STATE OF VERMONT
DEPARTMENT OF LABOR

Sean Gregorek

v.

Dynapower Corp.

Opinion No. 17-24WC

By: Stephen W. Brown
Administrative Law Judge

For: Michael A. Harrington
Commissioner

State File No. LL-63234

OPINION AND ORDER

Hearing held via Microsoft Teams on January 16, 2024, and January 23, 2024
Record closed on March 5, 2024

APPEARANCES:

Christopher McVeigh, Esq., for Claimant
William J. Blake, Esq., for Defendant

ISSUE PRESENTED:

Is Claimant permanently and totally disabled as a result of his accepted workplace low back injury?

EXHIBITS:

Joint Medical Exhibit ("JME")

Joint Vocational Rehabilitation Exhibit ("JVRE")

Defendant's Exhibit 1: Independent Vocational Evaluation by Fran Plaisted, MA, CRC, dated August 31, 2023

Defendant's Exhibit 2: Curriculum Vitae of Fran Plaisted, MA, CRC

FINDINGS OF FACT:

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

2. Claimant is a 62-year-old man residing in Georgia, Vermont. He graduated high school in 1980, after which he worked various entry-level jobs including in restaurants.

3. Claimant began working for Defendant in 1990, performing mechanical subassembly work, specifically making components that would be put into AC/DC power rectifiers. This work involved taking raw materials such as copper or aluminum, machining them

into finished parts, and then performing manual assembly with those parts. This was physically demanding work, as the copper and aluminum were typically in large sheets or cables that he had to manually pull. He credibly testified that there was "no good way" to move these materials.

4. Claimant worked for Defendant for approximately 28 years, and eventually became a team leader. During this time, he was occasionally "farmed out" to perform other jobs within Defendant's operations, some of which were less physically demanding. For instance, in the early 2000s, he performed some computer work, as Defendant needed to switch its electronic inventory methods. After this period, his core role grew to include the tracking of inventory items such as copper and heat sinks so that they could be properly expensed.

5. In 2006, approximately 16 years into his employment with Defendant, Claimant sustained a lower back injury when he attempted to lift a 32-inch heat sink, an electrical device shaped like a large hockey puck with metal cables, onto a pallet. He felt something pop in his back like a loud click, and his legs went numb. He entered this event into his logbook as an injury, but he continued working for two or three days, though he was still in pain. Defendant accepted this injury as compensable and paid some benefits accordingly.

6. Following this injury, Claimant went to a walk-in clinic, where his providers took his injury report, and he followed a relatively conservative treatment regimen including physical therapy, water therapy, and injections. A 2009 functional capacity evaluation ("FCE") found that he had a light work capacity with tendencies toward medium work (JME 269 *et seq.*). However, after undergoing a work hardening program, he was found to have a medium work capacity for 8 hours per day. (JME 314 *et seq.*).

7. Although some of his treatments have provided relief for several months, Claimant credibly testified that his low back has not been pain-free at any point since 2006. The most effective treatment was the injections, but he eventually developed a tolerance to them, and they lost some of their effectiveness. He has grown tolerant to his persistent back pain, but it is always present to some degree.

8. Between 2006 and 2018, Claimant continued to perform assembly work for Defendant, but he could not perform the same volume as he had before. He performed lighter duty work as well, such as paperwork, expense tracking, and light machining work. However, his pain progressed during this period, and his mobility declined. He eventually had to lean on things while moving around Defendant's premises, as his pain remained severe; leaning forward alleviated some of the pressure from his lumbar spine. By approximately 2016, his pain was so severe that it affected his speech and breathing.

9. In June 2018, Claimant underwent a laminectomy surgery at the L4-5 level of his spine with orthopedic surgeon Adam Pearson, MD, to relieve some of the pain he was experiencing. (JME 628 *et seq.*). The surgeon's operative report noted that his L4 and L5 nerves were fully decompressed as a result. (JME 681-82). Five weeks later, his surgeon noted that Claimant was doing well and was able to stand and walk more comfortably.

(JME 962). Claimant credibly testified that this procedure helped relieve some of his pain, and he recovered quickly from the surgery.

10. Following his recovery from surgery, Claimant returned to work with Defendant in August 2018, performing a mix of assembly work, supervisory work, and some desk work.

11. Just two months later, in October 2018, however, he again started experiencing new low back pain that caused him to go back out of work entirely. Initially, Defendant denied the causal relationship of these new symptoms to his work. Claimant thus used a combination of accrued leave and short-term disability insurance to sustain himself after leaving work.

12. In 2019, however, Defendant hired neurosurgeon Nancy Binter, MD, to perform an independent medical evaluation ("IME") of Claimant. She found that Claimant had sustained an L3-4 disc herniation, a different level than his 2006 injury. In her opinion, there was no evidence of any activity other than his overhead lifting at work that could have caused this condition. (JME 1129). Accordingly, Defendant accepted this injury as compensable and paid some benefits accordingly.

13. When Claimant left work in October 2018, he wanted to return eventually but was unsure whether he would be able to. However, Defendant's human resources director, Renee Naud, eventually made it clear to Claimant that he would not be returning to work there. At the formal hearing, Ms. Naud credibly testified that because of the nature of Defendant's manufacturing business, it did not have a position that was compatible with Claimant's work restrictions. Claimant never applied for a new position with Defendant after he left in 2018.

14. In January 2019, Claimant again visited Dr. Pearson, the surgeon who had performed his previous L4-5 laminectomy, in connection with his new L3-4 injury. Dr. Pearson diagnosed him with a work-related, right-sided L3-4 disc herniation and recommended conservative treatment including physical therapy and injections. He did not offer surgery at that time but left the option open. (JME 1076).

15. Also in January 2019, physical therapist Brigit Ruppert performed a work readiness evaluation and determined that Claimant had a sedentary-light physical capacity, meaning that he would not be able to return to his previous position with Defendant, which included work at the medium physical demand level. She found that Claimant had a full-time work capacity but recommended that he gradually transition to full-time work. (JME 1079-1084).

16. Also in early 2019, Defendant's insurer referred Claimant to vocational rehabilitation ("VR") counselor John May for a VR entitlement assessment. Mr. May began providing Claimant VR services that spring, but shortly thereafter, disputes arose concerning Claimant's obligation to perform work searches. One of Claimant's treating physicians had issued an out-of-work note pending the results of a new FCE (JVRE, Exhibit 7), but this appeared to conflict with Ms. Rupert's work readiness assessment. Eventually, in

September 2019, the Department's Specialist II ordered the closure of certain temporary disability benefits based on Claimant's failure to perform work searches.

17. In September 2019, at Defendant's request, Claimant underwent an IME with occupational and environmental medicine physician Verne Backus, MD. Dr. Backus determined that Claimant had reached end medical result with respect to his 2018 workplace injury and assigned a 29 percent whole person impairment rating. (JME 1219-1238, 1280-81). Defendant paid permanent partial disability benefits accordingly, subject to a credit for benefits based on a previous rating for Claimant's 2006 injury. With respect to work capacity, Dr. Backus found that it was reasonable to conclude that Ms. Rupert's work readiness assessment reflected Claimant's then-current capacity, but he noted that Claimant had a pending FCE with Charles Alexander later that month.

18. Claimant underwent that FCE with Mr. Alexander on September 30, 2019. Mr. Alexander found that Claimant did not meet the requirements for full-time sedentary or light duty work capacities, but that he did have a work capacity of 2-4 hours per day at a light duty level with specific restrictions, including lifting up to twenty pounds. He found that Claimant could stand up to 1/3 of the day, walk up to 1/3 of the day, and sit up to 1/3 of the day. (JME 1240-46).

19. New VR disputes arose in early 2020. Specifically, Defendant sought to enforce a plan that called for Claimant to take college courses in furtherance of obtaining a workplace skills certificate and engage in certain work exploration, including Claimant providing written documentation of job contacts. (JVRE, Exhibit 13). However, in a letter order dated March 12, 2020, the Department found that there was nothing to enforce because there was no agreement signed by all parties[1] requiring Claimant to perform any specific job exploration tasks. (JVRE, Exhibit 28).

20. Shortly thereafter, Vermont Governor Phil Scott issued an executive order declaring a state of emergency as a result of the then-nascent COVID-19 pandemic. In accordance with that executive order, the Department's then Director of Workers' Compensation and Safety issued a memorandum dated May 18, 2020, that suspended job search requirements in workers' compensation cases. Following several rounds of correspondence between the parties' counsel and the Department, the Department's VR Specialist conducted an additional informal conference in April 2021, after which she issued a deadline for Claimant to engage in vocational exploration activities such as making contact with potential employers.

21. A subsequent order from the VR Specialist dated June 30, 2021 closed VR services. Claimant appealed that determination to the formal hearing docket. Before a formal hearing took place on the issue of Claimant's entitlement to continued VR services, the parties reached a settlement agreement that closed out all VR benefits in exchange for a lump sum. The Department approved that agreement on July 26, 2022.

[1] The plan was signed by Claimant and his VR counselor John May, but it does not appear to have been signed by any representative of Defendant.

22. Approximately three months after the parties settled their VR-related disputes, Claimant sought a declaration that he was permanently and totally disabled. In support of that claim, Claimant relied largely upon an FCE that Charles Alexander performed on April 5, 2022, in which he found that Claimant could work up to two hours per day, standing up to 1/3 of the day, walking up to 1/3 of the day, and sitting up to 1/3 of the day. (JME 1541-1547).

23. Meanwhile, Dr. Backus performed a second IME of Claimant on October 29, 2021. Relying partly on Mr. Alexander's earlier 2019 FCE, Dr. Backus found that completely excluding Claimant from work would be "not only unnecessary but unadvised as work within one's capabilities has well-recognized positive effect on pain management while remaining out of work lowers the prognosis for maintaining pain and function instead leading to worsening pain and function. While not everyone returns to work, helping them return to work when possible is a primary goal and a conclusion there is no work capacity is an unnecessary iatrogenic disabling factor." (JME 1443 *et seq*).

24. Thereafter, Claimant saw Dr. Backus for a third IME on December 14, 2022 (JME 1610 *et seq.*) and Mr. Alexander for a third FCE on September 25, 2023 (JME 1728-1734). Neither of their opinions changed significantly, although Dr. Backus noted in his third IME that Claimant may be able to improve his work capacity by reducing his body mass index. Additionally, Dr. Backus noted that in his opinion, Claimant "can work full time if he is able to control how long he sits or stands at a time with a break once a day for a nap as needed, and his lifting and use of his arms is at bench level to 10-12 pounds occasionally…He demonstrated this tolerance for over 4 hours in the [second] FCE itself." (JME 1642).

25. At the time of his third FCE, Claimant was out of pain medication and had therefore not taken any that day; however, Mr. Alexander again found that Claimant could work up to two hours per day and that his standing, walking, and sitting capacities were the same as in his previous examination. In his conclusions, Mr. Alexander found that Claimant did not meet the criteria for a sedentary work capacity due to an inability to sit on a frequent basis. However, he noted that Claimant demonstrated the ability to perform some tasks at a sedentary level if he could change his position and take breaks as needed. He also noted that although Claimant could work up to two hours of productive time per day, depending on his pain levels and symptom management, it may take him more than two hours to complete his work. (JME 1734).

26. In the interim, Claimant visited Dr. Pearson in November 2021 and March 2022 to discuss the possibility of surgery. Following his 2021 visit, Dr. Pearson noted that Claimant would be at high risk for a proposed fusion surgery and would need to quit smoking before any such operation. (JME 1489). He stated that Claimant had no work capacity "at this point," and he did not expect Claimant to return to work at any point in "the near future." (*Id.*). During this 2022 visit, Dr. Pearson noted that Claimant had recently developed severe vasculitis during a hospital stay and was taking oxycodone daily. He stated again, "[a]t this point, I believe he has no work capacity." (JME 1520-1521). Dr. Pearson did not testify at the formal hearing.

Testimony Concerning Claimant's Work Capacity and Future Employability

27. At the formal hearing, Claimant was visibly in pain and had observable difficulty tolerating one position for the duration of his testimony. He credibly testified that he has not truly been pain free since 2006. Nonetheless, he credibly testified that he desires to return to work and continues to work toward his associate degree in business toward that end. At the time that VR was closed, he had completed 20 credits that will count toward that degree. Since then, he completed an additional 19 credits using his VR settlement proceeds. His degree requires a total of 60 credits. He enjoys the course work and is doing well academically. As a result of his coursework, Claimant has had to learn to use Zoom for online learning, and his computer skills have improved significantly over time. He spends over twenty hours per week pursuing his coursework. While he did not have a specific job in mind, he stated that if he could find something he enjoys and was passionate about, it would not be "work."

28. Mr. Alexander testified at the formal hearing at Claimant's request. He is a licensed occupational therapist with over twenty years of experience performing FCEs to clarify an individual's physical capabilities based on objective data points. He discussed the results of his three FCEs and noted that Claimant's results were largely consistent from one evaluation to the next, though there was some decline over time. Mr. Alexander found Claimant to be a reliable historian and did not see any reason to doubt that he was providing full effort during his testing. In Mr. Alexander's opinion, Claimant does not meet the requirements for a full-time light or sedentary work capacity,[2] but he does have some residual capacities, noting that he could lift up to 20 pounds[3] and could perform sustained work as long as he could change positions and limit overhead reaching. In his most recent report, during which Claimant was experiencing elevated pain levels because he had not taken his usual pain medications that day, Claimant could work up to two hours per day with accommodations.

29. Mr. Alexander credibly noted that Claimant's necessary accommodations could make it more difficult to participate in a competitive workplace, as most employers are looking for someone able to sustain a task throughout a shift. However, he did not go so far as to offer an opinion that Claimant was permanently and totally disabled. Instead, he credibly testified that while Claimant had residual work capacities that would require specific

[2] In Mr. Alexander's first FCE, he found that Claimant did not have a work capacity under the U.S. Department of Labor's Dictionary of Occupational Titles, a publication of job descriptions last updated in 1991. At the formal hearing, Mr. Alexander credibly acknowledged that the job definitions in that publication are outdated, but he noted that it is still used within the industry for determining work capacity and is still used by the Social Security Administration. He credibly clarified that he does not rest his analysis on the definitions in this publication alone. To be clear, the outdated status of this publication is not Mr. Alexander's fault. However, given the age of this publication and the obvious changes in the workplace since 1991, particularly after the revolutionary transformation of the workplace since the onset of the Covid-19 pandemic of the early 2020s, I find it difficult to place any weight on an individual's failure to meet the requirements of job descriptions as they existed in 1991. Thus, while I find Mr. Alexander's conclusion that Claimant does not have a work capacity for any of the job descriptions in that 1991 publication credible, I find this conclusion only minimally, if at all, informative as to Claimant's ability to perform jobs that may be available in 2024.

[3] This figure was lower in Mr. Alexander's third FCE.

accommodations. In his opinion, it would be up to professional VR counselors to account for Mr. Alexander's FCE findings when assessing Claimant's ultimate employability. I find this opinion credible, persuasive, and well-supported.

30. Dr. Backus testified at Defendant's request about his three IMEs of Claimant in this case.[4] In his opinion, Claimant is not permanently and totally disabled. He is familiar with Mr. Alexander's work as an FCE practitioner and has a favorable view of his work product. While Dr. Backus does not question Mr. Alexander's objective findings in his FCE reports regarding Claimant's activity tolerance, he cautions against using the conclusions in those reports as a definitive answer regarding employability.[5] Instead, he believes that FCEs should be interpreted by a physician who can take a more comprehensive assessment of an individual. Additionally, he credibly noted and that many individuals with serious injuries, including back injuries like Claimant's, are able to work.

31. Dr. Backus believes that completely excluding Claimant from the workforce is not only unwarranted in this case but would even be counterproductive as it could reinforce a negative mindset about the feasibility of returning to the workplace. Dr. Backus testified that if Claimant were to attempt to return to work, he should start at the levels indicated in Mr. Alexander's FCEs and attempt to increase from there. Additionally, Dr. Backus estimated that based on his second and third IMEs, Claimant could potentially even work full time if he can control his sitting and standing, assuming adequate accommodations of lifting restrictions and the ability to take a nap. Although Dr. Backus credibly acknowledged Claimant's very real limitations, his ultimate conclusion is that Claimant has some work capacity and that it would be a disservice to him to declare him permanently and totally disabled. I find this opinion to be credible, persuasive, and well-supported.

32. Claimant's VR counselor John May testified at the formal hearing about his efforts to return Claimant to employment, including job exploration to identify suitable vocational goals, attending job fairs, investigating employment options, and eventually enrolling in formal educational coursework in a certificate program to help Claimant obtain some basic clerical and computer skills. He understood from the beginning of his relationship with Claimant that he would not likely be able to attain a job that was at the same wage level that he was earning before his injury. However, he sought to help Claimant gain skills to make him more competitive. He credibly testified about the multiple VR disputes and frustrations that led to the ultimate closure of VR services and the resulting appeal that was settled on a limited Form 16. He noted that despite challenges along the way, Claimant worked hard at his courses and overall complied with Mr. May's efforts to return him to the workforce, and he believes Claimant was making progress. He did not

[4] Dr. Backus had also performed a separate IME of Claimant in a different claim related to his hearing loss.

[5] Dr. Backus disagreed with Mr. Alexander's opinion that Claimant did not have a work capacity necessary for any job description listed in the Dictionary of Occupational Titles. However, for the reasons set forth in greater detail in footnote 1, I find any discussion of that publication to be only marginally material to Claimant's current employability.

offer a specific opinion as to whether he believed Claimant was permanently and totally disabled.

33. At Defendant's request, VR counselor Fran Plaisted performed an independent vocational evaluation (IVE) of Claimant. Ms. Plaisted met personally with Claimant and prepared a report. In her opinion, Claimant is not permanently and totally disabled. She did not dispute that he faces several significant barriers to employment, such as his undisputedly serious back injury and related work restrictions. However, she noted that Claimant was engaging in ongoing education toward a business degree and was able to devote approximately twenty hours per week to his coursework. She found that to be a strong positive factor in favor of employability. She noted that Claimant's most likely route to reemployment would be through an at-home position such as sales or customer service, though she noted that it would be helpful for him to decide upon a specific vocational goal.

34. Ms. Plaisted also testified that Claimant would not necessarily need to work full time to obtain regular, gainful employment. As an example, she noted that someone working thirty-five hours per week at Vermont's minimum wage ($13.67 per hour) would earn approximately $478.45 per week. Thus, if Claimant were able to work 20 hours per week and earn approximately $24.00 per hour, he could earn roughly that same gross weekly income. In Ms. Plaisted's opinion, if Claimant successfully completes his college degree program, this wage scenario would be realistic. Additionally, Ms. Plaisted emphasized that Claimant actively desires to return to work, which is corroborated by Claimant's own testimony. All these factors support her opinion that Claimant should not be declared permanently and totally disabled.

CONCLUSIONS OF LAW:

1. Claimant has the burden of proof to establish all facts essential to the rights he presently asserts. *Goodwin v. Fairbanks Morse & Co.*, 123 Vt. 161, 166 (1962); *King v. Snide*, 144 Vt. 395, 399 (1984). He 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).

Permanent Total Disability Under Vermont's Workers' Compensation Act

2. Under Vermont's workers' compensation statute, claims for permanent total disability benefits are governed by 21 V.S.A. § 644, which provides as follows:

> (a) In case of the following injuries, the disability caused thereby shall be deemed total and permanent:

(1) the total and permanent loss of sight in both eyes;

(2) the loss of both feet at or above the ankle;

(3) the loss of both hands at or above the wrist;

(4) the loss of one hand and one foot;

(5) an injury to the spine resulting in permanent and complete paralysis of both legs or both arms or of one leg and of one arm; and

(6) severe traumatic brain injury causing permanent and severe cognitive, physical, or psychiatric disabilities.

(b) The enumeration in subsection (a) of this section is not exclusive, and, in order to determine disability under this section, the Commissioner shall consider other specific characteristics of the claimant, including the claimant's age, experience, training, education, and mental capacity.

3. Claimant is not alleging that he fits within any of the *per se* categories in Section 644(a). He relies entirely upon the provision in Section 644(b), often referred to as the "odd lot" doctrine. The Workers' Compensation Rules provide additional guidance on permanent total disability under that doctrine as follows:

> 10.1710 Unless the extent to which an injured worker's functional limitations precludes regular, gainful work is so obvious that formal assessment is not necessary, a claim for permanent total disability under the odd lot doctrine should be supported by the following:
>
> > 10.1711 A functional capacity evaluation (FCE) that assesses the injured worker's physical capabilities; and
> >
> > 10.1712 A vocational assessment that concludes that the injured worker is not reasonably expected to be able to return to regular, gainful work, either with or without vocational rehabilitation assistance.
> >
> > 10.1720 For the purposes of this Rule, "regular, gainful work" refers to regular employment in any well-known branch of the labor market. Work that is so limited in quality, dependability or quantity that a reasonably stable market for it does not exist does not constitute "regular, gainful work."

Workers' Compensation Rules 10.1710-1720 (internal citations omitted), codified at Vt. Admin Code 13-4-1:10.0000 *et seq*.

Weighing of Expert Testimony

4. Where expert medical opinions are conflicting, 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 (Sept. 17, 2003).

5. In this case, no expert specifically testified that Claiamnt was permanently and totally disabled from work. Although Claimant's treating surgeon, Dr. Pearson, noted in medical records that as of March 2022, Claimant did not have a work capacity, and the year before indicated that he did not expect Claimant to have a work capacity in the near future, he did not state that he believed Claimant would *never* regain any capacity for work. Moreover, Dr. Pearson did not testify at the formal hearing and therefore could not clarify whether he thought Claimant would ever regain the capacity for work, and if not, why not. If Mr. Alexander's most recent FCE findings are taken at face value—that Claimant is able to work up to two hours per day with accommodations—then there is a real question about whether regular, gainful work is possible within those restrictions. However, I am persuaded by Dr. Backus's testimony that the conclusions of an FCE standing alone should not be taken as determinative in ascertaining an individual's ultimate employability, but instead taken as an objective assessment of specific parameters relevant to assessing the ability to perform or tolerate tasks associated with working.

6. I also find that Claimant's ability and dedication toward completing his degree program, combined with his stated affirmative desire to reenter the workplace, suggest that he may eventually be able to work beyond two hours per day. Ms. Plaisted's analysis supports this possibility, and I find her opinion supported by Claimant's progress toward his degree program. I also find Dr. Backus's recommendation that Claimant should start at the work volume outlined in Mr. Alexander's most recent FCE and increase from there to be persuasive and well founded.

7. All the expert witnesses who testified in this case acknowledged the severity of Claimant's injury, the reality of his functional limitations, and the need for significant accommodations if he returns to work. However, *none* affirmatively endorsed the conclusion that he is permanently and totally disabled. A lack of expert testimony that Claimant is permanently and totally disabled is not necessarily outcome determinative. That said, it does not help.

8. Claimant has extensive workplace experience, presents cogently, answers questions intelligently, and apparently has some academic aptitude. He has been making progress and performing well in a formal academic program intended to improve his future employability. He affirmatively wants to return to the workplace. It is admittedly an ironic feature of the workers' compensation system that these otherwise commendable traits and accomplishments work against his interest in this case. However, for him to

prevail on his claim for permanent total disability benefits, he must establish by a preponderance of evidence that he cannot work in any regular and gainful way. As of the time of the formal hearing, he had not yet tried to return to work, and thus, as Dr. Backus's testimony supports, it is not yet possible to assess the upper limit of his work capacity.

9. Although there are individuals for whom an attempt to return to work would be so patently futile that attempting it would simply be a waste of time, the record in this case does not convince me that Claimant is such an individual. Indeed, his own testimony and academic progress so far suggests that it would be far from futile. Without Claimant's having yet identified a target job and attempting to perform it, I find that his claim for permanent total disability benefits is premature.

10. Claimant has the burden to prove his entitlement to the benefits he seeks. Under the evidence presented here, I conclude that he has not established the criteria for permanent total disability.

ORDER:

For the reasons above, Claimant's claim for permanent total disability benefits is **DIMISSED WITHOUT PREJUDICE** to his right to reassert such a claim in the future.

Claimant has failed to meet his burden to prove that he is permanently and totally disabled as of the date of this opinion. However, a significant reason for this conclusion is that he has not yet attempted to rejoin the workforce and he is actively pursuing, with apparent success, steps to improve his future employment prospects. Nothing in this opinion shall be construed to limit Claimant's right to renew his request for permanent total disability benefits should his circumstances materially change in the future.

DATED at Montpelier, Vermont this 1__ day of November 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.