

**STATE OF VERMONT
DEPARTMENT OF LABOR**

Michael Hall

Opinion No. 10-16WC

v.

By: Phyllis Phillips, Esq.
Administrative Law Judge

Safelite Group

For: Anne M. Noonan
Commissioner

State File No. FF-58850

OPINION AND ORDER

Hearing held in Montpelier on February 26, 2016
Record closed on March 28, 2016

APPEARANCES:

Charles Powell, Esq., for Claimant
James O'Sullivan, Esq., for Defendant

ISSUES PRESENTED:

1. Is Defendant obligated to pay for treatment of Claimant's dental infection by virtue of its responsibility under 21 V.S.A. §640(a) to provide reasonable medical services necessary for treatment of his January 8, 2014 compensable work injury?
2. If yes, does Defendant's obligation extend to paying for dentures to replace Claimant's extracted teeth?

EXHIBITS:

Joint Exhibit I: Medical records

Claimant's Exhibit 1: Opinion letter of Brittany McKenna, MS, CRC, January 12, 2016

CLAIM:

Medical benefits pursuant to 21 V.S.A. §640(a)
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 his employer as those terms are defined in Vermont's Workers' Compensation Act.
2. Judicial notice is taken of all relevant forms and correspondence contained in the Department's file relating to this claim.
3. Claimant worked for Defendant as a windshield installer. On January 8, 2014 he injured his left elbow while removing a windshield from a glass rack. Defendant accepted the injury as compensable and paid workers' compensation benefits accordingly.
4. Claimant treated conservatively for his injury, initially diagnosed as a left elbow strain, with rest, ice, anti-inflammatories and physical and occupational therapy. Unfortunately, his symptoms, which included both constant aching and occasional sharp pains, persisted.
5. Following consults with both an orthopedist and a physiatrist, in December 2014 Claimant was referred to Dr. Horton, a pain specialist, for further evaluation. Dr. Horton diagnosed complex regional pain syndrome (CRPS). As treatment, he recommended a stellate ganglion nerve block.
6. Although initially hesitant, ultimately Claimant accepted Dr. Horton's proposed treatment plan. In July 2015 he underwent his first nerve block. Almost immediately thereafter, he reported significant pain relief throughout his left upper extremity.
7. Given the first block's success, in August 2015 Claimant presented for a second nerve block. At some point in the intervening weeks, however, he had developed a dental infection, with pain and swelling on the right side of his face. He had not seen a dentist, but rather was self-medicating with some antibiotics he had left over from a prior infection. These had apparently been somewhat, but not wholly, effective. Dr. Horton observed that the right side of his face was still tender, his right upper incisor was severely decayed, his gums were red and he was slightly feverish.
8. Dr. Horton could not administer a nerve block while Claimant was suffering from an incompletely controlled infection. Doing so could put him at risk for serious infectious complications from the procedure itself. To be safe, Claimant needed to be off antibiotics and free from all symptoms of infection for at least two weeks before nerve block treatment for his work-related left elbow injury could resume.
9. After two rounds of antibiotics prescribed by his primary care provider failed to clear the infection, in September 2015 Claimant sought treatment with Dr.

McBeth, a dentist. Upon examination, Dr. McBeth noted significant dental issues, with several areas of abscess and infection, multiple areas of decay and bone loss into the jaw, and both periodontal infection (in and under the gums) and endodontic breakdown (into the nerves and structure of the teeth themselves). Virtually every tooth had some level of infection, and most were anatomically unsalvageable.

10. Dr. McBeth acknowledged in his formal hearing testimony that Claimant likely had been suffering from significant dental issues for quite some time. He was already missing a number of teeth, though the record does not indicate the circumstances of their loss, whether due to decay or trauma. Claimant had reported to him that he was extremely fearful of dentists, and while Dr. McBeth did not take a complete dental history, he understood that Claimant had not undergone any dental treatment for some time.
11. After conducting a tooth-by-tooth assessment, Dr. McBeth concluded that the treatment of choice was to extract all of Claimant's upper teeth, and all but two of his lower teeth. Because of the degree of infection and the complicated nature of the procedure, he referred Claimant to Dr. Weldon, an oral surgeon, for the extractions.
12. Dr. McBeth credibly testified that while antibiotics might have succeeded in temporarily calming the acute infection in Claimant's tooth, they were incapable of resolving its source, which was under his gums and in the bone itself. Like removing a splinter from an infected finger, the only way to clear the infection in Claimant's mouth was to extract his teeth.
13. On December 14, 2015 Dr. Weldon extracted 14 teeth, leaving Claimant with only his two bottom canines, as Dr. McBeth had recommended. Lower dentures are more apt than upper dentures to become unseated; thus, having the two canines to anchor the lower prosthesis allows for better fit and function.
14. The charges for Dr. Weldon's services, including both his initial evaluation and his extractions, total \$2,710.00.
15. With his teeth extracted, Claimant's infection cleared. Thereafter, in January and February 2016 he underwent two additional nerve blocks. Unfortunately, these were less effective than his first one, with only minimal and temporary pain relief.
16. Pending resolution of the current dispute, since December 2015 Claimant has had neither teeth nor dentures. Dr. McBeth credibly testified as to his need for dentures from a medical perspective. Without teeth, his ability to chew and digest food is severely compromised. The act of chewing breaks food down to particle size so that it can get through the intestinal system and be digested properly. Larger chunks of food are more difficult to digest, which can lead to intestinal

distress. Salivary flow is also affected, which has been shown as well to cause intestinal distress.

17. Beyond just the medical issues, Claimant credibly described the practical difficulties he has encountered since his teeth were extracted. His mouth is constantly dry. He speaks with a lisp. His diet consists solely of soft foods with limited nutritional value. Prior to his extractions he had no such difficulties. Even in September 2014, when his front tooth was actively infected, he could eat what he wanted, so long as he was careful about where he chewed. Overall, he felt that his teeth functioned fairly well, and had no plan to undergo dental treatment until it became necessary in order to continue treatment for his left elbow pain.
18. Most troubling, Claimant credibly testified that since his extractions he is embarrassed by his appearance, with what he described as "two fangs" sticking out when he tries to speak. He considers it a sign of disrespect not to look at somebody while talking to them, but he avoids doing so now.
19. Claimant's vocational rehabilitation counselor, Brittany McKenna, reinforced the negative consequences of his appearance from a vocational perspective. She acknowledged that this is just one of many considerations that an employer will weigh in evaluating a job applicant's eligibility and qualifications. Nevertheless, first impressions and dental hygiene certainly have an impact on employment opportunities. In her opinion, obtaining dentures "would be an asset" to Claimant's efforts to network and achieve his vocational goals. I find this analysis credible.
20. Dr. McBeth estimates that the dentures Claimant now requires will cost \$3,902.00. The charge for his initial evaluation was \$222.00. He has not charged Claimant for any intervening examinations, so as not to trigger collections action. Should his treatment be deemed compensable, he will charge Defendant accordingly.

CONCLUSIONS OF LAW:

1. The disputed issue in this claim concerns the extent of an employer's responsibility to pay for treatment of a non-work-related condition so as to enable necessary treatment for a work injury thereafter. Specifically in this case, the question is whether and to what extent Defendant should be obligated to pay for the dental treatment Claimant underwent prior to resuming injection therapy for his compensable work injury.
2. Vermont's workers' compensation statute obligates an employer to furnish "reasonable . . . medical services" necessitated by an injured worker's compensable injury. 21 V.S.A. §640(a). It is generally accepted, in Vermont and elsewhere, that when treatment for a work injury aggravates a preexisting

- condition or causes further complications, the entire result is compensable. *See, e.g., Jackson v True Temper Corp.*, 151 Vt. 592, 594-595 (1989); *Allstate Insurance Co. v. The Industrial Commission of Arizona*, 616 P.2d 100, 102 (Ariz.App. 1980) and cases cited therein. The question then becomes whether the same reasoning should apply here, where treatment for the non-work-related condition, though not aggravated in any way by the work injury, nevertheless is required as a condition precedent to effectively treating the work injury. *Id.*
3. The Vermont Supreme Court has not yet had occasion to consider the so-called "ancillary treatment" issue. Courts in other states have accepted the principle that if effective treatment of a compensable injury requires ancillary treatment for an otherwise non-work-related condition, in appropriate circumstances the injured worker may be entitled to benefits covering the entire course of treatment. *See, e.g., Palmer v. State ex rel. Wyoming Workers' Safety & Compensation Division*, 192 P.3d 125 (Wyo. 2008) (lumbar fusion surgery encompassing levels above and below level of work-related injury deemed ancillary); *Public Service Co. of Colorado v. Industrial Claim Appeals Office*, 979 P.2d 584 (Colo.App. 1999) (treatment for bipolar disorder ancillary to compensable neck surgery); *Arrowhead Press, Inc. v. Industrial Commission of Arizona*, 653 P.2d 371 (Ariz.App. 1982) (bronchitis treatment ancillary to compensable knee surgery); *see also*, 5 Lex K. Larson, *Larson's Workers' Compensation* §94.03[5] (Matthew Bender Rev. Ed.) and cases cited therein; *but see Rank v. Lindblom*, 459 N.W.2d 247 (S.D. 1990) (treatment of preexisting pulmonary condition not compensable where disease was significant and should have been treated regardless of impending knee surgery).
 4. Defendant here conceded at formal hearing that it was medically necessary to clear Claimant's dental infection prior to resuming treatment for his compensable injury. And while it refused to concede the question whether clearing the infection required extracting his teeth, it proffered no expert evidence to refute Dr. McBeth's testimony that this was in fact the case. Nor did it proffer any evidence to establish that Claimant's teeth were in such poor condition that he likely would have had to undergo dental treatment in September 2015 even had Dr. Horton not suspended treatment for his work injury. Claimant himself credibly testified to the contrary.
 5. I conclude from the facts in this case that in order to adequately treat Claimant's work injury, it became medically necessary to clear his dental infection by extracting his teeth. That treatment is therefore compensable, and Defendant is obligated to pay the reasonable charges associated with it. I stress the fact-specific nature of my determination, however. Here, the evidence in support is both clear and undisputed. In another case, the nature of the ancillary treatment at issue, the extent to which it is medically necessary as a condition precedent to treating the work injury, and/or the injured worker's previously established plan

to undergo it might dictate a different result.¹ See *State ex rel. Wyoming Workers' Compensation Division v. Girardot*, 807 P.2d 926, 930 (Wyo. 1991) (applying a rule of reason to deny treatment for unrelated heart surgery), cited with approval in *Palmer, supra*.

6. Having concluded that Defendant is obligated to pay for the extractions, it remains for me to determine whether it also must pay for the dentures Claimant now needs. Again, Defendant failed to proffer any expert evidence to rebut Dr. McBeth's credible opinion that without teeth, Claimant's ability to chew and digest food is severely compromised. Nor did it proffer evidence to dispute Ms. McKenna's opinion that having dentures would assist in his vocational rehabilitation efforts.
7. Vermont's workers' compensation statute defines the term "injury" to include the "cost of acquiring . . . prosthetic devices. . . ." 21 V.S.A. §601(7). Dentures are "prosthetic devices constructed to replace missing teeth," <https://en.wikipedia.org/wiki/Dentures>. The undisputed evidence clearly established that replacement teeth are both medically necessary and vocationally advantageous. That being the case, I can no more imagine absolving Defendant of responsibility for furnishing Claimant with prosthetics than I can imagine doing so if he had lost an arm or a leg instead.
8. I thus conclude that Defendant is responsible for paying the reasonable charges associated not only with Dr. McBeth's and Dr. Weldon's treatment of Claimant's dental infection to date, but also with Dr. McBeth's plan to fit Claimant with dentures, as required under 21 V.S.A. §§601(7) and 640(a).
9. As Claimant has prevailed on his claim for benefits, he 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 his itemized claim.

ORDER:

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

1. Medical benefits covering reasonable treatment of Claimant's dental infection, including the costs associated with evaluating and extracting his existing teeth and fitting and furnishing replacement dentures, in accordance with 21 V.S.A. §640(a); and

¹ For example, weight management procedures such as gastric bypass surgery often offer therapeutic benefits, but the evidence may be too speculative to establish that they will lead directly to a more favorable medical outcome for the work injury so as to justify a compensability determination. See, e.g., *Verizon Business Network Services, Inc. v. McKensie*, 823 N.W.2d 418 (Iowa App. 2012); *Rodriguez v. Hirschbach Motor Lines*, 707 N.W.2d 232 (Neb. 2005).

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

DATED at Montpelier, Vermont this 15th day of July 2016.

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.