

**STATE OF VERMONT  
DEPARTMENT OF LABOR**

Abdulkadir Ali

Opinion No. 20-20WC

v.

By: Stephen W. Brown  
Administrative Law Judge

University of Vermont

For: Michael A. Harrington  
Commissioner

State File No. LL-53322

**OPINION AND ORDER**

Hearing held via Skype on August 4, 2020  
Record closed on September 9, 2020

**APPEARANCES:**

Craig Jarvis, Esq., for Claimant  
David Berman, Esq., for Defendant

**ISSUE PRESENTED:**

Did Claimant sustain a work-related lower back injury, and if so, to what benefits is he entitled?

**EXHIBITS:**

Joint Exhibit:	Joint Medical Exhibit (“JME”)
Claimant’s Exhibit 1:	Emails regarding Claimant’s use of leave time, dated September 4, 2018
Claimant’s Exhibit 2:	Certificate of Dependency and Concurrent Employment (Form 10), filed September 24, 2018
Claimant’s Exhibit 3:	Wage Statement (Form 25), dated September 24, 2018
Claimant’s Exhibit 4:	Certificate of Dependency and Concurrent Employment (Form 10), dated July 31, 2020
Claimant’s Exhibit 5:	Signature of Dennis Coakley and handwritten date of “8·6·19” on notebook paper
Claimant’s Exhibit 6:	Correspondence from Laurie Newton to Claimant dated October 12, 2018, enclosing Denial of Workers’ Compensation Benefits by Employer or Carrier (Form 2)
Claimant’s Exhibit 7:	Multiple emails among Defendant’s employees dated October 12, 2018 concerning work orders assigned to Claimant

Defendant's Exhibit A: Employer's First Report of Injury (Form 1), dated September 4, 2018  
Defendant's Exhibit B: Work Order WO50063  
Defendant's Exhibit C: Work Order WO500600  
Defendant's Exhibit D: Work Schedule of Danny Whitaker for dates May 29, 2018 through September 29, 2018  
Defendant's Exhibit E: Written Statement of Dennis Coakley

**FINDINGS OF FACT:**

1. I take judicial notice of all forms in the Department's file for this claim.
2. Claimant is a 38-year-old man residing in Burlington, Vermont with his wife and six<sup>1</sup> dependent minor children.
3. He was born in Somalia but moved to Kenya when he was nine years old because of the Somali Civil War. He spent six years in a refugee camp in Kenya, where he mostly learned Swahili and Somali. He took some English classes there, but he credibly testified that they were not of high quality.
4. He moved to Massachusetts when he was 22 years old and could not speak English at that time. He moved to Vermont in 2006 and three years later began attending Winooski High School to improve his English while working full time. He attended high school for three years but did not graduate because one of his children became ill. Following his departure from Winooski High School, Claimant worked in several jobs, including Walmart, before Defendant hired him.

*Claimant's Employment with Defendant*

5. Defendant hired Claimant as a maintenance employee in August 2014, and three years later, promoted him to the role of repair specialist within the facilities repair department. His duties in both roles included cleaning, repairing, removing equipment, driving trucks, and changing filters.
6. Throughout his employment with Defendant, Claimant's direct supervisor was utility trade supervisor Danny Whitaker. Mr. Whitaker generally assigned Claimant work tasks by issuing work orders through Defendant's computer system. Claimant also worked with maintenance supervisor Keith Benoit when Mr. Whitaker was unavailable, and with facilities manager Dennis Coakley, who was Mr. Whitaker's supervisor. Messrs. Whitaker, Benoit, and Copley all testified at the formal hearing.

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<sup>1</sup> Between August 2018 and April 4, 2020, Claimant had five dependent children. As of April 4, 2020, he had six.

Claimant's History of Back-Related Complaints and Medical Care

7. Claimant had several episodes of back pain in 2014, 2015, and 2016 for which sought care at the University of Vermont Medical Center's (UVMMC's) emergency department.
8. Specifically, in April 2014, while Claimant was working at Walmart, he sustained a right hip and right lower back injury while unloading a truck. (JME 19-23). He was diagnosed with a lumbar strain and advised to treat with nonsteroidal anti-inflammatory drugs (NSAIDs), ice, and heat, and advised to avoid heavy lifting. (*Id.*).
9. Approximately one year later, in April 2015, he again presented to the emergency department with sudden-onset back pain after stretching his back. (JME 41-46). His providers administered Toradol, which provided significant relief, and he was advised to use NSAIDs, ice, and rest. (*Id.*).
10. He returned with similar back complaints in December 2015, and again was diagnosed with a strain, given Toradol, and advised to treat with NSAIDs, ice, and rest. He was discharged with a pain rating of 1/10. (JME 57-67).
11. In August 2016, Claimant returned to the emergency department with back pain, and again was provided Toradol. He also received a muscle relaxant and narcotic pain medications and was advised to treat with heat. (JME 72-88).
12. Despite these episodes of back pain, there is no convincing evidence that Claimant suffered ongoing back pain between these visits, or that his symptoms lingered long afterward. I see no basis in the record to find that Claimant experienced ongoing back symptoms during the roughly 21 months between his August 2016 emergency room visit and May 2018.

Claimant's May 2018 Workplace Incident

13. The parties dispute what happened between May 29 and August 28, 2018. Based on the totality of evidence presented, including the medical records, the Form 1 filed with the Department, work orders (Defendant's Exhibits B and C), Mr. Whitaker's time records (Defendant's Exhibit D), Mr. Coakley's contemporaneous written statement (Defendant's Exhibit E), and testimony from Claimant, Mr. Benoit, Mr. Coakley, and Mr. Whitaker, I find as follows:<sup>2</sup>
14. On May 29, 2018, Mr. Whitaker scheduled Claimant to perform two jobs through two work orders, one of which was to vacuum the snow screens in Jeffords Hall, a job that

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<sup>2</sup> Assessing the credibility of an unwitnessed and late-reported incident requires careful evaluation of the factual evidence so as to explore any inconsistencies, investigate possible intervening causes, and evaluate motivations. *Cf. Brochu v. Peck Electric Co.*, Opinion No. Opinion No. 18-20WC (November 4, 2020). I have taken these factors into account in the factual findings in this section, and I credit Claimant's testimony on substantially all material and contested factual issues discussed in this section.

took about five hours to complete. (Defendant's Exhibit B).<sup>3</sup> Claimant performed that task the following day, on May 30, 2018.

15. Cleaning the snow screens required Claimant to maneuver inside an air intake area with a vacuum unit on his back. While the vacuum unit was not particularly heavy, this task involves working for several hours in a tight and awkward space where movement is cramped and difficult. After completing that task, Claimant felt an irritation and sharp pain in his back.
16. Claimant spoke with Mr. Benoit about his back pain later that afternoon. Ordinarily, he would have gone to his direct supervisor, Mr. Whitaker, but he was not in the building at that time.
17. Mr. Whittaker was upset that Claimant did not report this injury to him directly. He approached Claimant to ask why he had reported his injury to Mr. Benoit rather than Mr. Whitaker and whether Claimant was unhappy with Mr. Whitaker as his supervisor. Claimant replied that the only reason he reported his injury to Mr. Benoit was that Mr. Whitaker was not immediately available at that time.<sup>4</sup>
18. No one created a contemporaneous incident report for Claimant's May 30, 2018 incident, although Defendant's policies were to create such reports even for minor injuries.
19. Mr. Whitaker explained Defendant's injury reporting process at length and credibly testified that he takes the reporting of even very minor injuries seriously. Although I find it credible that Mr. Whitaker takes injury reporting seriously, the lack of a contemporaneous written incident report from May 2018 does not convince me that Claimant's account of the onset of his back pain was false. Nor do I find that the lack of such contemporaneous documentation refutes Claimant's credible testimony that he orally reported his back complaints to Mr. Benoit in May 2018, particularly in light of Mr. Benoit's credible corroboration of key aspects of that conversation.
20. Claimant did not immediately seek medical care following this May 2018 incident because his pain at that time was not so severe as to impede his ability to work. However, he continued to feel occasional soreness in his back and pain when bending. He did not experience these symptoms every day, but he felt them during heavy physical activities. He did not have those symptoms during the roughly 21-month period prior to May 2018.

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<sup>3</sup> The other work order was for the removal of trash and dead bulbs by a chiller in the Health Science Research Facility and to replace a bulb by the exit door; that job was expected to take about one hour. (Defendant's Exhibit C).

<sup>4</sup> At the formal hearing, Mr. Whitaker did not recall the discussion of Claimant's back injury in May 2018. However, Mr. Benoit credibly recalled having a conversation with Claimant about back soreness following work on an air handler, although he could not recall when that conversation took place.

Claimant's Symptom Worsening Following a Sneeze at Work on August 28, 2018

21. Approximately three months after his May 2018 workplace incident, on August 28, 2018, Claimant was changing a dusty air filter at work early in the morning. He did not recall whether he was wearing a dust mask during that job or not, but he sneezed forcefully while completing this work task, and he suspected that the sneeze was due to the dusty environment. There is no evidence suggesting an idiopathic or non-occupational reason for Claimant's sneeze on this date.
22. After his sneeze, Claimant's back pain increased dramatically and traveled into his right leg. He credibly testified that his back symptoms following this sneeze were much worse than the pain he experienced after changing the snow filters in May, and that he had never experienced any pain like that before. After replacing the air filter, Claimant was unable to completely stand up. He told Mr. Coakley that he could not work because of his back pain and had to go home.
23. Claimant reported to Community Health Centers of Burlington ("CHCB") later that same day. (JME 92). CHCB's intake note indicates that Claimant had "back pain Onset: 2 months ago" and that he had "sneezed at work [that] day which 'really hurt [his] back an [he] had to leave work.'" (*Id.*). During that visit, Claimant did not recall the exact date of his original May back incident; he estimated that it had happened about two months prior, although it actually occurred approximately three months before that visit. Claimant's provider at CHCB took him out of work for one week. (JME 97).
24. Claimant returned to work on September 4, 2018. On that day, he and Mr. Coakley filled out a Form 1 First Report of Injury together. Because nobody had created a report for Claimant's May 2018 back incident, Mr. Coakley called another of Defendant's employees, Peter Blackmer, who advised Mr. Coakley to pick a date and put it on the Form 1 as the date of injury.
25. Mr. Coakley entered the date of injury as July 18, 2018, using a handwritten format consistent with other documentary evidence of Mr. Coakley's manner of writing dates. (*Cf.* Claimant's Exhibit 5). Claimant advised Mr. Coakley that the date was not correct and that the correct date could be obtained from a work order, but the date on the Form 1 was never changed.
26. That same day, Defendant sent Claimant to Concentra for evaluation. Claimant told his provider there that he had hurt his back while working with a vacuum backpack, but that he did not know the exact date of that earlier job. Concentra's medical note lists the date of injury as August 5, 2018 and indicates that his symptoms began "about one month ago, that particular day the pain started he had been doing work with heavy backpack on." (JME 98-103).
27. Approximately two weeks later, Claimant presented to CHCB with complaints of worsening back pain, radiating into both his legs. (JME 132). CHCB's record of that visit indicates that "Pt reports he had a vacuum back pack and he bent to clean a

screen. He felt ok at the time but the next day significant right sided low back pain. Does cleaning for work. This was about 2 months ago.” (JME 133).

28. In late September 2018, Concentra gave him a light duty work restriction (JME 165-167), but Defendant was not able to accommodate his work restrictions. Claimant never returned to work for Defendant.
29. Claimant subsequently underwent physical therapy at Concentra until Defendant denied his workers’ compensation claim in October 2018. The bases for Defendant’s denial were date discrepancies in Claimant’s medical records and an assertion that Defendant did not have knowledge of a work-related injury until September 4, 2018. *See* Claimant’s Exhibit 6; Form 2 Denial of Workers’ Compensation Benefits.<sup>5</sup>
30. After Defendant denied his workers’ compensation claim, Claimant returned to CHCB for treatment. In February 2019, he underwent a lumbar spine MRI study at UVMHC, which showed a nerve root compression at the L5-S1 level. (JME 263-265; 270).
31. In April 2019, he was evaluated for neurosurgery at UVMHC. Neurosurgeon Paul Penar, M.D., summarized his impressions and the history of Claimant’s injury as follows:

In early June 2018 he was working for UVM and cleaning a large screen which took all day. He began to have a sharp back pain which he reported the next day and over a few days began to develop the leg pain symptoms. Although these are a bit better he describes a more severe constant pain in the right buttock and radiating to the posterior thigh and lateral calf, nearly to the foot. The foot is no longer involved with numbness and paresthesia, but may have been so earlier. Pain increased as he tried to return to work and at one point he had to go home from work, and was put on bed rest. He was ultimately let go from his job because he could not perform the work. For some reason this is not deemed a Workmen’s Compensation issue for reasons that are unclear to him. Pain is worse with standing and occasionally with laying down. Initially walking exacerbated the leg pain but now that does not happen. Therefore he is a bit better, but not enough to return to work.

(JME 299).

32. Dr. Penar diagnosed Claimant with a lumbar disc herniation with radiculopathy and discussed the possibility of a surgical disc excision at the L5-S1 level. (JME 301). He performed that surgery on Claimant in October 2019. (JME 348-424). Following that

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<sup>5</sup> I do not find that any of the factors identified in Defendant’s denial adversely reflect on Claimant’s credibility. Claimant’s medical records reflect a consistent account of the key details and events giving rise to his injury. Additionally, his testimony about his contemporaneous oral reporting of his injury to his employer have convincing support from other witnesses. Moreover, the multiple dates of initial onset reflected in the various sources of documentary evidence are all within a relatively narrow timeframe, and I find it completely understandable that Claimant would not recall the precise date of his symptom onset three months later.

surgery, Claimant resumed physical therapy with Momentum, but he was unable to complete his physical therapy there because of the Covid-19 pandemic.

Expert Medical Testimony

33. Claimant underwent Independent Medical Examinations (“IMEs”) with George White, M.D. and Verne Backus, M.D. Claimant presented Dr. White as an expert witness, while Defendant presented Dr. Backus.

Dr. White’s Opinions

34. Dr. White is an occupational medicine physician who dedicates his practice to the performance of IMEs.
35. At Claimant’s request, Dr. white performed an IME of him in July 2019. Before examining him, Dr. White reviewed approximately 178 pages of medical records and a transcript of Claimant’s April 2019 deposition. After creating his IME report, Dr. White also reviewed additional medical records relating to Claimant’s pre-2018 back injuries, Claimant’s October 2019 surgical report, and Dr. Backus’s June 2020 IME report.
36. Dr. White diagnosed Claimant with mechanical low back pain, associated with a disc extrusion at L5-S1 and a possible annular fissure at L4-L5. (JME 327). In Dr. White’s opinion, Claimant’s May 2018 workplace activities involving cleaning the snow screens with a vacuum backpack caused or aggravated his back pain, assuming that Claimant’s deposition testimony about that incident and the onset of his back pain was accurate.<sup>6</sup>
37. Dr. White based this causation opinion in significant part on the facts that Claimant was not experiencing ongoing back pain before May 2018, that he experienced onset of pain while performing a work-related task, and his back pain persisted and did not subside thereafter.
38. Based on Claimant’s account of his own symptomological history, Dr. White testified that there was a clear worsening of his back condition starting on May 30, 2018, and that Claimant’s pattern of presentation is typical of approximately ninety percent of the back pain cases he sees in his practice. He noted in his report that Claimant reported the onset of his low back pain while performing a specific work activity, namely cleaning a snow screen using a backpack vacuum cleaner. (JME 327).
39. Dr. White did not attach much significance to Claimant’s sneezing incident in August 2018, although he testified that if a person has back pain and sneezes, it will hurt. He testified that a sneeze can potentially cause disc herniation, and that Claimant

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<sup>6</sup> Claimant’s deposition transcript is not in evidence. However, Dr. White’s IME report quotes certain excerpts from Claimant’s deposition testimony concerning the onset of his back symptoms following his May 2018 screen cleaning incident. The excerpts quoted in that report are consistent with Findings of Fact Nos. 14-22, *supra*.

ultimately underwent surgery for a disc herniation, but that disc herniations are generally gradual degenerative process that can be aggravated by things like sneezes or activities of daily living.

40. Dr. White rated Claimant's permanent impairment as a part of his IME, but he credibly testified at the formal hearing that his rating would no longer be accurate because Claimant underwent back surgery after Dr. White wrote his report. Given that surgery, Dr. White testified that Claimant was not at end medical result at the time of his IME. Dr. White also found that Claimant would be a candidate for a functional restoration program to improve his functionality and increase his work capacity.

*Dr. Backus's Opinions*

41. Dr. Backus is a board-certified occupational and environmental medicine physician.
42. He performed an IME of Claimant at Defendant's request in June 2020. His IME included a review of medical records, a written questionnaire, an oral discussion with Claimant, and a physical examination. Dr. Backus diagnosed Claimant with lumbago or non-specific back pain with a disc herniation and sciatica and noted that this condition tended to recur episodically.
43. Dr. Backus noted that Claimant had preexisting degenerative spinal changes that could make him susceptible to flares when lifting, and he testified that it would not take much to set off back symptoms in Claimant. He also acknowledged that sneezing can certainly make a susceptible back become aggravated, because sneezing is an acute event that can cause inflammation of a nerve root and worsen swelling and impingement.
44. Like Dr. White, Dr. Backus noted that Claimant's surgery was for a disc herniation, and that disc herniations are generally degenerative processes that often occur before they become symptomatic, but they can become aggravated.
45. Dr. Backus acknowledged that Claimant's work activities would likely cause back pain, and he believes that Claimant's account of how this injury happened is possible. However, he was not able to say within a reasonable degree of medical certainty that Claimant's back complaints are work-related.
46. He disagreed with Dr. White's characterization of Claimant's presentation as "typical." He noted that Claimant had an established history of non-specific low back pain with episodic flares going back to his time at Walmart, and that it was "likely this pre-existing condition leaves him susceptible to these flares with lifting and other task [*sic*] sufficiently taxing on his low back condition." (JME 463). Additionally, Dr. Backus believes that at "some point," Claimant's spinal condition at the L5-S1 level progressed to include the large disc herniation that Dr. Penar addressed surgically. (JME 463-64). However, Dr. Backus found that it was "impossible to know when this occurred, only that it was present by the time of the first MRI." (*Id.*).

47. Dr. Backus's report acknowledged that, "[r]egardless of the cause of the herniation, causation would be work related if specific work activities were responsible for the back worsening and not returning to the pre-activity baseline without being worsened by another new injury." (JME 464). However, because Claimant did not seek medical care after his May 2018 workplace incident until it worsened following the August 2018 sneezing incident, Dr. Backus was unable to conclude with the requisite degree of medical certainty that the May 2018 incident aggravated Claimant's underlying preexisting L5-S1 conditions. (*Id.*).
48. Irrespective of causation, Dr. Backus credibly testified that unless Claimant undergoes a functional restoration or work hardening program to increase his work capacity, he was at end medical result as of the date of his IME (June 1, 2020). There is no evidence that Claimant has any specific plan or intent to undergo a functional restoration or work hardening program.
49. Applying his clinical findings to the diagnosis related estimates (DRE) model set forth in the American Medical Association's Guides to the Evaluation of Permanent Impairment, Fifth Edition, Dr. Backus concluded that Claimant was in DRE Category III, which corresponds to a 10-13 percent whole person impairment, as he had surgery for radiculopathy. Based on the impact on Claimant's activities of daily living, Dr. Backus assessed Claimant with a whole person impairment of 11 percent attributable to his lumbar spine. (JME 464). I find Dr. Backus's opinion in this regard to be credible and well-supported

## CONCLUSIONS OF LAW:

1. Claimant has the burden of proof to establish all facts essential to the rights he presently asserts. *Goodwin v. Fairbanks Morse & Co.*, 123 Vt. 161, 166 (1962); *King v. Snide*, 144 Vt. 395, 399 (1984). He 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.

### Claimant Sustained a Work-Related Injury

2. Based on the credible evidence presented at the formal hearing, I conclude that Claimant satisfied his burden to prove that he sustained a work-related back injury on May 30, 2018 while cleaning the snow screens in the Jeffords building, and that such injury became more seriously symptomatic on August 28, 2018 when he sneezed in the course of cleaning a dusty air filter. *See Findings of Fact Nos. 14-22, supra.*

### Medical Causation

3. The parties presented conflicting medical opinion testimony on the question of whether Claimant's May 2018 snow screen cleaning incident caused or aggravated his low back condition. In such instances, 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 (Sept. 17, 2003).
4. With respect to Drs. White's and Backus's opinion testimony on causation, I find that the first, second, fourth, and fifth *Geiger* factors weigh equally as between these experts. Both physicians also have similarly impressive credentials and qualifications to offer their respective opinions; both were hired as forensic experts and neither had any treatment history with Claimant; and both performed competent and thorough examinations and reviewed the relevant medical records. Although Dr. White did not obtain some of those records until after he completed his IME report, he reviewed them before testifying at the formal hearing and was able to take them into account when expressing the bases of his opinions.
5. I find the third *Geiger* factor to be the most important in this case. Both doctors expressed sound rationales and explanations for their opinions, and in fact, their opinions were not diametrically opposed. Both found that Claimant's May 2018 *could* have contributed to his lower back pain, including his disc herniation and eventual surgery. They differed primarily as to whether they were convinced to a reasonable degree of medical certainty that the May 2018 incident *actually* caused this worsening. Their difference in viewpoints on this issue ultimately rests on how much weight they assigned to Claimant's history of pre-2018 episodic back pain and lack of treatment immediately following the May 2018 incident.
6. Ultimately, I find Dr. White's reasoning on the question of causation more persuasive, given my crediting of Claimant's factual testimony concerning his symptom progression. Although Claimant has a history of previous back complaints, the credible evidence shows that any problems he had with his back were essentially stable until his May 2018 workplace incident, and that his symptoms progressively worsened thereafter, especially after his August 2018 workplace sneezing incident. Nothing in the record suggests a reason for this worsening other than his work activities.
7. I therefore conclude that Claimant's May 2018 workplace incident aggravated his preexisting lumbar spinal conditions.

End Medical Result and Extent of Permanent Impairment

8. When Dr. White evaluated Claimant in June 2019, he concluded that Claimant would be at end medical result if he did not pursue further treatment. However, Claimant subsequently underwent surgery in October of that year, and Dr. White credibly acknowledged at the formal hearing that his permanency rating was therefore no longer accurate. He has not re-examined Claimant since that time. *See* Finding of Fact No. 40, *supra*.
9. Dr. Backus examined Claimant after his surgery and found that Claimant was at end medical result with an 11 percent whole person impairment attributable to his lumbar spine unless Claimant underwent a functional restoration program. There is no evidence that Claimant intends to undergo such a program, and I find Dr. Backus's opinions as to end medical result and permanent impairment persuasive and well-supported. Aside from Dr. White's rating which is admittedly no longer accurate, there is no other permanency value in evidence.
10. I conclude that Claimant was at end medical result as of June 1, 2020, the date of his IME with Dr. Backus, with an 11 percent whole person impairment rating attributable to his lumbar spine.

**ORDER:**

Based on the foregoing findings of fact and conclusions of law, Defendant shall treat Claimant's May 30, 2018 injury as a compensable claim for which Claimant reached end medical result on June 1, 2020, and shall pay the following benefits:

1. All medical treatment for Claimant's work-related back injury from August 28, 2018 through the present, including his October 2019 surgery, pursuant to 21 V.S.A. § 640;
2. Temporary total disability benefits pursuant to 21 V.S.A. § 642 starting on August 29, 2018 and continuing until May 31, 2020, with dependency benefits consistent with the factual findings in this decision;
3. Permanent partial disability benefits pursuant to 21 V.S.A. § 648 consistent with Dr. Backus's determination that Claimant was at end medical result as of June 1, 2020 with a whole person impairment rating of 11 percent attributable to his lumbar spine;
4. Interest as provided by 21 V.S.A. § 664; and
5. Reasonable attorneys' fees and costs pursuant to 21 V.S.A. § 678 in an amount to be proven.

**DATED** at Montpelier, Vermont this 15th day of December 2020.

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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.