

**STATE OF VERMONT  
DEPARTMENT OF LABOR**

Bonnie Clark

Opinion No. 09-25WC

v.

By: Beth A. DeBernardi  
Administrative Law Judge

Collaborative Solutions Corp.

For: Kendal M. Smith  
Interim Commissioner

State File No. RR-58330

**OPINION AND ORDER**

Hearing held on April 7, 2025 (in Montpelier) and April 11, 2025 (via Microsoft Teams)  
Record closed on May 12, 2025

**APPEARANCES:**

Heidi S. Groff, Esq., for Claimant  
William J. Blake, Esq., for Defendant

**ISSUES PRESENTED:**

1. What is the correct permanent impairment rating for Claimant's compensable work injuries?
2. Is Claimant permanently and totally disabled as a consequence of her compensable work injuries?

**EXHIBITS:**

Joint Exhibit I:	Joint Medical Exhibit ("JME")
Joint Exhibit II:	Pre-Injury Joint Medical Exhibit ("PI-JME")
Joint Exhibit III:	Vocational Rehabilitation Exhibit ("VRE")

Claimant's Exhibit 1:	<i>Curriculum vitae</i> of Louise Lynch, BS
Claimant's Exhibit 2:	<i>Curriculum vitae</i> of Verne Backus, MD
Claimant's Exhibit 3:	<i>Curriculum vitae</i> of John May, MA

Defendant's Exhibit A:	<i>Curriculum vitae</i> of George White, MD
Defendant's Exhibit B:	<i>Curriculum vitae</i> of Alex Torstrick, PhD
Defendant's Exhibit C:	<i>Curriculum vitae</i> of Fran Plaisted, MA

**CLAIMS:**

Permanent partial disability benefits pursuant to 21 V.S.A. § 648  
Permanent total disability benefits pursuant to 21 V.S.A. §§ 644 and 645

Medical benefits pursuant to 21 V.S.A. § 640(a)  
Interest, costs and attorney fees pursuant to 21 V.S.A. §§ 664 and 678

### **FINDINGS OF FACT:**

1. Claimant is a 73-year-old woman who lives in Hinesburg with her husband, her adult daughter Kristie Norton, and other family members.
2. Defendant operates a residential recovery program, called Second Spring, for residents who are working to overcome behavioral health conditions. Claimant worked for Defendant for three years as a recovery support specialist. Her job duties included passing out medications, crafting with residents, and driving residents to doctor appointments and shopping. She worked more than 40 hours per week.
3. Claimant fell at work on January 16, 2022. Defendant accepted her workers' compensation claim for cervical spine fractures and rib fractures. Defendant paid temporary total disability benefits until such benefits were discontinued based on a finding of end medical result. The parties currently dispute Claimant's correct permanent impairment rating and whether she is entitled to permanent total disability benefits. The answers to those questions turn, in part, on which of Claimant's medical conditions are causally related to her January 16, 2022 fall at Defendant's workplace.

#### *Claimant's January 16, 2022 Fall at Work and Subsequent Medical Course*

4. On January 16, 2022, Claimant was preparing to mop a floor at work. She entered the mop closet, lost her balance, and fell backwards, striking her upper body and neck on the door. Claimant felt no immediate pain and did not think she was injured. Nevertheless, at her coworkers' insistence, she drove herself to Fanny Allen Urgent Care in Colchester.
5. At Fanny Allen, Claimant reported falling at work, but she denied any loss of consciousness. She told staff that she had pain in her ribs and right arm, and a headache, reporting a pain level of two out of ten. (JME at 1-2, 10). Fanny Allen transferred her to the UVM Medical Center hospital for a thorough work up. (*See generally* JME 1-17).
6. At the hospital, Claimant underwent a CT scan of her head, which found no evidence of intracranial hemorrhage or skull fracture. (JME 31). Additional evaluation for her head strike found no obvious neurological involvement. (JME 25). However, the CT scan did find "ill-defined hypodensity in the right putamen. Scattered supraventricular white matter hypodensities, nonspecific likely sequela chronic microangiopathic changes."<sup>1</sup> (JME 42).
7. The hospital also took a CT scan of Claimant's neck that identified non-displaced fractures of her C4 and C5 vertebrae "of questionable age," as the fractures showed "some degree of healing." (JME 43). Nevertheless, out of caution, hospital staff opted to

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<sup>1</sup> Chronic microangiopathic changes indicate long-term, progressive damage to the small blood vessels in the brain. <https://my.clevelandclinic.org/health/diseases/22927-hypovascular-ischemic-disease> (Last accessed June 11, 2025 at 3:34 PM). *See* Dr. Torstrick's report at JME 904.

treat the neck fractures as acute by providing a cervical collar. Claimant was discharged from the hospital the same day. (JME 31-32).

8. Claimant returned to the hospital five days later, on January 21, 2022, complaining of rib pain. An imaging study identified several non-displaced rib fractures on her right side. (JME 79, 81). Hospital staff administered morphine but did not write a morphine prescription because Claimant already had morphine at home for chronic pain from other medical conditions predating her fall at work.<sup>2</sup> (JME 81).
9. On January 23, 2022, Claimant had an episode of acute respiratory failure and was admitted to the hospital for five nights. Hospital staff attributed her episode to excessive use of Tylenol and other pain medications. She was discharged on January 28, 2022 and began a multidisciplinary program including physical therapy for her neck and visits with a social worker. (JME 85-86, 97). Claimant was discharged from physical therapy on May 5, 2022. (JME 124, 458).
10. On June 15, 2022, Claimant's primary care physician diagnosed a decubitus ulcer (bedsore) on her buttock. (JME 501).
11. On July 6, 2022, Claimant followed up with a physiatrist for neck pain. A cervical CT scan found no abnormal neck motion with positioning or any other evidence of the previously identified cervical fractures. (JME 510, 522).
12. Claimant saw a rheumatology nurse practitioner for her long-standing hand condition on September 1, 2022. The nurse practitioner diagnosed age-related osteoarthritis, tendon and ligament laxity, and joint hypermobility with hand deformities.<sup>3</sup> She noted that Claimant had been seeing orthopedic physicians for her hands since the 1980s and that there was nothing else they could do to treat her condition. (JME 604-605).
13. Claimant had another CT scan of her head the same day. The CT scan found evidence of chronic small blood vessel ischemic disease and raised concern for a possible acute stroke. (JME 614-615).
14. On September 24, 2022, Claimant had a chest CT scan to follow up on a lung nodule that was identified the previous January. (JME 79, 654). This scan identified "improved bilateral lower lobe pneumonia." (JME 654).
15. On October 18, 2022, Claimant was admitted to the hospital for deep vein thrombosis (DVT) in her left leg, leading to a likely pulmonary embolism. (JME 666-671). She was discharged on October 19, 2022, with a referral to hematology and a prescription for a blood thinner, Eliquis, to help prevent future blood clots. (JME 669).

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<sup>2</sup> Prior to January 16, 2022, Claimant was taking morphine, tramadol (an opioid), and Topamax to treat chronic shoulder pain, neck pain, hand osteoarthritis, headaches, fibromyalgia and other chronic pain conditions. (*See, e.g.*, PI-JME 1051-1054, JME 81).

<sup>3</sup> Some medical records refer to rheumatoid arthritis in Claimant's hands, but the rheumatologist did not make this diagnosis. Rather, the rheumatologist diagnosed joint hypermobility, where the tendons and ligaments that support and stabilize the hand joints are weak, thereby allowing the joints to move beyond the normal range of motion.

16. Claimant followed up with Physician Assistant Rebecca Sokolowski in the UVM Medical Center's hematology department on November 11, 2022. PA Sokolowski considered Claimant's blood clot to be unprovoked,<sup>4</sup> as she did not have any of the classic provoking factors within the three months prior to her blood clot, including no surgeries, no trauma/fractures, and no hospitalizations. PA Sokolowski listed Claimant's ongoing risk factors for DVT as her age, her chronic inflammatory state, and her family history of DVT. (JME 728, 745-746, 752).
17. On December 14, 2022, Claimant stood up at home to retrieve her phone, felt dizzy, and fell down, leading to an emergency department visit that night. (JME 849).
18. On April 17, 2023, Claimant's hematology physician assistant reported a complete resolution of her deep vein thrombosis. Accordingly, her blood thinner medication was reduced to a low dose. (JME 951, 956).
19. On June 2, 2023, Claimant had an endocrinology consultation related to her severe osteoporosis and history of multiple bone fractures. (JME 1006). Claimant's recent bone density scan showed a worsening of her hip and lumbar spine. (JME 1007).
20. On June 14, 2023, Claimant reported memory concerns to her primary care physician. (JME 1035, 1059).
21. On June 20, 2023, Claimant underwent a brain MRI. Because of her frequent falls, her medical providers suspected she might have had a stroke. (JME 1185). The MRI found chronic microangiopathic changes, but no evidence of stroke. (JME 1185-1186).
22. On July 28, 2023, Claimant's hematology practitioner noted that her pulmonary embolism had completely resolved. Claimant continues to take a blood thinner to prevent a future episode. (JME 1252).
23. On September 5, 2023, Claimant fell while walking in her bedroom. As she fell, she struck her head on a desk and lacerated her ear lobe. At the hospital, she reported head pain, neck pain, arm pain, and a headache. (JME 1264-1265). A head CT scan found no evidence of an acute intracranial hemorrhage (JME 1266), and the fall was later determined to be a simple mechanical fall with amnesia. (JME 1371).
24. On September 14, 2023, Claimant saw her primary care provider, complaining of chronic pain from severe degenerative joint disease including worsening hand pain. (JME 1344).
25. Claimant returned to primary care on December 14, 2023 for chronic pain from severe arthritis. (JME 1431, 1437). On January 3, 2024, she saw primary care for migraines associated with fibromyalgia and arthritis. (JME 1440, 1459). The provider continued her opioid medications but recommended tapering them off, as they were likely contributing to her chronic headaches and gait instability. (JME 1463).

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<sup>4</sup> DVT is considered "provoked" when a known transient risk factor is identified, like recent surgery, trauma or prolonged immobilization. In the absence of such factors, DVT is generally considered "unprovoked." *See, e.g.,* <https://pmc.ncbi.nlm.nih.gov/articles/PMC7938631/> (Last accessed July 1, 2025 at 10:25 AM).

26. On February 27, 2024, Claimant sought medical attention at urgent care for right wrist bruising and swelling. (JME 1499).
27. On December 17, 2024, Claimant fell while she was attempting to sit down. She reported extensive bruising on her back, hip and arm. (JME 1735, 1754, 1775).

Claimant's Pre-Injury Medical Conditions

28. Claimant suffered from numerous medical conditions prior to January 16, 2022. She has had ongoing chronic pain in her shoulder, chest, arms, right hip, and leg, as well as chronic headaches, going back to at least 2010. She also has progressively worsening chronic pain from severe age-related degenerative changes in her cervical spine, lumbar spine, knees and feet. (PI-JME 1, 16, 22-24, 41-42, 111, 148, 163, 415, 420, 422, 446, 586, 594, 613, 669, 789).
29. Claimant has chronic pain and severe dysfunction in her hands from joint hypermobility, as well as from adduction contracture (where her fingers are pulled toward the palms of her hands). She has a history of bilateral thumb arthritis, with multiple failed surgeries, and atrophy of her thumb muscles. She also has carpal tunnel syndrome and chronic wrist pain following surgery in 2013. (PI-JME 117, 140-141, 415, 420).
30. Claimant has been diagnosed with a progressive lung condition called chronic obstructive pulmonary disease. (PI-JME 422).
31. In 2017, Claimant ruptured a tendon in her hand while pushing a grocery cart. (PI-JME 766, 771). In 2019, she suffered severe right wrist pain from turning a steering wheel. (PI-JME 859). The emergency department medical record for that visit includes: "Right hand deformities of the joints consistent with chronic arthritis with extension contractures of the fourth and fifth fingers, flexion contracture of the second and third fingers, and limited use of all the fingers." (PI-JME 866).
32. In July 2021, Claimant was diagnosed with a concussion, with symptoms of headache, nausea and vomiting, difficulty concentrating, increased sleeping, light sensitivity, and an inability to watch television. (PI-JME 995, 1012, 1014-1015).
33. In November 2021, two months prior to her fall on Defendant's premises, Claimant had chronic hand pain from advanced osteoarthritis, joint hyperlaxity and joint deformities; chronic neck pain from degenerative joint disease and spondylosis; and three to four headaches per day. At that time, she was taking morphine, tramadol, and Topamax for pain. (PI-JME 1046, 1052).
34. Claimant has a family history of deep vein thrombosis and pulmonary embolisms, including her mother, maternal grandfather, and maternal uncle. (JME 1037, 1707). She also has her own history of blood clotting. (JME 658).
35. Claimant fell, and suffered fall-related injuries requiring medical attention, at least twelve times before January 16, 2022:

- Fell and wrenched her neck yesterday, worsening chronic neck pain (5/2/2011) (PI-JME 61)
- Fell off the couch and broke her wrist (2/24/13) (PI-JME 164, 182), open reduction surgery (3/11/13) (PI-JME 193)
- Fell of a curb and sprained her ankle (March 2013) (PI-JME 345)
- Fell and suffered sacral pain (around 12/3/13) (PI-JME 420)
- Fell, no additional information (8/27/14) (PI-JME 478)
- Fell at home, lost balance, injured left wrist (9/22/14) (PI-JME 485, 488, 495)
- Fell recently, struck ribs (2/4/15) (PI-JME 556)
- Fell and broke her right foot (December 2015) (PI-JME 613)
- Right wrist sprain, emergency room (3/23/16) (PI-JME 626)
- Fell on her outstretched hand, injured wrist (2/19/19) (PI-JME 822, 828, 835)
- Fell after missing bottom step on January 10, 2021, injured left shoulder, fractured clavicle (1/21/21) (PI-JME 898)
- Fell after tripping, struck her head on a wall, acute head trauma and concussion (7/26/21) (PI-JME 968-969, 995); unable to maintain her balance standing on one leg and significant difficulty with tandem gait, reports “this is my baseline” (7/29/21) (PI-JME 1016)

*Claimant’s Current Status Based on the Credible Testimony of Herself and her Daughter*

36. Claimant’s visible hand deformities appeared in the 1990s. Her hands have been progressively getting worse for decades and have continued to deteriorate since her January 16, 2022 fall at work.
37. Claimant was relatively independent prior to her January 2022 fall. Before she fell, she drove a car and worked full time. After she fell, she stopped driving and working. Further, her daughter Kristie Norton began to help her with dressing, bathing and cooking after the fall. Even before she fell, Claimant was unable to cut her own food, and her hand condition made it slow and difficult for her to type notes at work.
38. Claimant enjoyed working and wishes she could return to her job. She misses interacting with people and the “outside world.” Claimant attributes her inability to work to being “unsteady on my feet.” Her daughter attributes her inability to work to the condition of her hands and her sore neck.

### Vocational Rehabilitation Efforts

39. Claimant received vocational rehabilitation services from August 2022 through July 2023 from vocational rehabilitation counselor William O'Neill. (VRE 1-82).
40. Mr. O'Neill's December 30, 2022 progress report included information from Dr. White's independent medical examination. Dr. White wrote that, based strictly on Claimant's rib and neck fractures, she would have no work restrictions. However, Dr. White was concerned that her "overall general health" posed a significant risk for her return to work; he specifically mentioned her hand deformities, her balance issues, and her inability to walk unassisted. (VRE 29). Mr. O'Neill's next progress report noted that lung disease was also impacting Claimant's overall health. (VRE 33). On March 31, 2023, Mr. O'Neill wrote that, based on Claimant's balance issues and hand condition, he was presently unable to formulate any return-to-work goal. (VRE 41). Eventually, he concluded that Claimant was not entitled to vocational rehabilitation services because her disabilities were "too severe" to achieve suitable employment, and he filed a Closure Report on July 31, 2023. (VRE 71, 76).

### Functional Capacity Evaluation

41. Physical therapist Louise Lynch performed a functional capacity evaluation of Claimant at her attorney's request on July 13, 2023. Ms. Lynch earned a bachelor's degree in physical therapy from the University of Vermont in 1986 and is an experienced Certified Work Capacity Evaluator. *See Claimant's Exhibit 1.*
42. Claimant participated in four hours of functional capacity testing, during which her comprehension was slow. She needed constant supervision, both for her safety and to stay on task. Claimant could not complete some of the testing due to her hand deformities and poor balance, and Ms. Lynch ended the testing early due to Claimant's mental fatigue. Ms. Lynch thought that Claimant was at risk for repeated falls, not only because of her musculoskeletal deficiencies but also due to poor judgment and her tendency to be distracted. (VRE 50).
43. In Ms. Lynch's opinion, Claimant does not have a work capacity due to her balance limitations, mental fatigue, hand deformities, strength limitations, and limited comprehension and judgment. (VRE 54). Based on Ms. Lynch's training and experience as a certified work capacity evaluator, I find her opinion to be well-supported, thorough and persuasive.

### Vocational Rehabilitation Counselors' Expert Opinions

44. John May and Fran Plaisted are vocational rehabilitation counselors with over 30 years' experience. They have master's degrees in rehabilitation counseling and are fellows of the American Board of Vocational Experts. *Claimant's Exhibit 3; Defendant's Exhibit C.* Mr. May performed a vocational evaluation of Claimant at her attorney's request (JVE 132-160), and Ms. Plaisted performed one at Defendant's request. (JVE 86-131).

45. Both counselors performed a thorough assessment and concluded that Claimant has no measurable capacity for regular gainful employment due to her physical and cognitive limitations. Specifically, in considering the reasons why Claimant can no longer work, they both pointed to her cognitive limitations, hand deformities and balance issues. I find their opinions persuasive.

The Parties' Medical Experts

46. Claimant presented expert testimony from Verne Backus, MD. Defendant presented expert testimony from George White, MD and Alex Torstrick, PhD.

Claimant's Expert Verne Backus, MD

47. Dr. Backus is a board-certified occupational medicine physician. He graduated from Dartmouth Medical School in 1993 and completed an occupational medicine residency at the Harvard School of Public Health. Dr. Backus is also certified to administer the Montreal Cognitive Assessment (MoCA) for mild brain injuries. Dr. Backus has substantial experience in treating patients with occupational injuries and in performing independent medical examinations. *Claimant's Exhibit 2.*
48. On June 8, 2023, Claimant underwent an independent medical examination with Dr. Backus at her lawyer's request. (JME 1009-1034). Dr. Backus physically examined her, interviewed her, and reviewed 882 pages of her medical records. He took measurements of her cervical range of motion and administered a MoCA cognitive screening test. Dr. Backus spent one hour and 45 minutes with Claimant. (JME 1011).
49. On August 10, 2023, Dr. Backus reviewed Louise Lynch's functional capacity evaluation report and agreed with her conclusions. (JME 1254-1256).

Defendant's Expert George White, MD

50. Dr. White is a board-certified occupational medicine physician. He graduated from the University of Vermont Medical School in 1982 and completed an occupational medicine residency at the University of Cincinnati Medical School. Dr. White has substantial experience in treating patients with occupational injuries and in performing independent medical examinations. *Defendant's Exhibit A.*
51. At Defendant's request, Dr. White performed two independent medical examinations of Claimant, on September 16, 2022 (JME 646-652) and on April 12, 2024. (JME 1600-1609). He also produced an Addendum to his first report on January 30, 2023. (JME 860-863).
52. At his first examination, Dr. White physically examined Claimant, interviewed her, and reviewed some of her medical records. He also took measurements of her cervical range of motion. In January 2023, Dr. White reviewed additional medical records and reconsidered the opinions set forth in his first report; the additional medical records did not change his opinions. At his second examination, Dr. White reviewed Claimant's

updated medical records, performed a physical examination, and considered whether she had any work-related permanent impairment related to her deep vein thrombosis.

*Defendant's Expert Alex Torstrick, PhD.*

53. Dr. Torstrick is a clinical neuropsychologist. He earned his doctorate in clinical psychology from St. John's University in 2018 and completed a neuropsychology post-doctoral fellowship at Yale Medical School. Dr. Torstrick has treated patients with traumatic brain injuries, cerebrovascular accidents, and various types of dementia. He also completed a clinical rotation in geriatric neuropsychology. Dr. Torstrick currently performs neuropsychological consultations and independent medical evaluations, and he provides individual psychotherapy to patients. *Defendant's Exhibit B.*
54. At Defendant's request, Dr. Torstrick performed two independent neuropsychological evaluations of Claimant. The first was performed on March 7 and March 22, 2023 (JME 894-908), and the second was performed on May 9, 2024. (JME 1610-1634.) For his first evaluation, Dr. Torstrick spent 370 minutes in a one-on-one setting with Claimant over two days, including the face-to-face administration of a battery of neuropsychological tests and a clinical interview. He also reviewed Claimant's medical records and scored and interpreted her test results. For his second evaluation a year later, Dr. Torstrick spent an additional 85 minutes with Claimant, again performing a clinical interview and neuropsychological testing and scoring.
55. At the first evaluation in March 2023, Claimant reported difficulty remembering recent conversations, retaining written information, misplacing items, and frequently repeating herself. She also reported word-finding difficulties, problems organizing her speech, and a decline in her processing speed. She reported that all these difficulties started within a month of her January 2022 workplace injury. (JME 904). At the second evaluation in May 2024, Claimant reported that her word-finding difficulties, problems retaining written information, disorganized speech, and poor concentration had progressively worsened over the previous year. (JME 1611).
56. Based on results from both evaluations, Dr. Torstrick identified deficits in Claimant's phonemic fluency (JME 900), executive functioning, and nonverbal encoding. (JME 902-903, 1630).

*Expert Opinions on Which Injuries Are Causally Related to Claimant's Fall at Work*

57. The parties agree that Claimant suffered non-displaced rib fractures and cervical fractures when she fell at work.<sup>5</sup> However, they disagree about whether two other medical conditions are work-related, as follows:

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<sup>5</sup> Defendant's expert Dr. White was not convinced that Claimant's cervical fractures were caused by her fall at work because the emergency room radiologist saw evidence of partial healing on the date of injury. Nevertheless, out of caution, hospital staff treated Claimant's cervical fractures as acute by having her wear a cervical collar. Dr. White therefore felt it was reasonable to consider the fractures work-related, despite the evidence of healing. Moreover, Defendant has accepted the cervical fractures as compensable.

*Causal Relationship Between Claimant's Deep Vein Thrombosis and her Fall*

58. Dr. Backus testified on Claimant's behalf that her deep vein thrombosis was provoked by her inactivity following the January 16, 2022 fall at work and is therefore work-related. Dr. Backus explained how immobility may cause DVT in a patient's legs: venous blood in the legs is circulated back to the heart through veins that have one-way valves; using one's muscles during activity helps to push the blood past each one-way valve. During periods of inactivity, the blood may become stagnant and clot in the deep veins of the extremities. These clots are dangerous because they can break off, circulate to the heart, and lodge in the lungs as a pulmonary embolism, where they impair the lung's ability to oxygenate the blood. (JME 1026-1027). Treating DVT consists of administering anti-coagulants (blood thinners) to reverse the clotting, but these medications carry a risk of serious bleeding. (JME 1027).
59. Dr. Backus testified that Claimant was less physically active after her fall in January 16, 2022. She was hospitalized for five days in late January 2022 when she suffered acute respiratory failure. She also contracted pneumonia after her fall; in Dr. Backus' opinion, Claimant's fractured ribs interfered with her ability to breathe and clear her lungs, leading to her pneumonia. Finally, Claimant had a bedsore on her buttock in June 2022. Such sores develop from the pressure of lying in bed. I find Dr. Backus' explanation of DVT and its relationship to inactivity to be clear and persuasive. Further, I find his opinion that Claimant was sufficiently inactive after her fall to have provoked a blood clot to be well supported by her medical history.
60. Defendant offered testimony from Dr. White on the origin of Claimant's deep vein thrombosis. Dr. White could not find a causal relationship between Claimant's employment and her blood clot to a reasonable degree of medical certainty. He explained that being bedridden was a risk factor for DVT, but based on what he knew, Claimant was not bedridden following her work injury. Rather, she was discharged from the hospital the same day that she fell and was going to physical therapy twice a week.
61. In considering Dr. White's opinion, I note that he was not aware of Claimant's bout of pneumonia sometime after she fell, nor did he know that she developed a bedsore. Accordingly, when he formed his opinion, Dr. White was not in possession of all the relevant information about Claimant's post-fall activity level.
62. Given Dr. White's incomplete information, and the fact that his opinion was not an outright denial of causation but merely an inability to assert a causal connection to a reasonable degree of medical certainty, I find Dr. Backus' opinion concerning Claimant's deep vein thrombosis more persuasive than Dr. White's.

*Causal Relationship Between Claimant's Cognitive Deficits and her Fall*

63. Defendant offered expert testimony from clinical neuropsychologist Dr. Torstrick that there is no causal relationship between Claimant's cognitive condition and her January 16, 2022 fall at work. Dr. Torstrick based his opinion on Claimant's age, medical history, neuroimaging studies, and the results of his neuropsychological testing. In his

opinion, Claimant meets the criteria for probable mild vascular neurocognitive disorder, rather than ongoing post-concussive symptoms. (JME 904, 1630).

64. Dr. Torstrick explained the biomechanics of vascular neurocognitive disorder, which occurs when blood flow to the brain is impaired. He explained that the blood vessels in the brain may be damaged by common health conditions, including hypertension, diabetes, chronic obstructive pulmonary disease and high cholesterol. Further, these conditions may work in conjunction with one another to create downstream cognitive impairments.
65. To support his opinion that Claimant's cognitive condition has a vascular origin, Dr. Torstrick noted that her pattern of deficits in executive functioning, phonemic fluency, and nonverbal encoding is characteristic of chronic cerebrovascular disease. Further, she has a medical history of high blood pressure, high cholesterol, a heart attack and chronic obstructive pulmonary disease, all of which may contribute to cerebrovascular disease. Dr. Torstrick also relied on the neuroimaging performed prior to Claimant's fall at work, in July 2021, which revealed hypodensities in her brain, including in the white matter, indicating chronic microangiopathic changes. (JME 904). For all these reasons, Dr. Torstrick opined that Claimant's cognitive issues stem from a vascular neurocognitive disorder, rather than from striking her head in January 2022.
66. Although Dr. Torstrick did not offer a definitive opinion on whether Claimant sustained a mild concussion when she fell in January 2022, he pointed to multiple factors that suggest she did not. Her contemporaneous medical records did not include a diagnosis of concussion, and the CT imaging studies in January 2022 revealed no acute intracranial hemorrhage or skull fracture. Further, Claimant reported no loss of consciousness or amnesia, and exhibited no other concussion symptoms, like nausea, vomiting, or light sensitivity. Her basic neurological exam at the time of her fall was also normal. Although these factors do not definitively rule out a mild concussion, they make such a diagnosis unlikely.
67. Finally, Dr. Torstrick opined that the results of Claimant's neuropsychological testing found deficits of a different nature than what a mild concussion would cause. He explained that the brain's white matter is the "central highway" that connects the processes carried out in other parts of the brain. The cognitive deficits that Claimant exhibited are consistent with vascular damage to the white matter of her brain; they are not consistent with the sequelae of a head strike. Further, Dr. Torstrick opined that Claimant's observed behaviors during testing indicated a neurological disease process, such as her slow processing speed, poor autobiographical memory, and non-linear speech with occasional vacant content. (JME 904-905). For these reasons, even if Claimant did sustain a mild concussion on January 16, 2022, Dr. Torstrick does not attribute any of her ongoing cognitive symptoms to a head strike.
68. For all these reasons, in Dr. Torstrick's opinion, Claimant's January 16, 2022 workplace fall did not cause or contribute to her cognitive condition. Rather, her cognitive deficits are attributable to a pre-injury neurocognitive disorder, most likely mild vascular neurocognitive disorder. (JME 905-906). As a clinical neuropsychologist, Dr. Torstrick is in the best position to diagnose the cause of Claimant's cognitive limitations. Further,

his opinions are clear, well explained, and objectively supported by his neurocognitive testing and Claimant's medical records. I therefore find his opinions persuasive.

69. Claimant offered expert testimony from occupational medicine physician Dr. Backus concerning her cognitive deficits. In June 2023, Dr. Backus administered the Montreal Cognitive Assessment (MoCA) screening tool to evaluate Claimant's cognitive abilities. She scored 22 out of 30, falling below the normal range, which runs from 26 to 30. (JME 1125). Dr. Backus is trained to administer the MoCA, and I accept his opinion that Claimant scored below the normal range.
70. In Dr. Backus' opinion, Claimant sustained a mild concussion in the January 2022 fall at work, and he attributes some of her ongoing cognitive deficits to that injury. (JME 1031). In causally connecting Claimant's cognitive condition and her fall, Dr. Backus primarily relies on her self-report that she noticed some diminished cognitive functioning several weeks after her fall. In his opinion, although most mild concussions resolve within a few weeks, some can cause persistent symptoms. (JME 1027). Dr. Backus also noted that a mild concussion may occur in the absence of a loss of consciousness. Accordingly, in Dr. Backus' opinion, neither the fact that Claimant did not lose consciousness nor the fact that most mild head injuries resolve in a few weeks excludes the possibility that she suffered a mild concussion in the fall at work.
71. Although I accept Dr. Backus' opinion that a mild concussion does not always result in loss of consciousness or persistent symptoms, those are not affirmative reasons to diagnose a concussion. Other than Claimant's report to Dr. Backus that she noticed some cognitive symptoms after the fall, Dr. Backus does not point to any affirmative reasons to diagnose a concussion. In particular, he does not offer an opinion on whether Claimant's cognitive limitations could be related to her vascular condition, despite the evidence of cerebrovascular disease on her CT scans. Second, his opinion is not supported by any concussion diagnosis from a treating provider relating to her head strike in January 2022. Finally, his opinion essentially relies on the temporal relationship of Claimant's noticing cognitive symptoms after she fell, without addressing whether there are alternative explanations for her symptoms.
72. For all these reasons, Dr. Torstrick's opinion that Claimant's cognitive impairment is not related to her January 16, 2022 fall at work is the most persuasive.

*Opinions on the Correct Permanent Impairment Rating for Claimant's Cervical Spine*

73. Dr. Backus testified on Claimant's behalf that she was at end medical result on June 8, 2023, with a 25 percent whole person impairment for her cervical spine condition. Dr. Backus used the range of motion method set forth in the *AMA Guides to the Evaluation of Permanent Impairment* ("AMA Guides") to assess her cervical spine impairment, as that is the correct method to use when the examinee has sustained fractures at multiple levels of the cervical spine, as Claimant did.
74. Dr. Backus explained that measurements of range of motion are inherently somewhat fluid and are not likely to be the same when they are taken on different dates. He thought his own measurements were a more accurate assessment of Claimant's permanent

impairment than Dr. White's measurements because his own measurements were taken months later, thereby more closely reflecting Claimant's ultimate permanent condition. I find Dr. Backus' opinions concerning Claimant's permanent impairment for her cervical spine to be credible.

75. Dr. White testified on Defendant's behalf about Claimant's permanent impairment for her cervical spine. At his first examination on September 16, 2022, he was not sure that Claimant was at end medical result for her cervical condition, as he did not have her most recent medical records. Nevertheless, assuming she was at end medical result, he assessed her with a 23 percent whole person impairment for her cervical spine condition using the range of motion method. In January 2023, Dr. White reviewed Claimant's updated medical records and expressly found that she was at end medical result at that time. (JME 863). However, he did not take new measurements in January 2023.
76. I find that Dr. White used the correct assessment method specified in the *AMA Guides* and that his measurements reflected Claimant's impairment on the date that he took them.
77. Nevertheless, I find Dr. Backus' impairment rating to be better supported than Dr. White's, as Dr. Backus performed his assessment when Claimant was clearly at end medical result. Accordingly, Dr. Backus' 25 percent whole person impairment rating for Claimant's cervical spine is the most persuasive.

#### Opinions on the Correct Permanent Impairment Rating for Claimant's DVT

78. Dr. Backus assessed Claimant with a ten percent whole person impairment for her work-related deep vein thrombosis under Section 9.6c of the *AMA Guides*. Dr. White did not find Claimant's DVT blood clot to be work-related. However, he acknowledged that if it were accepted as work-related, then Dr. Backus correctly rated it under the *AMA Guides*.
79. Having accepted Dr. Backus' opinion that Claimant's DVT is work-related, I accept his ten percent whole person impairment rating for her deep vein thrombosis.

#### Opinions on the Correct Permanent Impairment Rating for Claimant's Cognitive Condition

80. Defendant offered persuasive testimony from Dr. Torstrick that Claimant did not sustain any lasting cognitive deficits from her fall at work on January 16, 2022. Accordingly, I accept Dr. Torstrick's opinion that Claimant has no work-related permanent impairment for her cognitive condition.

#### Opinions on Claimant's Permanent and Total Disability Status

81. The parties agree that Claimant is unable to perform regular, gainful work. The dispute here is whether her inability to perform such work is due to the injuries she sustained in the January 16, 2022 fall or due to other health conditions unrelated to that fall.
82. Claimant's vocational rehabilitation counselor William O'Neill could not formulate a return-to-work goal for her due to her hand deformities and her balance issues. Vocational rehabilitation counselors John May and Fran Plaisted

both opined that Claimant is unable to perform regular, gainful work due to her cognitive limitations, hand deformities and balance issues. Work capacity evaluator Louise Lynch opined that Claimant has no work capacity due to the combination of her balance limitations, her mental fatigue, her limited comprehension and judgment, and her hand deformities. I have found all these opinions persuasive.

83. Claimant's expert, Dr. Backus, agreed with the findings of Ms. Lynch's functional capacity evaluation and opined that Claimant is unlikely to sustain gainful employment. (JME 1254-1256). The basis for his opinion includes Claimant's significant risk for additional falls, her fatigue level following his independent medical examination, and the condition of her hands. (JME 1030). I find this opinion persuasive.
84. Dr. Backus also testified that Claimant was less active after January 16, 2022 and that her overall condition weakened after her fall. However, he did not adequately explain the causal connection between Claimant's compensable injuries, her post-fall activity level, and her declining overall health. As is clear from her pre-injury medical records, Claimant suffered from many progressively worsening medical conditions, including degenerative disc and joint disease, hand hypermobility and contracture, chronic pain, and chronic obstructive pulmonary disease. Without persuasive testimony explaining how the decline in Claimant's overall health was causally related to her January 2022 fall at work, rather than the progressive nature of her underlying health conditions, I cannot accept Dr. Backus' suggestion of a causal relationship. Rather, my finding must be limited to a temporal relationship between Claimant's fall at work and her overall decline.
85. Defendant's expert Dr. White also opined that Claimant has no work capacity. In his opinion, she had no work restrictions from her January 16, 2022 fall, and he does not attribute her lack of work capacity to that fall. Rather, Dr. White testified that Claimant's work capacity is significantly impaired by her general health, the condition of her hands, her frailty, and the fact that she can hardly walk without falling. I find this opinion persuasive.
86. Defendant's expert Dr. Torstrick offered his opinion that, due to Claimant's executive functioning deficits, he does not recommend any unsupervised work that requires sustained concentration or precision, although Claimant possesses the cognitive capabilities required to perform a position using "basic well-learned verbal interactions with few other duties." (JME 907). Dr. Torstrick also offered his opinion that Claimant cannot work more than a three-hour shift, given her mental fatigue. (JME 908). As a neuropsychologist, Dr. Torstrick limited his opinion to how Claimant's cognitive deficits affect her work capacity; he did not offer an opinion on the impact of her physical deficits. With regard to Claimant's cognitive deficits and their impact on her work capacity, I find Dr. Torstrick's opinion persuasive.

## **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).

2. The parties presented conflicting medical evidence concerning the causal relationship between Claimant's various medical conditions and her fall at work. In such cases, the Commissioner traditionally uses a five-part test to determine which expert's opinion is the most persuasive: (1) the nature of treatment and the length of time there has been a patient-provider relationship; (2) whether the expert examined all pertinent records; (3) the clarity, thoroughness and objective support underlying the opinion; (4) the comprehensiveness of the evaluation; and (5) the qualifications of the experts, including training and experience. *Geiger v. Hawk Mountain Inn*, Opinion No. 37-03WC (September 17, 2003).

#### Causal Relationship Between Claimant's Fall at Work and her Medical Conditions

3. A worker is entitled to benefits under the Vermont Workers' Compensation Act when he or she receives a personal injury by accident arising out of and in the course of employment. 21 V.S.A. § 618(a)(1)(A). The parties agree that Claimant sustained injuries to her cervical spine and ribs arising out of and in the course of her employment, but they dispute the causal relationship between her employment and two other medical conditions.

#### Deep Vein Thrombosis

4. In Dr. Backus' opinion, Claimant's inactivity following her January 2022 fall likely caused her DVT. In contrast, Dr. White could not find a causal connection to a reasonable degree of medical certainty because he did not think that Claimant was inactive after her fall. However, Dr. White was not aware that Claimant had several periods of inactivity after her fall, nor did he know that she developed a bedsore.
5. Relying on the third *Geiger* factor, the clarity, thoroughness and objective support underlying the opinion, I accept Dr. Backus' opinion as better supported than Dr. White's because of Dr. Backus' greater familiarity with Claimant's post-recovery activity level. Accordingly, I conclude that Claimant's deep vein thrombosis arose out of and in the course of her employment with Defendant.

#### Cognitive Deficits

6. In Dr. Backus' opinion, Claimant's cognitive limitations are related to a mild concussion that he believes she sustained when she fell at work on January 16, 2022. In Dr. Torstrick's opinion, Claimant's cognitive limitations are most likely vascular in origin and unrelated to her fall at work.
7. Applying the relevant *Geiger* factors, I find Dr. Torstrick's opinion the most persuasive. Neither doctor was a treating provider, and both reviewed the relevant medical records. However, Dr. Torstrick is a clinical neuropsychologist. This area of medical practice

specializes in brain function, disorders and injuries; it is therefore a highly relevant specialty for evaluating the cause of Claimant's cognitive impairment. Further, Dr. Torstrick spent over seven and a half hours with Claimant, during which he administered a battery of neuropsychological testing over several days. In contrast, Dr. Backus, as a general occupational medicine physician, spent one hour and 45 minutes with Claimant, during which he administered only a screening tool for cognitive impairment. Accordingly, Dr. Torstrick's evaluation was significantly more comprehensive. Finally, Dr. Torstrick's opinion was clearer, more thorough, and better supported than Dr. Backus' opinion. Accordingly, based on the third, fourth and fifth *Geiger* factors, I conclude that Claimant's cognitive limitations are most likely vascular in nature and are not causally related to her fall at work on January 16, 2022.

#### Permanent Impairment Ratings for Claimant's Compensable Work-Related Injuries

8. The Vermont Workers' Compensation Act provides that the determination of an injured worker's permanent partial impairment shall be made under the Fifth Edition of the *AMA Guides to the Evaluation of Permanent Impairment*. 21 V.S.A. § 648(b). Neither party here asserts any permanent injury for Claimant's work-related non-displaced rib fractures. However, the parties dispute the correct permanent impairment rating for her cervical spine and her deep vein thrombosis.<sup>6</sup>

#### Permanent Impairment Rating for Claimant's Cervical Spine Condition

9. For Claimant's cervical spine condition, both Dr. Backus and Dr. White applied the range of motion assessment method and arrived at impairment ratings that were almost the same: 25 percent by Dr. Backus and 23 percent by Dr. White. Further, they agreed that minor variations in impairment rating are expected when using the range of motion method when the measurements are taken on different dates.
10. Under the *AMA Guides*, a claimant should not be assessed for permanent impairment until he or she has reached maximal medical improvement. Maximal medical improvement is the date from which further recovery or deterioration is not expected. See *AMA Guides*, § 2.4. Workers' Compensation Rule 2.2000, in turn, defines "end medical result" or "maximum medical improvement" as the point at which a person has reached a substantial plateau in the medical recovery process, such that significant further improvement is not expected, regardless of treatment.
11. Dr. White measured Claimant's permanent impairment before he had enough information to confidently place her at end medical result. Dr. Backus measured Claimant's permanent impairment after she reached end medical result. Accordingly, I conclude that Claimant has a 25 percent whole person permanent impairment of her spine based on Dr. Backus' rating.

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<sup>6</sup> Having concluded that Claimant has no work-related cognitive impairment, I need not consider an impairment rating for that condition.

Permanent Impairment Rating for Claimant's DVT

12. Dr. Backus assessed Claimant with a 10 percent whole person impairment for her ongoing use of the blood thinner Eliquis to treat her deep vein thrombosis. Section 9.6c of the *AMA Guides* provides that the increased bleeding risk associated with long-term treatment with an anticoagulant medication constitutes a whole person impairment in the ten percent range. Dr. White did not assess any permanent impairment for Claimant's DVT, as he did not find that condition work-related. Having already found that Claimant's DVT is work-related, I accept Dr. Backus' opinion and conclude that she has a 10 percent whole person impairment related to this condition.

Permanent and Total Disability

13. Claimant contends that her work-related injuries have rendered her permanently and totally disabled under 21 V.S.A. § 644(b). Workers' Compensation Rule 10.1700 provides in relevant part as follows:

10.1700 **Odd lot doctrine.** An injured worker shall be considered permanently and totally disabled in accordance with the odd lot doctrine if a *compensable injury causes* a physical and/or mental impairment that renders him or her unable to perform regular, gainful work. . . . (emphasis added).

14. The parties agree that Claimant is unable to perform regular, gainful work. The dispute is whether her inability to perform such work is caused by her compensable injuries or by other health conditions. Based on the credible opinions of Dr. White, Louise Lynch, Fran Plaisted and John May, the medical conditions that impact Claimant's ability to work are her hand condition, her balance issues, and her cognitive limitations. None of these conditions is causally related to the injuries she sustained on January 16, 2022.
15. More specifically, Claimant's hand joints suffer from hypermobility and contracture. They have been deformed since the 1990s and are getting progressively worse. There is no contention that her fall at work had any impact on her hands. Similarly, as evidenced by her frequent falls prior to January 16, 2022, Claimant has long-standing balance issues that are unrelated to her January 2022 fall. Finally, based on Dr. Torstrick's persuasive testimony, Claimant's cognitive deficits are likely vascular in nature; her deficits do not stem from striking her head on January 16, 2022. I therefore conclude that the medical conditions impacting Claimant's ability to perform regular, gainful work, including her hand deformities, her balance issues, and her cognitive limitations, are not causally related to her January 16, 2022 fall at work.
16. Claimant's expert, Dr. Backus, agreed with the findings of Ms. Lynch's functional capacity evaluation. He offered his opinion that the conditions affecting Claimant's ability to work are her significant risk for additional falls, her fatigue level following his independent medical examination, and the condition of her hands. *See Finding of Fact No. 83 supra.* (JME 1030). These are the same factors that Dr. White, Ms. Plaisted, Mr. May and Ms. Lynch identified as impacting Claimant's ability to work. Dr. Backus also suggested that Claimant's overall health decline after January 2022 impacts her ability to

work. However, he did not persuasively explain how her work injuries worsened her overall health decline. *See* Finding of Fact No. 84 *supra*. Although there is a temporal relationship between Claimant’s January 2022 fall and her subsequent overall health decline, she has failed to meet her burden of proof that her compensable injuries caused the worsening of her overall health, such that her inability to perform regular, gainful work would be related to her January 2022 fall to a reasonable degree of medical certainty. A temporal relationship alone is an insufficient basis to support causation. *See Bockus v. Datatrac Information Services*, Opinion No. 14-05WC (February 8, 2005), citing *Norse v. Melsur Corp.*, 143 Vt. 241, 244 (1983) (“because something comes into existence after the fact, standing alone, does not justify a conclusion that it came into existence because of the fact.”)

17. For all these reasons, I conclude that Claimant is not permanently and totally disabled under 21 V.S.A. § 644(b) and Workers’ Compensation Rule 10.1700 as a consequence of the injuries she sustained when she fell at work on January 16, 2022.

**ORDER:**

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

1. Permanent partial disability benefits for Claimant’s cervical fractures based on Dr. Backus’ 25 percent permanent impairment rating, to the extent not already paid, with interest thereon pursuant to 21 V.S.A. § 664;
2. Permanent partial disability benefits for Claimant’s deep vein thrombosis based on Dr. Backus’ 10 percent permanent impairment rating, with interest thereon pursuant to 21 V.S.A. § 664;
3. Reasonable medical treatment for Claimant’s work-related medical conditions, including her deep vein thrombosis, pursuant to 21 V.S.A. § 640(a); and
4. Costs and attorney fees commensurate with her success in amounts to be determined.

Claimant’s claim for permanent total disability benefits is hereby **DENIED**.

**DATED** at Montpelier, Vermont this 9 day of July 2025.

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Kendal M. Smith  
Interim 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.