

**STATE OF VERMONT
DEPARTMENT OF LABOR**

Adam Amsden

Opinion No. 16-24WC

v.

By: Beth A. DeBernardi
Administrative Law Judge

United Parcel Service, Inc.

For: Michael A. Harrington
Commissioner

State File No. SS-56887

OPINION AND ORDER

Hearing held via Microsoft Teams on September 9, 2024
Record closed on October 9, 2024

APPEARANCES:

Adam Amsden, *pro se*
James M. O'Sullivan, Esq., for Defendant

ISSUE PRESENTED:

Did Claimant sustain a dental injury arising out of and in the course of his employment with Defendant on December 19, 2022?

EXHIBITS:

Department's Exhibit 1: Dental Records in the Department's File (4 pages)

CLAIM:

Medical benefits pursuant to 21 V.S.A. § 640(a)
Wages while undergoing medical/dental treatment pursuant to 21 V.S.A. § 640(c)

FINDINGS OF FACT:

Claimant's Employment with Defendant and Prior Dental History

1. Claimant is a 41-year-old man who resides in Springfield, Vermont. He has been working for Defendant for more than ten years. Claimant's primary job duties are driving a delivery truck and delivering packages.
2. Until 2023, Claimant had not seen a dentist since he graduated from high school in 2001.

The December 19, 2022 Work Incident

3. December is a busy month for package delivery due to the Christmas holiday.
4. On Saturday, December 17, 2022, Claimant's truck was loaded up with packages for delivery. However, Claimant had already reached the maximum number of allowable driving hours for the week, so he could not deliver the packages that day. On Monday morning, December 19, 2022, additional packages were loaded onto Claimant's truck, and he began making his deliveries.
5. During his morning delivery route, Claimant entered the back of his truck to retrieve half a dozen packages. As he reached up to grab a package off the top shelf, another package fell and struck him in the face. According to Claimant's credible testimony, the impact of the falling package knocked out one of his teeth and chipped another. Claimant identified the teeth as the ones immediately next to his two front teeth. I take judicial notice that those teeth are the lateral incisors.
6. According to Claimant's credible and uncontroverted testimony, he promptly told his direct supervisor, Andrew Ashley, about the incident. Claimant and Mr. Ashley discussed whether he could continue working that day, and Claimant said that he could. Claimant told Mr. Ashley that he would wait to seek dental care until after the busy season was over. Claimant also asked Mr. Ashley which dentist he should see, as he did not have a regular dentist. Mr. Ashley told him that he could see any dentist.
7. Defendant filed a First Report of Injury (Form 1) on December 23, 2022. That report reflected Claimant's allegation that he broke two teeth when he was struck in the face by a falling package on December 19, 2022. *See Form 1.*
8. Based on Claimant's credible and uncontroverted testimony, I find that he sustained a dental injury on December 19, 2022 when he was struck in the face by a package while making deliveries for Defendant.

Claimant's Subsequent Medical Course

9. Claimant continued to work long hours for Defendant, even after the Christmas holiday, at times working 60 hours per week. Accordingly, he delayed seeking treatment for his dental injury until his planned vacation in July 2023.
10. On July 5, 2023, Claimant went to Aspen Dental in Brattleboro, Vermont, complaining of pain in his upper jaw and broken teeth. He told Aspen Dental that he had sustained his dental injury at work on December 19, 2022, and he provided the workers' compensation claim number for billing. *See Department's Exhibit 1.*
11. The dentist examined Claimant's mouth and identified two broken lateral incisors. She also diagnosed Claimant with pulpitis caused by his broken teeth and remaining root tips. *See Department's Exhibit 1.* The dentist recommended implants, but Claimant declined implants at that time. Instead, Claimant and the dentist agreed on a treatment plan to

fashion a removable partial denture to replace the broken teeth. *See Department's Exhibit 1.*

12. Claimant spent several days of his vacation undergoing treatment with Aspen Dental, including treatment on July 5, July 6, and July 7, 2023. His treatment included the removal of broken teeth and replacement with a removable partial denture. *See Department's Exhibit 1.*
13. Claimant has received no other dental treatment for his injury, but he is interested in a more permanent restoration than his removable partial denture.
14. Claimant did not miss any time from work between December 19, 2022 and July 4, 2023 due to his dental injury. Accordingly, he did not seek any workers' compensation benefits for his injury until July 5, 2023, when he went to the dentist. Defendant denied his claim for medical benefits on August 30, 2023, on the basis that there was "no injury arising out of and in the course of employment." *See Defendant's Denial (Form 2).*

Other Witnesses

15. On July 30, 2024, Claimant disclosed his supervisor Andrew Ashley as a witness. At the hearing, Claimant credibly testified that he spoke with Mr. Ashley sometime after July 30 and asked him to testify at the hearing. Claimant was under the impression that Mr. Ashley would testify.
16. Claimant spoke with Mr. Ashley again on Saturday, September 7, 2024, two days before the hearing. Both men were at work at the time. Claimant reminded Mr. Ashley about the hearing scheduled for Monday morning. Mr. Ashley told Claimant that he would have to check with his boss about testifying. Mr. Ashley then spoke with Claimant on Monday morning, prior to the hearing, and said that Defendant would not allow him to testify. According to Claimant, Mr. Ashley told him that if the insurance carrier had any questions, then the carrier could contact him directly. I find Claimant's account of this conversation to be credible.
17. Claimant brought Mr. Ashley's telephone number to the hearing, and the Administrative Law Judge called him from the hearing. Mr. Ashley answered the call and stated that he was "not authorized to speak to you on a recorded line, ma'am." Accordingly, the Administrative Law Judge terminated the call to Mr. Ashley, and he did not testify.
18. I find that Claimant made a reasonable effort to call Mr. Ashley as a witness to support his account of his dental injury, but Defendant discouraged Mr. Ashley from testifying. Neither party offered any other witnesses.

Medical Opinions Concerning Claimant's Injured Teeth

19. Neither party presented any expert testimony concerning the causal relationship between Claimant's dental condition and the December 19, 2022 work incident.

20. The dental records submitted by Defendant on August 30, 2023 include a written document from Heads Up Health Care of Tampa, Florida. Claimant did not undergo any dental treatment in Florida. Rather, this document is a written statement from someone whose signature is not legible addressing whether Claimant's injury is related to his employment. The provider wrote that he or she was unable to determine whether Claimant's dental condition was related to employment due to the length of time between the work incident and the first treatment date, as well as the unavailability of any prior x-rays. *See Department's Exhibit 1*, at 4. Notably, the provider did not say that Claimant's dental condition was unrelated to his employment.

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). 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). Conversely, where the causal connection between employment and injury is not obscure, and a layperson *could* have a well-grounded causation opinion, then expert medical testimony is *not* necessary. *See Bruder v. Grey Fox Inn*, Opinion No. 35-99WC (August 4, 1999), Conclusion of Law No. 21, citing *Lapan*, 137 Vt. at 395 ("expert testimony is only required when 'a layman could have no well-grounded opinion' as to the ultimate contested issue.")
3. In *Lowell v. Rutland Area Visiting Nurses Association*, Opinion No. 42-99WC (October 12, 1999), the claimant alleged that she injured her knee while performing housekeeping duties for Defendant. At the hearing, she testified that she was making a bed when she struck her knee on an errant bed rail, cutting her knee and causing it to bleed. She put a tissue over the wound, pulled her sock up, and continued her work duties. When she eventually sought medical treatment, she informed the provider about the work incident. In finding in the claimant's favor, the Commissioner wrote: "to this layperson," the alleged mechanism of injury was rational, "especially in the absence of credible expert testimony to refute it." *Lowell*, Conclusion of Law No. 5, citing *Lapan*, 137 Vt. at 393.
4. In this case, Claimant was hit in the face with a package while making deliveries for Defendant. He alleges that the package broke two teeth. The causal connection between Claimant's being hit in the face with a package and sustaining two broken teeth is not obscure at all. Rather, a layperson could easily have a well-grounded causation opinion under these circumstances.

5. I therefore conclude that expert medical testimony is not required to determine whether Claimant's dental injury bears a causal relationship to his employment. His account of the injury is entirely credible, and there is no credible testimony to the contrary. Further, the written opinion that Defendant obtained in August 2023 does not refute causation. *See Finding of Fact No. 20 supra.*
6. Having found Claimant's account of the accident persuasive, I conclude that he has met his burden of establishing a causal relationship between the December 19, 2022 work incident and his dental injury.

Workers' Compensation Benefits to which Claimant Is Entitled

Medical Benefits

7. Claimant is entitled to reasonable medical and dental treatment for his compensable dental injury, including the cost of the dental work performed in July 2023 and the cost of any reasonable additional treatment, as set forth in 21 V.S.A. § 640(a).

Wages While Undergoing Medical or Dental Care

8. To date, Claimant has not missed any work as a result of his injury other than the time he spent undergoing dental treatment in July 2023. An employer is responsible for paying an injured worker's *wages* (not temporary disability benefits) while the injured worker undergoes treatment for a work-related injury. 21 V.S.A. § 640(c) provides in pertinent part as follows:

An employer shall not withhold any wages from an employee for the employee's absence from work for treatment of a work injury or to attend a medical examination related to a work injury.

9. Claimant is therefore entitled to the payment of his wages for the time he has spent and will spend in the future undergoing dental treatment for his compensable injury pursuant to 21 V.S.A. § 640(c).

Defendant's February 1, 2024 Motion to Dismiss for Failure to Prosecute

10. On February 1, 2024, after Claimant failed to appear for the first two scheduled pretrial telephone conferences, Defendant filed a Motion to Dismiss for Failure to Prosecute. On February 2, 2024, Claimant opposed the motion by email and confirmed his intent to go forward with his claim. Claimant later appeared at the formal hearing and gave sworn testimony in support of his claim. Accordingly, Defendant's motion to dismiss for failure to prosecute is denied as moot.

ORDER:

Based on the foregoing Findings of Fact and Conclusions of Law, Defendant is **ORDERED** to pay all workers' compensation benefits to which Claimant proves his entitlement as causally related to his compensable dental condition, including but not limited to the following:

- (a) Wages for the time Claimant spent undergoing dental treatment for his compensable injury, if not already paid, and wages for time he spends undergoing reasonable dental treatment for his compensable injury in the future, pursuant to 21 V.S.A. § 640(c); and
- (b) Medical benefits for the reasonable treatment of Claimant's dental condition, including the dental work performed in July 2023 and all other reasonable medical or dental treatment related to his compensable injury, pursuant to 21 V.S.A. § 640(a).

DATED at Montpelier, Vermont this 15th day of October 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.