STATE OF VERMONT
DEPARTMENT OF LABOR

Leslie Cobler

v.

Milton School District

Opinion No. 16-23WC

By: Stephen W. Brown
Administrative Law Judge

For: Michael A. Harrington
Commissioner

State File Nos. LL-55377 (Church Mutual Insurance Company)

and

PP-60375 (Liberty Mutual Insurance Company)

OPINION AND ORDER

Hearing held via Microsoft Teams on January 10, 2023
Record closed on March 6, 2023

APPEARANCES:

Christopher McVeigh, Esq., for Claimant
Krystn M. Perettine, Esq., for Defendant and Church Mutual Insurance Co. ("Church Mutual")
Bonnie J. Badgewick, Esq., for Defendant and Liberty Mutual Insurance Co. ("Liberty Mutual")

ISSUES PRESENTED:

1. Did either of Claimant's falls, on April 5, 2021 and/or January 15, 2022, arise out of and in the course of her employment with Defendant?

2. If so, to what benefits is she entitled?

3. Which insurance carrier, if either, is responsible for any benefits to which Claimant is entitled as a result of either fall?

EXHIBITS:

Joint Exhibit A:	Joint Medical Exhibit ("JME")
Joint Exhibit B:	Work Status Report signed by Douglas M. Campbell M.D. on March 8, 2021

Defendant Church Mutual's Exhibit A:	Work Status Report signed by Douglas M. Campbell M.D. on March 8, 2021 (same as Joint Exhibit B)
Defendant Church Mutual's Exhibit B:	Multiple Letters from Claimant's Counsel to Church Mutual's Counsel; Emails Among Insurance Adjusters and Department of Labor Personnel

FINDINGS OF FACT:

1. I take judicial notice of all relevant forms and correspondence in the Department's file for this claim.

2. Claimant is a sixty-year-old woman who resides in Essex Junction, Vermont. Defendant employed her as an art teacher at Milton Elementary School from approximately 1987 until 2021. This case involves four falls that Claimant experienced between 2018 and 2022, their aftermath, and their causal relationship to one another.

The First Fall

3. Claimant's first fall occurred on October 29, 2018, when she was participating in an active shooter drill in a darkened classroom at school. During the drill, she tripped on a rug and fell onto her right knee.

4. Church Mutual was Defendant's workers' compensation insurer in October 2018. It accepted responsibility for that injury and paid some benefits accordingly. Claimant initially received conservative care for this injury including physical therapy and activity modifications, and she began using a telescoping chair in her classroom that enabled her to more easily transition between standing and sitting while teaching.

5. Eventually, Claimant's treating physician, orthopedic surgeon Douglas Campbell, MD, recommended a total knee replacement surgery, which he performed on October 1, 2020. (JME 197, 214-303). Claimant's recovery from that surgery was unusually complicated, protracted, and painful. She spent seven days in the hospital and lost a significant amount of blood, which resulted in her fainting during a physical therapy session.

Return to Work

6. During Claimant's convalescence from that surgery, she began discussing return to work strategies with her physical therapist and Dr. Campell. Dr. Campbell recommended that she park as close to her classroom as possible, that she use an electric scooter, and that she continue using a telescoping chair to get up and down in the classroom.

7. During a March 8, 2021 visit, Dr. Campbell released her to work half-days beginning April 5, 2021, with the following restrictions: "no kneeling, squatting—need for higher chair." (*See* Joint Exhibit B; Church Mutual Exhibit A). Claimant's counsel wrote to

Church Mutual's attorney with a request for accommodations in accordance with Dr. Campbell's recommendations. (Church Mutual's Exhibit B).

8. Claimant returned to work for Defendant on Monday April 5, 2021. Covid-19 protocols in place at that time required students to remain in a single classroom throughout the school day while teachers moved from classroom to classroom to teach their respective disciplines.

9. Claimant had discussed the need for a telescoping chair in each room where she taught with Defendant's human resources director before returning to work, and her supervisor suggested that a physical education teacher might be able to move Claimant's chair around to various classrooms where she would need to teach.

The Second Fall

10. On April 6, 2021, Claimant's second day back on the job following her knee surgery for the first fall, she entered a classroom that did not have a suitable chair, as Defendant had not yet arranged for a telescoping chair for her to use while teaching in all classrooms.

11. Claimant looked around for a chair and found a large child-sized chair to sit in. That chair placed her body in an awkward position with her knee higher than her hip. After sitting in that position for approximately twenty minutes, she tried to get up to assist a student. Her right knee did not respond, however, and she fell, breaking her fall with her right arm.

12. Liberty Mutual was Defendant's workers' compensation insurer on the risk for April 6, 2021.

13. Claimant was able to finish the remainder of her half-day, but later that day, she presented to her physical therapist with complaints of right shoulder pain and increased right knee pain after a fall at work. (JME 370). Her physical therapist recommended continuing her existing plan of care. Over the next several days, Claimant also reported symptoms in her right shoulder, neck, hand, and wrist. (JME 373, 395).

14. After her April 2021 fall, Defendant's Human Resources Director directed Claimant not to return to work until accommodations could be put in place for her. However, Defendant never accommodated Claimant's needs. Claimant retired from Defendant's employment at the end of June 2021 because she did not feel that she could give the job and her students the attention they needed. She credibly testified that she did not want to retire at that time.

15. Initially, Claimant pursued conservative treatments such as physical therapy and injections for her upper extremity and neck injuries following her April 2021 fall. She also received custom wrist and thumb braces, and her physical therapist noted spinal complaints including tingling and numbness that radiated into her right hand and assessed her with cervical spinal radiculopathy. (JME 397).

16. Eventually, Claimant saw orthopedic surgeon Andrew Geeslin, MD, who recommended rotator cuff repair surgery. He performed that surgery in May 2022, after Claimant's third and fourth falls discussed below. (JME 537, 649-656).

The Third Fall

17. On January 15, 2022, Claimant was at her home, where she lives with her father, her daughter, and her older sister, Anna Cobler. Anna lives in a basement apartment with a separate entrance accessible by a stairway equipped with a railed chairlift which was installed for the benefit of Claimant's father.

18. Claimant had recently brought groceries down the stairs to her sister's apartment and left to ascend the stairs to the main part of the house. As she ascended to the top of the stairs, she felt her right knee give out, and she began to fall. Claimant does not remember the fall itself. She only remembers reaching for her father's metal chair lift on the stairs and waking up at the bottom of the stairs.

19. However, her sister Anna credibly testified at the formal hearing that she was in the kitchen area of her apartment when Claimant fell. She heard a sound, turned toward the door, and saw Claimant falling down the stairs. Claimant was unconscious when Anna saw her at the bottom of the stairs, but she regained consciousness after a short period of time. Anna asked her what had happened, and Claimant told her that her knee had given out.

20. Claimant did not seek medical attention that night, but she presented the following day to a walk-in clinic, where her providers referred her to the University of Vermont Medical Center's Emergency Room. Claimant's Emergency Room records do not reflect any statement that the fall resulted from Claimant's knee giving out, although they do note that she fell down the stairs at home. (JME 557). Her subsequent treatment records within one month of this fall expressly mention her knee giving out. (*E.g.,* JME 606, 609).

21. Importantly, Claimant's Emergency Room records do not record any other explanation for the fall, and there is no evidence in the record tending to support an alternative mechanism of injury. I also find Claimant's sister's testimony concerning Claimant's close-in-time account of the fall credible.[1]

22. Moreover, as Verne Backus, MD, credibly testified, it is impossible to know whether the lack of reference to Claimant's knee giving out in the Emergency Room record is because she did not report it or because the providers did not record it; emergency room records "are not known for recording every detail you might later want."

23. Based on the totality of the evidence, I find that Claimant's third fall resulted from her right knee giving out in the stairway.

[1] Although Anna Cobler's testimony that Claimant told her upon regaining consciousness that her knee gave out is hearsay, I find it to be of the kind that a prudent person would rely upon in conducting his or her affairs, and I find it to be credible. *Cf.* Workers' Compensation Rule 17.1800.

24. After this third fall, Claimant developed worsening headaches, particularly behind her ear, and she has had to limit her driving. She received treatment from multiple physical and occupational therapists, as well as optometrist Tony Hollop, OD, for the symptoms that followed her January 2022 fall, including treatments for vertigo, cognitive impairment, vision disturbances including convergence insufficiency, and disequilibrium. (*See generally* JME 609-677).

25. Anna Cobler credibly testified that after the third fall in January 2022, Claimant was not as cognitively sound as she had been before. In particular, she noticed that Claimant developed more difficulty with memory and had trouble completing her tax returns, which she had previously done without difficulty.

The Fourth Fall

26. On April 25, 2022, Claimant was again ascending the stairs from her sister Anna's basement apartment when she experienced vertigo and fell near the bottom of the staircase. She broke her fall by reaching with her right arm but did not strike her head or lose consciousness.

27. However, she experienced worsening symptoms in her right shoulder, so she contacted the office of Dr. Geeslin, who was already scheduled to perform surgery to treat the injuries from her second fall on May 18, 2022. Dr. Geeslin ordered an MRI and examined Claimant on April 29, 2022, but he determined that there was no additional injury beyond that which he already planned to surgically repair in May 2022. (JME 363-644).

28. Dr. Geeslin performed surgery on Claimant's right shoulder as scheduled on May 18, 2022. (JME 649-656). Since that time, Claimant has been rehabilitating with the assistance of physical therapy to improve her strength and range of motion.

Expert Medical Opinions

Verne Backus, MD

29. Verne Backus, MD, is a board-certified physician in the area of occupational and environmental medicine, with extensive clinical experience. For the last ten years, he has devoted most of his practice to performing forensic medical evaluations and record reviews, though he still performs some clinical work in an urgent care setting. He performed an independent medical examination ("IME") on Claimant at her request on October 7, 2022. In performing that IME, Dr. Backus reviewed Claimant's medical records, provided her with a questionnaire, orally reviewed her medical history with her, and performed a physical examination.

30. In Dr. Backus's opinion, Claimant's second fall in April 2021 was causally related to her first fall in 2018. In support of this opinion, he noted that Claimant's recovery from her total knee replacement surgery was not yet complete in April 2021, as she was still treating medically for her knee and was still in physical therapy. The fact that she was still recovering from surgery, in turn, made her unable to tolerate the posture that resulted

from sitting in the small chair at work just prior to her second fall. Dr. Backus credibly testified that her knee might have given out eventually anyway, but he did not believe it would have done so at that moment without Claimant using that chair.

31. He also opined that Claimant's second fall in April 2021 caused injuries to her right shoulder, wrist, and hand, including aggravations to previously asymptomatic degenerative processes such as subacrimonial impingement syndrome and a rotator cuff tear that became symptomatic after this fall. He also believes that this second fall injured Claimant's cervical spine and that her neck contributed to some of her arm complaints. He credibly testified that the mechanism of Claimant's second fall in April 2021 supported these causation opinions, as did the timing of her symptom onset.

32. In his opinion, Claimant was not yet at end medical result for her shoulder injuries from this second fall at the time of his examination, and he anticipated that she would be at end medical result approximately one year after her shoulder surgery.

33. Dr. Backus also opined that Claimant's third fall in January 2022, when she fell down her stairs at home, caused the head injury and concussion symptoms that she developed after this incident. He related that third fall, in turn, to Claimant's first fall in October 2018, noting that the third fall occurred because Claimant's knee gave out. He believes that her knee most likely gave out because of the work-related knee injury that necessitated a total knee replacement surgery.

34. Finally, Dr. Backus testified that the medical treatments Claimant has received for her right shoulder injury, right wrist injury, right hand injury, cervical spine injuries, and traumatic brain injuries have all be reasonable.[2]

35. I find Dr. Backus's opinions credible and persuasive in all respects.

George White, MD

36. George White, MD, is a board-certified occupational medicine physician with extensive experience both as a treating practitioner and forensic consultant. He performed an independent medical examination ("IME") on September 26, 2022 at Liberty Mutual's request. (JME 724 *et seq.*). The primary focus of his examination was Claimant's shoulder and upper extremity injuries following her second fall in April 2021.

37. In Dr. White's opinion, Claimant's 2018 knee injury may have been a contributing factor to her second fall in April 2021, but he could not say so beyond speculation. However, he found that her difficulty in getting out of a child-sized chair was a "significant" contributing factor in bringing about that fall, citing cotemporaneous medical records that recounted Claimant's expression of difficulty while exiting the chair. When asked why he

[2] Dr. Backus rated Claimant's whole person permanent impairment for her knee injury, relative to her first fall in 2018. Claimant was also evaluated by Douglas Kirkpatrick, MD, in September 2022, for permanent impairment for that condition at Church Mutual's request. Claimant and Church Mutual have, since that time, resolved their dispute as to the degree of Claimant's permanent impairment attributable to that injury. As such, I need not address that issue here.

would describe the low chair's contributing role as "significant," he accurately replied, "it's an adjective."

38. He subsequently clarified that individuals in western cultures are generally not adept at maintaining a deep squat, and that it would be even more difficult for someone to do so while recovering from knee surgery. Thus, in his opinion, Claimant's posture in the child-sized chair made it more likely that she would experience a fall; if she had had a telescoping chair, she probably would not have had this injury. However, he could not say to reasonable degree of medical certainty that Claimant's knee would not have given out had she risen from an adult-sized chair.

39. With respect to Claimant's knee condition's contribution to her second fall, Dr. White testified that had Claimant been a twenty-five-year-old athlete ascending from this chair, she likely would have been able to do so without a problem, but she was approximately sixty years old recovering from a total knee replacement surgery, making the task of rising from this small chair more difficult. I find this credible but difficult to reconcile with Dr. White's characterization of the knee surgery's causal role in the second fall as speculative. Instead, Dr. White's analysis tends to support an inference that Claimant's knee condition was a key reason for her inability to stand up from the child-sized chair without her knee giving out.

40. In Dr. White's opinion, Claimant's second fall in April 2021 was forceful enough to cause a shoulder injury requiring rotator cuff surgery. He also noted that he was not aware of Claimant experiencing any right shoulder problems before this fall, in contrast to the well-documented onset of Claimant's shoulder pain after that fall.

41. With respect to Claimant's cervical spinal complaints, Dr. White did not offer any specific opinion as to causation and did not note any spinal abnormalities at the time of his examination.

42. Claimant reported to Dr. White that her fourth fall in April 2022 did not make her shoulder pain any worse than it already was. (JME 729). This is consistent with Claimant's contemporaneous medical records following this fall, including her consultation with Dr. Geeslin.

43. I find Dr. White's testimony generally persuasive except as to the characterization of the causal link between Claimant's first two falls as speculative. As discussed above, his analysis tends to support a causal link between these events.

CONCLUSIONS OF LAW:

General Principles

1. Claimant has the burden of proof to establish all facts essential to the rights she asserts. *Goodwin v. Fairbanks Morse & Co.*, 123 Vt. 161, 166 (1962); *King v. Snide*, 144 Vt. 395, 399 (1984). She 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. For an injury to be compensable under the Workers' Compensation Act, it need not result solely from a workplace incident; it is sufficient for the workplace incident to be one of multiple contributing factors. *E.g.*, *McGee v. Fair Haven Volunteer Rescue*, Opinion No. 04-20WC (February 21, 2020) (citing *McNall v. Town of Westford*, Opinion No. 08-19WC (May 10, 2019)).

3. In general, where questions of medical causation are "obscure and abstruse, and concerning which a layman can have no well-founded knowledge and can do no more than indulge in mere speculation," expert testimony is required; the expert testimony must meet a standard of "reasonable probability" or a "reasonable degree of medical certainty." *Jackson v. True Temper Corp.*, 151 Vt. 592, 596 (1989). Where the parties offer conflicting expert medical testimony, 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).

Claimant's Second and Third Falls Were Natural Consequences of the First, Making Both Church Mutual's Responsibility

4. Once an injury is shown to have arisen out of and in the course of employment, every natural consequence of that injury is likewise deemed to have arisen out of employment. *Harmon v. Central Vermont Council on Aging*, Opinion No. 01-17WC (February 1, 2017). This principle applies not only to complications of the original injury, but also new injuries that arise because of the original injury. *E.g., Sweetser v. Vermont Country Camper*, Opinion No. 36-09WC (September 24, 2009).

5. Of course, not every adverse medical outcome following a workplace injury is necessarily a natural consequence of that injury; a causal chain may be broken by subsequent events, whether work-related or not. Vermont's workers' compensation jurisprudence recognizes two distinct legal frameworks for addressing successive injuries, depending on whether the second injury is work-related or not:

(a) ***Successive workplace injuries*** involving different employers or insurers, under the Department's current rules, may constitute aggravations,[3] flare-ups,[4] or recurrences.[5] Regardless of which of these three categories describes a second workplace injury, however, the worker who suffers successive compensable workplace injuries receives workers' compensation benefits for both injuries. The principal difference lies with which employer or insurer must pay for which benefits.

(b) An ***intervening non-industrial event*** will terminate an employer's liability for a previous compensable injury if the evidence shows that the intervening event severs the causal chain between the original workplace injury and the subsequent disability or need for medical care. For instance, injuries resulting from "activities of daily living" such as lifting groceries, climbing stairs, or getting out of a chair, generally do not sever the causal chain because everyone, injured or not, must perform such activities; an injury arising from such an activity is thus a "natural consequence of the primary injury." However, an employer will only be responsible for injuries resulting from activities of daily living that occur within a "reasonable time" after the primary work injury or treatment therefor. Even for activities that do not constitute "activities of daily living," however, not all intervening events will sever this causal link. It is only where the claimant, knowing of certain weaknesses arising from the primary injury, "rashly undertakes activities likely to produce harmful results" that the causal connection disintegrates.

Lorman v. City of Rutland, Opinion No. 15-22WC (July 18, 2022) (cits. omitted).

6. In the case of successive workplace injuries, liability generally remains with the first insurer or employer if the second injury is a recurrence of the first, but if the second incident "aggravated, accelerated, or combined with a preexisting impairment or injury to produce a disability greater than would have resulted from the second injury alone, the second incident is an 'aggravation,' and the second employer becomes solely responsible for the entire disability at that point." *Farris v. Bryant Grinder Corp./Wausau Ins. Co.*, 2005 VT 5, ¶ 4.[6]

7. Additionally, the Workers' Compensation Act creates a rebuttable presumption that the later employer or insurer is responsible for the later injury and generally must pay interim

[3] "Aggravation" means an acceleration or exacerbation of a pre-existing condition caused by some intervening event or events. Workers' Compensation Rule 2.1200.

[4] "Flare-up" means a temporary worsening of a pre-existing condition caused by a new injury for which a new employer or insurance carrier is responsible, but only until the condition returns to baseline and not thereafter. Workers' Compensation Rule 2.2300

[5] "Recurrence" means the return of symptoms following a temporary remission. Workers' Compensation Rule 2.3900.

[6] There is no contention here that the third recognized alternative, the flare-up doctrine, is implicated in the analysis of any of the falls that Claimant suffered.

benefits until a final determination can be made as between the carriers' respective responsibilities. 21 V.S.A. § 662(c); *Parker v. Decel*, Opinion No. 58-94WC (March 1, 1995) ("Because this is a dispute between two carriers, we find that the burden of proof should rest with the subsequent carrier to demonstrate that it is not the responsible insurer.")

8. In distinguishing between an aggravation and a recurrence, the Department traditionally weighs the following five factors: (1) whether there is a subsequent incident or work condition which destabilized a previously stable condition; (2) whether the claimant had stopped treating medically; (3) whether the claimant had successfully returned to work; (4) whether the claimant had reached an end medical result; and (5) whether the subsequent work contributed independently to the final disability. *Trask v. Richburg Builders*, Opinion No. 51-98WC (Aug. 25, 1998). The Department generally assigns the greatest weight to the fifth factor. *See Beauregard v. Montpelier Public School System*, Opinion No. 26-00WC (August 17, 2000).

The Second Fall

9. In this case, no party disputes that Claimant's second fall, which occurred at work during work hours, was a compensable injury. The primary dispute is whether that fall and its aftermath are Church Mutual's or Liberty Mutual's responsibility.

10. Liberty Mutual contends that this fall was a "recurrence" of the first, emphasizing that Claimant's knee was still recovering and unstable at the time that it gave out in April 2021. Church Mutual, by contrast, contends that this fall constituted a new injury, pointing primarily to the causal role of Defendant's failure to provide Claimant with a telescoping chair in every classroom where she would need to teach.

11. Drs. Backus and White offered conflicting opinions concerning the relative causal contributions of the child-sized chair versus Claimant's continuing recovery from her knee surgery. In essence, Dr. Backus believed that Claimant's still-recovering knee condition was the primary cause of the second fall and was the reason Claimant could not tolerate the position the small chair placed her body in. Conversely, Dr. White believed that the child-sized chair was the most significant causal factor, and her knee condition may have been a contributing factor, but saying so would be speculative. I find Dr. Backus's opinion in this regard more persuasive on this point, primarily under the third *Geiger* factor, particularly given Dr. White's testimony that a 25-year-old athlete would likely have no problem ascending from a similar chair, but that a person over age sixty recovering from knee surgery, like Claimant, was more likely to have trouble. *See generally* Findings of Fact Nos. 29-43.

12. The *Trask* factors support the same conclusion. *See* Conclusion of Law No. 8 *supra*. Although the traditional recurrence/aggravation analysis is not a perfect fit for a case like this where the second workplace injury primarily affects different parts of Claimant's body than the first, it remains a useful framework for assessing the causal independence of Claimant's upper body injuries following her second fall from the knee injury she suffered as a result of the first.

13. With respect to the first *Trask* factor, Claimant's knee condition had not stabilized as of April 2021, as Claimant was not at end medical result, was still treating medically, and still needed accommodations to return to work. That said, her age-related shoulder conditions were asymptomatic and therefore stable immediately before her second fall. Thus, the second fall resulted from a condition that was unstable because of a work-related injury but led to the destabilization of a previously stable condition. This factor weighs in favor of treating Claimant's second fall as a new injury.

14. With respect to the second *Trask* factor, Claimant was still treating medically for her right knee condition when that knee gave out and led to her fall on her second day of work following a long and complex convalescence for her 2018 workplace injury. This factor favors treating the second fall as a natural consequence of the first.

15. With respect to the third *Trask* factor, it is true that Claimant had returned to work at the time of her second fall. However, I cannot characterize that return as "successful." She still needed significant accommodations in the form of an electric scooter and telescoping chair for her knee condition from her 2018 fall. Those accommodations were only partially implemented. On only her *second day* back at the workplace, because of a failure in the still-recovering knee that gave rise to the need for those accommodations, Claimant suffered a fall severe enough to require surgery.

16. Although the school's failure to ensure that Claimant had a telescoping chair in every room where she would need to teach at a time when Liberty Mutual was on the risk may well have been a contributing factor in rendering Claimant's return to work unsuccessful, it was Claimant's knee condition that gave rise to the need for those accommodations.

17. The underlying injury to that knee occurred while Church Mutual was on the risk, and I cannot conclude that Defendant's less-than-perfect implementation of the necessary accommodations for that condition was sufficient to sever the causal chain. On balance, I find that Claimant's return to work was unsuccessful, and that the reason for its lack of success primarily related to her less-than-full recovery from her 2018 workplace injury, which occurred when Church Mutual was on the risk. The third *Trask* factor therefore favors treating the second fall as a natural consequence of the first.

18. With respect to the fourth *Trask* factor, Claimant had not reached an end medical result for her right knee condition at the time of her second fall. This factor favors treating the second fall as a natural consequence of the first.

19. With respect to the fifth *Trask* factor, Claimant's second fall certainly contributed to new disabilities in different bodily regions than were affected by the first. Specifically, the first fall affected her right knee while the second affected her shoulder, upper extremity, and cervical spine. However, for the same reasons that I cannot call her return to work "successful," I likewise cannot call her second fall's contribution to those new disabilities "independent" of the first. Claimant's second fall happened because her knee was not yet fully recovered and gave out under work-related physical stresses that she would most likely have been able to tolerate otherwise.

20. Balancing the five *Trask* factors and crediting Dr. Backus's medical analysis, I conclude that Liberty Mutual, as the later carrier, has satisfied its burden to demonstrate that Claimant's second fall was a natural consequence of the first. Church Mutual was on the risk for the first fall and all of its natural consequences. It is therefore responsible for all benefits attributable to Claimant's second fall.

21. Based on Dr. Backus's credible and unrefuted expert medical testimony, I conclude this fall caused Claimant to suffer injuries to her right shoulder, right wrist, and right hand, and that her treatment for those injuries to date, including her shoulder surgery, has been reasonable and necessary.

22. Drs. Backus and White did differ as to whether Claimant suffered a cervical spine injury because of this second fall. Dr. White did not note any cervical abnormalities on examination, though he acknowledged that the mechanism of injury would result in a force sufficient to cause a cervical spinal injury. He thus did not offer any specific opinions concerning the causation of Claimant's cervical spinal complaints. Dr. Backus, by contrast, examined Claimant's cervical spine and found that her cervical spine was involved in her arm complaints, a finding that is supported by Claimant's treatment records' assessment of numbness and tingling in her arm and diagnosis of cervical spinal radiculopathy. While I cannot fault Dr. White for accurately stating that he did not note any spinal abnormalities, I find Dr. Backus's opinion that Claimant's second fall aggravated previously asymptomatic cervical spine conditions which then manifested via arm complaints to be persuasive and more well-supported by the medical record. As such, relying primarily on the third *Geiger* factor, I credit Dr. Backus's opinions concerning Claimant's cervical spine, and find that Church Mutual is responsible for Claimant's cervical spine condition as well.

The Third Fall

23. Claimant contends that her third fall in April 2022 occurred because her still-recovering right knee that was the subject of her first fall in 2018 gave out while she was traversing stairs at home, making this third fall a natural consequence of her first.

24. Unlike her second fall, the dispute concerning Claimant's third fall in January 2022 is not *which* insurer is responsible, but *whether* this fall is compensable at all. This dispute is solely between Claimant and Church Mutual, as there is no suggestion that Liberty Mutual may have any responsibility for this fall.

25. In support of its denial of liability, Church Mutual contends that Claimant's third fall was unwitnessed, that Claimant cannot remember the fall in its entirety, and that her first treatment record following this fall did not mention her knee giving way.[7]

[7] Although the parties do not directly address the intervening non-occupational event doctrine, I also note that Claimant's activity of traversing stairs at home was an activity of daily living, and there is no evidence that she was rash or otherwise careless in her decision to ascend the stairs. *Cf.* Conclusion of Law No. 5, *supra*, citing *Lorman*, *supra*, Opinion No. 15-22WC; *accord Church v. Springfield Hospital*, Opinion No. 40-08WC (October 8, 2008) (climbing steps at home held activity of daily living). As such, her act of climbing the stairs at home, despite her knee condition, did not sever the causal chain between her first fall in 2018 and her third fall in January 2022.

26. It is at best a stretch to characterize Claimant's third fall as "unwitnessed." While nobody saw the entirety of this fall from beginning to end, Claimant's sister Anna Cobler was nearby, heard the sound when the fall began, and saw the end of the fall. She came to Claimant's aid close in time thereafter. Claimant, upon regaining consciousness following a brief lapse, told her sister that her knee had given out. All of this took place within a matter of minutes. Even if I considered this event as an unwitnessed fall, however, I find no reason to doubt that it occurred as she described it.

27. In assessing the credibility of unwitnessed and/or late-reported incidents, the Department has traditionally considered the factual evidence as to explore any inconsistencies, investigate possible intervening causes, and evaluate the claimant's potential motivations.[8] In this case, there are no inconsistencies in Claimant's narrative to resolve,[9] and there is no specific alternative theory of why Claimant fell. While every claimant with a denied claim has some incentive to bend facts in favor of compensability, there is nothing in the record that undermines the credibility of either Claimant or her sister Anna, both of whom I find entirely credible.

28. Thus, even viewing the record through a skeptical lens, I conclude that Claimant fell down the stairs because her right knee gave out. I also find Dr. Backus's medical opinion that this knee giving out was because of her knee injury following her first fall in 2018 to be persuasive. I conclude that Claimant's third fall was a natural consequence of her first, making it Church Mutual's responsibility.

29. Additionally, based on Dr. Backus's credible and unrefuted expert medical testimony, I conclude that this third fall caused Claimant to suffer a concussion or traumatic brain injury, and that her medical treatment to date for that condition has been reasonable and necessary.[10]

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[8] *E.g.*, *Ali v. University of Vermont*, Opinion No.20-20WC (December 15, 2020); *Brochu v. Peck Electric Co.*, Opinion No. 18-20WC (November 4, 2020); *Jurden v. Northern Power Systems, Inc.*, Opinion No. 39-08WC (October 6, 2008); *Russell v. Omega Electric*, Opinion No. 42-03WC (November 10, 2003); *Fanger v. Village Inn*, Opinion No. 05-95WC (April 20, 1995).

[9] Although Claimant's initial emergency room records do not mention her knee giving out, her subsequent records consistently do so. Dr. Backus's characterization of emergency room records as often lacking in important details is both credible and consistent with my own experience of reviewing emergency room records in many workers' compensation cases. This is understandable given the exigencies of treating patients in that setting. Thus, I do not consider the omission of Claimant's knee's involvement in this medical record to be an inconsistency in need of resolution.

[10] The parties do not seek any legal conclusions related to Claimant's fourth fall, which occurred on April 25, 2022.

ORDER:

Based on the foregoing findings of fact and conclusions of law, Church Mutual is responsible for all benefits associated with Claimant's falls that occurred on April 6, 2021 and January 15, 2022, including injuries to her right shoulder, right wrist, right hand, and cervical spine, as well as a traumatic brain injury.

DATED at Montpelier, Vermont this 12 day of September 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.