STATE OF VERMONT
DEPARTMENT OF LABOR

Sadeta Zebic

v.

Rhino Foods, Inc.

Opinion No. 08-20WC

By: Stephen W. Brown
Administrative Law Judge

For: Michael A. Harrington
Interim Commissioner

State File No. HH-53984

OPINION AND ORDER

Hearing held in Montpelier on December 9, 2019
Record closed on February 24, 2020

APPEARANCES:

Christopher McVeigh, Esq., for Claimant
David Berman, Esq., for Defendant

ISSUES PRESENTED:

1) Did Claimant's accepted lower back injury causally contribute to her subarachnoid hemorrhage in March 2017?

2) Is Claimant entitled to temporary total disability ("TTD") benefits related to her July 12, 2018 lumbar spine surgery? If so, for what time period?

3) Is Claimant entitled to vocational rehabilitation ("VR") services?

EXHIBITS:

Joint Medical Exhibit ("JME")
Deposition of Bruce Tranmer, MD ("Tranmer Deposition")
Curriculum Vitae of Nancy Binter, MD
Curriculum Vitae of Farr Ajir, MD

FINDINGS OF FACT:

Personal and Medical History

1. I take judicial notice of all relevant forms and correspondence in the Department's file for this claim.

2. Claimant is a 52-year-old woman, originally from Bosnia, who now lives in South Burlington, Vermont. She moved to Vermont in the late 1990s and began her

employment with Defendant in 1999. Initially, she performed labor-intensive production tasks but by September 2015, she was serving as a production leader.

3. Claimant smoked cigarettes for over thirty years. She generally smoked between a half-pack and one pack of cigarettes per day, though sometimes she smoked more. She tried to quit several times but only completely stopped smoking in March 2017 after suffering the subarachnoid hemorrhage at issue in this case.

4. Claimant also has a pre-injury history of hypertension. Her medical records from 2014 reflect multiple elevated blood pressure readings, with systolic readings ranging between 140 and 160 during that year. (*E.g.*, JME 7-9, 55-58).

September 2015 Workplace Injury

5. On September 29, 2015, while working for Defendant, Claimant slipped but did not fall inside Defendant's walk-in cooler, resulting in injuries to her knee and lower back. Defendant accepted these injuries as compensable and paid some benefits accordingly.

6. Claimant's initial medical treatment focused on her right knee injury, for which she underwent arthroscopic meniscus repair surgery in January 2016. She returned to work with reduced activity the following month. (JME 144-167).

7. In August 2016, occupational medicine physician George White, MD, performed an independent medical examination ("IME") on Claimant and found that she was at end medical result with respect to her lower back and knee conditions. He assessed her with whole person impairment ratings of four percent relative to her knee condition and zero percent relative to her spinal condition. (JME 173-178).

8. Later that same month, however, Claimant's lower back symptoms worsened. She presented to the emergency room, where she was diagnosed with a lumbar strain and prescribed ibuprofen and diazepam. (JME 179-189).

9. Between August 2016 and February 2017, she treated her back condition with a combination of physical therapy, chiropractic care, acupuncture, steroid injections, and nonsteroidal anti-inflammatory drugs (NSAIDs). (JME 179-427). She was released to work with physical restrictions in October 2016. (JME 223-24).

10. As of early March 2017, she was working for Defendant and earning the same wages as before her 2015 workplace injury.

March 2017 Subarachnoid Hemorrhage

11. On March 5, 2017, Claimant suffered a large subarachnoid hemorrhage, a potentially fatal type of stroke. That hemorrhage resulted from the rupture of a preexisting

aneurysm, or abnormal localized dilation or bulging, in her middle cerebral artery, which supplies blood to most of the left side of the brain.[1]

12. Shortly after Claimant's hemorrhage, she was transported by ambulance to the University of Vermont Medical Center, where she underwent emergency surgery with neurosurgeon Bruce Tranmer, MD. (JME 429-430). Dr. Tranmer removed part of her skull to access her brain, removed the hemorrhage, and clipped her ruptured aneurysm. Approximately three months later, he replaced her skull flap, which he had left open after the initial surgery to allow room for brain swelling. (Tranmer Deposition, pages 5-6).

13. At the formal hearing, Claimant had difficulty articulating her precise post-hemorrhage symptoms, but it was apparent that she was suffering. Her post-hemorrhage medical records reflect a broad range of symptoms including speech slurring and aphasia even in her native Bosnian, seizures, altered mental status, cognitive deficits, facial drop, right-sided weakness, ambulatory problems, difficulty swallowing, visual changes, and an increased startle response. (*E.g.*, JME 1191-96, 1306-21, 1369).

14. Claimant has not returned to work since her hemorrhage and has not earned any wages since that time.

July 2018 Spinal Fusion Surgery; Placement at End Medical Result with No Work Capacity

15. After her hemorrhage, Claimant continued to experience lower back symptoms related to her earlier accepted work injury. By the summer of 2018, she had recovered from her hemorrhage sufficiently to undergo surgery.

16. On July 12, 2018, David Lunardini, MD, performed a spinal fusion surgery for Claimant's accepted back condition. Afterward, Claimant underwent physical therapy and multiple office visits as a part of her postoperative recovery.

17. On August 21, 2019, neurosurgeon Nancy Binter, MD, performed an IME on Claimant and placed her at end medical result with a 28 percent whole person impairment rating attributable to her accepted lower back condition.

18. Dr. Binter noted in her IME report that Claimant had no work capacity because of her post-stroke deficits. However, she did not find Claimant's subarachnoid hemorrhage to be related to her workplace injury. (JME 1335-1368).

19. Dr. Binter credibly confirmed at the formal hearing that Claimant has no work capacity and that if her subarachnoid hemorrhage is factored in, then she is permanently and totally disabled.

[1] Claimant still has two additional brain aneurysms that have not ruptured.

Expert Testimony Concerning the Asserted Causal Relationship Between Claimant's Accepted Back Injury and Her Subarachnoid Hemorrhage

20. Four expert witnesses testified as to whether Claimant's accepted September 2015 injury causally contributed to her March 2017 subarachnoid hemorrhage. Claimant presented her treating neurosurgeon, Dr. Tranmer, as well as physiatrist Tomas Zweber, MD. Defendant presented neurosurgeons Dr. Binter and Farr Ajir, MD.

Dr. Tranmer

21. Dr. Tranmer is a board-certified neurosurgeon and professor of neurosurgery at the University of Vermont Medical Center. He credibly testified about the neurosurgical services he provided to Claimant after her subarachnoid hemorrhage and about the general science of hemorrhages like Claimant's, including risk factors and the range of medical outcomes.

22. Dr. Tranmer credibly testified that cerebral aneurysms generally result from congenital defects in blood vessels inside the brain. However, only about five percent of such aneurysms ever rupture. While the exact cause of rupture is not well-understood, some activities are associated with an increased risk of rupture, such as sex, straining during bowel movements, and heavy lifting. Hypertension and smoking also increase the risk of rupture. (Tranmer Deposition, page 6-9, 11-12, 16).

23. Dr. Tranmer credibly testified that when cerebral aneurysms rupture, about thirty percent of patients die immediately, another thirty percent are "ruined," and thirty percent survive in "reasonable shape." (*Id.* at 5-12). Only about ten percent return to their usual occupation or lifestyle. (*Id.* at 5). He credibly characterized Claimant as having recovered "fairly well." (*Id.* at 6).

24. As to the question of what caused Claimant's aneurysm to rupture, Dr. Tranmer credibly testified that it was "a possibility" that her pain and stress stemming from her back injury could have caused her blood pressure to rise and thereby contribute to her hemorrhage. (*Id.* at 12-13). However, he could not say to a reasonable degree of medical certainty or probability that her workplace injury ***actually*** contributed to her hemorrhage. (*Id.* at 13). At most, he agreed with Claimant's counsel that it was "a plausible explanation." (*Id.* at 16).

25. I find Dr. Tranmer's testimony credible in all respects. However, nothing he said lifted the putative causal link between Claimant's 2015 workplace injury and her 2017 hemorrhage from the realm of possibility into the realm of probability.

Dr. Zweber

26. Dr. Zweber is a board-certified physiatrist based in Santa Barbara, California. He performed a medical records review but never personally met, examined, or spoke with Claimant. He did not review any of her medical records from before her September 2015 injury when drafting his expert report. Although he later reviewed at

least some of her pre-injury records before the formal hearing, he was unsure whether he had reviewed all of them and did not believe that her pre-injury records would change his opinions. He did not have the Joint Medical Exhibit with him while testifying.

27. In Dr. Zweber's opinion, Claimant's lower back injury, including the pain and stress generated by that injury and her use of steroid injections and NSAIDs to control that pain, increased her blood pressure, which in turn contributed to her March 2017 hemorrhage.

28. He based this causal opinion largely on what he claimed to be a positive correlation in Claimant's medical records between her pain reports and her systolic blood pressure readings between the time of her 2015 workplace injury and her 2017 hemorrhage.

29. He testified that pain can generate physiological responses such as tensing up, grunting, and holding of breath, all of which can drive up blood pressure and contribute to strain in the arterial system. He focused his analysis primarily on systolic blood pressure, or maximal pressure on the arterial wall during cardiac contraction, because if an increase in pressure is going to contribute to an aneurysm rupture, "it's the high pressure that will get you."

30. On cross-examination, defense counsel asked Dr. Zweber to reconcile his causation analysis with Claimant's last four systolic blood pressure readings from before her hemorrhage. All four of those records showed systolic blood pressure readings that were numerically lower than her documented pre-injury systolic readings from May 2014.[2] While Dr. Zweber characterized defense counsel's questions as "true cherry-picking," he did not substantively reconcile his opinion with these lower systolic readings immediately before Claimant's hemorrhage except to note that Claimant's blood pressure readings fluctuated throughout her medical records. While I find his assertion that Claimant's blood pressure fluctuated to be well-supported, I do not find that this to be a persuasive defense of an affirmative causation theory.

31. Dr. Zweber's responses to questions concerning Claimant's medical record from February 21, 2017—her last medical record before her subarachnoid hemorrhage—were particularly unpersuasive. That record reflects a systolic blood pressure reading of 138,[3] a figure numerically lower than Claimant's pre-injury systolic reading of 150 in May 2014.[4] Dr. Zweber characterized this medical record as "infamous" and testified that, "to a reasonable degree of medical certainty, her blood pressure was

[2] JME 267 (October 31, 2016; systolic blood pressure was 144); JME 297 (November 28, 2016; systolic blood pressure was 126); JME 394-95 (January 30, 2017; systolic blood pressure was 145); JME 424-27 (February 21, 2017; systolic blood pressure was 138); *cf.* JME 58 (May 28, 2014; systolic blood pressure was 150).

[3] *See* JME 426.

[4] *See* JME 55 (May 28, 2014).

higher" than the number reflected on that record. However, he also testified that he "believe[d] the reading." He based his opinion that Claimant's blood pressure was higher than reflected in that medical record on his belief that Claimant was "very emotional" at that time. I find this analysis entirely speculative and unpersuasive.

32. Dr. Zweber credibly acknowledged that Claimant had risk factors for aneurysm rupture, such as her age, gender,[5] and smoking history. He also credibly acknowledged that some aneurysms rupture unexpectedly and that aneurysms inside the brain are difficult to study, making it difficult to know their precise progression.

33. I find Dr. Zweber's analysis too speculative to support a finding of a causal link between Claimant's September 2015 back and knee injuries and her March 2017 subarachnoid hemorrhage.

Dr. Binter

34. Dr. Binter is a board-certified neurosurgeon. She no longer actively practices neurosurgery but currently dedicates most of her professional efforts to forensic work such as performing IMEs and providing expert witness testimony. She performed an IME on Claimant and reviewed her medical records from both before and after her 2015 workplace injury.

35. In Dr. Binter's opinion, no objective documentation in Claimant's medical records supports the theory that her post-injury pain and stress contributed to an increase in blood pressure that contributed to her subarachnoid hemorrhage. I find this opinion persuasive and well-supported.

36. Dr. Binter disagrees with Dr. Zweber's factual assertion that Claimant's medical records reflect any meaningful correlation between Claimant's blood pressure and documented pain. I find Dr. Binter's characterization of the medical records well-supported in this regard.

37. Dr. Binter also reviewed the relevant medical literature when forming her opinions in this case. She credibly testified that the medical literature she reviewed shows that smoking, hypertension, and female sex are key risk factors for the rupture of an aneurysm, with smoking being the most significant predictor. She credibly testified that nothing in the literature she reviewed indicated that pain or stress can cause cerebral aneurysms to rupture.

Dr. Ajir

38. Dr. Ajir is a board-certified neurosurgeon with over forty years of experience. He practices neurosurgery at the Mayo Clinic and maintains a separate office practice in Los Angeles where he performs IMEs and legal consultations. He performed a

[5] Dr. Zweber credibly testified that women are at greater risk for aneurysm rupture than men, and that people with aneurysms are generally at their highest risk for rupture between their late thirties and their fifties. Claimant was 49 years old at the time of her hemorrhage.

comprehensive review of Claimant's medical records but has not personally examined her.

39. Dr. Ajir credibly testified that while the exact mechanism of aneurysm rupture is unknown, there are known risk factors such as hypertension, smoking, and diabetes. Of these, smoking and high blood pressure are the most significant risk factors. Like the other expert witnesses who testified in this case, he also credibly testified that such ruptures are more common in females than males and that they most often occur after age forty or fifty.

40. Dr. Ajir credibly characterized Claimant's blood pressure throughout her medical records as high but fluctuating. Based on his review of relevant cardiological guidelines, he credibly testified that Claimant's blood pressure before her 2015 workplace injury constituted hypertension stage two, which placed her at high risk for stroke. Like Dr. Binter, Dr. Ajir also credibly testified that Claimant's medical records did not reflect any correlation between blood pressure and her subjectively reported pain levels.

41. In Dr. Ajir's opinion, Dr. Zweber's causal theory, whereby Claimant's 2015 back injury led to pain and stress that raised her blood pressure to such a degree as to cause her aneurysm to rupture, is not well-founded. Instead, Dr. Ajir testified that Claimant's aneurysm was most likely present without symptoms for many years, and her history of smoking and uncontrolled high blood pressure put her at risk for rupture at any time, with or without her 2015 workplace accident.

42. Dr. Ajir credibly acknowledged that he had seen some hemorrhages result from acute spikes in blood pressure from vigorous activities like very fast running or sexual activity. The spikes in systolic pressure from these activities can rapidly increase above 200 and cause ruptures to occur immediately.

43. He also credibly acknowledged that stress and pain can cause a modest increase in blood pressure. For instance, if a person has a baseline systolic pressure of 120 to 125, stress and pain might cause it to increase, but only to around 130 or 135; these factors do not cause rapid spikes of the kind associated with sprinting or sex. Although Claimant's baseline systolic blood pressure appears to have been higher than the 120-125 range that Dr. Ajir used in his example, I find his testimony on this point persuasive overall.

44. Dr. Ajir credibly testified that in his forty plus years of professional experience, he has never seen or heard of any patient's back pain causing such a spike in blood pressure as to lead to the rupture of an aneurysm.

Request for Vocational Rehabilitation ("VR") Services

45. On April 30, 2018, Claimant filed a request for VR services. She underwent screening in November 2018, and that screening resulted in a finding that a full entitlement assessment was necessary.

46. Defendant filed a timely denial of VR services, arguing that services were inappropriate because Claimant's disability was not caused by her work-related injury. The Department directly referred the question of Claimant's VR entitlement to the formal hearing docket.

47. The parties presented no evidence at the formal hearing specifically relating to VR services except for Dr. Binter's credible and uncontradicted testimony that Claimant has no work capacity because of her 2017 subarachnoid hemorrhage.

CONCLUSIONS OF LAW:

1. Although Defendant accepted liability for Claimant's back injury, it has not accepted liability for her subarachnoid hemorrhage. It denies liability for her present requests for indemnity benefits and VR services because it contends that Claimant's disability relevant to those benefits is entirely attributable to that hemorrhage.

2. As such, Claimant has the burden of proof to establish all facts essential to the rights she presently asserts. *Goodwin v. Fairbanks Morse & Co.*, 123 Vt. 161, 166 (1962); *King v. Snide*, 144 Vt. 395, 399 (1984). She must establish by sufficient credible evidence the character and extent of the injury, *see Burton v. Holden & Martin Lumber Co.*, 112 Vt. 17, 20 (1941), as well as the causal connection between the injury and the employment. *Egbert v. The Book Press*, 144 Vt. 367, 369 (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, supra*, 112 Vt. at 20; *Morse v. John E. Russell Corp.*, Opinion No. 40-92WC (May 7, 1993).

Claimant Has Not Proven Any Causal Relationship Between Her 2015 Workplace Injury and Her 2017 Subarachnoid Hemorrhage

3. The parties presented conflicting expert medical testimony regarding the causal relationship between Claimant's accepted back condition and her brain hemorrhage. 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). However, because a claimant bears the burden of proof on issues of causation, it is her experts' persuasiveness that matters most. *See Kibbie v. Killington, Ltd.*, Opinion No. 04-19WC (March 1, 2019).

4. I do not find that Claimant has put forth any convincing expert testimony in support of her theory of causation. The weight of the evidence from all testifying experts shows that Claimant was at increased risk for her preexisting aneurysm rupturing because of

her age, sex, smoking history, and pre-injury hypertension, and that the precise mechanism of cerebral aneurysm rupture is not well-understood.

5. While I find Dr. Tranmer's testimony that Claimant's 2015 workplace injuries *might* have impacted her blood pressure and that *might* have contributed to her eventual hemorrhage to be credible, he refrained from asserting that it was even medically probable.

6. Only Dr. Zweber affirmatively asserted a causal connection between Claimant's workplace injury and her subarachnoid hemorrhage as being medically probable, and I find his causal analysis far too speculative to be persuasive. Thus, even without considering Defendants' expert witnesses, Claimant has not sustained her burden of proof as to causation. *Cf. Meau v. The Howard Center, Inc.*, Opinion No. 01-14WC, Conclusion of Law No. 5 (January 24, 2014). As such, I do not find it necessary to assess each of the *Geiger* factors in this case. That said, both Drs. Binter and Ajir provided convincing reasons to question Dr. Zweber's causal analysis.

7. For all these reasons, Claimant has not satisfied her burden of proving any causal relationship between her September 2015 workplace injury and her March 2017 subarachnoid hemorrhage.

Claimant Has Not Established Entitlement to Temporary Total Disability ("TTD") Benefits

8. Claimant seeks TTD benefits for the period between her July 12, 2018 fusion surgery and the date Dr. Binter placed her at end medical result on August 21, 2019.

9. Vermont law provides that TTD benefits are available when a workplace injury "***causes*** total disability for work[.]" 21 V.S.A. § 642 (emphasis added); *see also* Workers' Compensation Rule 9.1300 (providing that a claim for TTD benefits "must be supported by credible medical evidence establishing both the extent of his or her disability ***and its causal relationship*** to the compensable injury") (emphasis added).[6]

10. Here, Claimant was working and receiving her full pre-injury wage up until her March 2017 subarachnoid hemorrhage. That hemorrhage suddenly but totally disabled her from working from then on. *See* Findings of Fact Nos. 9-10, 14, 18-19, 47, *supra*. She would therefore have been totally disabled from work due to this hemorrhage with or without her 2018 fusion surgery.

11. Because Claimant has failed to prove that her March 2017 hemorrhage was work-related, *see* Conclusion of Law No. 7, *supra*, her disability following her July 2018

[6] It is for that reason that the Department generally disallows TTD benefits for an injured worker who is terminated or voluntarily leaves a job for reasons unrelated to the work injury. *E.g., McAllister v. S.T. Griswold & Co.*, Opinion No. 07-03WC (February 5, 2003). There is an exception to the general rule for a claimant who can demonstrate: "1) a work injury; 2) a reasonably diligent attempt to return to the work force; and 3) the inability to return to the work force or that a return at a reduced wage ***is related to her work injury and not to other factors.***" *Id.*, Conclusion of Law No. 7 (emphasis added). However, even this exception requires claimants to demonstrate a causal connection between their work injury and the disability.

surgery was not caused by her workplace injury, even if that surgery itself was for a work-related condition. Instead, Claimant's non-work-related hemorrhage was an independent and superseding cause of her disability that broke any causal chain between her workplace injury and her disability following her 2018 surgery.[7]

12. For all these reasons, Claimant's request for TTD benefits during this period must be denied.

Claimant Has Not Established Entitlement to Vocational Rehabilitation ("VR") Services

13. Claimant's claim for VR services must be denied for substantially the same reason as her claim for TTD benefits.

14. Vermont law provides for VR services "[w]hen ***as a result*** of an injury covered by [the Workers' Compensation Act], an employee is unable to perform work for which the employee has previous training or experience[.]" 21 V.S.A. § 641(a) (emphasis added).[8] Thus, as with a claim for TTD benefits, a causal nexus between a workplace injury and the lack of work capacity is a statutory requirement for a claimant's entitlement to receive VR benefits.

15. Since March 2017, Claimant has been unable to perform any work, let alone work for which she has previous training and experience. However, the reason for her lack of work capacity is a hemorrhage that is not causally related to her workplace injury. *See* Conclusions of Law Nos. 7, 9-11, *supra*; Findings of Fact Nos. 9-10, 14, 18-19, 47, *supra*.

16. Because her present inability to work in a job for which she has previous training or experience is not "as a result" of a work-related injury, she is not entitled to receive VR services under the plain language of the statute. V.S.A. § 641(a); *accord* VR Rules 50.0000 and 54.0000.

[7] Nothing in *Wood v. Fletcher Allen Health Care*, 169 Vt. 419 (1999), which Claimant cites, changes this analysis. In *Wood*, the Vermont Supreme Court held that a claimant's pregnancy was not a superseding cause of her disability from work even though it extended the duration of her disability. The Court reasoned that pregnancy was not an "injury" but was a "normal, rather than a pathologic process." *Id.* at 422. Thus, the fact of her pregnancy did not justify the discontinuation of her TTD benefits, even if it prolonged her disability. *See id.* Here, by contrast, Claimant's total disability was caused entirely by a subarachnoid hemorrhage. Few things are more "pathologic." *Cf. Wood*, *supra*, 422. Additionally, although Claimant had some activity restrictions before her hemorrhage, she was working for her full pre-injury wages. Thus, unlike the pregnancy at issue in *Wood* that merely prolonged a period of total disability, Claimant's hemorrhage is the only reason she presently has no work capacity.

[8] *Accord* Vocational Rehabilitation Rules 50.0000 (providing that VR services " shall be provided to a worker when, ***because of the work injury***, he or she is unable to return to suitable employment for which he or she has prior training or experience relevant to currently available suitable employment.") and 54.0000 (same).

ORDER:

Based on the foregoing findings of fact and conclusions of law, Claimant's claims relating to her subarachnoid hemorrhage; her claim for temporary total disability benefits for the period between July 12, 2018 and August 21, 2019; and her claim for vocational rehabilitation services are **DENIED**.

DATED at Montpelier, Vermont this 9th day of May 2020.

_____
Michael A. Harrington
Interim 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.