

**STATE OF VERMONT
DEPARTMENT OF LABOR**

Brendan Conroy

Opinion No. 15-23WC

v.

By: Beth A. DeBernardi
Administrative Law Judge

Benchmark Senior Living

For: Michael A. Harrington
Commissioner

State File No. PP-50199

OPINION AND ORDER

Stipulated Order filed on April 19, 2023

Record closed on May 19, 2023

APPEARANCES:

Frank E. Talbott, Esq., for Claimant

Glenn S. Morgan, Esq. and Elijah T. LaChance, Esq., for Defendant

ISSUE PRESENTED:

What, if any, is Claimant's permanent impairment due to her occupational asthma?

EXHIBITS:

Joint Medical Records Exhibit

Claimant's Exhibit 1:

Curriculum vitae of Carrie A. Redlich, MD

Claimant's Exhibit 2:

March 20, 2023 report of Carrie A. Redlich, MD

Defendant's Exhibit A:

March 20, 2023 report of Jerome Siegel, MD

CLAIM:

Permanent partial disability benefits pursuant to 21 V.S.A. § 648

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

STIPULATED ORDER:

On April 19, 2023, the parties submitted the following Stipulated Order:

1. The Claimant has occupational asthma resulting from her on-the-job exposure to chlorine gas generated by a disinfectant product called ProKure on May 25 and 26, 2020 and a second exposure to a disinfectant in October of 2020.
2. The Claimant's medical treatment has been reasonable, necessary and causally related to the diagnosis and treatment of her occupational asthma.

3. Defendant will pay all unpaid medical bills and liens for medical bills paid by Claimant's health insurers, BCBS of Mass and DVHA (State of Vermont Medicaid), related to the diagnosis and treatment of her occupational asthma.
4. Defendant will pay all of the Claimant's causally related out-of-pocket medical expenses and prescription expenses.
5. Claimant will be paid temporary total disability benefits or temporary partial disability benefits for all time she was out of work due to her exposure to the chlorine products and subsequent causally related treatment for asthma that was unpaid by her employer or for which she was paid sick time or other leave time.
6. The Defendant asserts that the Claimant's permanent impairment is zero percent, and the Claimant asserts that her permanent impairment is 17.5 percent whole person. Claimant's percentage of impairment under the *AMA Guides to the Evaluation of Permanent Impairment, Fifth Edition*, will be decided by the Judge based on the following exhibits:
 - a. Joint Medical Records Exhibit
 - b. The Report of Dr. Carrie Redlich
 - c. The Report of Dr. Jerome Siegel
 - d. The Curriculum Vitae of Dr. Carrie Redlich
7. This Stipulation will be filed with the above exhibits by April 19, 2023; and the parties will file Proposed Findings and Conclusions of Law on the issue of Permanent Impairment by May 19, 2023.
8. Defendant will pay all causally related future benefits which become due and payable pursuant to the workers' compensation statute resulting from the Claimant's occupational asthma.

FINDINGS OF FACT:

Claimant's Work-Related Injury and Subsequent Medical Course

Based on the Joint Medical Records Exhibit ("JME"), I find the following facts:

9. Claimant is a 38-year-old resident of Bristol, Vermont. She works as a nurse for Defendant in a senior care facility in Shelburne. On June 16, 2020, she saw primary care physician Timothy Bicknell, MD, reporting dizziness, decrease in exercise tolerance, chest tightness, and hand tingling. (JME at 1-2).
10. On June 19, 2020, Claimant presented at the emergency department with progressive chest discomfort, fatigue, weakness, unsteady gait, and light-headedness. Hospital staff attempted to diagnose her condition but were unsuccessful. (JME at 22, 73-74, 83). Claimant returned to the emergency department on June 21, 2020, and underwent further

testing. The testing did not identify the cause of her symptoms, and she was discharged on June 22, 2020. (JME at 116).

11. Claimant returned to Dr. Bicknell on June 25, 2020. Dr. Bicknell asked her about any substances to which she may have been exposed, and she explained that she worked as a nurse for Defendant. With the onset of the Covid-19 epidemic, she donned personal protective equipment at work and sprayed herself with a chlorine-based disinfectant multiple times per day. Dr. Bicknell took her out of work for at least one week and further recommended that, when she returned to work, she avoid chlorine disinfectant, as it might be the cause of her symptoms. (JME at 120, 130-31). On July 2, 2020, Dr. Bicknell recommended that Claimant work no more than six hours per day and limit herself to administrative or other work that did not require physical exertion. (JME at 146).
12. On July 2, 2020, Dr. Bicknell noted significant tachycardia and shortness of breath even on minimal exertion. (JME at 159). Claimant received a prescription for Advair for reactive airways dysfunction syndrome. (JME at 160, 162).
13. On July 14, 2020, Claimant reported that the inhaler was helping with her shortness of breath and that she wanted to increase her work hours. (JME at 189). Dr. Bicknell released Claimant to work eight hours per day and lift up to 15 pounds. (JME at 185).
14. On August 12, 2020, Dr. Bicknell provided a work release to full duty. (JME at 212).
15. On August 18, 2020, Claimant reported that she tried to wean herself off her inhaler, but that her shortness of breath returned. (JME at 222). She tried several different inhaled medications, finally settling on Symbicort in August. (JME at 277).
16. Claimant underwent her annual physical on November 12, 2020. (JME at 272). The provider noted that she was feeling better in August 2020 and so stopped using her Symbicort. However, her symptoms returned, and she had to resume the medication. (JME at 277). The provider referred her to pulmonology to follow up on her chlorine gas exposure. (JME at 277).
17. On January 14, 2021, Claimant underwent pulmonary function testing at Rutland Regional Medical Center. (JME at 301-304). On January 19, she saw the pulmonologist, Darius Seidler, MD. Based on her clinical presentation and lung function testing, Dr. Seidler diagnosed Claimant with reactive airway dysfunction disorder that had progressed to asthma. (JME at 328).
18. On February 5, 2021, Claimant had a telehealth visit with Dr. Seidler. She reported increased shortness of breath and some wheezing. (JME at 353). Dr. Seidler thought she had an asthma exacerbation and recommended that she add prednisone to her medications. (JME at 352). On February 8, 2021, Claimant reported that prednisone was not helping her shortness of breath. (JME at 351).
19. On September 14, 2022, Claimant had a telehealth visit with physician assistant Abraham Sender for moderate persistent asthma. (JME at 390). Claimant reported feeling

generally well but with an increase of symptoms during summer humidity. She was taking Symbicort, as well as Albuterol as a rescue inhaler. PA Sender renewed her medications. (JME at 393).

20. Claimant underwent her annual physical on January 27, 2023. The record notes that she continues to use Symbicort and Albuterol. (JME at 399).

Expert Medical Opinions

21. The parties presented written reports from their medical experts concerning Claimant's permanent impairment. Neither party called an expert to testify at a hearing.

(a) Dr. Redlich

22. Carrie Redlich, MD, graduated from the Yale University School of Medicine in 1982 and obtained a master's degree in public health there several years later. In 1990, she completed a fellowship in pulmonary and critical care medicine at the University of Washington. Since 1990, Mr. Redlich has been a professor at the Yale School of Medicine in the areas of pulmonary and environmental medicine. She is currently the school's Director of the Occupational and Environmental Medicine Program. Dr. Redlich is board-certified in occupational medicine and pulmonary medicine, and she is a staff physician at the Yale-New Haven Hospital. *See generally Claimant's Exhibit 1.*
23. In February 2023, Claimant's counsel arranged for her to be evaluated by Dr. Redlich. Dr. Redlich took Claimant's occupational, medical and exposure history, reviewed her medical records and diagnostic test results, and met with Claimant by telehealth visit on February 23, 2023. Dr. Redlich then provided a written report addressing causation and permanent impairment. The parties no longer dispute that Claimant's occupational asthma is causally related to her employment with Defendant. The only contested issue here is Claimant's permanent impairment.
24. At the telehealth visit, Claimant reported the following to Dr. Redlich:

. . . on-going intermittent asthmatic symptoms, primarily shortness of breath, wheeze, chest tightness, in response to certain triggers. Her symptoms are currently controlled on her current treatment regimen (below) and with avoiding triggering exposures and activities. She reports that common triggers are bleach and other cleaning products, and scented products, as well as cold and hot air. She has been using her rescue inhaler about twice a month on average over the past few months. She has returned to exercising. However, she is still unable to exercise outside in the winter, such as ski or hike, to avoid triggering her asthma.

Claimant's Exhibit 2, at 3.

25. Dr. Redlich offered the following opinion concerning Claimant's permanent impairment:

Based on the AMA Guidelines to Evaluation of Permanent Impairment, 5th edition (Tables 5-9 and 5-10) I would rate Ms. Conroy's impairment rating for asthma as 17.5% impairment of the whole person based on her medication usage and pulmonary function testing.

Claimant's Exhibit 2, at 6.

26. Chapter 5 of the *AMA Guides* covers the respiratory system, and Section 5.5 addresses asthma. Table 5-9 is called Impairment Classification for Asthma Severity. Relying on Claimant's medication usage and pulmonary function test results, Dr. Redlich used Table 5-9 to derive a severity score for her asthma.
27. Table 5-10 of the *AMA Guides* is called Impairment Rating for Asthma. Pursuant to this table, the physician uses the severity of the patient's asthma from Table 5-9 to determine the whole person impairment rating. Using Table 5-10, Dr. Redlich placed Claimant in impairment class 2 and assessed a 17.5 percent whole person impairment. That percentage impairment is in the middle of the impairment range for impairment class 2.¹
28. Based on Dr. Redlich's review of Claimant's medical records and test results, her telehealth visit, and her substantial expertise in occupational and environmental lung disease, I find Dr. Redlich's permanent impairment opinion to be credible.

(b) Dr. Siegel

29. Defendant submitted a written report from Jerome Siegel, MD. Defendant did not offer Dr. Siegel's credentials into evidence, but the doctor's letterhead indicates that he is associated with a business called University Disability Consortium in Newton, Massachusetts. *See Defendant's Exhibit A*.
30. Dr. Siegel reviewed Claimant's medical records and deposition testimony, as well as the material data safety sheet for the ProKure disinfectant product. Based on his review, he concluded that there was no causal relationship between Claimant's symptomology and her occupational exposure to chlorine. *Defendant's Exhibit A*, at 4. He suggested that she follow up with an "ENT physician or allergist or GI physician" to explore other possible causes of her symptomology, including "allergies to pollens, dust, food, insects, etc., or other environmental agents or irritants or acid reflux." *Id.*, at 5.
31. Dr. Siegel concluded that Claimant had reached an end medical result by August 12, 2020, when she saw Dr. Bicknell. *Defendant's Exhibit A*, at 12. He then addressed Claimant's permanent impairment. He wrote: "There is no ratable condition." *Defendant's Exhibit A*, at 12.
32. Dr. Siegel did not explain whether he meant that he could not rate Claimant's impairment for her symptomology because he did not believe her condition was work-related, or whether he meant that permanent impairment for Claimant's condition cannot be assessed because the condition does not cause permanent impairment or is otherwise not

¹ Under Table 5-10, the range of permanent impairment for class 2 is from ten percent to 25 percent.

assessable under the *AMA Guides*. In any event, he offered no opinion on permanent impairment beyond “there is no ratable condition.” As Defendant contends, this opinion is the equivalent of stating that Claimant has a zero percent permanent impairment.

33. The parties have stipulated that Claimant has occupational asthma causally related to her employment with Defendant. Further, Chapter 5 of the *AMA Guides* provides a framework for assessing permanent impairment for asthma. Accordingly, I cannot credit Dr. Siegel’s opinion that Claimant has no ratable condition.
34. Finally, Dr. Siegel offered no opinion on whether Dr. Redlich correctly applied the tables set forth in the *AMA Guides* to assess Claimant’s permanent impairment for asthma.

CONCLUSIONS OF LAW:

1. In workers’ compensation cases, the claimant has the burden of establishing all facts essential to the rights asserted. *King v. Snide*, 144 Vt. 395, 399 (1984). He or she must establish by sufficient credible evidence the character and extent of the injury, *see, e.g., Burton v. Holden & Martin Lumber Co.*, 112 Vt. 17 (1941), as well as the causal connection between the injury and the employment. *Egbert v. The Book Press*, 144 Vt. 367 (1984).
2. Defendant accepted liability for Claimant’s occupational asthma but disputes her claim for permanent partial disability benefits. Therefore, Claimant has the burden of proving that she has a permanent impairment referable to her accepted occupational asthma.

Expert Medical Opinions

3. The parties presented conflicting expert medical opinions concerning Claimant’s permanent impairment. In such cases, 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 (September 17, 2003).
4. Claimant offered Dr. Redlich’s opinion as to her permanent impairment, and Defendant offered Dr. Siegel’s opinion. Neither physician was a treating provider, and both examined the pertinent records. Dr. Redlich examined Claimant remotely via telehealth visit, while Dr. Siegel just reviewed her deposition transcript. Although a telehealth visit is more of an evaluation than reviewing a deposition transcript, I do not ascribe a substantial advantage to Dr. Redlich’s opinion on this basis.
5. The fifth *Geiger* factor strongly favors Dr. Redlich’s opinion. Dr. Redlich has substantial training and experience in pulmonary and environmental medicine, all of which is directly relevant to assessing Claimant’s occupational asthma condition. In contrast, Defendant has produced no evidence of Dr. Siegel’s board certifications, qualifications, or experience in pulmonary medicine or environmental medicine.

6. The third *Geiger* factor also favors Dr. Redlich's opinion. Dr. Redlich cited to the relevant tables in the *AMA Guides* to support her assessment of Claimant's permanent impairment. Further, she explained that her assessment was based on Claimant's medication usage and pulmonary function testing, as well as on her own training and experience in occupational and environmental lung disease. Dr. Siegel offered no opinion challenging Dr. Redlich's methodology or her application of the *AMA Guides* to Claimant's condition. Accordingly, I find Dr. Redlich's opinion persuasive.
7. In contrast, Dr. Siegel concluded that Claimant's permanent impairment could not be rated because she has "no ratable condition." As set forth in the parties' stipulation, however, Defendant agrees that Claimant has occupational asthma from her exposure to chlorine while working for Defendant, and the *AMA Guides* provide a method for assessing permanent impairment for this condition. Accordingly, I find Dr. Siegel's opinion unpersuasive.
8. Based on Dr. Redlich's persuasive assessment of Claimant's permanent impairment, I conclude that Claimant has sustained her burden of proving a 17.5 percent whole person impairment causally related to her accepted occupational asthma.

Costs and Attorney Fees

9. Pursuant to 21 V.S.A. § 678(e), Claimant shall have 30 days from the date of this opinion to submit a claim for costs and attorney fees.

ORDER:

Defendant is hereby **ORDERED** to pay:

1. Permanent partial disability benefits consistent with a 17.5 percent whole person impairment referable to Claimant's occupational asthma pursuant to 21 V.S.A. § 648;
2. Other workers' compensation benefits as provided in the parties' Stipulation, which is hereby incorporated into this Opinion and Order; and
3. Costs and attorney fees in amounts to be determined, pursuant to 21 V.S.A. § 678.

DATED at Montpelier, Vermont this 24th day of August 2023.

Dustin Degree on behalf of: 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.