STATE OF VERMONT
DEPARTMENT OF LABOR

Senadina Camdzic

v.

Sodexo, Inc.

Opinion No. 04-25WC

By: Stephen W. Brown
Administrative Law Judge

For: Michael A. Harrington
Commissioner

State File No. SS-61739

OPINION AND ORDER

Hearing held via Microsoft Teams on March 25, 2024
Record closed on May 31, 2024

APPEARANCES:

Christopher McVeigh, Esq., for Claimant
Erin J. Gilmore, Esq., for Defendant

ISSUES PRESENTED:

1. Did Claimant's right ankle and Achilles tendon injury arise out of and in the course of her employment with Defendant?

2. If so, to what benefits is she entitled? In particular, Claimant seeks temporary total disability benefits and medical benefits including compression stockings.

EXHIBITS:
Joint Medical Exhibit ("JME")
Curriculum Vitae of Scott Pulaska, MD
Preservation Deposition of Douglas Kirkpatrick, MD

FINDINGS OF FACT:

1. Claimant is a 60-year-old woman originally from Bosnia. She moved from Bosnia to Vermont at age 30 in 1999 with her husband, Hamed Camdzic. Both Claimant and Hamed testified at the formal hearing.

2. Since moving to Vermont, Claimant has held several employment positions, including working as a pharmacy technician and at a cable company. She also took some time off from the workforce to raise her children.

3. Defendant hired Claimant in 2010 to work in the dining hall at Saint Michael's College in Colchester, Vermont, where she started as a cashier and transitioned to serving and training at different food stations, including making pizza and breakfast items. Her

supervisor, Jeremy Metcalf, credibly testified that she was eager to learn and praised her work performance.

4. Before the spring of 2023, Claimant did not experience any significant ongoing issues with her right ankle. While there are medical records before this time that reflect issues with right foot and ankle pain between 2003 and 2004 (JME 1-4), and knee pain in 2020 (JME 121, 139-140, 163), there is no evidence that any issues with her right ankle limited her activity or otherwise caused ongoing problems during the nearly two decades between 2004 and 2023. Before the spring of 2023, Claimant worked a second job cleaning offices for approximately 15 hours per week, in addition to her work for Defendant. She could drive, traverse the stairs to her third-floor apartment, and assist with household chores. She also enjoyed long walks with Hamed.

Claimant's April 17, 2023, Workplace Injury and Subsequent Medical Course

5. On the morning of April 17, 2023, Claimant was working at the Saint Michael's College cafeteria preparing for lunch. She had been working on her feet for approximately two hours making sandwiches, and by approximately 11:00 AM, she was making a pizza. She needed more cheese, so she twisted and turned around to get some. When she pivoted, she experienced a sudden and severe pain in her right leg just below her hip; she also experienced serious pain in her right heel radiating up her leg, making it difficult to walk on her right leg. She felt like she had been bitten by something.

6. Using tables and chairs to support herself, Claimant went to her supervisor Jeremy Metcalf's office to seek assistance. Mr. Metcalf provided ice for her injury. General manager Brian Roper eventually came to assist as well. Claimant told both of them at the time that she had hurt her foot at the pizza station and did not know how she hurt it, except that she turned, felt a pop, and it hurt. Both Mr. Metcalf and Mr. Roper credibly testified that Claimant appeared to be in noticeable pain. Eventually, Claimant then called her husband, who drove to pick her up and take her to the emergency room at Fanny Allen campus of the University of Vermont Medical Center.

7. At Fanny Allen, Claimant's medical providers recorded her injury history as follows:

> Pt states that around 1100 today she pivoted on her right foot and fell [*sic*] sudden pain in her right heel area. She [complains of] pain in her heel while weightbearing. Swelling in the area. Pt here in a wheelchair.

(JME 274).

8. At the emergency room, Claimant underwent an evaluation including x-rays and was treated with ice. Her providers assessed her with Achilles tendinopathy and bursitis as well spur-like formations, gave her a boot, and took her out of work for a week. They recommended follow-up with her primary care provider. (*See generally* JME at 272-304). Claimant did so, and her primary care providers at the Community Health Center of Burlington confirmed her Achilles tendonitis diagnosis with the April 2023 incident as the inciting cause and referred her to physical therapy. (JME 305-325).

9. Between April and December 2023, Claimant underwent physical therapy, but that treatment did not significantly improve her symptoms. (JME 326-459). She engaged in numerous conservative treatment modalities, including dry needling, taping, and aqua therapy, but did not realize significant relief. On December 18, 2023, her treating physical therapist noted potential signs of complex regional pain syndrome ("CRPS") and referred Claimant to a pain clinic. (JME 459).

10. On May 24, 2023, Claimant visited orthopedic and sports medicine physician Scott Paluska, M.D., who noted a "work-related onset of symptoms affecting the right position foot and ankle consistent w/ Achilles tendon injury and possible partial tearing." He noted that Claimant was "unable to work safely in the kitchen with her symptoms and will be released from work pending further evaluation." (JME at 359).

11. Dr. Pulaska recommended a right ankle MRI, which Claimant underwent on June 12, 2023. Findings from that MRI included tendonitis involving the distal Achilles tendon with a small interstitial tear of the calcaneal insertional fibers and edema. The findings also supported plantar fasciitis. (JME 362-63).

12. Due to Claimant's lack of improvement with conservative care, her primary care providers referred her to an orthopedic surgical consultation to discuss a potential debridement surgery. (JME 441, 450). In February 2024, orthopedic surgeon James Michelson, M.D., saw Claimant and recommended tendon surgery on her right ankle. Claimant agreed to this surgery, but it had not yet been scheduled as of the time of her formal hearing.

13. After Claimant's workplace incident in April 2023, she had difficulty moving around her apartment and no longer left home frequently, as traversing the stairs became much more difficult. She has spent significantly more time sitting and has contributed less to household chores. She can no longer drive, as she is unable to press the brake pedal.

14. Claimant has not returned to work since her injury. Her former supervisor, Mr. Metcalf, credibly testified that based on Claimant's work restrictions (JME 465-67),[1] she could not perform her old job and Defendant had no positions available that she could perform.[2]

15. As of the formal hearing date, no medical expert had returned Claimant to work, and there is no evidence in the record suggesting that she has any work capacity or that anyone had advised her of any obligation to engage in a work search.

[1] On this work restriction form dated December 20, 2023, on Defendant's letterhead, Claimant's treating provider indicated that Claimant would not be able to return to work for at least six months.

[2] *See also* out-of-work notes from Claimant's primary care providers, *e.g.,* JME at 325, 347, 356, 372.

Expert Opinions

Dr. Philip Davignon

16. At Claimant's request, Philip Davignon, M.D., an occupational medicine physician who is board-certified as an independent medical examiner, performed an Independent Medical Evaluation ("IME") of Claimant on November 15, 2023. (JME 443- 447).

17. As a part of his IME, Dr. Davignon interviewed Claimant, physically examined her, and reviewed her then-available medical records,[3] including her emergency room records, radiology reports, and vascular evaluations.

18. Dr. Davignon described Claimant's mechanism of injury as follows: "She went to grab some cheese, turned, and felt an electric shock down her right leg. She was not able to bear weight." (JME 444). As to causation, he noted, "I do feel the claimant's right ankle symptoms are causally related to the injury of record." (JME 447). He also noted that Claimant had an upcoming surgical consultation and was therefore not at end medical result. (*Id.*).

19. He noted a diminished range of motion and tenderness in the area of Claimant's injury and concluded that she had suffered a strain and tendonitis of the right ankle, specifically in her Achilles tendon. He also noted that Claimant was limping on her right side and demonstrated pain behaviors when he asked her to move her right ankle.

20. In his opinion, the forces applied across the ankle when Claimant pivoted contributed to her interstitial tendon tear and an inflammation of the soft tissues around her heel, causing pain and difficulty bearing weight. In support of his causation opinion, he relied heavily on the temporal sequence of events: before her pivoting movement at work, Claimant had not been experiencing right ankle pain; her onset of symptoms coincided exactly with that workplace incident. Dr. Davignon also cited Claimant's diagnostic evaluations such as an ultrasound report and a right ankle MRI that showed tendinosis, edema, and inflammation. He also noted that bone spurs can irritate the Achilles tendon over time.

21. Dr. Davignon was aware that Claimant has diabetes and varicose veins. In his opinion, these conditions did not contribute to her ankle injury.

22. In Dr. Davignon's opinion, Claimant's medical treatment to date for her ankle injury has been reasonable, and a surgical consultation is a reasonable next step. However, he credibly testified that compression socks were not indicated for Claimant's ankle injury; while they may be reasonable, they are treatment for her unrelated varicose veins.

23. I find Dr. Davignon's opinions credible, persuasive, and well-supported in all regards.

[3] Dr. Davignon did not have all of Claimant's medical records at the time of his IME. He subsequently reviewed physical therapy, chiropractic, and other medical records that he received after his evaluation; they did not change his opinions.

Dr. Scott Paluska

24. Dr. Paluska was one of Claimant's treating providers; he evaluated her ankle condition three times between May and July 2023. (*See generally* JME 359 *et seq.*). He has reviewed Claimant's medical records dating back to 2003, though he received many of them close in time to the formal hearing. He reviewed Claimant's radiological images including x-rays and MRIs during his course of treating her in 2023.

25. Dr. Pulaska has engaged in a non-surgical orthopedic medicine practice since 1999 and is board-certified in the field of sports medicine. He does not perform orthopedic surgery, but he is involved in orthopedic care before and after surgery, and he frequently consults with orthopedic surgeons as a part of his patient care.

26. Based on his treatment of Claimant and his review of her radiological images, Dr. Pulaska believes that her right ankle injury arose out of and in the course of her workplace incident on April 17, 2023.

27. Based on conversations with Claimant and her physical therapist, his understanding of Claimant's mechanism of her injury was that she pivoted with a bent and planted foot and felt a sharp shock behind her ankle. In his opinion, her sharp onset of pain resulted from an acute injury affecting the lower part of the calf muscle and the Achilles tendon where it connects to the bone, suggesting a partial tearing or inflammation of the tendon. He noted that Claimant's MRI findings showed swelling and a partial tear, that Claimant had no similar preexisting symptoms in this area, and her symptom onset occurred during normal work activities. In his view, these factors create a strong connection between Claimant's work and the sudden onset of her pain.

28. He noted that Claimant likely had some preexisting degenerative changes in her ankle, and that tendinosis can lurk in the background without symptoms. However, the fact that nothing in her medical record reflected any significant ongoing ankle complaints suggested that any preexisting tendinosis was asymptomatic. He found that the swelling, inflammation, and partial tendon tear, which he identified as a potential source of Claimant's pain in his initial May 24, 2023, evaluation of her, were related to her April 2023 workplace incident.

29. I find Dr. Pulaska's opinions to be clear, persuasive, and well-supported in all respects.

Dr. Douglas Kirkpatrick

30. At Defendant's request, board-certified orthopedic surgeon Douglas Kirkpatrick, M.D., reviewed Claimant's medical records and issued an opinion on medical causation. He did not physically examine Claimant. He testified that he did not feel he needed to do so, because the information he needed to form his opinion was available by reviewing medical records alone. He did acknowledge, however, that physical examinations can offer additional information that cannot be gleaned from records alone.

31. Based on his review of Claimant's medical records, Dr. Kirkpatrick explained that Claimant had a Haglund's deformity and a large bone spur as well as a thickened Achilles tendon.[4] He explained that a Haglund's deformity is consistent with chronic Achilles tendonitis and deposition of bone in that area, and that this deformity cannot be caused by trauma. These findings, in his opinion, suggest chronic conditions associated with a progressive tendinopathy, or partial tearing of the Achilles tendon over time.

32. Dr. Kirpatrick found it relevant that Claimant's medical records showed complaints of heel pain roughly twenty years ago, and that more recent medical records showed complaints of calf tension and knee pain. One of the potential causes of chronic Achilles tendonitis is a tight calf muscle.

33. Dr. Kirkpatrick also noted that Claimant's June 12, 2023, MRI showed bony prominences or depositions of bone within the Achilles tendon. That can cause a thickening and edema in the surrounding area, suggesting bone breakdown in the surrounding area. In his opinion, these findings are not suggestive of a traumatic injury but instead suggest that Claimant's Achilles tendon problems are related to her Haglund's deformity. He also pointed to Claimant's x-rays from the day of the incident, which he testified showed a diffuse swelling in the affected area, suggesting a more chronic condition; he would expect more localized swelling from an acute traumatic event.

34. With respect to Claimant's movements that immediately preceded her sudden onset of pain, Dr. Kirkpatrick testified that pivoting on a foot is not capable of producing the conditions shown on Claimant's x-rays because pivoting involves only minor stress on the Achilles tendon, no more than activities of daily life.

35. Dr. Kirkpatrick acknowledged that Claimant's pain onset occurred abruptly at work, but in his view, this could have happened anywhere; she simply happened to be at work when these symptoms manifested. More specifically, he believes that Claimant's symptom onset would have occurred *on that very day* whether she was at work or not. In this regard, he testified as follows:

> Q. So in your expert medical opinion, would the claimant's right ankle Achilles injury have occurred April 17, 2023, even if she hadn't been at work?
>
> A. I would think so, yes.
>
> Q. And what gives you that impression?
>
> A. I think, again, there's no significant trauma, no external force applied. Patient is standing, turning, pivoting. This is activities of daily living. She could have

[4] Dr. Kirkpatrick explained that a Haglund's deformity is a radiographic finding of calcification of the insertion site of the Achilles tendon in the area anterior to the insertion site where there is an abnormal bone formation present. Dr. Davignon also testified about Haglund deformities generally, but did not discuss Claimant's Haglund's deformity in particular. Dr. Davignon testified that this deformity is also known as a "pump bump" and is common in women with a history of wearing high-heeled shoes.

easily been in her own kitchen moving, turning and pivoting, and this could have occurred.

You know, the occupational - the idiopathic occupational disease of this is something unusual or unique to this job that she wouldn't have experienced elsewhere in her life. There's no objective evidence to support that. This is something she could have easily done just living her life, because of this underlying chronic condition.

So I don't find it related to the work environment, for that reason.

(Kirkpatrick Depo, pp. 15-16).

36. Dr. Kirkpatrick acknowledged that when Claimant pivoted on her foot, that "certainly could have produced some additional swelling or pain in that area or some degree of increase partial tearing, just based on this, again, force of just simply pivoting," and that Claimant's symptoms progressed very suddenly, but reiterated that this pivoting was an "activity of daily life." (*Id.*, pp. 28-29).

37. I find Dr. Kirkpatrick's opinions that Claimant had longstanding, non-work-related degenerative changes in her ankle, including a Haglund's deformity and progressive tendinopathy, persuasive and well-supported.

38. However, I do not find that he has convincingly explained away the timing of her sharp onset of pain and resulting disability related to those conditions. I am also perplexed by his assertions that pivoting cannot supply the force necessary to bring about Claimant's symptoms but that it may have increased her pain, swelling, or partial tearing.

39. I find Dr. Kirkpatrick's *general* premise that twisting or pivoting movements are involved with many activities of daily living to be credible and well-supported. However, I am not convinced by his apparent inference from that premise that no *particular* twist or pivot could constitute an occupational cause of Claimant's sudden symptom onset.

40. Surely not all twisting movements exert the same force. While I find it likely that Claimant engaged in some twisting or pivoting motions outside of her workplace in the months or years preceding April 17, 2023, none of those other movements precipitated any significant changes in her medical presentation or physical capacity. This one did.

41. Dr. Kirkpatrick has not persuasively explained *why* he believes Claimant would have experienced that pain onset on the very same day whether she was at work or not.

42. Even if Claimant's progressive degenerative changes put her on track to experience that same medical result eventually, the key question is whether her work is what made her condition become symptomatic and disabling earlier than would have happened otherwise. *See* discussion *infra,* Conclusions of Law Nos. 5-6.

43. While temporal sequence alone does not establish causation, it also cannot be ignored. Claimant was fine one minute, turned to reach for some cheese she needed for work, and immediately felt excruciating pain that has rendered her unable to work ever since. The only objective difference from one minute when Claimant was fine to the next minute when she was not was that she twisted to retrieve some cheese for work. Explaining this as mere coincidence of Claimant happening to be at work when the inevitable happened is simply too difficult to square with the undisputed timeline for me to accept without a more robust showing of a specific reason why Claimant would have experienced the same worsening *right then*, on the morning of April 17, 2023.

44. For all these reasons, I find Dr. Kirkpatrick's causation analysis less persuasive than those of Drs. Davignon and Pulaska.

CONCLUSIONS OF LAW:

Applicable Legal Standards

Burden of Proof

1. A 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). She must establish by sufficient credible evidence the character and extent of the injury, *see Burton v. Holden & Martin Lumber Co.*, 112 Vt. 17, 20 (1941), as well as the causal connection between the injury and the employment. *Egbert v. The Book Press*, 144 Vt. 367, 369 (1984). There must be created in the mind of the trier of fact something more than a possibility, suspicion or surmise that the incidents complained of were the cause of the injury and the resulting disability, and the inference from the facts proved must be the more probable hypothesis. *Burton, supra*, 112 Vt. at 20; *Morse v. John E. Russell Corp.*, Opinion No. 40-92WC (May 7, 1993).

Positional Risk

2. Employers must pay workers' compensation benefits when a worker sustains a "personal injury by accident arising out of and in the course of employment by an employer[.]" 21 V.S.A. § 618(a). In other words, to have a compensable injury, a claimant must satisfy two elements by proving that the injury: "(1) arose out of the employment, and (2) occurred in the course of the employment." *Miller v. Int'l Bus. Machines Corp.*, 161 Vt. 213, 214 (1993).

3. The first prong of this inquiry—whether an injury "arises out of" employment—involves the assessment of "positional risk." Specifically, an injury arises out of employment "if it would not have occurred but for the fact that the conditions and obligations of the employment placed the claimant in the position where claimant was injured." *Cyr v. McDermott's, Inc.*, 2010 VT 19, ¶ 10 (claimant was put in a "positional risk" when his coworker gave him a Mountain Dew bottle that contained an industrial cleaning agent, and the claimant later consumed it, believing the liquid to be a soft drink, suffering chemical burns).

4. The second prong of the compensability inquiry—whether an injury occurs "within the course of employment"—depends on "time, place and activity." This prong requires that the injury arise "within the time and space boundaries of the employment, and in the course of an activity whose purpose is related to the employment." *Rainville v. Boxer Blake & Moore, PLLC*, Opinion No. 02-21WC (January 15, 2021). This requirement is satisfied when the injury occurred "within the period of time when the employee was on duty at a place where the employee was reasonably expected to be while fulfilling the duties of the employment contract." *Id.* (cits. & punct. omitted).

Acceleration of Progressive Conditions

5. A workplace injury is compensable if it "accelerates the progression of a pre-existing condition, or disrupts its stability such that an individual's ability to work and function is disabled[.]" *Taub v. Shippee Family Eye Care, PC*, Opinion No. 12-23WC (May 15, 2023) (quoting *S. B. v. Homebound Mortgage*, Opinion No. 29-07WC (November 6, 2007)).

6. In the context of progressively degenerative conditions, the standard for causation is "whether, due to a work injury or the work environment, the disability came upon the claimant earlier than otherwise would have occurred." *Id.* (quoting *Stannard v. Stannard Co.*, 2003 VT 52, ¶ 11) (cits. & punct. omitted). The "[m]ere continuation or even exacerbation of symptoms, without a worsening of the underlying disability, does not meet the causation requirement." *Id.*

Resolving Conflicting Expert Testimony

7. 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).

8. In this case, the first factor favors Dr. Pulaska over the other experts as he is the only treating provider, although the relative weight of this factor is low in this case.

9. The second and fifth factors weigh substantially equally among the three experts, as all are well-credentialed in fields relevant to evaluating Claimant's injury, and all reviewed the key medical records. While there were some disparities relating to what records the experts reviewed and when, there is no significant disagreement about Claimant's medical chronology. This is not a case where one expert relied heavily on a key landscape-altering treatment record that another expert overlooked.

10. The fourth factor favors Drs. Pulaska and Davignon over Dr. Kirkpatrick, as Dr. Kirkpatrick performed only a medical records review while the other two experts

physically examined Claimant. A physical examination of an injured worker is not a legal requirement for an expert to provide opinion testimony, but it never hurts and usually helps.

11. As with many cases, the third factor is most important here. For the reasons explained in greater detail at Findings of Fact Nos. 37-40, *supra*, I find Drs. Davignon's and Pulaska's opinions that Claimant's work activities causally contributed to her sudden pain onset more objectively supported by the timeline of events than Dr. Kirkpatrick's opinion that Claimant would have suffered the same result on the same day whether engaging in work activity or not.

12. While Dr. Kirkpatrick has convinced me that Claimant had preexisting, non-work-related progressive degenerative changes, including a Haglund's deformity, they were asymptomatic until Claimant engaged in a specific work-related movement, and thereafter she has experienced severe and debilitating symptoms. While I am convinced that her preexisting degenerative changes made her more susceptible to the sudden onset of intense and lasting pain she suffered, the weight of the evidence persuades me that her twisting motion at work caused her precipitous change. Casting her presence at work when this happened as a mere coincidence would require me to stretch my perception of the operative timeline more strenuously than I am able.

Application of Positional Risk Doctrine and Progressive Condition Causation Analysis

13. Claimant's sudden onset of pain resulted from activities she was performing for work at work. It unquestionably occurred "during the course of" her employment. *Cf.* Conclusion of Law No. 4; *Rainville*, *supra*, Opinion No. 02-21WC.

14. Defendant contends, however, that it did not "arise out of" her employment under the positional risk doctrine, relying on Dr. Kirkpatrick's opinion that Claimant's symptom onset resulted from nonoccupational factors that simply happened to come to fruition while she was at work. Because I have not credited that opinion, I do not credit Defendant's legal theory. Claimant's job duty in the moments before her pain onset was to make a pizza. That required her to retrieve more cheese. The cheese she needed was in a place that required her to change her position. She did so. That, quite literally, increased her "positional risk" by applying forces on her Achilles tendon and made her previously asymptomatic degenerative conditions become suddenly symptomatic. *Cf.* Conclusion of Law No. 3, *supra*; *Cyr*, *supra*, 2010 VT 19, ¶ 10.

15. For those same reasons, the evidence in this case satisfies the causation standard for aggravation of a progressive, degenerative condition. Claimant's preexisting Haglund's deformity and progressive tendinopathy were stable and asymptomatic up until the morning of April 17, 2023. Then suddenly, they were not. A movement that she undertook for work "disupt[ed] its stability such that [her] ability to work and function [was] disabled." *Cf. Taub, supra*, Opinion No. 12-23WC. Thus, her "disability came upon the claimant earlier than otherwise would have occurred." *Id.*; *accord Stannard*, *supra*, 2003 VT 52, ¶ 11. (cits. & punct. omitted).

16. This is not a case where Claimant experienced a mere continuation or worsening of symptoms over time due to continuing degenerative processes. *Cf. contra id.* She had no symptoms to worsen. Her symptoms and resultant disability came about instantaneously from one discrete work-related event.

17. For all these reasons, I conclude that Claimant's April 17, 2023, right ankle and Achilles tendon injury arose out of and in the course of her employment with Defendant.

Workers' Compensation Benefits to Which Claimant Is Entitled

Temporary Total Disability

18. When an injured worker is unable to work because of a work-related injury, the worker 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). An employer may require an injured worker receiving temporary disability benefits to engage in a good faith work search if:

> (a) the injured worker is medically released to return to work, with or without restrictions;
>
> (b) the employer has provided the injured worker with written notice of the work release and any applicable restrictions; and
>
> (c) the employer cannot offer work that the injured worker is medically released to do.

Workers' Compensation Rule 9.1700.

19. Claimant has been out of work since April 17, 2023. Emergency Room providers took her out of work that day, and her primary care providers have kept her out of work with multiple notes since then. *See* Findings of Fact No.8, *supra.*

20. Defendant has presented no evidence that Claimant has any work capacity, and Claimant's former superior who continues to work for Defendant credibly confirmed that Defendant has no positions that Claimant could perform. *See* Findings of Fact No. 14, *supra*. There is also no evidence that Defendant ever advised Claimant of any obligation to perform a work search.

21. There is no evidence that Claimant has reached end medical result. Further, as of the formal hearing date, Claimant planned to undergo surgery for her injury that had not yet taken place.

22. Therefore, Claimant is entitled to temporary total disability benefits until she either reaches end medical result, successfully returns to work, or acquires a work capacity and fails to perform a good faith work search after being advised of an obligation to do so.

23. Further, pursuant to 21 V.S.A. § 664, Claimant is entitled to pre-judgment interest at the statutory rate computed from April 17, 2023 through the date of this Opinion and Order. The statutory interest rate is 12 percent per annum. 9 V.S.A. § 41a.

Medical Benefits

24. Additionally, 21 V.S.A. § 640(a) requires that an employer pay for "reasonable" medical treatment. Vermont law defines reasonable treatment as treatment that is medically necessary and causally related to the work injury. *Baraw v. F.R. Lafayette, Inc.*, Opinion No. 01-10WC (January 20, 2010).

25. Based on Dr. Davignon's testimony, I conclude that all the medical treatment that Claimant has received for her workplace injury as of the date of the formal hearing in this case was reasonable, as is the surgery that Claimant planned to undergo but had not yet undergone as of the formal hearing date. However, based on Dr. Davignon's persuasive testimony, I conclude Claimant's compression stockings are not related to her workplace injury. Defendant is therefore financially responsible for all of Claimant's treatment for her ankle injury that she had received up to the time of the formal hearing, including the proposed surgery, but not her compression stockings.

26. Defendant is also responsible for ongoing reasonable medical treatment for Claimant's compensable workplace injury.

ORDER:

For all of these reasons, Defendant shall adjust this claim as a compensable workplace injury and shall pay temporary total disability benefits retroactive to Claimant's date of injury and continuing until she either successfully returns to work or Defendant discontinues such benefits by establishing that Claimant has reached end medical result or has regained a work capacity and failed to perform a good faith work search after being advised of an obligation to do so. Defendant shall also pay interest at the statutory rate on Claimant's retroactive temporary total disability benefits. Finally, Defendant shall pay medical benefits for all medical treatment that Claimant has received for her right ankle injury, but not compression socks, as well as for the ongoing reasonable medical treatment of her compensable work injury.

DATED at Montpelier, Vermont this 20 day of March 2025.

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.