

**STATE OF VERMONT
DEPARTMENT OF LABOR**

Pamela McKenzie Gallo

Opinion No. 19-20WC

v.

By: Beth A. DeBernardi
Administrative Law Judge

Costco Wholesale Corporation

For: Michael A. Harrington
Commissioner

State File No. HH-64357

OPINION AND ORDER

Hearing held via Skype on September 2, 2020
Record closed on October 5, 2020

APPEARANCES:

Christopher McVeigh, Esq., for Claimant
Jason R. Ferreira, Esq., for Defendant

ISSUES PRESENTED:

1. Is Claimant entitled to temporary disability benefits after she left her employment with Defendant on March 19, 2019?
2. Is Claimant entitled to temporary disability benefits following her left hand surgery on May 29, 2020?

EXHIBITS:

Joint Exhibit I:	Medical records
Claimant's Exhibit 1:	Claimant's hours at work for February and March 2019
Claimant's Exhibit 2:	December 20, 2018 letter from Defendant to Claimant concerning her employment status
Claimant's Exhibit 3:	December 27, 2018 letter from Claimant's counsel to Defendant concerning her employment status
Claimant's Exhibit 5:	November 9, 2018 email from Defendant to Claimant concerning the refund cashier position
Claimant's Exhibit 6:	November 9, 2018 letter from Claimant's counsel to Defendant concerning reinstatement rights under 21 V.S.A. § 643b
Claimant's Exhibit 7:	January 4, 2019 letter from Defendant to Claimant's counsel with Job Analysis record
Claimant's Exhibit 8:	February 14, 2019 Job Assessment Meeting record
Claimant's Exhibit 9:	March 12, 2019 Exit Interview record

Claimant's Exhibit 10:	March 13, 2019 Exit Questionnaire
Defendant's Exhibit 1:	January 14, 2019 medical record and Work Capabilities Form
Defendant's Exhibit 2:	February 14, 2019 Job Assessment Meeting record
Defendant's Exhibit 3:	March 1, 2019 letter from Claimant's counsel confirming her return to work effective February 26, 2019
Defendant's Exhibit 4:	March 9, 2019 resignation letter
Defendant's Exhibit 5:	March 12, 2019 Exit Interview record
Defendant's Exhibit 6:	March 12, 2019 Resignation Form
Defendant's Exhibit 7:	March 13, 2019 Exit Questionnaire
Defendant's Exhibit 8:	Dr. White's May 2019 Independent Medical Examination report
Defendant's Exhibit 9:	PA Hammond's May 17, 2019 telephone encounter record
Defendant's Exhibit 10:	Claimant's hours at work for February and March 2019
Defendant's Exhibit 11:	September 2016 emails between Store Manager Christopher Stafford and Defendant's Corporate Benefits Department

CLAIM:

Temporary disability benefits pursuant to 21 V.S.A. §§ 642 and 646

Costs and attorney fees pursuant to 21 V.S.A. § 678

FINDINGS OF FACT:

1. Claimant was an employee and Defendant was her employer as those terms are defined in the Vermont Workers' Compensation Act.
2. I take judicial notice of all forms in the Department's file relating to this claim.
3. Claimant is a 56-year-old woman who lives in Colchester, Vermont, with her husband and her elderly parents.
4. Claimant's adult daughter, who lives in Michigan, was diagnosed with lupus when she was 19 years old. She has received several rounds of chemotherapy and has serious kidney disease and a heart condition. When she became pregnant in 2018, her pregnancy was considered high risk.

Claimant's Employment with Defendant and her Work-Related Injuries

5. Claimant began her employment with Defendant as a temporary seasonal employee in December 1995; she became a regular employee in May 1996. She has worked in several departments, including electronics, jewelry, pharmacy, the photo lab, and the tire center. She has also worked as a front-end cashier. The cashier position required her to move items of varying weight over a scanner and to maintain a fast pace.
6. On May 25, 2016, Claimant sustained a right wrist injury while working as a part-time front-end cashier for Defendant. She grasped a container of cream cheese during the checkout process and felt a twinge in her wrist.

7. Two days later, Claimant sought medical treatment at Concentra and was diagnosed with a right wrist sprain. The provider referred her to physical therapy and placed her on light-duty work restrictions. *Joint Exhibit I*, at 15-19.
8. Defendant accepted Claimant's right wrist injury as compensable and began paying workers' compensation benefits accordingly.
9. About six months later, Claimant began to experience left wrist symptoms. *Joint Exhibit I*, at 174. Defendant accepted her left wrist condition as compensable and began paying benefits for that condition as well.

Claimant's Medical Course During her Employment with Defendant

10. Claimant initially underwent conservative treatment and was released to full-duty work on November 3, 2016 with no restrictions. *Joint Exhibit I*, at 153. However, on November 26, 2016, her medical provider advised her to stop her cashier duties and return to light-duty work, if available. *Id.* at 176.
11. Claimant underwent right wrist surgeries in July 2017 and January 2018, and she underwent left wrist surgery in May 2018. *See Joint Exhibit I*, at 248-51, 401-04, 469-70. She was out of work after each surgery but returned to light duty each time. *See Joint Exhibit I*, at 291, 294, 314, 327, 449, 508.
12. In October 2018, Claimant underwent a third right wrist surgery to remove an excess tendon graft. *Joint Exhibit I*, at 543-44. She again left work to recover from surgery.
13. In November 2018, Claimant reported to her surgeon that she had no pain and was able to grasp things and use her thumb better than before. *Joint Exhibit I*, at 551. The surgeon noted "basically full" wrist range of motion with no pain and stated that she was "much improved." *Id.* at 552. He recommended increasing activity as tolerated.

Claimant's Efforts to Return to Work in the Fall of 2018 and Winter of 2019

14. Claimant's October 2018 surgery was successful, and she felt ready to return to work. On November 9, 2018, she emailed Defendant to express interest in a refund cashier position. *Claimant's Exhibit 5*. The same day, her attorney notified Defendant by letter that she would likely be able to return to work on November 30, 2018 and that she wished to be reinstated to a suitable position as provided by 21 V.S.A. § 643b. *Claimant's Exhibit 6*. On December 20, 2018, Defendant wrote to Claimant that it did not have a position that she could likely perform, and it suggested that she might wish to voluntarily resign her employment. *See Claimant's Exhibit 2*.
15. Claimant's counsel responded to Defendant's letter on December 27, 2018, reiterating Claimant's reinstatement rights under the workers' compensation statute. *See Claimant's Exhibit 3*. Defendant responded on January 4, 2019, asking for an updated Work Capabilities Form (Form 20). *See Claimant's Exhibit 7*. Claimant then

scheduled an office visit with orthopedic physician assistant Tracie Hammond to discuss her work capabilities.

16. At the January 14, 2019 office visit with PA Hammond, Claimant reported that things were going well, and she requested a work release. *Joint Exhibit I*, at 565.
17. PA Hammond reviewed Claimant's medical chart focusing on the history and treatment of both wrists. She also performed a physical examination. She noted well healed surgical incisions on both wrists and warm skin with no discoloration. She noted limited thumb motion, the measurements for which were set out in the hand therapy notes. Based on her chart review and her physical examination, PA Hammond released Claimant to return to work effective January 18, 2019, with restrictions as set forth in the completed Work Capabilities Form. *Joint Exhibit I*, at 566-68; *Defendant's Exhibit 1*.
18. Claimant's work capabilities included lifting 10 and 20 pounds frequently, lifting 50 pounds occasionally, and performing repetitive activities no more than six hours per shift. PA Hammond indicated that Claimant could work eight hours per day and placed no limitations on standing, sitting, driving, bending, squatting, climbing, twisting or reaching above shoulder height. *Joint Exhibit I*, at 568. Claimant credibly testified that she discussed these restrictions with PA Hammond and was comfortable with all of them. PA Hammond noted that, if a more detailed work capability assessment were required, Claimant could undergo a functional capacity evaluation. *Id.* at 567.
19. After Defendant received PA Hammond's work release, it proposed a job assessment meeting to discuss Claimant's return to work. At that time, Claimant's daughter in Michigan was experiencing a high-risk pregnancy, and her doctors were planning to induce labor at 34 weeks. Claimant wanted to go to Michigan right away to provide support, so the meeting was scheduled for after her return.
20. Claimant flew to Michigan in mid-January and was present for her granddaughter's birth on February 2, 2019. The baby spent nine days in intensive care. Claimant returned to Vermont in time for the job assessment meeting.
21. The meeting was held on February 14, 2019. Participating were Claimant, general manager Christopher Stafford, leave administrator Jennifer Stoner, and an ADA facilitator, Frances Parisi. *Claimant's Exhibit 8; Defendant's Exhibit 2*. The attendees identified three part-time positions that might be suitable for Claimant: front-end cashier, refund cashier and member service assistant. They discussed the physical demand levels of each position and any accommodations that could be made. Claimant had direct input into the accommodations that could be made for her to perform the functions of the positions under consideration.

22. The meeting attendees agreed that Claimant could not to perform the cashier positions, even with accommodations. Therefore, they focused on the part-time member service assistant position.¹
23. The essential functions of the member service position included conducting hourly building safety and security checks, welcoming members entering the warehouse, clicking a hand-held counter to count members entering, opening and closing the entrance and exit doors using a chain, greeting customers as they exit and checking the accuracy of their receipts, watching the after-hours exit door discretely from a private vehicle, and regular and reliable attendance at the employee's assigned location. *Defendant's Exhibit 2.* Checking receipts at the exit door required the employee to mark each receipt with a pen stroke. Non-essential job functions included assisting with front-end duties and in other departments, as needed. *Id.*
24. The meeting attendees identified accommodations that would allow Claimant to perform the member service assistant duties. In place of the hand-held clicker used to count members entering the warehouse, she could wear an electronic counter around her neck and tap it with the side of her hand. She could request help from other employees to pull the chain that opens and closes the front doors. Finally, for marking the receipts of exiting members, she could use a Velcro pen holder, so she could mark receipts without gripping a pen. More generally, Claimant could monitor herself to assure that she was working within her restrictions and request assistance, as needed. Defendant concluded that Claimant could perform the member service assistant job duties with these accommodations, and Claimant agreed.
25. Defendant offered Claimant the position, and she accepted it. Claimant then requested two weeks off before starting work, so she could make another trip to Michigan to help her daughter and granddaughter. Defendant agreed and scheduled her first day of work for February 26, 2019.
26. Claimant flew back to Michigan to help her daughter with the baby. She stayed for several weeks, helping with bottle feeding, bottle washing, changing diapers, carrying the baby, organizing clothes, washing laundry and grocery shopping. She also provided emotional support for her daughter.
27. Claimant then returned to Vermont and began work as a member service assistant on February 26, 2019. *Claimant's Exhibit 1; Defendant's Exhibits 3 and 10.* Store managers reported to Mr. Stafford that she was doing a good job, and her husband credibly testified that she was happy to be back at work. On March 1, 2019, Claimant's attorney notified Defendant's attorney that Claimant had returned to employment. *Defendant's Exhibit 3.*

¹ Part-time work for Defendant consists of 24 to 40 hours per week. At the time of her injury, Claimant's position as a front-end cashier was part time.

Claimant's Resignation of her Employment with Defendant

28. On March 9, 2019, Claimant handed a resignation letter to Mr. Stafford. *Defendant's Exhibit 4*. She wrote:

Please accept this letter as a formal notification that I am resigning from my position as a member service employee with Costco. My last day will be on March 19, 2019. Thank you so much for helping me raise my children and making me feel like Family. I've greatly enjoyed and appreciated my two decades plus years with this company. I wish the company continued success and its employees all the happiness imaginable. I'll see you when we come in for shopping.

29. Claimant made no mention of her wrist injuries in her resignation letter, nor did she indicate that she was unable to perform her work duties.
30. Defendant has a practice of conducting exit interviews with departing long-term employees to learn why they have decided to leave. Claimant participated in such an interview on March 12, 2019 with Mr. Stafford and another manager, Ms. Racine.
31. Claimant credibly testified that her exit interview was not confrontational in any way. She was not nervous, nor was she intimidated or uncomfortable. She acknowledged that she had a good relationship with Mr. Stafford and that he was approachable and understanding about family issues. She was also comfortable with Ms. Racine.
32. During the exit interview, Mr. Stafford asked Claimant six questions that were set forth on the exit interview form, and he wrote down her answers. *Claimant's Exhibit 9; Defendant's Exhibit 5*.
33. The first question inquired into Claimant's reasons for leaving her employment. Claimant stated that her reason for leaving was that her daughter had just given birth after 34 weeks, was sick, and had undergone 12 months of chemotherapy. She also stated that she wanted to be a "full-time grandma." *Defendant's Exhibit 5*. The fifth question asked whether there was anything Defendant could have done to prevent her from leaving. Claimant responded "no" and stated that she was leaving for her granddaughter. *Id.* In response to the sixth question about whether she saw herself returning to employment with Defendant, she responded "no" and stated that she was "going to Michigan." *Id.* She never mentioned her wrist injuries or her job duties.
34. Mr. Stafford provided Claimant with a written exit questionnaire to take home, and she completed it the next day. *Claimant's Exhibit 10; Defendant's Exhibit 7*. Concerning her reasons for leaving, she wrote:

I have 3 reasons: I had 4 hand surgeries, sick daughter
1) I fought to come back and even the outdoors hurts beyond belief.
2) I preferred working before Jim (founder) retired.

3) My daughter just had a high risk pregnancy, needs chemo + my help. She has Lupus stage 4 kidney disease and Heart problems with a preemie.

35. In response to whether there was anything Defendant could have done to prevent her from leaving, Claimant responded “no.” She wrote: “(1) After 23 years at Costco and 4 hand surgeries, my hands are always going to hurt no matter what I do; (2) My daughter’s lupus is bad and she’s never going to get better. She’s going to need help.” *Claimant’s Exhibit 10; Defendants Exhibit 7.*
36. Although Claimant’s resignation letter specified that her last day of employment would be March 19, 2019, the last day she was scheduled to work was March 16, 2019. She worked an eight-hour shift that day. *Claimant’s Exhibit 1; Defendant’s Exhibit 10.* She has not looked for any work since her departure from Defendant.
37. On March 26, 2019, Claimant reported to her physical therapist that she was going back to Michigan the next day and was not sure when she would return. *Joint Exhibit I, at 577.* Claimant credibly estimated that she has made five trips to Michigan since resigning her employment.
38. At the time of Claimant’s resignation, no medical provider had placed her out of work or modified the Work Capabilities Form completed by PA Hammond in January 2019.

Claimant’s Family Obligations

39. Claimant identified her daughter’s health and her granddaughter’s birth as her reasons for resigning her employment during the exit interview, noting that she was going to Michigan. However, her daughter’s health unexpectedly improved after giving birth, and she did not need as much assistance as Claimant had expected.
40. However, by that time, Claimant’s parents needed her assistance, and she turned her caregiving efforts to them. Both parents are in their 80s and have significant health conditions. Her mother has Alzheimer’s disease and Parkinson’s disease. She also suffered a stroke in 2019 and requires supplemental oxygen. Claimant’s father underwent triple bypass surgery and has chronic obstructive pulmonary disease. He also requires supplemental oxygen. Claimant cares for both parents without any assistance from home nursing services. She handles their medications (about 40 pills per day), helps her mother with exercise and showering, and attends her medical appointments. She also helps her parents with laundry, meal planning, occasional cooking, picking up clutter, and their finances. Claimant’s husband works full time outside the home, so daytime caregiving falls on her.
41. When Claimant and her husband go on vacation, as they did to Mexico in 2019 and to the Bahamas in 2020, Claimant arranges for an Emergency Medical Technician friend to stay with her parents while she is gone. Claimant and her husband would not be able to travel without having someone stay in their home to care for her parents.

Claimant's Credibility

42. Claimant testified that she resigned her employment because she could not perform her job duties. She further testified that her daughter's health and the birth of her granddaughter were not factors in her decision to resign. I find this testimony unpersuasive for several reasons.
43. First, Claimant's resignation letter did not mention any difficulty performing her job duties. Instead, she gave Defendant ten days' notice of her departure date. Giving ten days' notice is consistent with leaving for personal reasons; it is not consistent with being physically unable to perform one's job. Further, she was able to work a full eight-hour shift on her last day of employment.
44. Second, Claimant stated in the exit interview that she was resigning for family reasons. She did not mention any difficulty performing her job duties. The next day, after time to reflect, she included her wrist condition on the exit questionnaire as an important reason why she was leaving. However, if that were the case, she would not have forgotten that reason during the exit interview.
45. Third, Claimant's job duties were within the work restrictions provided by PA Hammond in January 2019. No medical provider issued any work restrictions or out-of-work notes contrary to PA Hammond's work release. Thus, there is no contemporaneous medical evidence to support Claimant's testimony that she could not perform her job duties in March 2019.
46. Accordingly, I find that Claimant left her employment to care for her daughter and granddaughter, and not because she was unable to perform her job duties.

Medical Treatment After Claimant's Resignation

47. In July 2019, Claimant saw orthopedic surgeon Michel Benoit, MD, for bilateral wrist pain. Dr. Benoit offered her an injection, which she declined, and noted that she would likely need surgery in the future. *Joint Exhibit I*, at 614-15. When she saw him again in the fall, he recommended left wrist revision surgery and prepared a preauthorization request for the surgery. *Id.* at 634, 636. Defendant approved the preauthorization request on November 27, 2019.
48. Claimant testified that she was planning to have the surgery in late 2019 at the Fanny Allen Medical Center, but the facility closed due to an odor problem. She then hoped to have the surgery in March 2020, but the Covid-19 pandemic delayed elective surgeries at that time. I find Claimant's testimony on these issues to be credible.
49. Claimant underwent left wrist revision surgery on May 29, 2020. *Joint Exhibit I*, at 658. She reported to Dr. Benoit in June 2020 that she was doing well, and she began physical therapy shortly thereafter. *Id.* at 661, 663.

Testimony from Claimant's Medical Expert

50. Claimant presented expert medical testimony from Verne Backus, MD, as to her work capacity when she resigned her employment in March 2019 and following her May 29, 2020 surgery. Defendant did not present a medical expert.
51. Dr. Backus is a board-certified occupational medicine physician. He graduated from Dartmouth Medical School and completed his occupational and environmental medicine residency at the Harvard School of Public Health. His current practice focuses on independent medical examinations. At Claimant's request, Dr. Backus performed such an examination of her on June 1, 2020, including a physical examination and a medical records review.
52. Dr. Backus familiarized himself with Claimant's medical history, her job duties, and the accommodations made for her in February 2019. In his opinion, this "return to work trial" that the parties developed for Claimant was well designed and appropriate. As an occupational medicine physician, Dr. Backus has substantial training and experience with return to work plans, and I find this testimony credible.
53. Claimant reported to Dr. Backus that she resigned her member service assistant position in March 2019 because she was physically unable to perform the job duties; she mentioned no other reason for her resignation. Based on her report, Dr. Backus offered his opinion that the return to work trial had failed and that Claimant therefore did not have the work capacity in March 2019 to perform her modified job duties. He further opined that, if Claimant could not work as a member service assistant, then she likely could not perform any position for Defendant, as the member service position was among the lightest duty positions available.
54. Dr. Backus' opinion rests squarely on the credibility of Claimant's report that she resigned because she could not perform her job duties. I have already found that Claimant resigned her position for family reasons, and not because she was unable to perform her job duties. *See* Finding of Fact No. 46 *supra*. Therefore, Dr. Backus' opinion as to Claimant's work capacity in March 2019 was based on erroneous information. Accordingly, I find it unpersuasive.
55. Dr. Backus also offered his opinion that Claimant was unable to work when he examined her on June 1, 2020. This opinion was based on Claimant's having undergone left wrist surgery three days prior to his examination. He offered no opinion on how long her inability to work would continue beyond June 1, 2020.
56. Based on Dr. Backus' qualifications and experience as an occupational medicine physician, I accept his opinion that Claimant was not able to work as of June 1, 2020.

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, *see, e.g., Burton v. Holden & Martin Lumber Co.*, 112 Vt. 17 (1941), 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, supra* at 19; *Morse v. John E. Russell Corp.*, Opinion No. 40-92WC (May 7, 1993).

2. Where the causal connection between employment and injury is obscure, and a layperson could have no well-grounded opinion as to causation, expert medical testimony is necessary. *Lapan v. Berne's Inc.*, 137 Vt. 393, 395-96 (1979).

Claim for Temporary Disability Benefits Following Claimant's March 2019 Resignation

3. In the context of a claim for temporary disability benefits, it is well-settled that a claimant cannot determine his or her own disability status; rather, expert medical testimony is required to establish the extent, if any, to which an injured worker is incapable of working. *Maluk v. Plastic Technologies of Vermont*, Opinion No. 06-13WC (February 5, 2013), citing *Pfalzer v. Pollution Solutions of Vermont*, Opinion No. 23A-01WC October 5, 2001).
4. Here, PA Hammond's January 2019 work release provided that Claimant could work full time, with modified duty restrictions. Further, the credible evidence establishes that Defendant was providing suitable modified duty when Claimant left her employment in March 2019.
5. Further, Dr. Backus' opinion that Claimant was incapable of working in March 2019 was based on her inaccurate report that she left her employment for this reason. Accordingly, his opinion does not support a conclusion that Claimant was disabled from work in March 2019, either.
6. I therefore conclude that Claimant removed herself from the workforce for reasons unrelated to her workplace injury. Whatever wages she lost thereafter were due to her voluntary decision to leave the workforce, and not due to her work injury. For that reason, she is disqualified from receiving temporary disability benefits after March 19, 2010. *Maluk, supra*; *see also Andrew v. Johnson Controls*, Opinion No. 03-93WC (June 13, 1993) (injured worker who voluntarily quits employment for reasons unrelated to the work injury not entitled to temporary disability benefits).
7. In order to avoid unnecessarily harsh consequences however, the Commissioner has recognized an exception to this disqualification rule, providing that temporary disability benefits might resume if a claimant can show that the work-related disability is once again the cause of his or her inability to find or hold new employment. *See Andrew v. Johnson Controls, supra*; *see also Ribis v. Coventry Health Care*, Opinion No. 26-09WC (July 17, 2009); *Pitaniello v. GE Transportation*, Opinion No. 03-08WC (January 17, 2008). To qualify for temporary disability benefits under the

exception, Claimant would have to establish that she made a reasonably diligent effort to return to the workforce, but because of her work injury was unable to find suitable work. *See Andrew v. Johnson Controls, supra.*

8. Claimant made no effort to return to the workforce after she voluntarily left her employment in March 2019. Instead, she became a caregiver to her parents. Under the circumstances, I conclude that she has not established the facts necessary to resume any entitlement to temporary disability benefits under the exception set forth in *Andrew v. Johnson Controls*.
9. I therefore conclude that Claimant has failed to sustain her burden of proving her entitlement to temporary disability benefits after she left her employment with Defendant on March 19, 2019.

Claim for Temporary Disability Benefits Following Claimant's May 29, 2020 Surgery

10. The second issue presented here is whether Claimant is entitled to temporary disability benefits following her May 29, 2020 work-related wrist surgery. Based on Dr. Backus' persuasive opinion, I conclude that Claimant was temporarily disabled from work following that surgery.
11. Generally, an injured worker is entitled to temporary total disability benefits where the injury causes total disability for work. 21 V.S.A. § 642. Such benefits are designed to replace the wages that an injured worker likely would be earning had the work injury not occurred. *See* 21 V.S.A. § 650. Defendant contends that Claimant is not entitled to temporary disability benefits following her wrist surgery because she earned no wages in the 26 weeks prior to the surgery.
12. In *Bacon v. Gerald E. Morrissey, Inc.*, Opinion No. 32-11WC (October 12, 2011), the Commissioner wrote that "it is a necessary prerequisite to any claim for wage replacement benefits that there be previously earned wages to replace." The Commissioner held that the injured worker in *Bacon* had earned no wages for 15 months prior to his claimed period of disability and that, therefore, his claim for temporary total disability benefits failed as a matter of law. *See also* *Giacobbe v. Verizon*, Opinion No. 72-05WC (December 30, 2005) (with no earned wages prior to the claimant's surgery, no wage replacement benefits were due).
13. Two years after *Bacon*, the Commissioner considered another temporary disability claim in which the injured worker earned no wages prior to the period of claimed disability. In that case, the Commissioner held that unless the failure to earn wages was the result of an injury-related consequence rather than a personal choice, no temporary disability benefits are due. *Duffy v. Sisler Builders, Inc.*, Opinion No. 20-13WC (August 28, 2013).
14. Claimant here last earned wages on March 16, 2019. Her May 29, 2020 surgery took place more than one year later. She did not earn any wages in the 26 weeks prior to her surgery.

15. Further, I have already found that Claimant's failure to earn any wages following her March 2019 departure from the workforce was due to personal reasons, unrelated to her work injury. *See* Conclusion of Law No. 6 *supra*.
16. I therefore conclude that Claimant is not entitled to temporary disability benefits following her May 29, 2020 surgery.

ORDER:

Based on the foregoing findings of fact and conclusions of law, Claimant's claims for temporary disability benefits following her March 19, 2019 departure from employment and following her May 29, 2020 wrist surgery are hereby **DENIED**.

DATED at Montpelier, Vermont this 22nd day of November 2020.

Michael A. Harrington
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.