

**STATE OF VERMONT
DEPARTMENT OF LABOR**

Daniel Colburn

Opinion No. 13-25WC

v.

By: Beth A. DeBernardi
Administrative Law Judge

Marmon Holdings, Inc. d/b/a
Sonnax Transmission Company

For: Kendal M. Smith
Interim Commissioner

State File No. SS-58615

RULING ON CROSS MOTIONS FOR PARTIAL SUMMARY JUDGMENT

APPEARANCES:

Noah J. Jallo-Prufer, Esq., for Claimant
Oliver A. Abbott, Esq., for Defendant

ISSUES PRESENTED:

1. Is Defendant currently obligated to pay permanent partial disability benefits when Claimant is not at end medical result for all his compensable injuries?
2. Is Claimant at end medical result for his upper extremity injury?

EXHIBITS:

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|--------------------------|---|
| Claimant's Exhibit A.01: | First Report of Injury (Form 1) |
| Claimant's Exhibit A.02: | Defendant's October 18, 2024 Form 2 Denial and Correspondence |
| Claimant's Exhibit A.03: | Claimant's December 13, 2024 Hearing Request (Form 6) |
| Claimant's Exhibit A.04: | Hearing Request Addendum (Form 6 Addendum) |
| Claimant's Exhibit A.05: | Formal Docket Referral Memorandum |
| Claimant's Exhibit B.01: | Dr. Donaldson's April 1, 2024 IME Report |
| Claimant's Exhibit B.02: | Dr. Stommel's September 30, 2024 IME Report |
| Claimant's Exhibit B.03: | Care Review's October 15, 2024 Peer Review Report |
| Claimant's Exhibit B.04: | Dr. Stommel's October 24, 2024 Supplemental IME Report |
| Claimant's Exhibit C.01: | Defendant's Counsel's October 10, 2024 Letter to the Department |
| Claimant's Exhibit C.02: | December 17, 2024 Email Exchange |

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|------------------------|---|
| Defendant's Exhibit A: | Dr. Donaldson's April 1, 2024 IME Report |
| Defendant's Exhibit B: | Dr. Stommel's September 30, 2024 IME Report |
| Defendant's Exhibit C: | October 2024 Emails between Counsel |
| Defendant's Exhibit D: | Defendant's October 18, 2024 Form 2 Denial and Correspondence |
| Defendant's Exhibit E: | Care Review's October 15, 2024 Peer Review Report |
| Defendant's Exhibit F: | Dr. Stommel's October 24, 2024 Supplemental IME Report |
| Defendant's Exhibit G: | Claimant's December 13, 2024 Hearing Request (Form 6) |
| Defendant's Exhibit H: | Formal Docket Referral Memorandum |

Defendant's Exhibit I: Defendant's April 22, 2025 IME Notice
Defendant's Exhibit J: 1993-94 Legislative Act Relating to Workers' Compensation

BACKGROUND:

Except as noted, there is no genuine issue as to the following material facts:

Claimant's Workplace Injury and Subsequent Return to Work

1. On February 1, 2023, Claimant sustained an electrocution injury arising out of and in the course of his employment with Defendant. *Claimant's Statement of Undisputed Material Facts* ("Claimant's Statement"), ¶ 40; *Employer's First Report of Injury (Form 1)*.
2. Claimant suffered bilateral burns and a broad spectrum of nerve-related pathologies. *Claimant's Statement*, ¶ 41. Defendant has accepted all claims pertaining to Claimant's bilateral thermal burns. *Claimant's Statement*, ¶ 57. Defendant has also accepted Claimant's upper extremity peripheral neuropathy as compensable. *Claimant's Statement*, ¶ 58.
3. Claimant's injuries have evolved and expanded over time and may continue to worsen. This course is consistent with electrical injuries, which may manifest and progress slowly. *Claimant's Statement*, ¶ 42; *Claimant's Exhibit B.01, Defendant's April 1, 2024 IME Report*.
4. Claimant has been back to work full time, full duty, since May 18, 2023. *Claimant's Statement*, ¶ 60; *Defendant's Exhibit D, Letter to the Department, at 1*.

First Independent Medical Examination Arranged by Defendant

5. On April 1, 2024, Claimant underwent an independent medical examination with neurologist Deirdre Donaldson, MD, at Defendant's request. *Claimant's Statement*, ¶ 43; *Claimant's Exhibit B.01; Defendant's Statement of Undisputed Material Facts* ("Defendant's Statement"), ¶ 1; *Defendant's Exhibit A, Dr. Donaldson's April 1, 2024 IME Report*.
6. Dr. Donaldson offered her opinion that while Claimant "may" be at end medical result for upper extremity injuries, his reported left leg weakness had yet to be evaluated and might be related to the February 1, 2023 electrical injury. *Defendant's Statement*, ¶ 1; *Defendant's Exhibit A, at 5*.

Claimant's Treatment for his Upper Extremity Condition

7. On April 4, 2024, Claimant completed his prescribed course of physical therapy for his upper extremity condition. *Claimant's Statement*, ¶ 45. On July 15, 2024, Claimant's treating neurologist confirmed that he was seeing no further improvement with physical therapy. *Claimant's Statement*, ¶ 49.

8. Following the July 15, 2024, neurology appointment, Claimant ceased treatment for his upper extremity condition. *Claimant's Statement*, ¶ 48.
9. Claimant's treating providers have not recommended any additional treatment for his upper extremity condition. *Claimant's Statement*, ¶ 64.

Claimant's Lower Extremity Condition and Status

10. On September 30, 2024, neurologist Elijah Stommel, MD, offered recommendations for additional diagnostic treatment, including a work-up for Claimant's left lower extremity symptoms. *Defendant's Statement*, ¶ 4; *Defendant's Exhibit B*, at § VI, *Additional Recommendations*.
11. As of February 13, 2025, Defendant has accepted payment for the reasonable medical treatment for Claimant's left lower extremity condition. *Claimant's Statement*, ¶ 59; *Claimant's Exhibit C.04*, February 13, 2025 Correspondence from Defense Counsel.
12. Claimant continues to pursue treatment for his lower extremity condition. *Claimant's Statement*, ¶ 61. No treating provider or independent medical examiner has found him to be at end medical result for his lower extremity condition, nor has any provider or examiner calculated a whole person impairment for his lower extremity peripheral nerve condition. *Claimant's Statement*, ¶¶ 62-63.

First Independent Medical Examination Arranged by Claimant and Follow-Up Reports

13. On September 18, 2024, Claimant presented to Dr. Stommel for his own independent medical examination. Dr. Stommel offered his opinion that Claimant was "possibly" at end medical result for his upper extremity condition. He further noted that complaints of left leg weakness had not been fully evaluated, and he opined that there was a greater than fifty percent probability that Claimant's leg weakness was related to his electrical injury. *Defendant's Statement*, ¶ 2; *Defendant's Exhibit B*, *Dr. Stommel's September 30, 2024 IME Report*, at § V, *Conclusion*; *Claimant's Statement*, ¶ 52.
14. Dr. Stommel also offered his opinion that there were no further treatment options for Claimant's upper extremity condition except for occupational therapy. *Claimant's Statement*, ¶ 52; *Claimant's Exhibit B.02*, *Dr. Stommel's September 30, 2024 IME Report*, at 6.
15. Despite the lack of a definitive opinion on end medical result, Dr. Stommel offered impairment ratings for Claimant's left lateral antebrachial cutaneous and musculocutaneous nerve, loss of range of motion in the wrist, and burn scars, for a combined total whole person impairment of 16 percent. *Defendant's Statement*, ¶ 3; *Defendant's Exhibit B*, at § V, *Conclusion (A)-(E)*; *Claimant's Exhibit B.02*, at 7-9.
16. Claimant alleges in his Statement of Undisputed Material Facts that he has reached an end medical result for his upper extremity injury. *Claimant's Statement*, ¶ 65. Defendant disputes this portion of Claimant's Statement. *Defendant's Response to Claimant's*

Statement (“Defendant’s Response”), ¶ 65. Defendant cites Dr. Stommel’s opinion that Claimant is “possibly” at end medical result for his upper extremity condition. Defendant’s Exhibit F. Defendant asserts that the “possibility” of end medical result falls below the required standard of proof for medical opinions. Id. Based on this exchange, I find that the allegation that Claimant set forth in ¶ 65 is disputed.

17. After receiving Dr. Stommel’s September 30, 2024 report, Defendant arranged for Dr. Stommel’s permanency rating to be peer reviewed. The resulting report, dated October 15, 2024, noted several methodology errors in Dr. Stommel’s rating. In contrast to Dr. Stommel’s 16 percent impairment rating, the peer-review report author, Kimberly Terry, MD, opined that based on Dr. Stommel’s findings, the impairment rating should be 9 percent. *Defendant’s Statement, ¶ 7; Defendant’s Exhibit E, Care Review Impairment Rating Review Report, October 15, 2024.*
18. Claimant’s counsel then arranged for Dr. Stommel to see the peer-review report and produce an addendum to his independent medical examination report. *Claimant’s Statement, ¶ 55; Claimant’s Exhibit B.04, Dr. Stommel’s October 24, 2024 IME Report Addendum.* In his addendum, Dr. Stommel revised his permanent impairment rating from 16 percent to 12 percent.¹ Dr. Stommel did not revise his prior opinion that Claimant was only “possibly” at end medical result for his upper extremity condition. He also left unchanged his opinion that Claimant’s left lower extremity needed further work-up. *Defendant’s Statement, ¶ 8; Defendant’s Exhibit F, Dr. Stommel’s October 24, 2024 IME Report Addendum, at § V, Conclusion.*

Claimant’s Request for Permanent Partial Disability Benefits for his Upper Extremity Condition

19. On September 30, 2024, based on Dr. Stommel’s opinions, Claimant asked Defendant to prepare and circulate an Agreement for Permanent Partial Disability Compensation (Form 22) for upper extremity permanent partial disability. *Claimant’s Statement, ¶ 53.* At the same time, Claimant’s counsel advised that Claimant planned to seek additional diagnostic work-up. *Defendant’s Statement, ¶ 5; Defendant’s Exhibit C, Email from Claimant’s Counsel sent September 30, 2024 at 11:26 AM.*
20. Defendant declined to circulate the requested Agreement on the grounds that it was premature to enter into such an Agreement for Claimant’s upper extremity condition until he reached end medical result for all compensable injuries. Defendant then memorialized its position with a Denial (Form 2) filed on October 18, 2024. *Defendant’s Statement, ¶ 6; Defendant’s Exhibit C, Email from Defendant’s Counsel sent October 10, 2024 at 12:07 PM; Defendant’s Exhibit D, Letter and Denial (Form 2) filed October 18, 2024.*
21. In its Denial, Defendant also questioned Dr. Stommel’s methodology in providing the impairment rating in his original independent medical examination report. *Claimant’s Statement, ¶ 54; Claimant’s Exhibit A.02, Defendant’s Letter to the Department filed with its October 18, 2024 Denial (Form 2).*

¹ Dr. Stommel did not accept the peer-review report’s 9 percent impairment rating.

22. Claimant alleges that Defendant has declined to contest the adequacy of Dr. Stommel's October 24, 2024 supplemental report. *Claimant's Statement*, ¶ 56. Defendant disputes this portion of Claimant's Statement. *Defendant's Response*, ¶ 56. Defendant alleges, and Claimant does not contest, that on April 22, 2025, Defendant notified Claimant that it had retained Dr. Donaldson to perform another independent medical examination on May 8, 2025, including a review of Dr. Stommel's findings. *Defendant's Statement*, ¶ 11; *Defendant's Exhibit I, Notice of IME Sent April 22, 2025*. As of the date of Defendant's cross motion, Dr. Donaldson had not yet produced her second independent medical examination report. *Id.* Based on this exchange, I find that the allegation Claimant set forth in ¶ 56 is disputed.²

Claimant's Hearing Request and Formal Docket Referral

23. On December 13, 2024, Claimant filed a Hearing Request (Form 6) alleging that Defendant was obligated to enter an Agreement for Permanent Partial Disability Compensation (Form 22) for his upper extremity impairment. *Defendant's Statement*, ¶ 9; *Defendant's Exhibit G, Hearing Request (Form 6)*.
24. The Department upheld Defendant's denial at the informal level, explaining that injured workers are not entitled to permanent partial disability benefits until they are at end medical result for all compensable injuries. At Claimant's request, the Department referred the matter to the formal hearing docket on December 17, 2024. *Defendant's Statement*, ¶ 10; *Defendant's Exhibit H, Referral to Formal Hearing Docket*.

CONCLUSIONS OF LAW:

1. Claimant contends that he is at end medical result for his upper extremity condition but not for his lower extremity condition. He further contends that injured workers are immediately entitled to permanent partial disability benefits for each component of their compensable injury, as soon as each component is at end medical result. He therefore asks the Department for a summary judgment ruling that he is presently entitled to permanent partial disability benefits for his upper extremity condition. In the alternative, if the Department finds that material facts are in dispute concerning whether Claimant is at end medical result for his upper extremity condition, Claimant moves for a general ruling that an injured worker need not be at end medical result for all components of the compensable injury before the worker is entitled to permanent partial disability benefits.
2. Defendant contends that injured workers must be at end medical result for all components of their compensable injury before they are entitled to payment of permanent partial disability benefits. Defendant further contends that Claimant is not at end medical result for his upper extremity condition. Accordingly, Defendant opposes Claimant's motion and seeks a ruling that Claimant is not currently entitled to permanent partial disability benefits both because he is not at end medical result for his entire workplace injury and because he is not at end medical result even just for his upper extremity injury.

² On August 28, 2025, Claimant's counsel filed Dr. Donaldson's second IME report with the Department.

Summary Judgment Standard

3. Summary judgment is appropriate when there is no genuine issue of material fact and the moving party is entitled to judgment in its favor as a matter of law. *Samplid Enterprises, Inc. v. First Vermont Bank*, 165 Vt. 22, 25 (1996). Summary judgment is appropriate only when the facts in question are clear, undisputed or unrefuted. *State v. Heritage Realty of Vermont*, 137 Vt. 425, 428 (1979). Summary judgment is unwarranted where the evidence is subject to conflicting interpretations, regardless of the comparative plausibility of the facts offered by either party or the likelihood that one party or the other might prevail at trial. *Provost v. Fletcher Allen Health Care, Inc.*, 2005 VT 115, ¶ 15.
4. The party opposing summary judgment is entitled to the benefit of all reasonable doubts and inferences. *State v. Delaney*, 157 Vt. 247, 252 (1991); *Toys, Inc. v. F.M. Burlington Co.*, 155 Vt. 44, 48 (1990). In determining whether there is a genuine issue as to any material fact, the Department must accept as true “the allegations made in opposition to the motion for summary judgment, so long as they are supported by affidavits or other evidentiary material.” *Gauthier v. Keurig Green Mountain, Inc.*, 2015 VT 108, ¶ 14.
5. Where the parties have filed cross motions for summary judgment, each party is entitled to the benefit of all reasonable doubts and inferences when the opposing party’s motion is being judged. *Toys, Inc.*, 155 Vt. at 48.

Obligation to Pay Permanent Partial Disability Benefits When the Injured Worker Is Not at End Medical Result for All Components of the Compensable Injury

6. The first issue to determine is whether injured workers are entitled to permanent partial disability benefits every time they reach end medical result for a separate component of their compensable work injuries, or whether they must reach end medical result for all components of their injuries before they are entitled to such benefits.

Statutory Interpretation

7. The Vermont Workers’ Compensation Act provides for permanent partial disability benefits when an injury results in a partial impairment that is “permanent” and that does not result in permanent total disability. 21 V.S.A. § 648(a). For purposes of determining the existence and degree of any permanent impairment, the statute expressly adopts the ***whole person*** determination method set forth in the Fifth Edition of the *American Medical Association Guides to the Evaluation of Permanent Impairment* (“*AMA Guides*”). 21 V.S.A. § 648(b).
8. Inherent in the concept of “permanent” impairment is that the injured worker’s medical condition be, in fact, permanent; if the condition is still improving, then it is not yet permanent. Under Vermont’s workers’ compensation law, this concept appears in the definition of end medical result. Workers’ Compensation Rule 2.2000 defines end medical result as follows:

“End medical result” or “medical end result” or “maximum medical improvement” means 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.

Once an injured worker has reached end medical result, he or she may be assessed for any permanent impairment pursuant to the *AMA Guides*.

9. The terminology used in the *AMA Guides* for this status is “maximal medical improvement.” A condition is at maximal medical improvement when it is “well stabilized and unlikely to change substantially in the next year, with or without medical treatment. Over time, there may be some change; however, further recovery or deterioration is not anticipated.” *AMA Guides*, at 601. Although the wording of the two definitions is not identical, the concept is the same. In order to determine whether an injured worker has any permanent impairment, the injured worker’s condition must be at end medical result or maximum medical improvement. *Billingham v. Pompanoosuc Mills Corp.*, Opinion No. 14-24WC (September 10, 2024).
10. In order to determine an injured worker’s entitlement to permanent partial disability benefits, the worker’s condition must be at end medical result for his or her *entire injury* because permanent impairment is based on a ***whole person*** impairment rating. 21 V.S.A. § 648(b). Impairment ratings from all components of the worker’s injury are taken into consideration when arriving at the whole person impairment rating. If an injury to one of the worker’s body parts or systems is not yet at end medical result, that injury cannot be included in the whole person impairment rating, and that rating will be incomplete.
11. The *AMA Guides* provide a specific methodology for combining (not adding) impairment ratings from separate body parts or systems into a single whole person impairment rating. Under this methodology, when an injured worker has reached end medical result for multiple injury components, the physician shall determine the permanent impairment rating for each component and then combine the separate impairment ratings into one whole person impairment rating using the “Combined Values Chart.” *AMA Guides*, at 604-06. Under the chart, the separate ratings for each component of the injury are not added together but rather are “combined” pursuant to a formula. For example, a 35 percent impairment to one body part combined with a 20 percent impairment to another body part yields a 48 percent whole person impairment (not a 55 percent impairment). *AMA Guides*, at 604.³
12. By waiting until an injured worker is at end medical result for all components of the work injury, the workers’ compensation system relies upon a single whole person impairment rating that forms the basis for calculation and payment of permanent partial disability benefits. To do otherwise would not be using the ***whole person*** impairment rating system required by 21 V.S.A. § 648 but rather would be computing the equivalent of a series of partial person impairment ratings throughout the injured worker’s recovery period.

³ The Combined Values Chart was designed to allow the physician to account for the effects of multiple impairments with one summary value. The Chart’s formula insures that, regardless of the number of impairments, the summary value will not exceed 100 percent of the whole person. *AMA Guides*, § 1.4, at p. 9.

13. Accordingly, based on 21 V.S.A. § 648(b) and the *AMA Guides*, I conclude that the statutory provision for permanent partial disability benefits contemplates the injured worker being at end medical result for all components of the compensable injury before the employer or carrier is obligated to commence paying those benefits.⁴
14. Claimant here relies on *Diamond v. Burlington Free Press*, 2017 VT 93, for the proposition that he is currently entitled to permanent partial disability benefits for his upper extremity condition. The injured worker in *Diamond* underwent disc fusion surgery in 2003 at levels C4-6 of her cervical spine due to a compensable injury, and the parties entered into an Agreement for Permanent Partial Disability Compensation (Form 22) for her injuries after she reached end medical result in 2004. Eight years later, in 2012, the injured worker developed a disc herniation in an adjacent segment of her cervical spine, at level C3-4. The injured worker underwent fusion surgery at level C3-4 in 2014 and reached end medical result for this condition in 2015. The injured worker then sought additional permanent partial disability benefits for her permanent impairment at level C3-4.
15. The issue before the *Diamond* Court was whether the injured worker's claim for additional permanent partial disability benefits was an attempt to modify the prior permanency award or a distinct new claim for benefits.⁵ Interpreting the parties' 2004 Agreement for Permanent Partial Disability Compensation, the *Diamond* Court concluded that the claim was a distinct new claim for benefits. In particular, when the injured worker entered into the Agreement in 2004, she did not have any dysfunction in the C3-4 level of her spine. Although the doctor who evaluated her noted that "adjacent segment syndrome" was a risk of her 2003 surgery, she did not have that condition in 2004. Thus, when she developed the condition almost a decade later, the injured worker was able to assert a new claim for permanent partial disability benefits related to the "newly manifesting damage to a different level of her spine." 2017 VT 93, ¶ 21. The Court noted that, at the time of the 2004 Agreement, the injured worker "did not have this impairment" and "could not have obtained benefits based upon it." 2017 VT 93, ¶ 21.
16. The claim here is not analogous to *Diamond*. Claimant here has already manifested an upper extremity injury and a lower extremity injury. *Diamond* does not stand for the proposition that injured workers are entitled to permanent partial disability benefits every time each component of their injuries reaches end medical result, as Claimant contends. Rather, *Diamond* recognizes that an injured worker may develop new conditions or symptoms even after appropriately being placed at end medical result for the entire injury. In such instances, the injured worker is entitled to compensation for the newly manifested condition. Accordingly, even after an injured worker enters into an Agreement for Permanent Partial Disability Compensation, he or she is not precluded from future permanent partial disability benefits should a new condition emerge later that

⁴ Nothing in the statute prohibits the parties from agreeing to an advancement of permanent partial disability benefits before the injured worker has reached end medical result for the entire injury.

⁵ This was an important distinction in *Diamond*, as a modification of the 2004 Agreement would be barred by the statute of limitations, whereas a new claim for benefits would be timely.

is causally related to the compensable work injury. I therefore conclude that *Diamond* does not provide support for Claimant's contention that he is currently entitled to permanent partial disability benefits before being placed at end medical result for his upper and lower extremity conditions, both of which are manifest now.

Summary and Simple Procedures

17. Second, requiring an injured worker to be at end medical result for all components of the work injury before entering into an Agreement for Permanent Partial Disability Compensation is supported by 21 V.S.A. § 602, which provides that all process and procedure under the workers' compensation statute shall be as summary and simple as reasonably may be. Once an injured worker reaches end medical result for all components of the injury, an examining physician assesses his or her whole person impairment under the *AMA Guides*, combining any values for separate components of the work injury into one ***whole person*** impairment rating. With that rating in hand, the employer or carrier calculates the permanent partial disability benefits and enters into an Agreement for Permanent Partial Disability Compensation (Form 22) with the injured worker. The Department then reviews and approves the Agreement. This process is reasonably summary and simple.
18. If, on the other hand, an injured worker were entitled to permanent partial disability benefits every time he or she reached end medical result for a separate component of a compensable injury, the process would become unduly complex and cumbersome. For a worker who suffered injuries to multiple body parts and systems, he or she would be placed at end medical result multiple times and be rated for permanent impairment multiple times, as each component of the injury completed treatment. Each time the worker were rated for another permanent impairment, the examining physician would have to recalculate the whole person impairment, and the adjuster would have to determine what portion of the prior permanent impairment had been paid (or was still being paid) and determine the additional benefits to be paid. The parties would have to enter into multiple Agreements, and the Department specialists would have to review and approve multiple agreements. Such an approach would incur significant additional costs for administration and medical evaluation. In short, it would not be the summary and simple process that the statute provides for.
19. Further, treating each component of a compensable work injury as a separate injury subject to a separate Agreement for Permanent Partial Disability Compensation also sets up a significant "line drawing" problem. For example, an injured worker may fall off a ladder, suffering lacerations, a soft tissue injury, a neurological injury, a broken femur, and a broken hip. All these different components of the injury have different healing times. Under Claimant's interpretation of the statute, the injured worker might be placed at end medical result on different dates for his lacerations, soft tissue injury, neurological condition and each broken bone, resulting in five separate Agreements for Permanent Partial Disability Compensation. If dividing the injury into these five separate components is not the correct division, then it is unclear what the correct division would be, as the statute does not provide any basis or standards for such line drawing. Rather, waiting for an injured worker to reach end medical result for all components of the injury

is the most logical and workable interpretation, allowing for the efficient resolution of claims, as contemplated by 21 V.S.A. § 602. *See also L.P. v. Greer's House of Dry Cleaning*, Opinion No. 07S-06WC (February 13, 2006) (the goal of the workers' compensation system is the speedy and inexpensive resolution of claims).

20. Paying permanent partial disability benefits piecemeal, as a worker recovers from each separate component of his or her injury, poses an additional concern. In some instances, the injured worker will reach end medical result for some components of the injury while he or she is still temporarily totally disabled from work. If the worker receives permanent partial disability benefits for a certain component of the injury immediately upon reaching end medical result for that component, as Claimant urges, then he or she might receive permanent partial disability benefits and temporary total disability benefits at the same time. Receipt of both benefits simultaneously is not permitted under the statutory scheme. *Martin v. Burlington Public School Dist.*, Opinion No. 35-11WC (November 2, 2011) (injured workers are not permitted to receive temporary total disability and permanent partial disability benefits at the same time). This prohibition provides further support that the correct interpretation of the statute is to require end medical result for all components of an injury prior to payment of permanent partial disability benefits.

Wrotten v. Lamphere

21. Finally, Claimant relies on *Wrotten v. Lamphere*, 147 Vt. 606 (1987), to support his claim for immediate permanent partial disability benefits for his upper extremity condition. The *Wrotten* Court wrote:

Permanent disability is established when the injured employee reaches a medical end result or maximum earning power is restored through resumption of employment, despite ongoing medical treatment. At that point, he becomes eligible for scheduled benefits.

Id. at 610.

Based on this language, Claimant contends that he is entitled to permanent partial disability benefits for his upper extremity condition now, as he is (arguably) at end medical result for that condition and has resumed employment.

22. The issue in *Wrotten* was whether the injured worker was entitled to temporary total disability benefits, not permanent partial disability benefits. The injured worker in *Wrotten* contended that his temporary total disability benefits must continue until he reached end medical result *and* until he completed his participation in vocational rehabilitation. The Vermont Supreme Court soundly rejected this argument, finding that the injured worker's entitlement to temporary total disability benefits ended when he reached end medical result, regardless of his participation in vocational rehabilitation. The *Wrotten* Court did not address the contested issue in the instant case, which is whether an injured worker must be at end medical result for all compensable injuries

before being entitled to permanent partial disability benefits. Accordingly, Claimant's reliance on *Wroten* is misplaced.

23. The *Wroten* Court was also interpreting a prior version of 21 V.S.A. § 648. The prior version set forth a detailed schedule of specific injuries and, for each such injury, specified the number of weeks of permanent partial disability benefits the injured worker would be entitled to.⁶ See *Defendant's Exhibit J*. This statute was amended by the Legislature on June 20, 1994, effective April 1, 1995. Under the amended statute, the schedule of benefits was repealed and replaced with the whole person impairment rating system set forth in the *AMA Guides*. Accordingly, when Claimant contends that he is entitled to "scheduled benefits" under *Wroten*, his contention relies on a statutory system that has been repealed.
24. For all these reasons, I conclude that an injured worker must be at end medical result for all components of the compensable injury before he or she is entitled to permanent partial disability benefits. However, nothing in the statute prohibits the employer or carrier from voluntarily advancing such benefits before the injured worker has reached end medical result for the entire injury.

End Medical Result for Claimant's Upper Extremity Condition

25. The second issue to determine is whether Claimant is at end medical result for his upper extremity condition. According to Claimant, it is undisputed that he has reached end medical result for his upper extremity condition. In support of his contention, he relies on Dr. Stommel's end medical result opinion. See Finding of Fact No. 13 *supra*. Claimant also included in his Statement of Undisputed Facts that he completed his course of physical therapy and that his treating providers have not recommended any additional treatment for his upper extremity condition. See Finding of Fact Nos. 7 through 9 *supra*.
26. Defendant disputes that Claimant has reached end medical result for his upper extremity condition. See Finding of Fact No. 16 *supra*. Defendant's position is supported by evidentiary material in the record, as required by *Gauthier v. Keurig Green Mountain, Inc.*, 2015 VT 108, ¶ 14. Specifically, Defendant points to the opinions of Dr. Stommel and Dr. Donaldson, neither of whom offered an end medical result opinion to a reasonable degree of medical certainty. Dr. Donaldson opined that Claimant "may" be at end medical result for his upper extremity condition, and Dr. Stommel opined that he was "possibly" at end medical result for that condition. See Finding of Fact Nos. 6 and 13 *supra*.
27. Whether an injured worker is at end medical result is not a subject on which a layperson could have a well-grounded opinion. Accordingly, expert medical testimony is necessary to establish end medical result. See *Lapan v. Berno's Inc.*, 137 Vt. 393, 395-96 (1979). The evidentiary standard for medical opinions in proceedings before the Department is a reasonable degree of medical certainty. See, e.g., *White v. Porter Hospital*, Opinion No.

⁶ For example, an injured worker who suffered the separation of one arm at or above the elbow joint, or the permanent and complete loss of one arm, was entitled to 215 weeks of permanent partial disability benefits under the schedule. 21 V.S.A. § 648(1), effective prior to April 1, 1995.

23SJ-02WC (May 24, 2002), citing *Campbell v. Heinrich Savelberg, Inc.*, 139 Vt. 31, 34 (1980) (“Expert medical testimony must meet a standard of reasonable probability or a reasonable degree of medical certainty.”)

28. Here, neither expert has offered an end medical result opinion to a reasonable probability or a reasonable degree of medical certainty. Accordingly, I find that there is a genuine issue of material fact as to whether Claimant has reached an end medical result for his upper extremity condition. Regardless of the relative merits of the parties positions, Claimant’s end medical result status for his upper extremity condition cannot be resolved on summary judgment. See *Provost v. Fletcher Allen Health Care, Inc.*, 2005 VT 115, ¶ 15, *supra*.
29. Accordingly, even if an injured worker were entitled to permanent partial disability benefits without being at end medical result for all components of the injury, Claimant has not established that he is at end medical result for his upper extremity condition as a matter of law.

ORDER:

Based on the foregoing, Claimant’s Motion for Partial Summary Judgment is hereby **DENIED**, and Defendant’s Cross Motion for Partial Summary Judgment is hereby **GRANTED**. Claimant is not currently entitled to permanent partial disability benefits for his upper extremity condition both because he is not at end medical result for his entire workplace injury and because he is not at end medical result for his upper extremity injury as a matter of law.

DATED at Montpelier, Vermont this 4th day of September 2025.

Kendal M. Smith
Interim Commissioner