

**STATE OF VERMONT
DEPARTMENT OF LABOR**

Charles Billingham

Opinion No. 14-24WC

v.

By: Beth A. DeBernardi
Administrative Law Judge

Pompanoosuc Mills Corporation

For: Michael A. Harrington
Commissioner

State File No. LL-63347

OPINION AND ORDER

Hearing held via Microsoft Teams on June 12, 2024
Record closed on July 15, 2024

APPEARANCES:

Sean P. Noonan, Esq., for Claimant
Peter R. Cruice, Esq., for Defendant

ISSUES PRESENTED:

1. Did Claimant's right wrist condition, which resulted in fusion surgery and subsequent hardware removal, arise out of and in the course of his employment as a result of his April 2019 work-related injury?
2. If so, to what workers' compensation benefits is he entitled?

EXHIBITS:

Joint Exhibit I:	Joint Medical Exhibit ("JME")
Claimant's Exhibit 1:	Photograph of king-size headboard
Claimant's Exhibit 2:	February 27, 2024 report of Victor Gennaro, DO
Claimant's Exhibit 3:	<i>Curriculum Vitae</i> of Andrew Forrest, MD
Defendant's Exhibit A:	<i>Curriculum vitae</i> of Victor Gennaro, DO

CLAIM:

Temporary total disability benefits pursuant to 21 V.S.A. § 642
Permanent partial disability benefits pursuant to 21 V.S.A. § 648
Medical benefits pursuant to 21 V.S.A. § 640(a)
Interest, costs and attorney fees pursuant to 21 V.S.A. §§ 664 and 678

FINDINGS OF FACT:

Claimant's Employment with Defendant and Prior Medical History

1. Claimant is a 58-year-old man who resides in Corinth, Vermont. Defendant sells handcrafted hardwood furniture. Claimant has been working for Defendant for 28 years.
2. As of the spring of 2019, Claimant's primary job duty for Defendant was building hardwood furniture.¹ To build a piece of furniture, he would obtain the specification sheet and assemble all the necessary parts and tools. He then crafted the piece by hand. Claimant used power tools in his work, including drills, screw guns, belt sanders, orbital sanders, jigsaws, band saws and table saws. He is right-hand dominant and ran the power tools using his dominant hand.
3. Crafting fine furniture is a slow and painstaking process. For example, building a king-size headboard would take Claimant two days. After assembling each piece of furniture, Claimant would carry the piece a short distance and place it on a set of wheels called an "orb line," which would transport the piece to another area of the shop for finishing and packaging.
4. Claimant credibly testified that he had never sustained any injury to his right wrist prior to April 26, 2019, and his medical records do not reflect any right wrist injury or treatment prior to that date. Further, Claimant was never diagnosed with right wrist arthritis prior to April 26, 2019, nor had he ever sought medical treatment for symptoms of such a condition prior to that date.

Claimant's April 2019 Work Injury and Subsequent Medical Course

5. On April 26, 2019, Claimant finished building a king-size oak headboard. The headboard was 80 inches long, 36 inches high, and weighed 60 to 80 pounds. While he was carrying the headboard to the orb line, he tripped and fell. He did not want to damage the headboard, so he held it tightly with his right arm as he fell. Immediately, he felt something go "drastically wrong" in his right arm. He was able to safely place the headboard on the floor, and another employee brought it to the orb line for him.
6. Claimant experienced immediate pain when he fell. He felt a "pop" in his right arm and then pain from his right hand up to his shoulder. (JME 003). When icing did not help, he drove to the emergency department at Alice Peck Day Memorial Hospital in Lebanon, New Hampshire. He was then referred to Dartmouth Hitchcock Medical Center for evaluation of an apparent right biceps injury. (JME 001-005).
7. On April 29, 2019, Claimant was diagnosed with a biceps tendon rupture at Dartmouth Hitchcock. (JME 319-320). Defendant accepted Claimant's biceps tendon injury and paid some workers' compensation benefits accordingly.

¹ Claimant still works for Defendant, but he no longer builds furniture.

8. On April 30, 2019, Claimant underwent surgical repair of his ruptured tendon performed by orthopedic surgeon John-Erik Bell, MD, at Dartmouth-Hitchcock Medical Center. (JME 009-012).
9. Claimant followed up after surgery with his primary care provider. His post-surgical treatment included occupational therapy and a series of arm braces and splints. (JME 013-015). For the first two weeks, his right arm was completely immobilized in a brace from his wrist to above his elbow. He wore a plastic immobilizer for another four weeks and then switched to a similar hard plastic brace with rubber bands so he could start using his arm muscles; he was still wearing that brace when he returned to light-duty work.
10. On June 4, 2019, Claimant followed up with Dr. Bell. (JME 016-021). Dr. Bell noted that he did not have much pain but had persistent sensitivity over his forearm. Dr. Bell released Claimant to light duty work as of June 17, 2019. (*Id.*) Light duty included teaching other employees how to build furniture, retrieving parts for other employees, and sweeping floors.
11. On October 15, 2019, Claimant reported diminished sensation in his right forearm to Dr. Bell but not specifically any wrist pain. Dr. Bell released Claimant to return to full-duty work on that date, and Claimant returned to furniture making, using sanders, drills and all the other power tools of the trade with his right arm. (JME 037-039). On January 15, 2020, Dr. Bell noted that the sensation in Claimant's forearm had improved. (JME 040). This was Claimant's last medical visit relating to his right upper extremity injury until August 2021.
12. Claimant credibly testified that his right wrist pain increased after he returned to full-duty work, especially when using drills and other power tools. Sometimes a drill bit would "catch," causing the drill to keep running while the bit was suddenly stationary. Claimant would feel the effects of the drill catching in his right wrist. Although his wrist pain increased after his return to full duty, Claimant ignored the pain for quite a while. He credibly explained that he wanted to settle back into his work routine after the disruption of the biceps tendon surgery and was hoping his wrist would improve on its own.
13. Eventually, by the spring or summer of 2021, Claimant's wrist became so painful that he could not even rest it on the center console of his truck after work. However, he still did not seek medical attention because he was "stubborn" and because he wanted to focus on work and support his family. Over time, it became apparent to Claimant's wife that he was experiencing significant wrist pain, especially when he would come home from work in the evening clutching his wrist. She urged him to see a doctor.
14. Claimant still did not schedule a medical appointment specifically for evaluation of his wrist, but rather brought up his wrist pain at his annual physical with family medicine practitioner Nina McCampbell, MD on August 23, 2021. He reported pain that felt like someone was driving a dull object through his wrist; some days, his wrist pain was "horrible." (JME 044). An MRI found moderate osteoarthritis in Claimant's wrist, and Dr. McCampbell made some suggestions for alleviating arthritis pain. (JME 057).

15. On May 9, 2022, Claimant underwent a preoperative evaluation with Dr. McCampbell to determine his readiness for an unrelated medical procedure. Dr. McCampbell noted Claimant's persistent right wrist pain and referred him to Alice Peck Day Orthopedics for a consultation. (JME 063).
16. On July 22, 2022, Claimant saw orthopedic surgeon Diane Riley, MD, at Alice Peck Day Orthopedics for evaluation of his right wrist condition. (JME 068). Claimant reported pain and swelling in his right wrist; he was also losing strength and had a constant burning pain. (JME 072). An August 26, 2022 MRI found a scapholunate ligament tear; a healed fracture of the scaphoid bone with surrounding non-united bone fragments; and a 5-mm wide scapholunate interval, indicating dissociation or separation of the scaphoid and lunate bones. (JME 083-084).
17. Claimant followed up with Dr. Riley on September 12, 2022, and was diagnosed with scapholunate advanced collapse of his wrist, a condition known as "SLAC wrist." SLAC wrist is a progressively worsening condition leading to deformity and instability of the wrist joint. The wrist contains eight carpal bones that form a complex articulation, with ligaments between them. If a ligament sustains damage, the bones held together by that ligament may start to shift positions. Over time, the condition can cause arthritic degeneration in the wrist joint, which may then go on to collapse. The scaphoid is the small "peanut-shaped" bone in the wrist, in close articulation to the "moon-shaped" lunate bone. When the scapholunate ligament is damaged, these two bones may move apart. The measured interval between the scaphoid and lunate bones will increase, indicating that separation has occurred.²
18. Dr. Riley recommended arthrodesis to treat Claimant's SLAC wrist. This procedure involves fusing the wrist joint with screws and a metal plate. (JME 085, 087). Claimant underwent arthrodesis on December 30, 2022. (JME 102). In January and February of 2023, Dr. Riley noted that he was doing well post-surgery. (JME 107, 111).
19. On April 4, 2023, Dr. Riley released Claimant to light-duty work, with no use of power tools and some lifting restrictions. (JME 147). On July 5, 2023, Dr. Riley released him back to full duty.³ (JME 155).
20. Claimant returned to furniture building after his full-duty work release. One day in October 2023, as he was using a drill at work, the drill bit caught and sent a strong force into his right wrist. Claimant's wrist became painful and swollen. Claimant hoped his condition would improve, so he did not seek medical attention right away. When his wrist did not improve, he underwent an x-ray on January 23, 2024; the x-ray revealed that two screws holding his wrist fusion together had snapped off and the metal plate in his wrist was lifting off the bone. (JME 166, 176). As the breakdown of the mechanical hardware in Claimant's wrist posed a risk for severing the tendons in his fingers, his medical provider advised him that the hardware must be removed. (JME 178).

² This description of SLAC wrist is based on Dr. Forrest's credible testimony.

³ Dr. Riley did not place Claimant at end medical result at this time. In her opinion, a patient typically reaches end medical result following arthrodesis one year after surgery. (JME 155-156).

21. Claimant reported to the hospital for hardware removal surgery on March 15, 2024, but the procedure could not be performed that day due to a scratch on his arm that posed an infection risk. (JME 203-230). The procedure was then performed ten days later, on March 25, 2024. (JME 245-246). No evidence was offered on whether Claimant worked between March 15 and March 25, 2024.
22. Claimant returned to work about seven weeks after the surgery, but he no longer builds furniture for Defendant. His duties now include prepping components for furniture building, retrieving parts and supplies for other employees, gluing legs onto various products, and teaching others how to build furniture.

The Modified Form 16 Agreement and Addendum Approved May 30, 2024

23. On May 22, 2024, the parties submitted a Modified Form 16 Settlement Agreement and Addendum, which the Department approved on May 30, 2024. The agreement settled certain workers' compensation benefits, including Claimant's entitlement to temporary total disability benefits for the period from December 20, 2022, through February 24, 2023, and his entitlement to permanent partial disability benefits for his ruptured biceps tendon and carpal tunnel conditions, but not his SLAC wrist condition. *See Modified Form 16 Settlement Agreement and Addendum.*

Medical Opinions Concerning Claimant's SLAC Wrist Condition

24. Claimant presented expert testimony from Andrew Forrest, MD, in support of his claim, and Defendant presented expert testimony from Victor Gennaro, DO. In addition to the medical testimony, the Joint Medical Exhibit includes a report from Phillip Collins, MD, addressing the causation of Claimant's SLAC wrist condition.

(a) *Andrew Forrest, MD*

25. Dr. Forrest is a board-certified physical medicine and rehabilitation physician with more than 35 years' experience. He graduated from Dartmouth Medical School in 1987 and completed a four-year residency in physical medicine and rehabilitation at the Mayo Clinic in Rochester, Minnesota. Dr. Forrest has practiced medicine at several hospitals and currently sees patients at the Alice Peck Day Hospital in Lebanon, New Hampshire. He also operates a medical consulting practice. *Claimant's Exhibit 3.*
26. The specialty of physical medicine and rehabilitation involves the evaluation and treatment of neurological and musculoskeletal injuries. Dr. Forrest has evaluated and treated hundreds or thousands of patients with orthopedic injuries to their wrists, shoulders and elbows in the course of his medical practice.
27. On November 14, 2023, at Claimant's request, Dr. Forrest performed an independent medical examination of him. (JME 162-164). Dr. Forrest took a medical history from Claimant, physically examined him, and reviewed his medical records and imaging studies. Dr. Forrest has also seen Claimant as a treating provider, performing two needle

examinations of his wrist and seeing him two more times for office visits.⁴ Dr. Forrest found Claimant to be a credible historian.

28. In Dr. Forrest's opinion, to a reasonable degree of medical certainty, there is a causal relationship between Claimant's April 26, 2019, work injury and his SLAC wrist condition. Dr. Forrest explained that Claimant's fall at work was a sufficient mechanism of injury to have injured the scapholunate ligament in his wrist, leading to the separation of his scaphoid and lunate wrist bones. He noted that the same mechanism of injury caused the rupture of Claimant's biceps tendon.
29. In addition to the sufficient mechanism of injury, Dr. Forrest based his causation opinion on several other factors, including his impression that Claimant was a credible historian and that he had no right wrist pain prior to the April 2019 work accident. Further, Claimant did not have similar pain in his left wrist, despite working with both hands for many years. The lack of left wrist symptoms points to trauma as the cause of his right wrist condition, rather than normal aging or repetitive hand use.
30. Dr. Forrest explained that SLAC wrist is more often traumatic but may also be degenerative. As no wrist imaging studies were done before April 2019, it is impossible to know whether Claimant had pre-existing osteoarthritis in his wrist. However, Dr. Forrest thinks it more likely that the fall caused the condition because Claimant did not complain about any right wrist symptoms until after his fall at work and because his left wrist was not similarly affected, despite working with his hands for years. However, even if Claimant already had some arthritis in his right wrist before the fall, his SLAC wrist condition would still be work-related in Dr. Forrest's opinion because the fall would have worsened the condition. As Dr. Forrest explained, arthritic joints do not tolerate injury well.
31. Dr. Forrest acknowledged that Claimant's medical records do not contain any complaints of wrist pain until August 2021, but that does not change his opinion that the injury is work-related. Dr. Forrest explained that Claimant's right upper extremity was immobilized in a brace after his biceps tendon surgery; that immobilization prevented Claimant from experiencing wrist pain. Later, when Claimant returned to work, he was restricted to light duty for months. It was not until he returned to full duty and resumed building furniture that his wrist pain began to gradually increase. In Dr. Forrest's opinion, this pain history is consistent with a work-related wrist injury.
32. Dr. Forrest also explained that Claimant's medical providers focused on his ruptured biceps tendon initially because that injury was more severe. In his experience, it is common for a patient not to notice or not to report pain from one injury while experiencing pain from a more severe injury.
33. I find Dr. Forrest's causation opinion to be clear and credible, well-grounded in Claimant's medical history, and well-supported by his knowledge, training and experience as a physical medicine and rehabilitation physician.

⁴ The needle examinations related to Claimant's carpal tunnel syndrome, not his SLAC wrist.

34. Dr. Forrest did not offer testimony about whether Claimant is at an end medical result for his SLAC wrist condition, nor did he testify as to any permanent impairment referable to that condition. In his November 2023 independent medical examination report, Dr. Forrest opined that Claimant would not be at end medical result for his SLAC wrist before late December 2023, one year after his arthrodesis. His report also included an estimate of what Claimant's permanent impairment might be, even though Claimant had not yet reached an end medical result. (JME 163-164). I find that these comments in Dr. Forrest's report do not constitute an opinion to a reasonable degree of medical certainty that Claimant reached end medical result on any particular date or that he had any specific permanent impairment referable to his SLAC wrist condition thereafter.
35. Further, Dr. Forrest's November 2023 estimate of a future end medical result date and permanent impairment did not take into consideration the subsequent hardware removal surgery in March 2024. For all these reasons, I make no findings about end medical result or permanent impairment related to Claimant's SLAC wrist condition.

(b) Victor Gennaro, DO

36. Dr. Gennaro is a board-certified orthopedic surgeon with over 35 years' experience. He graduated from the Philadelphia College of Osteopathic Medicine in 1984 and completed a four-year residency in orthopedic surgery at Metropolitan Hospital in Philadelphia. Dr. Gennaro has practiced orthopedic surgery in a variety of settings, most recently at the Day Kimball Hospital in Putnam, Connecticut. He also operates an orthopedic consulting practice and has been performing independent medical examinations for almost 30 years. *Defendant's Exhibit A.*
37. As a general orthopedic surgeon, Dr. Gennaro treats patients with bone fractures, joint conditions and sports injuries; he has performed numerous joint replacements, spinal surgeries and other orthopedic surgical procedures.
38. On February 17, 2023, at Defendant's request, Dr. Gennaro performed an independent medical examination of Claimant. (JME 113-117). He interviewed Claimant, physically examined him, and reviewed his medical records. Dr. Gennaro testified that he found Claimant to be a credible historian.
39. Dr. Gennaro testified that, based on the available medical records, he cannot find a causal relationship between Claimant's April 26, 2019, work injury and his SLAC wrist condition to a reasonable degree of medical certainty. He testified that such a relationship is possible, but he cannot find one because Claimant did not report right wrist pain to his medical providers in close proximity⁵ to April 26, 2019.
40. In Dr. Gennaro's opinion, Claimant's fall at work in April 2019 *was* a sufficient mechanism of injury to have caused his SLAC wrist condition. However, if the fall caused the condition, he thinks that Claimant would have reported wrist pain to his

⁵ Dr. Gennaro considers three months to be close proximity.

medical providers within a few months. In the absence of such pain reports, Dr. Gennaro cannot attribute Claimant's SLAC wrist to his fall at work.

41. Although Dr. Gennaro's opinion is straight-forward, he did not offer any convincing reason why an injured scapholunate ligament must be painful within the first few months of injury. According to Dr. Forrest's credible testimony, SLAC wrist is a progressive condition; first the ligament is injured, and then the scaphoid and lunate bones undergo a separation process over time. Further, Dr. Forrest credibly explained why Claimant might not have noticed or reported wrist pain sooner. *See* Finding of Fact Nos. 31-32 *supra*. Without a compelling explanation of why this progressive condition would necessarily be painful within the first few months, I find Dr. Gennaro's opinion unconvincing.
42. Further, in his independent medical examination report, Dr. Gennaro identified "post-traumatic osteoarthritis" and "previous scapholunate dissociation" in Claimant's right wrist, likely predating the April 2019 fall at work. (JME 116). However, this opinion does not address Claimant's credible testimony that he never had any wrist injury or pain prior to April 2019, nor is it consistent with his medical records, which include no history of wrist trauma prior to April 2019. Accordingly, I am not persuaded that Claimant's SLAC wrist was caused by a separate traumatic event that took place prior to April 2019.

(c) Phillip Collins, MD

43. On October 4, 2022, Claimant saw occupational medicine physician Phillip Collins, MD, for consideration of the proposed arthrodesis procedure and its causal relationship to employment.⁶ (JME 088-090). Dr. Collins examined Claimant, took a medical history from him, and reviewed his medical records. He noted Claimant's report of wrist pain gradually increasing over the prior three to five months; he also noted that Claimant underwent right wrist x-rays 14 months earlier to diagnose his wrist pain.
44. In Dr. Collins' opinion, to a reasonable degree of medical certainty, Claimant's right wrist condition is more likely than not related to his April 2019 work accident. He opined that the headboard incident was sufficient as a mechanism of injury to account for Claimant's SLAC wrist. He further explained that Claimant's condition might not have become apparent sooner because of his more significant biceps tendon injury, repair surgery and subsequent immobilization. I find that Dr. Collins' opinion adds additional credible support to Dr. Forrest's opinion.

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.

⁶ Dr. Riley referred Claimant to Dr. Collins for this consultation, after Claimant's employer asked for a medical opinion addressing the causal relationship between the proposed arthrodesis and Claimant's employment.

367 (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* at 19; *Morse v. John E. Russell Corp.*, Opinion No. 40-92WC (May 7, 1993).

2. Where the causal connection between employment and injury is obscure, and a layperson could have no well-grounded opinion as to causation, expert medical testimony is necessary. *Lapan v. Berno's Inc.*, 137 Vt. 393, 395-96 (1979).

Causal Relationship Between Claimant's SLAC Wrist Condition and his April 2019 Work Injury

3. The parties presented conflicting evidence concerning the causal relationship between Claimant's right wrist condition and his accepted April 2019 work injury. 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. Here, both Dr. Forrest and Dr. Gennaro are experienced physicians with specialties that render them well qualified to offer causation opinions in this case. Both physicians viewed the pertinent records and performed comprehensive evaluations. Although Dr. Forrest was also a treating physician, his treatment was related to Claimant's carpal tunnel syndrome, not his SLAC wrist condition. Accordingly, I do not afford more weight to Dr. Forrest's opinion based on his status as a treating doctor. Thus, the first, second, fourth and fifth *Geiger* factors do not provide a significant advantage to the opinions of either physician.
5. As is often the case, the relative persuasiveness of the medical opinions here turns on the third *Geiger* factor – the clarity, thoroughness and objective support underlying the opinions. This factor weighs in Dr. Forrest's favor. Dr. Forrest clearly and thoroughly explained the basis for his opinion that Claimant's SLAC wrist condition was work-related, and he offered a persuasive explanation for why Claimant might not have reported any wrist symptoms sooner. Further, his opinion was consistent with Claimant's credible testimony and his medical history. Finally, Dr. Forrest offered a credible opinion that, even if Claimant had some pre-existing osteoarthritis in his right wrist before April 2019, the fall at work aggravated his condition, as arthritic joints do not tolerate injury well. It is well-established that a work-related aggravation of a pre-existing condition is compensable. *C.D. v. Grand Union*, Opinion No. 34-06WC (August 4, 2006), citing *Jackson v. True Temper Corp.*, 151 Vt. 592, 595 (1989) (aggravation or acceleration of a pre-existing condition by an employment accident is compensable under the workers' compensation law).

6. Dr. Gennaro agreed that the fall at work was a sufficient mechanism of injury to have caused Claimant's SLAC wrist condition, but he declined to find a causal relationship to a reasonable degree of medical certainty because Claimant's medical records did not record complaints of wrist pain sooner. However, Dr. Gennaro did not convincingly explain why early pain reports are paramount.
7. Further, I am unpersuaded by Dr. Gennaro's testimony that Claimant's post-traumatic osteoarthritis and scapholunate dissociation were likely caused by a prior wrist trauma that took place before his April 2019 fall at work. Claimant's medical history includes no prior traumatic incident, and his credible testimony was that he sustained no prior wrist injury.
8. Therefore, based on the clear, thorough and well-supported opinion of Dr. Forrest, I conclude that Claimant's SLAC wrist condition, including his need for arthrodesis and subsequent hardware removal surgery, is causally related to his April 2019 fall at work.

Workers' Compensation Benefits to which Claimant Is Entitled

Temporary Total Disability Benefits

9. Claimant seeks temporary total disability benefits for the time periods from December 30, 2022 through April 12, 2023, and from March 15, 2024 through April 29, 2024. *See* Claimant's Proposed Findings of Fact and Conclusions of Law, at 17.
10. As Claimant's SLAC wrist condition is causally related to his employment for Defendant, he is entitled to temporary total disability benefits pursuant to 21 V.S.A. § 642 for the time periods during which he was unable to work as a result of that wrist condition, including when he underwent arthrodesis and when he underwent the subsequent hardware removal surgery.
11. Claimant's arthrodesis was performed on December 30, 2022, and he was released to return to work on April 4, 2023. However, the parties' Modified Form 16 Settlement Agreement and Addendum included temporary total disability benefits from December 30, 2022 through February 24, 2023. Accordingly, Claimant is entitled to temporary total disability benefits from February 25, 2023 through April 4, 2023.
12. Claimant reported to the hospital for hardware removal on March 15, 2024, but the procedure was postponed until March 25, 2024. The evidence presented at hearing does not address whether Claimant worked from March 16 through March 24, 2024, nor does it address when his physician released him to return to work after hardware removal. Claimant credibly testified that he was out of work following the hardware removal surgery for seven weeks, but his specific return to work date is not in evidence. Accordingly, I conclude that Claimant is entitled to temporary total disability benefits related to his disability from work due to his hardware removal surgery, with the exact dates to be determined or agreed upon.

13. Claimant is also entitled to interest on his temporary total disability benefits pursuant to 21 V.S.A. § 664.

Medical Benefits

14. Claimant is entitled to reasonable medical services for his SLAC wrist condition, including the cost of the arthrodesis procedure, the subsequent hardware removal surgery, related office visits and imaging, prescription medications and any and all other reasonable medical treatment for this injury, as set forth in 21 V.S.A. § 640(a).

Permanent Partial Disability Benefits

15. When an injury results in a partial impairment that is permanent, the workers' compensation statute provides for the payment of permanent partial disability benefits. 21 V.S.A. § 648(a). Pursuant to the statute, the determination of the existence and degree of permanent impairment shall be made only in accordance with the whole person determinations as set out in the Fifth Edition of the *AMA Guides to the Evaluation of Permanent Impairment*. 21 V.S.A. § 648(b). The *AMA Guides*, in turn, require a finding of maximal medical improvement before a patient may be assessed for permanent impairment. *AMA Guides*, § 2.4.
16. The parties here did not offer any medical testimony establishing whether or when Claimant reached an end medical result for his SLAC wrist injury. Claimant's expert, Dr. Forrest, addressed end medical result and permanent impairment in his November 2023 written report, but he did not place Claimant at end medical result at that time. Rather, he offered his opinion that Claimant would not be at an end medical result sooner than late December 2023 and estimated what his permanent impairment might be at that future date.
17. In the absence of a finding that Claimant has reached end medical result and an assessment of his permanent impairment after such a finding, I cannot include an award of permanent partial disability benefits in this order. Claimant may seek such benefits once he is placed at end medical result.⁷

Costs and Attorney Fees

18. Claimant is entitled to an award of necessary costs and reasonable attorney fees. In accordance with 21 V.S.A. § 678(e), he shall have 30 days from the date of this opinion within which to submit his itemized claim.

ORDER:

Based on the foregoing Findings of Fact and Conclusions of Law, Defendant is **ORDERED** to pay:

⁷ Nothing in this Opinion and Order prohibits the parties from agreeing to use Dr. Forrest's estimate of end medical result and permanent impairment.

1. All workers' compensation benefits to which Claimant proves his entitlement as causally related to his compensable SLAC wrist condition, including but not limited to the following:
 - (a) Temporary total disability benefits from February 25, 2023 through April 4, 2023, with interest thereon;
 - (b) Temporary total disability benefits for the time he was unable to work due to the failure and removal of the hardware in his right wrist, with interest thereon;
 - (c) Medical benefits related to his SLAC wrist condition, including the arthrodesis procedure, the hardware removal surgery, and all other reasonable medical treatment related to that condition;
 - (d) Permanent partial disability benefits, if any, in an amount to be determined once Claimant reaches an end medical result; and
2. Costs and attorney fees in amounts to be determined.

DATED at Montpelier, Vermont this 10th day of September 2024.

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.