clinical psychiatric consultation might assist in determining whether a more aggressive medication program might be even more beneficial. I find this reasoning persuasive.
- (b) Dr. Rater
31. Dr. Rater is a board certified psychiatrist. At Defendant's request, he performed an independent medical examination of Claimant in September 2011. Dr. Rater reviewed the pertinent records at the time, as well as Dr. Drukteinis' reports when they became available.
32. Dr. Rater concluded that Claimant does not suffer from a psychiatrically diagnosed condition causally related to her May 2006 work injury. Rather, in his opinion, her primary concern is one of chronic pain. According to his analysis, any lack of physical activity, insomnia, weight gain or inability to think or concentrate is attributable solely to the pain caused by her physical injuries. If the pain were to resolve, she would not be depressed.

33. In support of his opinion, Dr. Rater pointed to various occasions described in Mr. Vaillancourt's progress notes in which Claimant was reported to enjoy country music and exercise, that she had taken up crocheting and that she had traveled to both SeaWorld and Wyoming after her work injury. From these reports, Dr. Rater determined that Claimant was able to leave her home, interact socially with others and cope with stress. With that in mind, he concluded that Claimant was not suffering from major depressive disorder. I do not find this analysis convincing.
34. Regarding the reasonableness of Claimant's treatment, in Dr. Rater's opinion Claimant needs at most sixteen therapy sessions to learn how to manage chronic pain. Thus, her ongoing counseling sessions with Mr. Vaillancourt are not necessary. Additionally, because her psychiatric medications might cross-react with her pain medications, these are not appropriate either. I do not find Dr. Rater's reasoning on this issue persuasive.

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. Claimant here presents a "physical-mental" claim – one in which a compensable physical injury provokes a psychological injury as well. If there is sufficient medical evidence to establish a causal connection between the former and the latter, then the psychological injury is deemed to have arisen out of the physical injury and therefore becomes compensable. *Vach v. Twin City Subaru*, Opinion No. 02-00WC (March 24, 2000); *Blais v. Church of Jesus Christ of Latter Day Saints*, Opinion No. 30-99WC (July 30, 1999); see generally, 3 Lex K. Larson, *Larson's Workers' Compensation* §56.03[3] (Matthew Bender, Rev. Ed.), and cases cited therein.
3. To establish the required connection, Claimant presented testimony from Dr. Drukteinis. Claimant alleges that as a result of her May 2006 work injury, and specifically following her March 2007 ankle surgery, her chronic pain became unmanageable. The combination of intractable pain and physical limitations caused her to develop the major depressive disorder from which she now suffers.
4. Defendant counters this argument through the testimony of its expert, Dr. Rater. It asserts that Claimant's depression is not a separate diagnosis, but rather is merely secondary to her chronic pain. If her pain were to resolve, her depression would resolve as well.

5. The key component of any workers' compensation claim is the causal nexus between a work-related accident and a resulting injury. 21 V.S.A. §618. Most compensable claims originate with a physical stimulus, a slip and fall, for example, and result in a physical injury, such as a disc herniation or a ligament tear. The same causal nexus is required in a physical-mental claim. The only difference is that the work-related physical stimulus gives rise to a psychological injury rather than a physical one. *See, e.g., Blais v. Church of Christ of Latter Day Saints*, Opinion No. 30-99WC (July 30, 1999); *see* 3 Lex K. Larson, *Larson's Workers' Compensation* §56.03 (Matthew Bender, Rev. Ed.) and cases cited therein.
6. Where expert 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).
7. I conclude that Dr. Drukteinis' opinion is better supported, and therefore more persuasive, than Dr. Rater's. Dr. Drukteinis' analysis took into account the way in which Claimant's psychological symptoms have evolved over time. According to both Claimant's own credible testimony and that of her treatment providers, they now encompass every one of the elements necessary to support a diagnosis of major depressive disorder. They signify far more than simply a reaction to chronic physical pain, and even if that pain resolves, they are unlikely to disappear without focused, ongoing psychological treatment.
8. In contrast, Dr. Rater's analysis relied primarily on snippets of information gleaned from Mr. Vaillancourt's notes, not the broader picture that Claimant herself credibly described. As I do not accept as credible his analysis, nor can I accept as credible his ultimate conclusion.
9. As to the reasonableness of Claimant's ongoing psychological treatment, including both continued counseling and medications, I conclude that Dr. Drukteinis' opinion is more persuasive. Given the period of time during which her psychological symptoms have persisted, I concur that further treatment is necessary to support her emotionally.
10. I conclude that Claimant has sustained her burden of proving that her current psychological condition, specifically major depressive disorder, is causally related to her May 2006 work injury, and is therefore compensable. I further conclude that the treatment she is receiving is reasonable. She therefore is entitled to workers' compensation coverage for whatever further treatment is determined to be reasonable, necessary and causally related to that condition.

Costs and Attorney Fees

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 necessitated by Claimant's compensable major depressive disorder, 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 29th day of March 2013.

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.