

**STATE OF VERMONT
DEPARTMENT OF LABOR**

Paul Reis

Opinion No. 04-21WC

v.

By: Beth A. DeBernardi
Administrative Law Judge

Windham Northeast
Supervisory Union

For: Michael A. Harrington
Commissioner

State File No. KK-63701

RULING ON CROSS MOTIONS FOR SUMMARY JUDGMENT

APPEARANCES:

Paul Reis, *pro se*
David A. Berman, Esq., for Defendant

ISSUES PRESENTED:

1. Is Defendant entitled to judgment in its favor as a matter of law on the question of whether Claimant sustained a compensable low back and/or psychological injury arising out of and in the course of his employment with Defendant?
2. Alternatively, is Claimant entitled to judgment in his favor as a matter of law on the question of whether he sustained a compensable low back and/or psychological injury arising out of and in the course of his employment with Defendant?

EXHIBITS:

Claimant's Exhibit 1-7: ¹	Social Security Administration's approval of Claimant's disability benefits on September 29, 2018
Claimant's Exhibit 1-8:	June 18, 2014 public records request
Claimant's Exhibit 1-10:	August 24, 2020 letter from Claimant to the Department
Claimant's Exhibit 1-11:	October 26, 2017 letter from Attorney Massucco to Defendant
Claimant's Exhibit 1-13:	February 28, 2017 letter from nurse practitioner Laura Lober
Claimant's Exhibit 1-14:	August 1, 2018 payroll record
Claimant's Exhibit 1-15:	July 26, 2008 prescription for Anaprox
Claimant's Exhibit 1-16:	July 26, 2008 prescription for Valium
Claimant's Exhibit 1-17:	August 14, 2020 formal hearing docket referral memorandum
Claimant's Exhibit 1-19:	Unfiled draft of Claimant's Notice and Application for Hearing
Claimant's Exhibit 1-20:	August 7, 2020 letter from Claimant to the Department
Claimant's Exhibit 1-26:	June 30, 2003 letter from therapist Maggie Comparetta
Claimant's Exhibit 1-27:	January 4, 2018 letter from Attorney Massucco to Claimant

¹ Claimant's Exhibit 1 consists of documents numbered consecutively from page 7 through page 139. I have listed each document separately, using the handwritten page numbers to further identify them.

Claimant's Exhibit 1-28:	Same as Exhibit 1-13
Claimant's Exhibit 1-29:	November 25, 2019 letter from Attorney Massucco to the U.S. Equal Employment Opportunity Commission
Claimant's Exhibit 1-30:	Same as Exhibit 1-26
Claimant's Exhibit 1-31:	Same as Exhibit 1-13
Claimant's Exhibit 1-32:	Same as Exhibit 1-27
Claimant's Exhibit 1-33:	Same as Exhibit 1-29
Claimant's Exhibit 1-34:	Medical records (nine pages)
Claimant's Exhibit 1-43:	Claimant's July 22, 2014 VOSHA complaint
Claimant's Exhibit 1-45:	U.S. DOL information sheet on the Williams-Steiger Act
Claimant's Exhibit 1-47:	Same as Exhibit 1-11
Claimant's Exhibit 1-49:	Warranty
Claimant's Exhibit 1-50:	Handwritten list
Claimant's Exhibit 1-54:	Same as Exhibit 1-15
Claimant's Exhibit 1-55:	Same as Exhibit 1-16
Claimant's Exhibit 1-56:	July 24, 2008 medical record of Dr. Griffiths
Claimant's Exhibit 1-57:	Handwritten notes
Claimant's Exhibit 1-59:	Defendant's undated Discrimination/Harassment Policy
Claimant's Exhibit 1-60:	Claimant's July 4, 2020 letter to the Vermont Attorney General
Claimant's Exhibit 1-64:	May 30, 2018 Vermont State Police Report, names redacted
Claimant's Exhibit 1-66:	August 27, 2020 record request to Vermont State Police
Claimant's Exhibit 1-67:	August 27, 2020 record request to Ms. Comparetta
Claimant's Exhibit 1-68:	September 14, 2020 letter from Claimant to the Department
Claimant's Exhibit 1-71:	Unpublished decision in Claimant's appeal of the Superior Court's dismissal of his personal injury action against Ben & Jerry's Homemade, Inc., <i>Paul Reis v. Ben and Jerry's Homemade and Liberty Mutual Ins. Co.</i> , Vermont Supreme Court Docket No. 2020-040 (May 1, 2020), p. 2
Claimant's Exhibit 1-72:	Undated "open letter" from Claimant to U.S. District Court Judge Geoffrey Crawford
Claimant's Exhibit 1-77:	Claimant's undated complaint to the Vermont Attorney General
Claimant's Exhibit 1-78:	Undated "open letter" from Claimant to Vermont Superior Court Judge Michael Kainen
Claimant's Exhibit 1-79:	April 25, 2018 letter from Attorney Massucco to Claimant
Claimant's Exhibit 1-80:	April 4, 2018 letter from Attorney Atwood to Attorney Massucco
Claimant's Exhibit 1-82:	March 27, 2018 letter from Attorney Massucco to Defendant
Claimant's Exhibit 1-84:	Medical records (10 pages)
Claimant's Exhibit 1-94:	Same as Exhibit 1-34
Claimant's Exhibit 1-103:	Same as Exhibit 1-84, pp. 84-85
Claimant's Exhibit 1-105:	Same as Exhibit 1-84, p. 92
Claimant's Exhibit 1-106:	Medical bills
Claimant's Exhibit 1-108:	December 17, 2019 medical record of Vernon Temple, DC
Claimant's Exhibit 1-109:	Medical bills, insurance forms and out-of-work notes
Claimant's Exhibit 1-115:	Same as Exhibit 1-108
Claimant's Exhibit 1-116:	Same as Exhibit 1-13
Claimant's Exhibit 1-117:	Same as Exhibit 1-108

Claimant's Exhibit 1-118:	March 26, 2019 medical record of Dr. Temple
Claimant's Exhibit 1-119:	March 29, 2019 medical record of Dr. Temple
Claimant's Exhibit 1-120:	Same as Exhibit 1-7
Claimant's Exhibit 1-121:	Same as Exhibit 1-82
Claimant's Exhibit 1-123:	Same as Exhibit 1-82
Claimant's Exhibit 1-125:	Same as Exhibit 1-13
Claimant's Exhibit 1-126:	Excerpt from Exhibit 1-84
Claimant's Exhibit 1-127:	October 2, 2018 chiropractor invoice
Claimant's Exhibit 1-128:	Same as Exhibit 1-82
Claimant's Exhibit 1-130:	Same as Exhibit 1-26
Claimant's Exhibit 1-131:	Claimant's May 12, 2018 discrimination complaint to the Vermont Attorney General
Claimant's Exhibit 2: ²	December 9, 2017 paystub
Claimant's Exhibit 3:	May 12, 2018 paystub
Claimant's Exhibit 4:	June 13, 2018 letter from the Vermont State Treasurer to Claimant
Claimant's Exhibit 5:	Same as Exhibit 1-7
Claimant's Exhibit 6: ³	November 2, 2020 letter from Claimant to the Department

Defendant's Statement of Undisputed Facts filed October 23, 2020

Defendant's Exhibit 1:	First Report of Injury (Form 1) filed May 10, 2018
Defendant's Exhibit 2:	Claimant's April 30, 2018 employment resignation letter
Defendant's Exhibit 3:	Department's ruling on Defendant's Motion for Summary Judgment in <i>Paul Reis v. Ben & Jerry's Homemade, Inc.</i> , Opinion No. 10-17WC (June 13, 2017)
Defendant's Exhibit 4:	June 30, 2003 letter from therapist Maggie Comparetta
Defendant's Exhibit 5:	January 14, 2004 medical record of Rowland Hazard, MD
Defendant's Exhibit 6:	July 9, 2015 medical record of Dr. Temple
Defendant's Exhibit 7:	February 28, 2017 letter from nurse practitioner Laura Lober
Defendant's Exhibit 8:	March 19, 2018 medical record of nurse practitioner James Walsh
Defendant's Exhibit 9:	April 26, 2018 medical record of Mr. Walsh
Defendant's Exhibit 10:	May 26, 2018 medical record of Dr. Temple
Defendant's Exhibit 11:	May 29, 2018 medical record of Mr. Walsh
Defendant's Exhibit 12:	March 26, 2019 medical record of Dr. Temple
Defendant's Exhibit 13:	December 17, 2019 medical record of Dr. Temple

² On November 5, 2020, Claimant sent a letter to the Department with four documents attached. I have labeled those documents Claimant's Exhibits 2, 3, 4 and 5.

³ On November 2, 2020, Claimant sent a letter to the Department. I have labeled that document Claimant's Exhibit 6.

FINDINGS OF FACT:

The following facts are undisputed:⁴

1. Claimant has alleged both a low back injury and a psychological injury resulting from his employment with Defendant, with an alleged injury date of March 19, 2018. *See Defendant's Exhibit 1, First Report of Injury.*
2. As set forth on the First Report of Injury, Claimant alleges “ongoing mental and emotional bullying, harassment and threats. Threat that I would be shot in the head, + back damage from back pack 19 years. See MRI.” *Defendant's Exhibit 1.*
3. Claimant resigned his employment with Defendant by letter dated April 30, 2018, stating an effective resignation date of May 31, 2018. *Defendant's Exhibit 2.* He wrote: “Thank you for the last 19 years.” *Id.*
4. In 2016, Claimant pursued a workers’ compensation claim against a previous employer, Ben & Jerry’s Homemade, Inc., alleging low back and psychological injuries. The Department dismissed his claim on summary judgment based on the statute of limitations having run. *Defendant's Exhibit 3, Reis v. Ben & Jerry's Homemade, Inc.*, Opinion No. 10-17WC (June 13, 2017).
5. On June 30, 2003, Licensed Marriage and Family Therapist Maggie Comparetta wrote a letter, at Claimant’s request, to “clarify” that he has been diagnosed with post-traumatic stress disorder (“PTSD”). *Defendant's Exhibit 4; Claimant's Exhibit 1-26.* Her letter provides no information as to the cause of his condition, nor when he developed it. Claimant previously alleged that his PTSD arose out of his employment at Ben & Jerry’s in 1994. *See Defendant's Exhibit 3.*
6. On January 14, 2004, Claimant saw Rowland Hazard, MD, for back pain. *Defendant's Exhibit 5; Claimant's Exhibit 1-84, p. 89.* Claimant reported that his back pain began with an incident playing high school football. He then had periodic episodes of severe low back pain and some minor low back pain. Dr. Hazard’s medical record notes that Claimant had an episode of severe back pain two months earlier, when he stepped out of the shower. *Id.* It makes no mention of any work activities affecting Claimant’s back. *See id.*
7. On July 9, 2015, Claimant saw chiropractor Vernon Temple, DC. According to Dr. Temple’s medical record, Claimant reported “no trauma involved” with respect to his

⁴ These facts are set forth in Defendant’s Statement of Undisputed Facts. Claimant did not dispute any part of Defendant’s statement. Thus, I accept Defendant’s Statement of Undisputed Facts as true for purposes of these cross motions. *See* V.R.Civ.P. 56(c)(1)(A) and (B); V.R.Civ.P. 56(c)(2); and V.R.Civ.P. 56(e)(2). *See also Webb v. LeClair*, 2007 VT 65, ¶ 6; *T.A. v. Ann Johnston and Charlotte Rancourt d/b/a Karma Farm*, Opinion No. 05S-07WC (September 12, 2007).

low back pain; he reported that he “just has occasional flare-ups of [low back pain].” *Defendant’s Exhibit 6.*

8. On February 28, 2017, family nurse practitioner Laura Lober wrote a letter stating that Claimant has been under her care for PTSD and anxiety since March of 2015. *Defendant’s Exhibit 7; Claimant’s Exhibit 1-13.* Ms. Lober wrote that Claimant reported incidents that would “qualify as work place harassment” and stated that such incidents were “exacerbating his anxiety and triggering his PTSD.” *Id.* Ms. Lober provided no description of the alleged incidents, nor any information about how Claimant’s anxiety and PTSD were manifesting. *See id.*
9. On March 19, 2018, Claimant saw nurse practitioner James Walsh for anxiety. *Defendant’s Exhibit 8; Claimant’s Exhibit 1-34.* Mr. Walsh documented that Claimant’s anxiety had a “gradual” onset and that it had been “occurring in a persistent pattern for years.” He documented specific precipitating factors of “stressed home life, caring for too many people, managing 3 properties.” Mr. Walsh elaborated that Claimant “takes care of his 94 [year-old] mother, mentally ill brother and is a single father to three teenage children.” *Id.*
10. Claimant saw Mr. Walsh again on April 26, 2018. *Defendant’s Exhibit 9.* Mr. Walsh documented that Claimant presented with PTSD, classified as chronic, arising out of a physical assault, childhood trauma, and a motor vehicle accident with serious injury. *Id.* He did not mention workplace bullying. *See id.*
11. On May 26, 2018, Claimant reported worsening low back pain over the prior two years to Dr. Temple, with no mention of work activities as a cause. *Defendant’s Exhibit 10.*
12. On May 29, 2018, Mr. Walsh noted the same presentation of PTSD and precipitating events as he had noted on April 26, 2018. *Defendant’s Exhibit 11.*
13. On March 26, 2019, Dr. Temple noted a long history of back and neck pain. *Defendant’s Exhibit 12; Claimant’s Exhibit 1-118.*
14. On December 17, 2019, Dr. Temple noted with respect to Claimant’s “long standing chronic low back pain” that Claimant was “attempting to classify the acute exacerbation of his injury over the past several years as a work related injury.” *Defendant’s Exhibit 13; Claimant’s Exhibit 1-108.* Despite this request, Dr. Temple declined to attribute Claimant’s low back pain to his employment. He simply wrote: “Certainly our records indicate that he had increasing back pain over the years.” *Id.*

The following facts from Claimant's exhibits are not in dispute:⁵

15. On June 4, 2015, Rowland Hazard, MD, noted that Claimant has had low back pain "over many years now." Dr. Hazard noted that his pain is "usually aggravated with either sitting or sometimes with running." *Claimant's Exhibit 1-84, at p. 93.*
16. On November 14, 2016, marriage and family therapist Maggie Comparetta wrote a letter stating that Claimant was diagnosed with PTSD on June 30, 2003, when he began therapy. Her letter attributes his condition to the alleged abuse at Ben & Jerry's in 1994 and to his "history of emotional and physical abuse before the age of twelve years old." *Claimant's Exhibit 1-84, at p. 88.*
17. On September 15, 2017, Claimant saw nurse practitioner Grace St. Pierre for treatment of hypertension. Ms. St. Pierre documented that Claimant was focused on his past history of abuse at Ben & Jerry's, when he was "held up and hit with a board." Claimant also described to her at length the "abuse he suffered as a child and trauma which he witnessed" as having caused his PTSD. *Claimant's Exhibit 1-34, at p. 38.*
18. On March 22, 2018, nurse practitioner James Walsh reported that Claimant was "worked up" over an incident at Ben & Jerry's that was alleged to have occurred over 20 years before. *Claimant's Exhibit 1-34, at p. 34.*
19. Claimant has alleged that he was bullied during his employment with Defendant.⁶ *See, e.g., Claimant's Exhibit 1-11 (October 26, 2017 letter from Attorney Raymond Massucco to Defendant).* Defendant has denied the bullying allegations. *See Claimant's Exhibit 1-80 (April 4, 2018 letter from Defendant to Attorney Massucco).*

CONCLUSIONS OF LAW:

1. To prevail on a summary judgment motion, the moving party must show that there exist no genuine issues of material fact, such that it is entitled to judgment in its favor as a matter of law. *Samplid Enterprises, Inc. v. First Vermont Bank*, 165 Vt. 22, 25 (1996). Summary judgment is appropriate only when the facts in question are clear, undisputed or unrefuted. *State v. Heritage Realty of Vermont*, 137 Vt. 425, 428 (1979).
2. The party opposing a summary judgment motion is entitled to the benefit of all reasonable doubts and inferences. *State v. Delaney*, 157 Vt. 247, 252 (1991); *Toys, Inc. v. F.M. Burlington Co.*, 155 Vt. 44, 48 (1990). Where the parties have filed cross motions, each party is entitled to the benefit of all reasonable doubts and inferences when the opposing party's motion is being judged. *Toys, Inc.*, 155 Vt. at 48.

⁵ Claimant did not file a Statement of Undisputed Facts; rather, he relies upon a set of exhibits that he filed. Defendant has not disputed Claimant's exhibits, and I have considered them as permitted by V.R.Civ.P. 56(c)(3).

⁶ Claimant's allegations are not supported by any affidavits or sworn statements from himself or any witnesses.

3. Once a properly supported summary judgment motion has been made, the non-moving party may not rest on mere allegations in its pleadings. *Pierce v. Riggs*, 149 Vt. 136, 138-39 (1987). Rather, it must respond with sufficient evidence, such as a sworn affidavit, to support a *prima facie* case. *Gauthier v. Keurig Green Mountain, Inc.*, 2015 VT 108, ¶ 14. If an essential element of the non-movant's case cannot be established, summary judgment is appropriate. *State v. G.S. Blodgett Co.*, 163 Vt. 175, 180 (1995).

Claimant's Burden of Proof

4. Claimant has the burden of proving that his claimed injuries arose out of and in the course of his employment with Defendant. *King v. Snide*, 144 Vt. 395, 399 (1984); see 21 V.S.A. § 618. He must establish by sufficient credible evidence the character and extent of his injuries, see, e.g., *Burton v. Holden & Martin Lumber Co.*, 112 Vt. 17 (1941), as well as the causal connection between the injuries and his employment. *Egbert v. The Book Press*, 144 Vt. 367 (1984).

Compensability of Claimant's Low Back Condition

5. Claimant asserts that his low back condition is causally related to his employment as a custodian for Defendant. Where the causal connection between a claimant's medical condition and his or her employment is obscure, such that a layperson could have no well-grounded opinion as to causation, establishing the claim requires expert medical testimony. *Egbert v. The Book Press*, 144 Vt. 367, 369 (1984); *Lapan v. Berno's Inc.*, 137 Vt. 393, 395-96 (1979). As the causal relationship between Claimant's low back condition and his employment for Defendant here is beyond the ken of the ordinary layperson, expert medical opinion is required to establish causation.
6. Claimant has offered no medical opinion relating his low back symptoms to his employment. Rather, his medical records largely attribute his symptoms to age-related degenerative changes in his lumbar spine. See, e.g., *Claimant's Exhibit I-56 (2008 medical record noting degenerative disc disease with chronic low back pain)*. Without a medical opinion as to the causal relationship between his low back condition and his employment, Claimant cannot establish the compensability of his low back claim. See *Egbert, supra*, 144 Vt. at 369.
7. I further note that, in 2016, Claimant filed a workers' compensation claim for his low back condition against his prior employer, Ben & Jerry's. See *Reis v. Ben & Jerry's Homemade, Inc.*, Opinion No. 10-17WC (June 13, 2017), at Finding of Fact No. 11. At the time he filed his claim against Ben & Jerry's, Claimant had already been working for Defendant as a custodian for 17 years; yet he did not attribute his chronic low back condition to his custodial employment.
8. Considering the evidence here in the light most favorable to Claimant, I conclude that he has failed to establish a *prima facie* case for the compensability of his low back condition. On this issue, therefore, Claimant is not entitled to judgment in his favor, and Defendant is entitled to judgment in its favor, as a matter of law.

Compensability of Claimant's Psychological Condition

9. Claimant also asserts a psychological condition related to his employment as a custodian for Defendant. In particular, he asserts that he suffers from PTSD and anxiety caused by workplace bullying. To support his motion for summary judgment, and to survive the motion for summary judgment filed against him, he must proffer expert medical evidence to establish a *prima facie* case for the compensability of his psychological condition. See *Egbert v. The Book Press*, 144 Vt. 367, 369 (1984); *Lapan v. Berno's Inc.*, 137 Vt. 393, 395-96 (1979).
10. Vermont law recognizes the compensability of work-related psychological injuries that do not involve a physical component. The standard for evaluating such claims depends on whether the psychological injury occurred before July 1, 2017, the effective date of a substantive statutory amendment, or thereafter. See generally *Bergeron v. City of Burlington*, Opinion No. 14-18WC (October 15, 2018); 21 V.S.A. § 601(11)(J)(i), effective July 1, 2017.
11. However, under either the pre- or post-amendment standard of compensability, a claimant must prove that the psychological injury arose out of and was incurred in the course of employment. See 21 V.S.A. § 618(a)(1). Since Defendant's contention is that Claimant cannot establish that his psychological complaints are work-related, and the question of causation is common to both standards of compensability, it is not necessary to determine which standard applies to resolve the present motions. See *Scott Reed v. Craftsbury Academy*, Opinion No. 21-19WC (November 20, 2019).
12. Claimant has filed only one document relating his psychological symptoms to his employment with Defendant. That document is a February 28, 2017 letter from family nurse practitioner Laura Lober. *Claimant's Exhibit 1-13*. Ms. Lober's letter states:

[Claimant] has been under my care for a medical problem PTSD and anxiety since March of 2015. He was seen by me today on 2/28/17. He reported to me incidences that have been occurring at work that would qualify as work place harassment. In my opinion, these incidences are exacerbating his anxiety and triggering his PTSD and making it very difficult for him to function at work.
13. The issue for this summary judgment motion is whether Ms. Lober's letter creates a genuine issue of material fact as to whether Claimant's psychological condition is causally related to his employment with Defendant.
14. For an expert affidavit to defeat an opposing party's summary judgment motion, it must present "specific facts demonstrating a genuine issue for trial." *Morais v. Yee*, 162 Vt. 366, 371 (1994) (conclusory expert affidavit "unsupported by specific facts or any indication of how the opinion was formulated" held insufficient to defeat summary judgment). The *Morais* Court wrote: "If an expert presents 'nothing but conclusions – no facts, no hint of an inferential process, no discussion of hypotheses considered and rejected,' such testimony will be insufficient to defeat a motion for

summary judgment.” *Morais*, 162 Vt. at 371-72, quoting *Mid-State Fertilizer Co. v. Exchange Nat’l Bank*, 877 F.2d 1333, 1339 (7th Cir. 1989).

15. The Department has had several recent occasions to consider the sufficiency of an expert affidavit in the summary judgment context. In *Huang v. Progressive Plastics, Inc.*, Opinion No. 17-18WC (December 21, 2018),⁷ the claimant asserted a claim for neck pain. The defendant moved for summary judgment on the grounds that the claimant could not demonstrate a causal connection between his neck symptoms and his employment. The claimant’s medical records overwhelmingly showed that his neck symptoms were due to age-related degenerative changes. They included just one statement from a nurse practitioner that the claimant’s stenosis and cervical disc bulge “certainly could have occurred after the heavy lifting incident that occurred at his place of work on 3/16/2018.” *Id.*, at Conclusion of Law No. 22. The Commissioner held that this statement was insufficient to create a genuine issue of material fact, as it merely asserted a possible temporal sequence, not a causal relationship.
16. The Department considered the issue again in *Reed v. Craftsbury Academy*, Opinion No. 21-19 (November 20, 2019). The claimant in *Reed* asserted a claim for psychological injuries. The defendant moved for summary judgment on the grounds that the claimant could not demonstrate a causal connection between his psychological condition and his employment. In response, the claimant filed an affidavit from his mental health counselor. Her affidavit included a statement that it was her “clinical opinion that [claimant’s] current health issues are a direct result of years of intimidation, bullying and vicious attacks by principal, Merri Greenia at the Craftsbury Academy School.” *Reed, supra*, at Finding of Fact No. 8. The counselor noted that the claimant demonstrated an extreme fear of the principal and exhibited symptoms of hypervigilance, sleeplessness and depression. *Id.* She also identified a “breakthrough memory” that the claimant experienced during a treatment session concerning his being required to build a windowless disciplinary enclosure for a misbehaving student. She noted that the claimant felt horrible about what he had done and what the child must have endured in the windowless enclosure. As a result, he was “constantly” thinking about the enclosure. *Reed, supra*, at Finding of Fact No. 9. Finally, the counselor’s affidavit referenced the diagnostic criteria for PTSD, although she did not systematically assess each criterion. *Reed, supra*, at Finding of Fact No. 10.
17. The Commissioner in *Reed* found the counselor’s affidavit sufficient to create a genuine issue of material fact for trial. Although he characterized the affidavit as “quite light on detail,” it still contained enough factual details regarding the claimant’s specific symptoms, concerns and experiences that it was more than just conclusions. *Reed, supra*, at Conclusion of Law No. 7.
18. Analyzing Claimant’s evidence in the context of *Huang* and *Reed*, I first find that his evidence is different in nature from the evidence in *Huang*. While the evidence in *Huang* merely stated a possibility of a causal relationship between the claimant’s neck

⁷ The Vermont Supreme Court affirmed the Department’s ruling in an unpublished decision in Supreme Court Docket No. 2019-042 issued on July 12, 2019.

condition and his employment, Ms. Lober affirmatively stated that the alleged workplace bullying was exacerbating Claimant's psychological condition. Thus, the sufficiency of Claimant's evidence here turns on whether Ms. Lober's letter offers a sufficient factual and analytical basis for her opinion, similar to the analysis in *Reed*.

19. Unlike the counselor's affidavit in *Reed*, Ms. Lober's letter provides no description of Claimant's bullying allegations whatsoever. She merely states that Claimant reported incidents at work that she would characterize as harassing. Thus, her statement that Claimant experienced workplace harassment is entirely conclusory.
20. In a similar manner, Ms. Lober's letter states that the unspecified harassment was exacerbating Claimant's anxiety and triggering his PTSD. In contrast to the counselor's affidavit in *Reed*, see Conclusion of Law No. 16 *supra*, Ms. Lober provided no factual detail as to Claimant's symptoms or the manifestation of his increased stress and anxiety. Further, she did not address, or even refer to, any diagnostic criteria for his psychological condition. In short, Ms. Lober's letter contains no facts, no hint of an inferential process, and no discussion of any hypotheses that she considered and rejected. She simply stated that harassment occurred and that it exacerbated Claimant's psychological condition. Accordingly, I find that Ms. Lober's letter is "nothing but conclusions." See *Morais*, *supra*, 162 Vt. at 371–72. As such, her letter does not establish a *prima facie* case of compensability, nor does it defeat Defendant's summary judgment motion.
21. Considering the evidence here in the light most favorable to Claimant, I conclude that he has failed to provide sufficient evidence to establish a *prima facie* case for the compensability of his psychological condition. On this issue, therefore, he is not entitled to judgment in his favor, and Defendant is entitled to judgment in its favor, as a matter of law.

ORDER:

Defendant's Motion for Summary Judgment is hereby **GRANTED**. Claimant's Motion for Summary Judgment is hereby **DENIED**.

DATED at Montpelier, Vermont this 16th day of February 2021.

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.