

**STATE OF VERMONT
DEPARTMENT OF LABOR**

Kenneth King

Opinion No. 13-23WC

v.

By: Beth A. DeBernardi
Administrative Law Judge

Century Arms, Inc.

For: Michael A. Harrington
Commissioner

State File No. JJ-59895

RULING ON CROSS MOTIONS FOR SUMMARY JUDGMENT

APPEARANCES:

Christopher McVeigh, Esq., for Claimant

Oliver A. Abbott, Esq., for Defendant

ISSUES PRESENTED:

1. Is Defendant obligated to pay the cost of an evaluation performed by a physician chosen by Claimant?
2. Is Defendant obligated to pay the cost of an EMG study conducted by the same physician?
3. Are the treatment recommendations made during the evaluation reasonable treatment for Claimant's work injury?
4. If Defendant is obligated to pay for the evaluation and/or the EMG study, is Defendant liable for a ten percent penalty plus interest on the provider's invoices?

EXHIBITS:

Claimant's Statement of Undisputed Material Facts filed March 31, 2023

Defendant's Response to Claimant's Statement filed May 1, 2023

Defendant's Statement of Undisputed Material Facts filed May 1, 2023

Claimant's Response to Defendant's Statement filed May 31, 2023

Claimant's Exhibits Filed with his March 31, 2023 Motion for Summary Judgment

Claimant's Exhibit 1:	Defendant's January 23, 2018, denial of payment for an MRI
Claimant's Exhibit 2:	Medical records review report of Dr. Boucher
Claimant's Exhibit 3:	Independent medical examination report of Dr. Davignon
Claimant's Exhibit 4:	Independent medical examination report of Dr. Boucher
Claimant's Exhibit 5:	June 2020 letters from Claimant's counsel to Defendant's counsel concerning an EMG study recommendation

Claimant's Exhibit 6: July 31, 2020, letter from Claimant's counsel to Defendant's counsel concerning status of EMG study request
 Claimant's Exhibit 7: February 12, 2021, letter from Claimant's counsel to Defendant's counsel concerning evaluation and EMG study
 Claimant's Exhibit 8: Evaluation report of Andrew Haig, MD
 Claimant's Exhibit 9: November 29, 2021, letter from Claimant's counsel to Defendant's counsel enclosing Dr. Haig's invoices
 Claimant's Exhibit 10: Denial of payment for Dr. Haig's invoices (Form 2)
 Claimant's Exhibit 11: Notice and Application for Hearing (Form 6)
 Claimant's Exhibit 12: Defendant's response to Claimant's Form 6

Claimant's Exhibits Filed with his May 31, 2023 Response to Defendant's Cross Motion

Claimant's Exhibit 1: Claimant's counsel's December 31, 2019 letter to Dr. Lisle and proposed preauthorization form (predating the June 4, 2020 recommendation for an EMG study)
 Claimant's Exhibit 2: Claimant's counsel's June 12, 2020 letter to Dr. Lisle and proposed preauthorization form for an EMG study
 Claimant's Exhibit 3: Claimant's counsel's February 17, 2021 letter to Dr. Lisle and proposed preauthorization form for an EMG study

Defendant's Exhibits Filed with its May 1, 2023 Cross Motion for Summary Judgment

Defendant's Exhibit A: June 12, 2020 letter from Claimant's counsel
 Defendant's Exhibit B: June 23, 2020 letter from Claimant's counsel
 Defendant's Exhibit C: July 31, 2020 letter from Claimant's counsel
 Defendant's Exhibit D: August 5, 2020 email from Defendant's counsel
 Defendant's Exhibit E: February 12, 2021 letter from Claimant's counsel
 Defendant's Exhibit F: February 12, 2021 email from Defendant's counsel
 Defendant's Exhibit G: November 17, 2021 letter from Claimant's counsel
 Defendant's Exhibit H: Evaluation report of Andrew Haig, MD
 Defendant's Exhibit I: November 29, 2021 letter from Claimant's counsel
 Defendant's Exhibit J: November 30, 2021 letter with Form 2 Denial
 Defendant's Exhibit K: August 24, 2022 letter from Claimant's counsel with Form 6
 Defendant's Exhibit L: August 29, 2022 Department note about informal conference
 Defendant's Exhibit M: August 31, 2022 Rule 14 response to Form 6
 Defendant's Exhibit N: October 17, 2022 email from the Department
 Defendant's Exhibit O: October 18, 2022 email from the Department
 Defendant's Exhibit P: November 30, 2022 email from the Department
 Defendant's Exhibit Q: December 6, 2022 letter from Claimant's counsel
 Defendant's Exhibit R: February 22, 2021 letter from Claimant's counsel to Dr. Haig
 Defendant's Exhibit S: December 13, 2022 formal docket referral
 Defendant's Exhibit T: January 25, 2023 email from the Administrative Law Judge

Defendant's Exhibits Filed with its June 14, 2023 Reply

Defendant's Exhibit A: January 25, 2023 email from the Administrative Law Judge

BACKGROUND:

There is no genuine issue as to the following material facts:

1. Claimant worked for Defendant in St. Albans, Vermont. On January 16, 2017, he sustained a work-related injury to his right upper extremity. *Claimant's Statement of Undisputed Material Facts* ("Claimant's Statement"), ¶ 1; *Defendant's Statement of Undisputed Material Facts* ("Defendant's Statement"), ¶¶ 1-2; *Defendant's Response to Claimant's Statement* ("Defendant's Response"), ¶ 1.
2. On June 4, 2020, Claimant saw a treating provider, orthopedic physician David Lisle, MD. Claimant shared Dr. Lisle's recommendations with his attorney. On June 12, 2020, Claimant's counsel wrote to Defendant's counsel:

Dr. Lisle is apparently recommending an EMG study. I've sent a preauthorization form to Dr. Lisle for completion and will forward that to you when I receive it back. [Defendant] can always authorize the EMG study beforehand, however.

Claimant's Exhibit 5; Defendant's Exhibit A; Claimant's Statement, ¶ 8; Defendant's Statement, ¶ 3.

3. On June 23, 2020, Claimant's counsel forwarded Dr. Lisle's June 4, 2020 office notes to Defendant's counsel, but he did not provide a signed preauthorization. *Claimant's Statement, ¶ 8; Claimant's Exhibit 5; Defendant's Response, ¶ 8; Defendant's Statement, ¶ 4; Defendant's Exhibit B.*
4. On July 31, 2020, Claimant's counsel sent another letter to Defendant's counsel, asking whether Defendant was "denying authorization for the EMG study." He did not include a signed preauthorization. *Defendant's Statement, ¶ 5; Defendant's Exhibit C.*
5. On August 5, 2020, Defendant's counsel emailed Claimant's counsel that he did not recall ever seeing a preauthorization request for the EMG study and asked Claimant's counsel to advise. Claimant's counsel did not respond. *Defendant's Statement, ¶¶ 6-7; Defendant's Exhibit D.*
6. Claimant's counsel made at least two attempts to secure a signed preauthorization for the EMG study from Dr. Lisle, the first on June 12, 2020 and the second on February 17, 2021. Dr. Lisle never provided a preauthorization. *Claimant's Exhibits 2 and 3 submitted on May 31, 2023.*
7. On February 12, 2021, Claimant's counsel wrote to Defendant's counsel:

In order to move this matter to some type of resolution, I am scheduling [Claimant] for an evaluation with Dr. Haig with the request that he also perform an EMG study. It does not appear that [Defendant] has scheduled [Claimant] for any type of permanency evaluation.

Claimant's Statement, ¶ 10; *Claimant's Exhibit 7*; *Defendant's Statement*, ¶ 8; *Defendant's Exhibit E*.

8. Replying the same day, Defendant's counsel emailed Claimant's counsel that Defendant had never received a preauthorization request for an EMG study. *Defendant's Statement*, ¶ 10; *Defendant's Exhibit F*. Claimant's counsel did not respond to Defendant's counsel's email. *Defendant's Statement*, ¶ 11.
9. Around this time, Claimant's counsel reached out to Andrew Haig, MD, a physical medicine and rehabilitation physician who is board-certified in electrodiagnostic medicine. On February 22, 2021, Claimant's counsel wrote to Dr. Haig to confirm that he was scheduled to see Claimant on March 9, 2021 "for evaluation and an EMG study." Counsel's letter did not specify a "permanency" evaluation. *Defendant's Statement*, ¶ 23; *Defendant's Exhibit R*.
10. On May 16, 2021,¹ Dr. Haig performed an evaluation of Claimant, including an EMG study. In his undated report, Dr. Haig provided diagnoses and treatment recommendations. *Claimant's Statement*, ¶ 11; *Claimant's Exhibit 8*, at 7-8. Dr. Haig also reported the results of his EMG study in the report. *Defendant's Statement*, ¶ 13; *Defendant's Exhibit H*; *Claimant's Response to Defendant's Statement (Claimant's Response)*, ¶ 13.
11. Dr. Haig's report states that, according to the *AMA Guides to the Evaluation of Permanent Impairment*, an impairment rating would not be appropriate unless Claimant conceded that he did not want further treatment. Dr. Haig outlined which injuries he would rate and which chapters of the *AMA Guides* he would apply to assess Claimant for permanent impairment if he were at end medical result. *Defendant's Statement*, ¶ 13; *Defendant's Exhibit H*; *Claimant's Response*, ¶ 13.
12. The record does not reflect when Dr. Haig made his report available. On November 17, 2021, Claimant's counsel provided Dr. Haig's report and invoices to Defendant's counsel. *Claimant's Statement*, ¶ 12; *Claimant's Exhibit 9*; *Defendant's Statement*, ¶ 12; *Defendant's Exhibit G*. The invoices itemized the evaluation and the EMG study separately. *Claimant's Exhibit 9*. The evaluation charge was \$1,800.00, and the EMG charge was \$741.48. *Id.*
13. On November 29, 2021, Claimant's counsel wrote to Defendant's counsel requesting reimbursement for the costs of Dr. Haig's evaluation and EMG study. *Defendant's Statement*, ¶ 14; *Defendant's Exhibit I*; *Claimant's Response*, ¶ 14.

¹ Claimant's Statement specified the evaluation date as May 16, 2021, and Defendant did not dispute that date. *Claimant's Statement*, ¶ 11; *Defendant's Response*, ¶ 11.

14. On November 30, 2021, Defendant filed a denial (Form 2) of Claimant's request for payment of Dr. Haig's invoices on the grounds that Dr. Haig performed a diagnostic IME and EMG study, not a "claimant's choice" permanency evaluation. *Claimant's Statement*, ¶ 15; *Claimant's Exhibit 10*; *Defendant's Statement*, ¶ 15; *Defendant's Exhibit J*.
15. Claimant did not respond to the denial until August 24, 2022, at which time he filed a Notice and Application for Hearing (Form 6) seeking reimbursement for the costs of Dr. Haig's evaluation and EMG study. He also sought a determination of whether the medical treatments recommended in Dr. Haig's report were reasonable treatment for Claimant's work-related injury. *Claimant's Statement*, ¶ 16; *Claimant's Exhibit 11*; *Defendant's Statement*, ¶ 16; *Defendant's Exhibit K*.
16. After upholding Defendant's denial, the Department's specialist referred two issues to the formal docket concerning the nature of Dr. Haig's evaluation and whether Defendant was liable for the cost of the evaluation and EMG study. *Defendant's Statement*, ¶¶ 24-25; *Defendant's Exhibit S*.
17. The Administrative Law Judge held a pretrial conference at the formal level on January 25, 2023, during which Claimant's counsel indicated his intent to file for summary judgment on the two issues referred to the formal docket and on the reasonableness of Dr. Haig's treatment recommendations. *Defendant's Statement*, ¶ 26.
18. Because the amount in controversy was small (about \$2,500) and because there might be disputed issues of material fact, the Administrative Law Judge offered to resolve any factual disputes on the record in connection with the summary judgment motion, if the parties did not object. Neither party objected. The Administrative Law Judge advised that Claimant must address the reasonableness of the proposed treatments at the informal level before that issue could be adjudicated on the formal docket. She set the matter for a status conference on February 28, 2023 to follow up on the status of Claimant's attempts to pursue the treatments recommended by Dr. Haig. *Defendant's Statement*, ¶ 26; *Defendant's Exhibit T*.
19. At the February 28, 2023 status conference, Claimant's counsel reported that Claimant had not sought the treatments recommended by Dr. Haig two years earlier and had not pursued a claim for them at the informal level. *Defendant's Statement*, ¶ 27. The reasonableness of those treatments has not been referred to the formal docket.

CONCLUSIONS OF LAW:

Summary Judgment Standard

1. To prevail on a summary judgment motion, the moving party must show entitlement 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 when the facts in

question are clear, undisputed or unrefuted. *State v. Heritage Realty of Vermont*, 137 Vt. 425, 428 (1979).

2. In this case, because the amount in controversy is small,² the Administrative Law Judge offered to resolve any material factual disputes that might preclude summary judgment by reference to the parties' submissions and the Department's file, if neither party objected. This offer was communicated to the parties at a telephone conference on January 25, 2023 and confirmed by email; neither party objected. *See Defendant's Exhibit T*. Accordingly, to the extent material facts are in dispute here, the Department has resolved those disputes. *See, e.g., Chubbuck v. New England Career Connection, Inc.*, Opinion No. 10-22WC (May 5, 2022) (given the small amount in controversy, the Department resolved a disputed MRI invoice on written motion, making factual findings).

Cost of a Medical Evaluation with a Physician of Claimant's Choosing

3. In 2021, Claimant's counsel arranged for him to undergo an evaluation with Dr. Haig. Claimant seeks an order that Defendant pay the \$1,800.00 cost of this evaluation as a Claimant's choice permanency evaluation pursuant to Workers' Compensation Rule 10.1210.

4. Workers' Compensation Rule 10.1210 provides in relevant part as follows:

The employer or insurance carrier shall be responsible for paying for at least one such permanent impairment rating, notwithstanding its decision to obtain a rating from another medical examiner as well if it so chooses. At the Commissioner's discretion, the employer or insurance carrier may be ordered to pay for additional permanent impairment evaluations.

5. Although the rule specifies a "permanent impairment rating," such a rating necessarily requires a permanency evaluation under the *AMA Guides to the Evaluation of Permanent Impairment*. *See* 21 V.S.A. § 648(b). Accordingly, I liberally construe Rule 10.1210 as providing for a permanency evaluation and permanent impairment rating. *See Montgomery v. Brinver Corp.*, 142 Vt. 461 (1983) (workers' compensation statute, having a benevolent purpose and being remedial in nature, must be given a liberal construction). Thus, if the evaluating physician is unable to assess an impairment rating during the permanency evaluation, the Commissioner still may order the employer to pay for the permanency evaluation in his or her discretion.
6. Defendant contends that Claimant's counsel did not engage Dr. Haig to perform a "permanency" evaluation. The record does not include Claimant's counsel's initial communication with Dr. Haig's office. The only record of their communication is

² The amount in dispute here is \$2,541.48. The parties' cross motions for summary judgment, including reply briefs, total 318 pages. In the future, the Department hopes that parties with similar disputes will make a more concerted effort to resolve them. *See Chubbuck v. New England Career Connection, Inc.*, Opinion No. 10-22WC (May 5, 2022), at fn 1.

Claimant's counsel's letter to Dr. Haig on February 22, 2021, confirming an appointment on March 9, 2021 "for evaluation and an EMG study." *Defendant's Exhibit R*. The confirmatory nature of this letter implies a prior communication with Dr. Haig concerning the nature of the evaluation sought.

7. Claimant's counsel's intent concerning Dr. Haig's evaluation is reflected in his February 12, 2021 letter to Defendant's counsel. Claimant's counsel wrote:

In order to move this matter to some type of resolution, I am scheduling [Claimant] for an evaluation with Dr. Haig with the request that he also perform an EMG study. It does not appear that [Defendant] has scheduled [Claimant] for any type of permanency evaluation. The last report I have from a [Defendant] scheduled appointment is a May 21, 2019 report that Dr. Boucher prepared at which Dr. Boucher concluded [Claimant] was not yet at a medical end result.

Defendant's Exhibit E.

Claimant's counsel's references to "resolution" of the claim, the lack of a prior permanency evaluation, and the passing of two years since Claimant was last evaluated for end medical result all support his intent to have Claimant undergo a permanency evaluation.

8. Finally, Dr. Haig specifically addressed permanent impairment in his report. Although he could not assess a rating because Claimant was not at end medical result, he identified Claimant's work-related medical conditions and the sections of the *AMA Guides* that he would apply to assess impairment. *See Defendant's Exhibit H*.
9. Resolving this factual dispute on the record, *see* Background No. 18 *supra*, I find that Claimant's counsel engaged Dr. Haig to perform a permanency evaluation. Accordingly, this claim presents the situation where an injured worker seeks a "claimant's choice" permanency evaluation only to learn that he or she is not at end medical result. Whether the carrier must pay for the evaluation is within the Commissioner's discretion.
10. In this case, it would be reasonable for anyone to think that Claimant was at end medical result in the spring of 2021. Further, there is no evidence that Claimant had an ulterior motive in seeking a permanency evaluation at that time. The claim was languishing, and Claimant's counsel's actions were a reasonable effort to bring the claim to resolution. Further, Claimant's counsel was transparent in communicating his intentions to Defendant.
11. I therefore order Defendant to pay for Dr. Haig's evaluation as his "claimant's choice" permanency evaluation, in the amount of \$1,800.00. Under Workers' Compensation Rule 10.1210, Claimant is entitled to only one permanency evaluation paid for by Defendant; payment for any additional evaluation is not guaranteed but rather lies within the Commissioner's discretion. If Claimant seeks payment for an additional

permanency evaluation in the future, the Commissioner will take into consideration that Defendant has been ordered to pay for Dr. Haig's 2021 evaluation.

Cost of Dr. Haig's EMG Study

12. When he arranged for Dr. Haig's permanency evaluation, Claimant's counsel also asked Dr. Haig to perform the EMG study recommended by Dr. Lisle. Dr. Haig performed the study and submitted a separate invoice for this service in the amount of \$741.48. Claimant seeks reimbursement for this invoice. Defendant contends that it is not responsible for the invoice because Dr. Haig's report expressly disclaimed a doctor-patient relationship. Defendant also contends that Claimant's failure to provide a preauthorization for an EMG study "bars his claim." *Defendant's Opposition and Cross Motion*, at 11, 14.³
13. An EMG study may be compensable either as medical treatment or as a component of a permanency evaluation. For example, in *Crowe v. The Fonda Group, Inc.*, Opinion No. 02-11WC (January 25, 2011), the Commissioner concluded that an EMG study was compensable because it was necessary to assess the injured worker's permanent impairment. In this case, Dr. Haig did not use the findings from Claimant's EMG study to assess impairment. Accordingly, I analyze Defendant's responsibility to pay for the EMG study as medical treatment.

Reasonable Medical Treatment

14. The workers' compensation statute provides that an employer shall furnish reasonable medical services to an injured employee. 21 V.S.A. § 640(a).
15. Claimant's treating provider, Dr. Lisle, recommended the EMG study on June 4, 2020. He noted that Claimant continued to have lateral elbow pain that worsened with repetitive use, as well as some sensation changes in his forearm. Claimant also had neurological symptoms to the radial nerve distribution. As the MRI study did not reveal the cause of Claimant's continuing symptoms, Dr. Lisle recommended an EMG study of his right forearm. He further stated that Claimant's condition was related to his work injury. *Defendant's Exhibit B*. I find Dr. Lisle's analysis to be credible.
16. Defendant has offered no medical evidence contesting the reasonableness of the EMG study, nor does it contend that the procedure was unreasonable under 21 V.S.A. § 640(a).
17. Based on the record before me and the circumstances of this case, I conclude that the EMG study was reasonable treatment for Claimant's compensable work injury.

Physician-Patient Relationship

³ As Defendant did not number the pages of its Cross Motion, I have numbered them for reference.

18. Defendant contends that it need not pay for the EMG study because there was no physician-patient relationship between Dr. Haig and Claimant. In his report, Dr. Haig wrote: “Before proceeding I told the subject that this independent evaluation does not constitute a physician-patient relationship, and I decline such a relationship.”
Defendant’s Exhibit G.
19. Defendant’s contention fails for two reasons. First, Claimant engaged Dr. Haig to provide two separate services: a permanency evaluation and an EMG study. Although the results of each were included in the same report, the services were distinct and were invoiced separately. By undertaking the EMG study, Dr. Haig was performing a medical procedure recommended by Claimant’s treating physician for the purpose of diagnosing and treating his condition. Further, if a physician performs medical services to treat a compensable injury, his or her boilerplate disclaimer language will not negate the fact that treatment was provided in any event. For these reasons, I interpret Dr. Haig’s disclaimer as applying to the permanency evaluation but not to the EMG study. Accordingly, I conclude that there was a physician-patient relationship for the EMG study.
20. Second, the workers’ compensation rules do not preclude a treating physician from performing a permanency evaluation. Specifically, Workers’ Compensation Rule 10.1210 provides that the injured worker has the right to seek a permanent impairment rating “either from the treating physician or from another physician of his or her choosing.” Accordingly, a physician’s performance of a permanency evaluation does not disqualify the physician from also providing medical treatment to the injured worker.

Lack of a Preauthorization for the EMG Study

21. Defendant also contends that it need not pay for the EMG study because Claimant did not provide a preauthorization. It characterizes Claimant’s current request for payment of the EMG study as an “attempt to backdoor medical care after ignoring the preauthorization process,” which “should not be permitted.” *Defendant’s Opposition and Cross Motion*, at 15.
22. Defendant’s counsel’s argument mischaracterizes the preauthorization process. As set forth in Workers’ Compensation Rule 7.1100, an injured worker or medical provider “may” submit a preauthorization request for medical treatment before the injured worker undergoes the treatment. Preauthorization is a voluntary process that helps injured workers avoid undergoing expensive procedures only to learn afterwards that the procedures are not covered. Nothing in the statute or rules *requires* an injured worker to use the preauthorization process. Rather, an injured worker may obtain medical treatment and then find out whether the employer disputes the reasonableness of the treatment after the fact.
23. In this case, Claimant tried to use the preauthorization process for his EMG study, but Claimant’s counsel was unable to obtain a signed preauthorization form from the treating physician. As Claimant’s treating provider never submitted a preauthorization

for an EMG study, Defendant had no obligation to approve or disapprove the treatment in advance. However, once Claimant underwent the treatment, Defendant had an obligation to pay for it, provided it was “reasonable treatment” under 21 V.S.A. § 640(a).

Compensability of the EMG Cost

24. The EMG study was reasonable treatment for Claimant’s compensable work injury. *See Conclusion of Law No. 17 supra*. Neither Dr. Haig’s status as an independent evaluator for purposes of the permanency evaluation nor the failure of the preauthorization process provide grounds for Defendant to avoid paying for reasonable treatment.
25. The mechanics of payment for medical treatment under the workers’ compensation statute are governed by Workers’ Compensation Rule 40. Rule 40.021(C) provides for payment within 30 days, and Rule 40.021(G) sets forth the requirements for invoices from treating providers, including the service date. Dr. Haig’s invoice for the EMG study does not include a service date.
26. Accordingly, having found the EMG study to be reasonable treatment for Claimant’s work injury, I order Defendant to pay for the EMG study within 30 days of receiving an invoice that includes the service date, as required by Rules 40.021(C) and (G).

Reasonableness of Proposed Treatments

27. Claimant next seeks a ruling that the treatment recommendations proposed in Dr. Haig’s report (steroid injections, medication and counseling) are reasonable treatments for his work-related injury. Unlike the reasonableness of Dr. Haig’s EMG study, however, the reasonableness of the proposed treatments is not pending on the formal hearing docket. *See Defendant’s Exhibit S*.
28. On February 28, 2023, Claimant’s counsel advised the Department that Claimant has not sought any of the treatments that Dr. Haig recommended two years earlier, nor has he taken any steps to pursue his claim for those treatments at the informal level. *See Background No. 19 supra*. Accordingly, determination of this issue at the formal level is premature. *See Workers’ Compensation Rules 16.1100 - 16.1300* (procedures for informal resolution of disputed claims).
29. Claimant’s request for an order that Dr. Haig’s recommended medical treatments are reasonable is therefore denied.

Claimant’s Request for a Ten Percent Penalty Plus Interest

30. Claimant seeks a ten percent penalty plus interest on Dr. Haig’s invoices running from December 29, 2021, thirty days from the date on which he presented those invoices to Defendant with a payment request.

Ten Percent Penalty

31. The workers' compensation statute provides for a ten percent penalty when weekly compensation benefits are not paid within 21 days. 21 V.S.A. § 650(e). Neither of the invoices here are weekly compensation benefits. Accordingly, the ten percent penalty provision set forth in 21 V.S.A. § 650(e) does not apply.
32. Claimant has not cited any other legal authority to support a ten percent penalty on Dr. Haig's invoices. Accordingly, Claimant's request for a ten percent penalty is denied.

Interest

33. The workers' compensation statute provides for an award of interest when an employer or carrier fails to pay a medical bill within 30 days. 21 V.S.A. § 640a(e).
34. In this case, Claimant has not submitted an invoice for the EMG study that complies with the requirements of Workers' Compensation Rule 40.021(G). I therefore conclude that Defendant's obligation to pay the invoice has not yet accrued. Claimant's request for an award of interest on the EMG study invoice is therefore denied.

ORDER:

Based on the foregoing, Claimant's Motion for Summary Judgment is hereby **GRANTED on issues one and two**, and Defendant's Cross Motion for Summary Judgment is hereby **GRANTED on issues three and four**. Defendant is hereby **ORDERED** to pay:

1. The cost of Dr. Haig's permanency evaluation in the amount of \$1,800.00; and
2. The cost of Dr. Haig's EMG study in the amount of \$741.48, within 30 days after Defendant receives an invoice specifying the date of service in accordance with Workers' Compensation Rules 40.021(C) and (G).

DATED at Montpelier, Vermont this 7th day of August 2023.

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.