

**STATE OF VERMONT
DEPARTMENT OF LABOR**

Rogers Adika

Opinion No. 19-24WC

v.

By: Beth A. DeBernardi
Administrative Law Judge

Ultimate Carpentry Works, Inc.

For: Michael A. Harrington
Commissioner

State File No. YY-00317

OPINION AND ORDER

Hearing held via Microsoft Teams on December 9, 2024
Record closed on December 9, 2024

APPEARANCES:

Rogers Adika, *pro se*
Jose Enrique Ayala, *pro se*, for Defendant

ISSUE PRESENTED:

Is Claimant entitled to any additional workers' compensation benefits for the compensable finger laceration that he sustained in a work-related accident on August 15, 2023?

EXHIBITS:

| | |
|------------------------|--|
| Claimant's Exhibit 1: | Medical records |
| Defendant's Exhibit A: | Checks issued to Claimant for pay and for temporary disability |
| Defendant's Exhibit B: | Medical bills and proof of payment |
| Defendant's Exhibit C: | Purchase of Delta Airlines round trip ticket to Ohio |
| Defendant's Exhibit D: | Text messages sent to "Adika Phone #1" [Claimant's original phone] from June 25, 2023 to August 14, 2023 and on November 14, 2023 |
| Defendant's Exhibit E: | Text messages sent to "Adika" [Claimant's friend's phone] from August 10, 2023 to October 10, 2023 with additional messages sent November 14, 2023, February 24, 2024, March 25, 2024 and May 12, 2024 |
| Defendant's Exhibit F: | Group texts sent to both "Adika Phone #1" and "Adika" on October 15, 2023, October 22, 2023, October 29, 2023 and February 25, 2024 |

CLAIM:

Temporary total disability benefits pursuant to 21 V.S.A. § 642
Medical benefits pursuant to 21 V.S.A. § 640(a)

FINDINGS OF FACT:

1. Claimant is a 41-year-old man who lives in Clarendon, Vermont.
2. Defendant is a carpentry business specializing in custom framing, renovations and finish carpentry. The owner, Jose Enrique Ayala, formed the business in Massachusetts in 2016; two years ago, he moved the business to Vermont. Mr. Ayala is a resident of Rochester, Vermont.
3. When Mr. Ayala first moved the business to Vermont, it had no employees here. Thus, Defendant did not obtain a workers' compensation insurance policy in Vermont. Later, when Defendant hired workers in Vermont, it neglected to secure workers' compensation insurance for them. Accordingly, it was operating without workers' compensation insurance on August 15, 2023.

Claimant's Employment with Defendant

4. In June of 2023, Mr. Ayala happened to see Claimant at a gas station on his way to work one morning. Mr. Ayala asked Claimant if he was interested in working, and Claimant said yes. They exchanged telephone numbers.
5. After they spoke on the telephone, Mr. Ayala agreed to hire Claimant as a laborer at a rate of \$20 per hour. Claimant was living in Randolph at that time, and Mr. Ayala drove through Randolph on his way to work every day. They agreed that Mr. Ayala would pick Claimant up for work every morning, and they would text each other every evening to confirm the pick-up time and whether work was available the next day.
6. Claimant began working for Defendant on June 26, 2023. At first, he just moved items around the jobsite, but as he demonstrated a good attitude and skills, Defendant began to teach him carpentry. On or about July 22, 2023, Claimant received a raise to \$22 per hour.

Claimant's Pay

7. Defendant paid its employees by check on a weekly basis. Defendant submitted copies of those checks to the Department, and both parties agree that those checks are an accurate record of Claimant's earnings. *See* Defendant's Exhibit A. In addition, a text message from Claimant to Mr. Ayala confirms that he received pay of \$500 in cash on July 21, 2023. *See* Defendant's Exhibit D.
8. Claimant had the following earnings from the start of his employment on June 26, 2023 through August 11, 2023:

| Check Date | Amount Paid | Hours Worked ¹ |
|------------|-------------|---------------------------|
| 6/30/23 | \$500 | 40 hours |
| 7/7/23 | \$540 | 27 hours |
| 7/14/23 | \$560 | 28 hours |
| 7/21/23 | \$500 cash | |
| 7/26/23 | \$220 | 16 hours |
| 7/28/23 | \$520 | 26 hours |
| 8/2/23 | \$902 | |
| 8/11/23 | \$550 | 25 hours |

Claimant's Work Injury

9. On Tuesday, August 15, 2023, Claimant worked for Defendant at a job site in Stowe. As he was using a table saw, he cut the middle finger on his left hand. He did not cut off any portion of his finger, but he sustained two lacerations. As soon as he heard about the accident, Mr. Ayala rushed to the job site and drove Claimant to Copley Hospital in Morrisville.

Claimant's Medical Treatment

10. Claimant was seen in the Emergency Department of Copley Hospital on August 15, 2023. The medical provider noted two lacerations on his left middle finger. The medical record notes: "The nail is intact, sensations intact distally, flexion with strength is intact at the MCP, PIP and DIP joint[s]." See Claimant's Exhibit 1. Examination found minimal flexor tendon involvement, and x-rays found no fractures or foreign bodies. The provider cleaned the wound, closed it with sutures, and gave Claimant him a metal finger splint. *Id.* Claimant's medical records reveal that he is right-hand dominant. *Id.*
11. On August 25, 2023, Mr. Ayala took Claimant back to Copley Hospital to have the sutures removed. The medical record notes: "Well-healed wound to the left middle finger, no erythema, no drainage, range of motion is intact at the MCP joint, PIP joint, and decreased active flexion at the DIP joint, able to passively flex the digit with increased discomfort to the DIP joint per patient." See Claimant's Exhibit 1. The provider encouraged Claimant to move his finger at home to improve the range of motion. The note further provides: "I will notify Mansfield Orthopedics for further follow up if patient decides that he is having difficulty with active range of motion at the DIP joint." *Id.* The medical record notes that Claimant's injury is work-related, but the provider did not issue any work restrictions. *Id.*
12. There is no record of Claimant making any appointments with Mansfield Orthopedics. He testified that he was interested in physical therapy for his finger, but Defendant did not provide him with a ride. Mr. Ayala does not recall Claimant's asking him for a ride. In any event, Claimant did not undergo any physical therapy at Mansfield Orthopedics.

¹ The hours listed are based on notations in the "memo" section of the checks. Not every check included a memo notation.

13. Claimant attended his third medical appointment on March 20, 2024, at the Vermont Orthopedic Clinic in Rutland. The provider recommended physical therapy for six weeks, followed by home exercise. The provider also noted that Claimant could work with the following restrictions: no lifting over 20 pounds and no repetitive gripping with his left hand. Claimant did not undergo the recommended physical therapy and has not seen any medical providers for his finger since March 20, 2024.

Claimant's Missed Work after the Accident and Subsequent Return to Light Duty

14. Claimant took time off after August 15, 2023 to allow his finger to heal, during which time Defendant paid him temporary total disability benefits.² He was out of work for the remainder of the week of the injury (Wednesday, August 16 through Friday, August 18), the entire week of Monday, August 21 through Friday, August 25, and the entire week of Monday, August 28 through Friday, September 1. During that time, Defendant paid him \$100 in wages for the day of the accident,³ plus \$800 in benefits for each of those three weeks. *See* Finding of Fact No. 21 *infra*.
15. Claimant returned to work on light duty the week of September 4-8, 2023, working 36 hours. He did not work on Monday, September 4, because it was Labor Day. *See* Defendant's Exhibit E. The following week, September 11-15, Claimant worked 27.5 hours. Defendant did not have any employees working on September 11 because it was raining, and Claimant worked just half a day on September 15 because he went to Logan Airport that afternoon. *See* Defendant's Exhibit E. Accordingly, even though Claimant worked less than 40 hours for each of these weeks, his reduced work schedule was not related to his finger injury.
16. The following week, September 18-22, Claimant went on vacation to Ohio to visit his family. Defendant paid \$552.80 for Claimant's round trip plane ticket, *see* Defendant's Exhibit C, and an additional \$500 in vacation pay⁴ for the week, for a total of \$1,052.80.
17. Claimant's plane ticket included a return flight on Friday, September 22. While he was in Ohio, Claimant missed his return flight and rebooked his return for a day or two later. Consequently, he missed work on Monday, September 25. On Tuesday, September 26, Mr. Ayala texted Claimant that he should stay home that day, as there was not much work available. He told Claimant to come back to work on Wednesday. *See* Defendant's Exhibit E.
18. Claimant ended up working 22.5 hours for the week of September 25-29. His late return from vacation and the lack of available work on Tuesday, and not his work injury, explain why he worked fewer hours that week.

² As Defendant did not have an insurance adjuster processing the claim, it did not characterize the payments as "temporary total disability benefits," but that is what the payments were.

³ The record does not reveal how many hours Claimant worked on the day of injury, but he was at Copley Hospital by 10:46 A.M. *See* Claimant's Exhibit 1.

⁴ A notation in the check's memo section indicates that \$500 was "vacation" pay. *See* Defendant's Exhibit A.

19. Claimant worked 30 hours for the week of October 2-6, 2023. The record includes no evidence explaining his work schedule for that week.
20. Claimant's last week of work for Defendant was October 9-13, 2023. He worked 21 hours and was paid on October 13. Text messages show that he failed to show up for work on Monday October 9; no other evidence is available about his work schedule that week. *See* Defendant's Exhibit E.
21. This chart summarizes the payments that Defendant made to Claimant following his August 15, 2023 injury.

| Check Date | Payment |
|------------|--|
| 8/17/23 | \$900 (\$100 for work the morning of the accident, plus \$800 TTD ⁵) |
| 8/25/23 | \$800 (TTD) |
| 8/31/23 | \$800 (TTD) |
| 9/8/23 | \$792 for 36 hours of work |
| 9/15/23 | \$600 for 27.5 hours of work |
| 9/22/23 | \$500 vacation ⁶ + \$552.80 plane ticket |
| 9/29/23 | \$500 for 22.5 hours of work |
| 10/5/23 | \$660 for 30 hours of work |
| 10/13/23 | \$462 for 21 hours of work |

Claimant's Separation from Employment with Defendant

22. Although Claimant returned to work for Defendant on light duty the week of September 4, 2023, his personal relationship with Mr. Ayala began to suffer in September, following his return from Ohio.
23. At 10:27 PM on Sunday, September 24, 2023, Claimant texted Mr. Ayala: "I can't be at work tomorrow, I am sorry. I was on a train to Randolph. It was delayed for 2 and a half hours and I fell asleep. I am stuck in St Albans and trying to make My way down. I apologize." *See* Defendant's Exhibit E.
24. On September 25, 2023, at 12:13 PM, Mr. Ayala texted Claimant: "Did you change the flight bro and you didn't tell me anything. Made me spend money for no reason. I just found out you never too[k] the flight from Boston. And you took p[l]ane from Ohio on Sunday." Claimant responded: "That's not true man. I flew to Ohio. I had to change the day to fly back because I couldn't make the flight on time because of argument and fighting with My Wife. I asked if there would be a change in price they said No." *See* Defendant's Exhibit E.

⁵ "TTD" is temporary total disability benefits.

⁶ The \$500 vacation pay was included in the prior week's check, which totaled \$1,100.

25. Early on the morning of Monday, October 9, 2023, Mr. Ayala texted Claimant to arrange to pick him up for work, but Claimant did not show up at the appointed time. *See* Defendant's Exhibit E.
26. Mr. Ayala was annoyed that Claimant failed to appear for work on October 9. On the morning of October 10, he texted Claimant that, if he was not going to show up to work, he should give Mr. Ayala the courtesy of letting him know. He also texted Claimant that he would pick him up for work that morning (October 10), but Claimant did not reply.
27. Mr. Ayala credibly testified that he was in the process of finding some new employees at that time and, given Claimant's "attitude," he texted Claimant that he would use the new employees on his current job site. He said that he did not have time to work with Claimant right then but would contact him when he did have time. At the hearing, Mr. Ayala explained that he felt Claimant was causing workplace drama, and he did not have time for the drama. Both parties agree that Mr. Ayala sent such a text message to Claimant in mid-October, but neither party offered that text into evidence.
28. Mr. Ayala texted Claimant several more times, including on October 22 and October 29, but Claimant did not respond. Mr. Ayala tried him one more time on November 24, 2023, with no reply. Claimant used different cell phones at different times, but the records show that Mr. Ayala contacted him at his current phone number in October 2023. Further, after not receiving replies from Claimant, Mr. Ayala sent several communications as a group text to both of Claimant's phone numbers, with no reply. *See* Defendant's Exhibit F.
29. Based on the foregoing, I find that Claimant performed light duty work for Defendant after his work injury and that his light duty status did not result in his working fewer hours. I further find that Claimant's separation from employment with Defendant was not related to his work injury, nor has Claimant alleged that it was.

Claimant's Subsequent Employment and Activities

30. At the hearing, Claimant testified that he returned to work following his separation from employment with Defendant when he began to work as a traffic control "flagger" in August or September 2024. He worked that job for about six weeks and then left to start school in September. Claimant did not testify about any other employment after he stopped working for Defendant. I find Claimant's testimony about his flagger job to be credible.
31. At the informal conference with the Department's specialist in June 2024, Claimant stated that he found a job in January 2024 at the Westminster Cracker Company in Rutland. *See Specialist's June 24, 2024 Formal Docket Referral Memo*, at 2. Because Claimant did not testify about this job at the formal hearing, I make no findings about the nature of his job duties nor how long he worked at Westminster Cracker Company.
32. When Claimant filed his claim with the Department on May 6, 2024, he wrote that he returned to work on March 25, 2024 and was currently working 20 to 25 hours per week. *See* Notice of Injury and Claim for Compensation (Form 5). Claimant's Form 5 does not

include the name of his employer or the nature of the job. As Claimant did not testify about this job at the hearing, I make no further findings about this employment, including whether it was the job at Westminster Cracker Company or a different employer.

Claimant's Current Status

33. In September 2024, Claimant enrolled in a two-year program at the Community College of Vermont, where he is studying computer information systems with a goal of working in the Internet security field. If Claimant maintains his grades, he will be eligible for a grant from Microsoft to cover the cost of a four-year course of study.
34. At the hearing, Claimant testified that he is suffering from left wrist pain. He describes his wrist pain as feeling "icy" during cold moments. He further testified that his current school work involves typing on a keyboard. The activity of typing, according to Claimant, "initiates carpal tunnel." Claimant also testified that he sometimes gets left shoulder pain that wakes him up. I find Claimant's testimony about his experience of wrist and shoulder symptoms to be credible, although I cannot find that he has carpal tunnel syndrome, as that requires a medical diagnosis.

Medical Evidence

35. Defendant has accepted responsibility for Claimant's finger laceration. However, it has not accepted responsibility for either a wrist condition or a shoulder condition.
36. Neither party called a medical expert to testify at the hearing as to any causal relationship between Claimant's wrist pain or shoulder pain and the August 15, 2023 finger injury. Further, Claimant's medical records do not relate any wrist or shoulder pain to the work accident on August 15, 2023.

Benefits Paid by Defendant

37. Because Defendant did not have workers' compensation insurance in effect at the time of the accident, Defendant has paid workers' compensation benefits to Claimant and his medical providers directly. Defendant has paid the following amounts to date:

Temporary Disability Benefits

38. The Department's file does not contain a Wage Statement (Form 25) for this claim. A Wage Statement sets forth a worker's wages for up to 26 weeks prior to the accident (not including the week of the accident); the statement forms the basis for the calculation of an injured worker's average weekly wage. In the absence of a Wage Statement here, I have calculated Claimant's average weekly wage prior to the injury as \$613.14 per week based on seven weeks of work for Defendant prior to the accident. See Finding of Fact No. 8 *supra* and Workers' Compensation Rule 8.
39. Claimant missed work for almost three weeks after his injury, from August 16, 2023 to September 1, 2023. Defendant paid Claimant temporary total disability benefits in the

amount of \$800 per week for a period of three weeks, after which Claimant returned to work.

40. Defendant also paid Claimant \$1,052.80 for the week of September 18-22, 2023, including \$500 “vacation” pay and \$552.80 for a plane ticket. The notation on the check of “vacation” confirms the status of this week off. *See* Finding of Fact No. 16 *supra*.

Medical Benefits

41. Claimant has seen treating providers for his finger laceration three times: August 15, 2023, August 25, 2023, and March 20, 2024.
42. Defendant has paid for all three visits, including the x-rays that were taken on August 15, 2023. *See* Defendant’s Exhibit B.
43. There are no unpaid medical bills for treatment of Claimant’s finger injury.

CONCLUSIONS OF LAW:

Burden of Proof as to Claimant’s Wrist and Shoulder Conditions

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). The claimant 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 employment. *Egbert v. The Book Press*, 144 Vt. 367 (1984).
2. Defendant has accepted Claimant’s finger injury as compensable, but it has not accepted any claim for a wrist or a shoulder condition. Accordingly, Claimant has the burden of proof to establish that he suffered compensable injuries to his wrist and shoulder in the August 15, 2023 incident.
3. 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).
4. Claimant here offered no expert medical testimony on the nature of his wrist or shoulder conditions, nor to support any causal connection between those injuries and his employment. Accordingly, I find that he has failed to meet the burden of proof to establish compensable claims for his wrist or shoulder.
5. I therefore conclude that Claimant has a compensable claim for his finger laceration but not for any other medical conditions or symptoms.

Temporary Disability Benefits Following Claimant’s Injury

6. When a claimant is unable to work as a result of a work-related injury, the claimant is entitled to temporary total disability benefits until he or she reaches an end medical result or successfully returns to work. 21 V.S.A. §§ 642, 642a, 643a; *Felion v. Church Street Hospitality, Inc.*, Opinion No. 20-23WC (December 18, 2023), citing *Britton v. Laidlaw Transit*, Opinion No. 47-03WC (December 3, 2003).
7. The Vermont Workers' Compensation Act provides a method for calculating an injured worker's temporary total disability benefits, based on his or her average weekly wage. Under the statute, the employer or its insurance carrier shall pay such benefits at the rate of two-thirds of the employee's average weekly wage, subject to maximum and minimum rates set forth in the statute. 21 V.S.A. § 642(a). The statute further provides:

Notwithstanding any provision of subsection (a) or (b) to the contrary . . . [a]n employee's total weekly wage replacement benefits . . . shall not exceed 90 percent of the employee's average weekly wage prior to applying any applicable cost of living adjustment.

21 V.S.A. § 642(c)(1).
8. Claimant's average weekly wage here is \$613.14. *See* Finding of Fact No. 38 *supra*. Two-thirds of that amount (a figure known as the "compensation rate") is \$408.96. To determine the applicable compensation rate here, however, I must also look at the minimum rate and the limiting provision set forth in 21 V.S.A. § 642(c)(1).
9. In August 2023, the minimum compensation rate was \$567.00 per week. Injured workers would be entitled to that minimum weekly rate unless that rate would exceed 90 percent of their average weekly wage, in which case their compensation rate is limited to the 90 percent figure. Claimant's average weekly wage here is \$613.14. Ninety percent of that figure is \$551.82, which is less than the minimum of \$567 per week. Accordingly, Claimant's weekly compensation rate is limited to 90 percent of his average weekly wage. Based on this calculation, his weekly compensation rate is \$551.82.
10. Claimant missed work due to his injury for the partial week of August 15-18 and for the two full weeks of August 21-25 and August 28-September 1.
11. For the partial week, Defendant owed Claimant temporary total disability benefits for four days (August 15-18). A full weekly benefit would be \$551.82. Prorating this amount over four days yields a benefit for that week of \$441.46. Defendant paid Claimant \$800 for those four days. Accordingly, no additional amounts are due for that week.

12. For the weeks of September 4-8 and September 11-15, Defendant owed Claimant temporary total disability benefits in the amount of \$551.82 per week. Defendant paid him \$800 for each of those weeks. Accordingly, no additional amounts are due for those two weeks, either.⁷
13. Based on the foregoing, I conclude that Defendant owes Claimant no additional temporary total disability benefits for the three weeks when he was out of work following his finger injury. Thereafter, Claimant was not entitled to additional temporary total disability benefits because he returned to work for Defendant.

Temporary Disability Benefits Following Separation from Employment

14. Generally, when an injured worker's employment ends for reasons unrelated to the work injury, the injury is not the cause of the loss of earnings, and the worker is not entitled to additional temporary disability benefits. *See Andrew v. Johnson Controls*, Opinion No. 03-93WC (June 13, 1993) (employee who voluntarily quit his employment is not entitled to temporary disability benefits); *Britton v. Laidlaw Transit*, Opinion No. 47-03WC (December 3, 2003) (employee fired for cause is not entitled to temporary disability benefits).
15. Here, Claimant's employment with Defendant ended due to the deterioration of his relationship with Defendant, and not for any reason related to his work injury. Accordingly, no additional temporary disability benefits are due after his separation from employment in October 2023.

Future Medical Treatment

16. Vermont's workers' compensation statute obligates an employer to furnish "reasonable" medical services and supplies to an employee who has sustained a compensable work-related injury. 21 V.S.A. § 640(a). To be reasonable under the statute, a treatment must be both medically necessary and causally related to the compensable injury. *Baraw v. F.R. Lafayette, Inc.*, Opinion No. 01-10WC (January 20, 2010); *Brodeur v. Energizer Battery Mfg., Inc.*, Opinion No. 06-14WC (April 2, 2014).
17. Claimant received medical treatment for his injury, and Defendant has paid all the medical bills for that treatment. Accordingly, Defendant does not owe for any unpaid medical bills.
18. As this is an open claim for workers' compensation benefits, Defendant remains responsible for any future treatment for Claimant's accepted finger injury, provided that any such treatment is (a) medically necessary, and (b) causally related to the finger laceration that occurred on August 15, 2023.

⁷ An employer's right to seek reimbursement of any overpayment is limited by statute to an offset against future compensation; no offset may be made against medical benefits. Further, any such offset requires prior approval of the Department. 21 V.S.A. § 651; *See, e.g., Felion v. NSK Corporation*, Opinion No. 10-11WC (April 29, 2011); *McGinness v. OWL International*, Opinion No. 11-12WC (April 4, 2012).

19. Claimant has failed to establish that his wrist pain and/or shoulder pain are causally related to the work injury, so Defendant is not responsible for any medical treatment for those or any other medical conditions other than Claimant's finger.

ORDER:

Based on the above Findings of Fact and Conclusions of Law, Claimant's claim for additional workers' compensation benefits at this time is **DENIED**. As this is an open claim, Defendant remains responsible for any workers' compensation benefits to which Claimant may prove his entitlement in the future, including any future medical treatment that is both medically necessary and causally related to the August 15, 2023 finger injury.

DATED at Montpelier, Vermont this 18 day of December 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.