

**STATE OF VERMONT
DEPARTMENT OF LABOR**

Suvada Kukavica

Opinion No. 14-25WC

v.

By: Stephen W. Brown
Administrative Law Judge

Keurig/Dr Pepper

For: Kendal M. Smith
Commissioner

State File No. SS-58928

OPINION AND ORDER

Hearing held via Microsoft Teams on January 28, 2025
Record closed on March 20, 2025

APPEARANCES:

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

ISSUE PRESENTED:

Has Claimant reached end medical result for her February 8, 2023 workplace injury?

EXHIBITS:

Joint Medical Exhibit (JME)

CLAIM:

Temporary total disability benefits pursuant to 21 V.S.A. § 642
Interest, costs and attorney fees pursuant to 21 V.S.A. §§ 664 and 678

FINDINGS OF FACT:

1. Claimant is a 59-year-old woman who resides in Essex Junction with her husband, Suljeman Kukavica. She began working for Defendant over a decade ago, first in housekeeping and later in production work.
2. On February 8, 2023, Claimant tripped over a pallet at work and struck her head, sustaining a concussion and cervical strain. Defendant accepted her claim as compensable for those injuries. Later, Defendant also accepted her claim for a psychological injury related to the same workplace accident.

Claimant's Medical Treatment

3. Following the accident, Claimant sought medical treatment for her physical injuries. Her medical course has included physical therapy, occupational therapy, injection therapy, and medications. Although her response to medical treatment has been slow, she has been able to increase her physical activities with incremental gains.
4. At her primary care visit on December 16, 2024, Claimant reported to Dr. Wargo that she continued to have regular visits with orthopedics, physical therapy, occupational therapy, and psychological therapy. Dr Wargo noted: "Her symptoms overall are most the same, concentrating on her headaches, neck pain, nervousness." (JME 1766). He also wrote that her symptoms and presentation were "largely unchanged." (JME 1767).
5. In late 2024, Claimant's primary care providers recommended a follow up cervical MRI. (JME 1665, 1766). Claimant had not undergone the MRI as of the formal hearing, but she was scheduled to do so shortly thereafter.
6. About five months after her work accident, Claimant also sought treatment for her psychological injury. On July 24, 2023, she began treatment with Nora Senecal, MSW, at the UVM Medical Center's Mood and Anxiety Clinic. (JME 415). At the first visit, Claimant reported headaches, dizziness, nausea, light sensitivity, trouble concentrating, and neck pain. She also reported anxiety, depression, and fear of walking and falling. (*Id.*) Ms. Senecal treated Claimant with a variety of therapy modalities, including cognitive behavioral therapy. During her treatment at the Mood and Anxiety Clinic between July and December 2023, Claimant also saw a licensed psychiatrist, Judith Lewis, MD, on three occasions for medication management.
7. Claimant was discharged from the Mood and Anxiety Clinic program on January 5, 2024, although her treatment with Ms. Senecal continued at another location. The January 5, 2024 discharge note states: "[Patient] is about the same. Gives similar pain and mood levels. Loves working w/ Nora: it makes her feel better just to listen to Nora, but overall symptoms are about the same." (JME 779).
8. Shortly after January 5, 2024, Ms. Senecal relocated her practice to UVM Medical Center's Comprehensive Pain Program. Claimant continued to see Ms. Senecal regularly at the new location, although she was not enrolled in the Comprehensive Pain Program.
9. Claimant and her husband both testified at the hearing. Their credible testimony establishes that Claimant has difficulty walking without holding onto a wall and that she cannot do housework as she did before her injury. She has not resumed handling the family's finances, watching television, or driving a car since her accident. Claimant's husband credibly testified that her physical and psychological states appear to have improved somewhat; she can walk better now than immediately after the accident, but not like she could before the accident; she can also engage in some housework and tends to be more "open" during conversation, but is still much quieter than she was before her injury.

10. As of the hearing date, January 28, 2025, Claimant was continuing her weekly therapy with Ms. Senecal.

Expert Medical Opinions

Nora Senecal, MSW

11. Claimant offered testimony from Nora Senecal at the hearing. Ms. Senecal is a licensed clinical social worker. She obtained a master's degree in social work from the University of Washington in 1995 and has training in cognitive behavioral therapy, Eye Movement Desensitization and Reprocessing, pain reprocessing therapy, and mindfulness-based therapy. Since 2019, Ms. Senecal has also worked as a clinical instructor at the Larner College of Medicine. Ms. Senecal currently sees patients at UVM Medical Center's Comprehensive Pain Program in South Burlington. That program provides integrative therapies for chronic pain, including psychotherapy.
12. Ms. Senecal has been Claimant's treating therapist since July 2023.
13. Claimant first presented to Ms. Senecal with headaches, dizziness, nausea, photophobia, and trouble concentrating. She was diagnosed with a severe episode of major depressive disorder; she was later also diagnosed with post-traumatic stress disorder.
14. Ms. Senecal testified that Claimant's treatment focused on multiple symptoms and moved quite slowly. As she made some progress, the treatment refocused from symptom management to depression. Ms. Senecal offered her opinion that Claimant was an active participant in her therapy, even though it sometimes took extra time to explain certain therapeutic concepts to her. Ms. Senecal attributed Claimant's difficulties in grasping certain concepts to her concentration difficulties and some language barriers. Another factor was that Claimant's psychological condition sometimes reduced her tolerance for participating in a full-length therapy session. Nevertheless, in Ms. Senecal's opinion, Claimant practiced her newly-acquired therapy skills between visits and wanted to improve her condition. Based on Ms. Senecal's ongoing role as Claimant's treatment provider, I find her testimony credible.
15. Ms. Senecal testified that Claimant's psychological condition has improved over time, with therapy. Ms. Senecal attributes that improvement to Claimant's applying the skills she has learned in cognitive behavioral therapy to the challenges that she faces in her life. Nevertheless, Claimant continues to have a phobic response to movement and is still afraid of falling. She also still has headaches and anxiety, although in Ms. Senecal's opinion, she is better than she was when she started therapy in July 2023. Ms. Senecal credibly acknowledged that Claimant's progress in therapy has been slow.
16. Over time, Ms. Senecal shifted her treatment focus from cognitive behavioral therapy to Eye Movement Desensitization and Reprocessing to address Claimant's fear of falling. In Ms. Senecal's opinion, Claimant has made some gains here, although she credibly conceded that the gains were "subtle."

17. At the hearing, Ms. Senecal was asked for her opinion on whether Claimant is at end medical result for her psychological injury. She responded that she thought “the *possibility* of her improving is definitely there.” More specifically, she offered her opinion that if Claimant’s treating medical providers were able to help reduce her neck pain, then her anxiety might improve. Ms. Senecal also pointed to a recent recommendation of Claimant’s occupational therapist that she undergo optometry rehabilitation. If Claimant were to undergo such treatment, and if it reduced her dizziness, then she might feel more confident in her movement, which hopefully could decrease her anxiety.
18. In terms of whether she was offering an end medical result opinion to a reasonable degree of psychological certainty, Ms. Senecal testified that she has “seen people make improvements,” although she was “not a crystal ball.” When Ms. Senecal was asked whether she expected Claimant to make “significant” further improvement in her psychological condition over the next year, she was unable to answer in the affirmative. The most she could say was that, if Claimant’s headaches and neck pain improved in the future, then she “could” make improvements that might be significant “to her.” *Hearing Recording*, Segment 4, at 1:45:22. Although this testimony itself is credible, Ms. Senecal’s opinion falls short of supporting a conclusion that Claimant has not reached an end medical result for her psychological condition to a reasonable degree of psychological certainty.

Nancy Binter, MD

19. Defendant offered testimony from Nancy Binter, MD, at the hearing. Claimant underwent two independent medical examinations (IMEs) with Dr. Binter at Defendant’s request. (JME 448-459 and JME 1109-1129). Dr. Binter is a retired board-certified neurosurgeon who now performs forensic work including IMEs. Her medical expertise includes head trauma and traumatic brain injuries.
20. Dr. Binter’s IME process is to review the injured worker’s medical records, interview the worker, and perform a physical examination. In the second IME performed here, the physical examination included a neurological examination, observation of Claimant’s presentation and gait, and asking her to perform certain movements, like raising her arms and moving her neck. Claimant reported that she could not perform those movements due to pain.
21. At her first IME on August 2, 2023, Dr. Binter concluded that Claimant was not at end medical result. She reached this conclusion because she identified a significant psychological overlay that was delaying Claimant’s recovery from a slip-and-fall six months prior. Accordingly, Dr. Binter recommended intensive outpatient psychotherapy as reasonable and necessary treatment for Claimant’s recovery. The parties agree that Claimant was not at end medical result on August 2, 2023, and I find Dr. Binter’s opinion credible.
22. Dr. Binter performed her second IME on April 17, 2024, during which time she examined Claimant again and reviewed additional medical records. Her IME report

describes Claimant as “very anxious and fearful.” (JME 1110). This time, Dr. Binter offered her opinion to a reasonable degree of medical certainty that Claimant was at end medical result for her injuries.

23. Dr. Binter based her opinion on Claimant’s having made essentially no improvement in her symptoms since her prior examination, despite undergoing physical therapy, occupational therapy, and psychological therapy. In forming this opinion, Dr. Binter applied the definition of end medical result as the state where the injured worker’s condition is well stabilized and unlikely to change substantially in the next year, with or without treatment.
24. Dr. Binter supported her opinion by reference to Claimant’s medical records, which she interpreted as documenting that Claimant’s functional limitations and pain complaints were essentially unchanged. Further, Dr. Binter reviewed additional medical records subsequent to her second IME, through December 16, 2024; those records did not change her opinion because Claimant’s symptoms and limitations were consistent with her presentation when Dr. Binter saw her in April 2024, eight months earlier.
25. Dr. Binter is not a psychiatrist, but she credibly explained that she was capable of reviewing Claimant’s medical records and reaching a conclusion as to whether her condition has improved. As one example, Dr. Binter pointed to Claimant’s December 6, 2024 medical record, which records the following statement from Claimant: “I start telling people I am better because I’m sick of saying I am not doing well.” (JME 1735). Dr. Binter further relied on the medical records documenting that Claimant’s pain levels in late 2024 were still in the range of 7 out of 10. (*Compare, e.g., January 31, 2024 pain level of 7/10 (JME 1127) with October 24, 2024 pain level of 7/10 (JME 1664)*).
26. Dr. Binter was aware that after her second IME, Claimant had cervical spine injections and steroid injections, neither of which provided significant pain relief. She was also aware that Claimant was scheduled for a cervical MRI shortly after the hearing. The pending MRI did not change Dr. Binter’s end medical result opinion, though, because Claimant had already undergone the same work up previously, and the work-up did not lead to any treatment that resulted in significant improvement. Based on her training and experience, Dr. Binter does not expect a different outcome from repeating the same diagnostic procedures.
27. I find Dr. Binter’s end medical result opinion to be well-supported and persuasive.

Subsequent Proceedings

28. After the formal hearing giving rise to the present opinion, this case was referred to the formal hearing docket on the question of whether a proposed cervical spinal surgery constitutes reasonable medical treatment for Claimant’s accepted workplace injury. Defendant has denied responsibility for the proposed surgery, the Department upheld that denial at the informal resolution level, and the formal hearing on the compensability of that proposed surgery has not yet occurred.

29. The present opinion only addresses whether Claimant had reached end medical result based on the evidence presented as of the close of evidence noted above, without prejudice to either party's right to contend that an additional surgery, if related to Claimant's workplace injury, may affect her end medical result status in the future.

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). Once a claim is accepted and benefits are paid, however, the burden shifts to the employer to establish a sufficient basis for terminating compensation. *Merrill v. University of Vermont*, 133 Vt. 101, 105 (1974); *Houle v. Verizon Communications Inc.*, Opinion No. 02-20WC (January 16, 2020). In this case, Defendant seeks to discontinue temporary total disability benefits based on a finding of end medical result status. Accordingly, it has the burden of proof on end medical result here.
2. Determining whether Claimant has reached a substantial plateau in her recovery is well beyond the ken of an ordinary layperson, particularly given the complex and multifaceted medical history in this case. As such, I conclude that expert testimony is necessary for Defendant to sustain its burden of proof. *See, e.g., Lapan v. Berno's Inc.*, 137 Vt. 393, 395-96 (1979) (where the causal connection between employment and injury is obscure, and a layperson could have no well-grounded opinion as to causation, expert medical testimony is necessary).

End Medical Result

3. Under Vermont workers' compensation law, an injured worker is entitled to temporary disability compensation until reaching an end medical result or successfully returning to work. *See Coburn v. Frank Dodge & Sons*, 165 Vt. 529, 532 (1996). "The fact that some treatment, such as physical or drug therapy, continues to be necessary does not preclude a finding of medical end result if the underlying condition causing the disability has become stable and if further treatment will not improve that condition." *Id.* at 529. The determination of end medical result is a question of fact for the Commissioner. *Id.*
4. The Department's Workers' Compensation Rules define "end medical result" 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." Workers' Compensation Rule 2.2000. The Vermont Supreme Court has held that the "proper test" of whether a person has reached end medical result is "whether the treatment contemplated at the time it was given was reasonably expected to bring about significant medical improvement." *Brace v. Vergennes Auto, Inc.*, 2009 VT 49 ¶ 11 (citing *Coburn, supra*, at 533).
5. The parties presented conflicting expert medical opinions on the issue of whether Claimant has reached end medical result in this case. In such instances, 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).

6. In this case, the first, fourth, and fifth *Geiger* factors favor Ms. Senecal, as she is a treating provider and therapist. As to the second factor, both experts reviewed relevant medical records.
7. As in many cases, however, the third factor is the most important here. This factor favors Dr. Binter's opinion. Dr. Binter offered her opinion to a reasonable degree of medical certainty that Claimant had reached an end medical result by April 17, 2024. She credibly supported her opinion by reference to Claimant's medical records and her lack of significant improvement over a 14-month period. Further, Dr. Binter related her conclusions to the definition of end medical result set forth in Workers' Compensation Rule 2.2000. I find her opinion persuasive.
8. In contrast, Ms. Senecal did not offer an opinion to a reasonable degree of psychological certainty that Claimant was not at end medical result. She was not familiar with the applicable standard for end medical result and offered no opinion on whether she expected significant improvement in Claimant's condition over the next year, with or without treatment. She finally offered an opinion that there could be improvement that might be significant to Claimant, but she did not offer an opinion that this was likely. Overall, I find that Claimant's position concerning end medical result was not supported by a persuasive expert opinion.
9. Based on Dr. Binter's opinion, I conclude that Claimant reached an end medical result on April 17, 2024.

Temporary Total Disability Benefits

10. Vermont law provides for the payment of temporary total or temporary partial disability benefits when a workplace injury causes disability for work. 21 V.S.A. §§ 642, 646.
11. An employer's obligation to pay temporary disability generally terminates when the injured worker either reaches an end medical result or successfully returns to work, whichever comes first. *Cyr v. Record Concrete*, Opinion No. 22-15WC (October 2, 2015) ("Once the worker either regains full earning power or reaches an end medical result, his entitlement to temporary disability benefits, whether total or partial, ends."); *see also Barry v. Ethan Allen Interiors, Inc.*, Opinion No. 10-18WC, Conclusion of Law No. 5 (June 25, 2018) (citing 21 V.S.A. § 643a; Workers' Compensation Rule 12.1200).
12. Claimant here reached an end medical result on April 17, 2024. On August 13, 2024, Defendant submitted a Notice of Intent to Discontinue Temporary Total Disability Payments (Form 27), based on Dr. Binter's end medical result determination. The Department approved the discontinuance on August 21, 2024. Accordingly, Defendant is

not obligated to pay temporary total disability benefits beyond the date of the approved discontinuance.¹

ORDER:

Based on the foregoing Findings of Fact and Conclusions of Law, I determine that Claimant reached end medical result on April 17, 2024. Defendant therefore has no further obligation to pay temporary disability benefits to Claimant beyond the date of the approved discontinuance.

DATED at Montpelier, Vermont this 18 day of September 2025.

Kendal M. Smith
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.

¹ Should Claimant undergo the proposed surgery discussed *supra* at Findings of Fact Nos. 28-29, and should that surgery be deemed compensable either by Defendant's acceptance or by order of the Department, nothing in this decision shall preclude Claimant from seeking temporary indemnity benefits related to that surgery.