

**STATE OF VERMONT  
DEPARTMENT OF LABOR**

Milenko Milijevic

Opinion No. 02-23WC

v.

By: Stephen W. Brown  
Administrative Law Judge

University of Vermont

For: Michael A. Harrington  
Commissioner

State File Nos. JJ-61048 and KK-63398

**OPINION AND ORDER**

Hearing held via Microsoft Teams on July 6 and July 7, 2022  
Record closed on September 22, 2022

**APPEARANCES:**

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

**ISSUES PRESENTED:**

1. Did Claimant suffer a low back, cervical spine, right knee, right arm, and/or psychological injury arising out of and in the course of his employment with Defendant?
2. If so, to what benefits is he entitled?

**EXHIBITS:**

Joint Medical Exhibit (“JME”)  
Preservation Deposition of Austin Sumner, M.D.

Claimant’s Exhibit 1: Employee Evaluations

Defendant’s Exhibit A: Video Surveillance (2 compact discs)<sup>1</sup>

**FINDINGS OF FACT**

1. Claimant is originally from Bosnia, where he trained as a mechanic and driver. He worked in the transportation industry in Bosnia, as well as in a police department. He emigrated to Serbia during the Bosnian Civil War, and later moved to Vermont in

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<sup>1</sup> At the formal hearing, Defendant referenced both surveillance videos and reports. Upon review, the materials submitted only appear to contain the surveillance videos, and not the accompanying reports.

2003. He has a history of leg injuries before moving to Vermont, including a right leg tendon injury that required surgical repair in 2003. However, his injuries prior to his move to the United States healed and did not significantly limit his work activities in Vermont.

2. After moving to Vermont, Claimant initially worked as a janitor for IBM in Essex. In 2006, he left that position to accept employment with Defendant in its housekeeping division, where he worked until April 2018. He received positive work evaluations in that role. (*See generally* Claimant's Exhibit 1).
3. While working for Defendant, Claimant also worked several nights per week as a janitor for Lucky's Peterbilt in Colchester, Vermont.
4. Claimant's work duties for Defendant included cleaning classrooms, often involving the use of a backpack vacuum cleaner with a long extension cord.

#### *Alleged Trip Without a Fall at Work on March 6, 2017*

5. Claimant alleges that on March 6, 2017, while vacuuming an auditorium on Defendant's premises, he became entangled in an extension cord, tripped, and twisted, but avoided falling by reaching out with his right hand and catching a railing.
6. The precise date on which this alleged incident occurred is a matter of much confusion and controversy. Claimant insists that the tripping incident occurred on March 6, 2017, and not any other date. He asserts that on that date, he reported the injury to his supervisor, got her to record his allegation in a written report, and was sent to Concentra for a medical workup. He testified that all these events occurred on the same day.
7. Defendant's first report of injury is dated March 8, 2017, and states that the incident occurred that morning. Claimant's primary expert witness, Mark Bucksbaum, MD, testified that his causation analysis is based on Claimant's injury having occurred on March 8, 2017, and not March 6, as Claimant alleges.

#### *Medical Records from March 2017 Raise Questions Concerning Chronology*

8. On March 2, 2017, four days before Claimant allegedly suffered his workplace injury, he presented to the University of Vermont Medical Center's ("UVMHC's") Emergency Department with complaints of dizziness, headache, abdominal pain, and shortness of breath. The medical record from that visit notes that Claimant had been using narcotic pain medication since 2016<sup>2</sup> and had mild anemia, but otherwise the cause of his symptoms was unclear. In any event, his symptoms resolved during his emergency visit, and his providers recommended a follow-up with Claimant's primary care provider Wayne Warnken, MD, at the Community Health Centers of Burlington ("CHCB"). (JME 19-31).

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<sup>2</sup> Claimant testified that he was taking Vicodin for abdominal pain associated with a gallbladder condition.

9. On March 7, 2017, the day after Claimant claims his workplace injury occurred, he presented to CHCB, where he saw Adam Greenlee, MD. He complained of chronic right-sided musculoskeletal pain, numbness, tingling, and fatigue. Claimant reported that he had been taking pain medicine daily and that his pain had “been ongoing for years.” He requested a referral to a rheumatologist to check on his arthritis and asked what testing should be done to “evaluate the severity of his arthritis.” (JME 34-39).
10. Importantly, nothing in the March 7, 2017 medical record references any recent trauma or injury. All his recorded concerns relate to chronic conditions such as arthritis and pain that had been ongoing for years. Claimant was seeking a consultation with a rheumatologist for those concerns.
11. Moreover, the March 7, 2017 record expressly notes, “context: *there is no injury*,” and states that Claimant was “*unable to describe what has made pain worse*.” JME 34 (emphasis added). It does record a “remote history” of falling down some stairs three years prior while shoveling snow. It also notes that Claimant had some shooting pain down his leg associated with numbness and weakness, and that he reported feeling “unsteady but *without falls*.” (*Id.*) (emphasis added).
12. Claimant testified at the formal hearing that he told Dr. Greenlee about his March 6 workplace tripping accident during this March 7, 2017 visit. Dr. Greenlee did not testify at the formal hearing and thus could not corroborate Claimant’s account.
13. While it is common for medical records to leave out important details of a patient’s narrative, I find it unusual for a medical record from the day after an alleged injury—particularly an injury severe enough to lead to two surgeries, *see* Finding of Fact No. 32, *infra*—to say “there is no injury,” and note that the patient was “unable to describe” the source of his pain.
14. While English is not Claimant’s first language and he uses an interpretation service, he is highly expressive and demonstrated an ability to communicate effectively at the formal hearing. It is also apparent that he speaks and understands some English. If he had recently suffered an injury, I find that he most likely would have communicated it to Dr. Greenlee on March 7, 2017 and that it would have been reflected in this note.
15. The next day, March 8, 2017, two days after Claimant alleges that he tripped without a fall at work, and the same day as Defendant’s First Report of Injury (Form 1), Claimant visited Concentra Medical Centers in South Burlington, Vermont. At Concentra, he saw Colleen Bud, NP, with complaints of a right elbow injury with pain in his neck, back, and down his right leg. Nurse Bud diagnosed him with a myofascial strain, lumbosacral strain, and right shoulder strain related to an “Acute Musculoskeletal Injury” that occurred two days prior, on “*3/6/2017*.” (JME 40-43) (emphasis added). Nothing in this record describes how the injury occurred. Nurse Bud released Claimant to work with full shifts but with activity restrictions. (JME 45).

16. Claimant followed up with Nurse Bud at Concentra on March 10, 2017, reporting worsening pain and an inability to tolerate working more than six hours of an eight-hour shift. Nurse Bud noted that he had a full range of motion, although using the full range was painful. Like the previous record from Concentra, the note from this visit did not record any specific mechanism of Claimant's injury. (JME 49-53).
17. The first medical record that documents a narrative of how Claimant's alleged March 6, 2017 injury occurred was on March 16, when Claimant saw his primary care physician, Dr. Warnken, at CHCB. This was ten days after Claimant alleges his workplace injury occurred. On March 16, 2017, Dr. Warnken recorded Claimant's narrative as follows:

Follow Up of Musculoskeletal Pain

Onset on 03/06/2017. The problem is improving. Location: right arm. **Context: there is an injury.**

Additional information: Here to be referred for MRI/other testing for work injury. Right side of body is bothersome from neck to foot.

Pt was vacuuming at work, hit body on side of desk.

(JME 54) (emphasis added).

18. Dr. Warnken took Claimant out of work until March 20, 2017. (JME 61).
19. Dr. Warnken's March 16, 2017 record demonstrates both that Claimant was capable of communicating the existence and mechanism of an injury and that CHCB's recordkeeping practice contemplates the importance of recording whether or not a medical visit is related to an injury.
20. Claimant's medical records from March 2017 collectively undermine the otherwise plausible inference that Claimant suffered a workplace injury on March 8, 2017 and was simply mistaken about the date of injury when he testified at the formal hearing. He told two different providers, just two and ten days after his alleged injury, that his injury occurred on March 6. This underscores the significance of the March 7 note's specific statement that there was "no injury" at that time and its reference to **chronic, right-sided pain** in the same regions that Claimant later claimed to have been acutely injured on March 6, 2017. All of this further accentuates the importance of Claimant's testimony that the injury, the first report of injury, and his visit to Concentra all happened on the same day.

*Claimant's Return to Work; Non-Work-Related Motor Vehicle Accident in February 2018*

21. Claimant subsequently returned to work for Defendant with activity restrictions, although the precise date of his return is unclear.
22. On February 24, 2018, he was involved in a non-work-related motor vehicle accident. Another car drove across his lane of traffic as it attempted to turn left. As a result of

this accident, Claimant experienced a worsening of his lower back and cervical spinal pain that he had already been experiencing.

23. Claimant presented to the UVMMC Emergency Department three days after the accident, on February 27, 2018, with complaints of head and neck pain as well as insomnia and stress following the accident. (JME 262 *et seq.*). He missed approximately ten days of work following this accident.
24. On March 5, 2018, he again presented to UVMMC's Emergency Department and reported that he had returned to work but experienced a flare of his symptoms. He reported that his symptoms had not improved since the motor vehicle accident, and he rated his pain as 10/10 at that time. (JME 283). He complained at that time of dizziness with the extension of his neck. (*Id.*).
25. On April 16, 2018, during a follow-up visit concerning the motor vehicle accident, Claimant was assessed with whiplash resulting in acute on chronic neck and lower back pain from that accident, as well as bilateral heaviness, new left leg pain, acute on chronic right leg pain, and dizziness. (JME 340-341).
26. During a physical therapy session four days later, Claimant again complained of dizziness following head movement. (JME 343).

*New Allegation of Work-Related Dizziness on April 26, 2018*

27. On April 26, 2018, Claimant left work due to severe dizziness, a complaint that had generated several medical visits since his February 2018 automobile accident, and for which he also sought care just four days before his alleged March 2017 injury giving rise to this case. *See* Findings of Fact Nos. 8, 24-26, *supra*.
28. He presented to UVMMC's Emergency Department on April 26, 2018, and reported that while he was cleaning toilets at work, he experienced an onset of bilateral neck and lower back pain as well as dizziness. (JME 361). This incident generated a new workers' compensation claim because the onset occurred while Claimant was at work.
29. On April 30, 2018, Claimant followed up with Dr. Warnken, who took him out of work because of his "neck injury at work on 4/26/18." (JME 400).
30. Claimant has never returned to work for Defendant and has not performed any work for wages anywhere since April 2018.
31. Claimant characterizes the April 26, 2018 incident as a new workplace injury, while Defendant contends that it was a continuation of the dizziness that followed his non-work-related February 2018 automobile accident.

Medical Treatment; Claimed Disability

32. From March 2017 onward, Claimant underwent extensive medical treatment for his lower back, cervical spine, right knee, and shoulder conditions. The treatment he received after March 2017 is markedly more intensive than before that date and includes surgeries to Claimant's right knee in September 2018 (JME 537 *et seq.*) and cervical spine in September 2019 (JME 869 *et seq.*). He has undergone extensive physical therapy, injections, and psychological counseling. The medical records in evidence comprise over 1,500 pages of treatment, all of which Claimant contends is ultimately related to his alleged March 2017 workplace injury.
33. Claimant also asserts that he has been totally disabled from work since he left Defendant's workplace in April 2018. He seeks over four years of temporary total disability benefits, which he causally attributes to his alleged trip without a fall in March 2017.
34. Claimant accurately notes that there is no evidence that Defendant advised him of any obligation to perform a work search.

Surveillance

35. Defendant retained Richard Murphy, a licensed private investigator and owner of FYI Investigative Group, to perform surveillance of Claimant to determine the extent of Claimant's daily activities. He performed six days of surveillance in mid-August 2020, at various times of the day. These videos are in evidence. *See* Defendant's Exhibit A. They raise significant questions about Claimant's asserted disability from work.
36. On the morning of August 11, 2020, Mr. Murphy filmed Claimant shopping with his family, lifting his granddaughter<sup>3</sup> out of a car with his right arm, and carrying her without apparent difficulty. Later that same day, Mr. Murphy filmed Claimant driving to Williston, Vermont, where he attempted to change a tire on a car using a jack. Although the car that Claimant was working on occludes the view of his actual motions, the video shows the car repeatedly lurching back and forth as Claimant exerted pressure. Claimant then drove to an automotive repair store, where he jacked the vehicle up and again attempted to remove and replace another tire.
37. On August 13, 2020, Mr. Murphy filmed Claimant driving with his wife to Lucky's Peterbilt in Colchester, Vermont. The business appeared to be closed for the evening, but Claimant entered with a key. Inside, Claimant and his wife performed custodial services. Later that evening, Claimant and his wife traveled to Klinger's Bakery in South Burlington, Vermont, where they met Claimant's adult daughter, Mirjana Mahmutovic. All three performed custodial work at that location. Claimant mopped and swept the floors.

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<sup>3</sup> Claimant identified the child as his granddaughter at the formal hearing.

38. On August 18, 2020, Mr. Murphy again filmed Claimant performing custodial services including mopping and sweeping at Lucky's Peterbilt and Klinger's. On this date, Claimant also appeared to perform custodial services at the Champlain Marina, though the dim lighting makes it difficult to see exactly what activities he was performing.
39. Claimant's daughter, Mirjana Mahmutovic, testified at the formal hearing that she and her husband own a cleaning business. Lucky's, Klinger's, and the Champlain Marina are all clients of their business. Mrs. Mahmutovic credibly testified that she observed her father displaying depressive symptoms after he stopped working for Defendant, so she encouraged him to start helping her with the cleaning services to get him out of the house. The cleaning service does not pay Claimant, and he often takes breaks.
40. Mrs. Mahmutovic has viewed the surveillance videos that Mr. Murphy took of her father and credibly acknowledged that they are a fair representation of the custodial work he performs. She credibly acknowledged that he is capable of tasks such as mopping and sweeping.
41. Claimant testified that it was difficult to pick up his granddaughter, and that it hurt a little, but that he only carried her for a moment, and that she was only three years old. He also testified that it was difficult to change the automobile tire. While he did appear to experience some technical difficulty, the videos do not leave me with the impression that he found this work to be physically demanding. He also testified that he generally does not drive, and that his wife drives. However, he acknowledged that the surveillance videos show him driving. I find Claimant's responses less than satisfying as explanations for the level of apparent activity tolerance recorded in these videos.

Expert Medical Evaluations and Testimony

42. Four medical experts testified at the formal hearing: Claimant's treating clinical psychologist Lauren Dewey, M.D.; and three physicians who performed independent medical examinations ("IMEs"): Austin Sumner, MD; Mark Bucksbaum, MD; and Nancy Binter, MD.

Lauren Dewey, Ph.D.

43. Claimant called Dr. Dewey as an expert witness on the subject of Claimant's psychological conditions.
44. Claimant began counseling with Dr. Dewey beginning in November 2020. She has diagnosed him with major depressive disorder with anxious stress as well as posttraumatic stress disorder ("PTSD") with persistent depressive disorders, all causally related to Claimant's March 2017 injury and its aftermath.

45. Dr. Dewey testified that Claimant's reported inability to work contributes to his depressive symptoms, as being a good worker is important to his identity and more broadly in Bosnian culture.
46. Despite seeing him approximately 65 to 70 times, she found that Claimant has made little progress. In her experience, Claimant appears scattered and irritable, and she has rarely seen him in a good mood. She believes that Claimant needs more intensive therapy, with more than one session per week, but she cannot provide that level of care.
47. Dr. Dewey testified that she requested and received a large stack of Claimant's medical records from CHCB. Although she flipped through those records to identify any significant relevant diagnoses, she acknowledged that she did not closely examine all of them, noting that doing so would be outside the scope of her clinical practice and that she would not be compensated for that extra work.
48. Dr. Dewey was unaware of Claimant's February 2018 automobile accident and did not recall any discussions with him about that incident.
49. I have no reason to question Dr. Dewey's diagnoses of Claimant with depression and PTSD. However, I find that her assessment of causation ultimately relies on Claimant's narrative about what happened in March 2017, a narrative that I find unconvincing in large part because of unresolved temporal inconsistencies with his medical records, with which Dr. Dewey did not demonstrate close familiarity. Accordingly, I find her clinical diagnoses persuasive, but not her causation opinions.

Mark Bucksbaum, MD

50. Dr. Bucksbaum is a psychiatrist who practices physical medicine in Rutland, Vermont. He performed his IME of Claimant on March 19, 2020, at Claimant's request. He subsequently reviewed additional medical records after the completion of his report and has reviewed the complete JME in this case.
51. In Dr. Bucksbaum's opinion, Claimant's right shoulder, cervical spine, low back, and right knee conditions are all causally related to an injury that Claimant sustained while working for Defendant on **March 8**, 2017, not March 6, as Claimant insists.
52. By using March 8 as the date of injury, Dr. Bucksbaum minimizes the importance of the March 7, 2017 medical record that there was "no injury" at that time while recording chronic pain complaints in the same regions as Claimant's alleged work injury. However, Dr. Bucksbaum does not convincingly account for the fact that Claimant's March 8, 2017 medical record specifically identifies March 6 as the date of injury. *Cf.* Finding of Fact No. 15, *supra*.
53. Additionally, Dr. Bucksbaum believes that Claimant's February 24, 2018 automobile accident exacerbated his pain but "did not cause an aggravation, worsening, or any new injuries, and did not result in any additional treatment" that would not have been



necessary already for the March 2017 injury except for the initial emergency room visit and subsequent March 5, 2018 follow-up appointment.

54. In his opinion, Claimant's symptoms related to the automobile accident resolved after March 5, 2018, even though his medical record on that date rated Claimant's pain level as 10 out of 10. He acknowledged on cross examination that Claimant continued to attend follow-up appointments related to that automobile accident into April 2018 for symptoms including dizziness. However, Dr. Bucksbaum opined that as of April 26, 2018, Claimant experienced a "different kind of dizziness" that was not related to the automobile accident. I find it difficult to identify a foundation for this opinion.
55. Dr. Bucksbaum has viewed the videos that Mr. Murphy shot. He testified that it is important to be "very cautious" when considering these surveillance videos and that he did not find it possible to "extrapolate too much" from them. He noted that video of activity was not the same as video of "sustained" activity. I find this cautionary note well-founded, but even viewing these videos with caution leaves me with the impression that Claimant has an activity tolerance inconsistent with his claimed level of disability.
56. Finally, Dr. Bucksbaum testified that in his opinion, Claimant's medical treatment for his cervical spine, lumbar spine, right knee, and right shoulder to date has been reasonable. I have no reason to doubt the reasonableness of Claimant's medical treatment, but I remain unconvinced that his need for any of it stems from any workplace injury.
57. Dr. Bucksbaum's causation analysis does not convincingly account for the medical chronology in this case or the important ways in which Claimant's narrative appears at odds with that chronology.
58. While there is no basis to question Dr. Bucksbaum's medical credentials or expertise, his causation opinions in this case ultimately rest largely upon Claimant's narrative, which I have not credited. I therefore find these opinions unpersuasive.

Austin Sumner, MD

59. Dr. Sumner is a board-certified environmental and occupational medicine physician who examined Claimant on December 18, 2018, at Claimant's request. He reviewed Claimant's medical records up through the date of his examination and subsequently reviewed additional records in preparation for his testimony. As of the time of his testimony in this case, Dr. Sumner had not received or reviewed the surveillance videos that Mr. Murphy had taken of Claimant.
60. Dr. Sumner credibly testified that Claimant demonstrated exaggerated pain behaviors and inconsistencies during his examination such as keeping his leg very straight. In his opinion, there was no physiological explanation of this presentation given Claimant's diagnoses. Dr. Sumner credibly described Claimant as having "an unusual presentation, and I would say it does make one suspect."

61. However, Dr. Sumner testified that in his experience working with non-native English-speaking populations, he has found that some patients can be overly expressive with their body expressions to show a physician that they are in pain because they are unable to adequately express their complaints verbally. Dr. Sumner also testified that Claimant's pain behaviors could potentially be explained as trauma behaviors, although he candidly acknowledged that another "plausible explanation is that he wasn't really being straight with his physical exam."
62. I find Dr. Sumner's cultural observations plausible and credible as applied broadly across populations, and I certainly do not endorse the view that any recorded symptom exaggeration or inconsistency on examination signals a patient's dishonesty. However, Dr. Sumner's observations of Claimant's exaggerated behaviors in this case, when combined with all of the other discrepancies concerning the timeline and extent of disability, still contribute to my overall assessment of Claimant's credibility.
63. Dr. Sumner credibly testified that in assessing causation in any case, it is important to have a clear understanding of both the date and mechanism of injury. He described his understanding of the mechanism of Claimant's alleged March 2017 trip without a fall based on Claimant's description. In his opinion, this incident contributed to multiple injuries, including to Claimant's right knee, right leg, lumbar spine, cervical spine, and right shoulder. In Dr. Sumner's opinion, the medical treatment Claimant has received for those injuries has been reasonable but is not yet complete.
64. He acknowledged that the date of injury in this case was unclear. With respect to Dr. Greenlee's March 7, 2017 record which stated that there was "no injury" on the day after Claimant's claimed injury, Dr. Sumner found that this record was not particularly detailed. He also testified that this note reflected some pain complaints consistent with his later presentation to Nurse Bud the following day, and that it appeared that Nurse Bud had performed a more comprehensive examination on March 8 than Dr. Greenlee had performed on March 7. I find this less than compelling as a reconciliation of this chronological inconsistency.
65. With respect to Claimant's February 2018 automobile accident, Dr. Sumner noted that Claimant's symptoms increased as a result of that accident, but that he was actively symptomatic before it. He noted that after the accident, Claimant never returned to his previous baseline, but in his opinion, the accident did not substantially alter his medical care for his underlying March 2017 workplace accident. Dr. Sumner also believes that Claimant's April 26, 2018 incident at work flared his then-existing symptoms related to his March 2017 workplace injury.
66. Like Dr. Bucksbaum's opinions, the persuasiveness of Dr. Sumner's opinion that Claimant's medical conditions are causally related to a March 2017 workplace injury is entirely dependent on Claimant having suffered a March 2017 workplace injury in the first place. His testimony does not resolve my questions about whether that actually occurred.

Nancy Binter, MD

67. Dr. Binter is a board-certified neurosurgeon who performed two record reviews of Claimant in December 2017 and November 2019, and an IME on August 26, 2020, all at Defendant's request. She testified as an expert witness for the defense and reviewed the entire JME before providing her testimony.
68. When Claimant presented for his IME with Dr. Binter, he reported significant ongoing pain and limitations concerning his neck, right knee, and right shoulder. He told her that he was in too much pain for her to proceed with examining his right upper extremity. This was less than two weeks after Mr. Murphy observed Claimant lifting and carrying his grandchild, removing car tires with a jack, and performing custodial services for his daughter's business.
69. At the time of her IME, Dr. Binter had not viewed those videos. However, she reviewed them afterward and addressed them in an addendum. She also reviewed those videos again before testifying at the formal hearing. Dr. Binter found it noteworthy that Claimant could pick up his granddaughter and hold her in his right arm, and that he could perform the movements required to change a car tire just fifteen days before his IME, where he reported that his arm was in so much pain that Dr. Binter could not examine it. She found the fluidity of his overall movements in those videos consistent with a "fit, smoothly functioning person" and not someone limited by chronic pain. She credibly described his custodial work as captured in those videos as "clearly working and moving well." I find this characterization well-supported by the videos themselves.
70. With respect to Dr. Greenlee's March 7, 2017 medical record, Dr. Binter accurately noted that the record reflects a musculoskeletal examination with full bilateral knee strength in both flexion and extension. She also accurately notes that it documents "no injury," except for a "remote history" of a fall while shoveling snow. She accurately noted that this record did not discuss any acute incident the day before, and that the provider ordered laboratory tests for arthritic conditions, not for any acute injury.
71. As to Claimant's February 2018 automobile accident, Dr. Binter credibly testified that Claimant told her that his car was totaled. She accurately noted that the medical records following this accident reflect worsened neck pain, low back pain, and significant dizziness. She also noted that Claimant's April 16, 2018 medical record documented significant symptoms, including dizziness, from the automobile accident. In her opinion, Claimant's complaints of dizziness and loss of balance on April 26, 2018, when he left work and never returned, constituted a continuation of his symptoms following the automobile accident. I find this opinion credible and persuasive.
72. In Dr. Binter's opinion, there is no evidence that any injury that Claimant suffered on or March 6, 2017 caused or contributed to any objective worsening of his lower back, neck, right shoulder, or right knee.

## 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 (May 7, 1993).
2. This is a case where the weight of all of the evidence—including the extensive expert testimony concerning causation, the reasonableness of medical treatment, and extent of disability—boils down to whether Claimant’s description of the core events giving rise to this case sustains his factual burden of proof.
3. There is no single piece of evidence that, by itself, squarely contradicts Claimant’s account. However, the combined effect of his chronological inconsistencies, the difference between his guarded presentation at Dr. Binter’s IME and the surveillance videos showing easy and fluid full-body movements only two weeks earlier, and the disconnect between his asserted work capacity and his apparent activity tolerance in those videos all contribute to significant credibility concerns. Those concerns ultimately leave me unable to take his word at face value.
4. Claimant has not convinced me that anything that happened in March 2017 occurred the way he described, or that he sustained any injury at work. Nor has any evidence in the record convinced me that any dizziness he experienced beginning in April 2018 was anything other than a continuation of symptoms that he began experiencing after a non-work-related automobile accident two months prior, or that anything he did at work contributed to this condition. I find Dr. Binter’s opinion in this regard to be convincing and well-supported by the contemporaneous medical records.
5. Based on the evidence presented, I conclude that Claimant has failed to sustain his burden of proof that he has a viable claim for workers’ compensation benefits.

## **ORDER:**

Based on the foregoing Findings of Fact and Conclusions of Law, this claim is **DISMISSED**.

**DATED** at Montpelier, Vermont this 25th day of January 2023.

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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.