

**STATE OF VERMONT
DEPARTMENT OF LABOR**

Kim Sheehan

Opinion No. 19-25WC

v.

By: Stephen W. Brown
Administrative Law Judge

Northeast Kingdom Human Services, Inc.

For: Kendal M. Smith
Commissioner

State File No. LL-55613

OPINION AND ORDER

Hearing held via Microsoft Teams on June 10 and 11, 2025
Record closed on July 21, 2025

APPEARANCES:

Kelly Massicotte, Esq., for Claimant
William J. Blake, Esq., for Defendant

ISSUE PRESENTED:

Is Claimant permanently and totally disabled as a consequence of her November 1, 2018 compensable work injury?

EXHIBITS:

Joint Exhibit I:	Medical records (“JME”)
Joint Exhibit II:	Vocational rehabilitation records (“VRE”)
Claimant’s Exhibit 1:	<i>Curriculum vitae</i> of David Dent, DO
Claimant’s Exhibit 2:	<i>Curriculum vitae</i> of Louise Lynch, BS
Claimant’s Exhibit 3:	<i>Curriculum vitae</i> of Tammy Parker, MA
Defendant’s Exhibit A:	<i>Curriculum vitae</i> of Verne Backus, MD
Defendant’s Exhibit B:	<i>Curriculum vitae</i> of Fran Plaisted, MA

CLAIM:

Permanent total disability benefits pursuant to 21 V.S.A. §§ 644(b) and 645
Interest, costs and attorney fees pursuant to 21 V.S.A. §§ 664 and 678

FINDINGS OF FACT:

1. Claimant is a 62-year-old woman who lives in St. Johnsbury, Vermont.

2. Defendant operates a residential group home for disabled women in Danville, Vermont. In 2014, Defendant hired Claimant as a full-time residential caregiver at the group home.
3. Claimant's job duties included assisting the residents with activities of daily living, including bathing, dressing, cooking and eating. She also brought residents to medical appointments and performed outdoor maintenance, including shoveling and lawn mowing.

Claimant's Work Injury and Claim for Benefits

4. Claimant sustained a low back injury on November 1, 2018, when she and a fellow caregiver were transferring an uncooperative resident from a wheelchair to a vehicle for a medical appointment. In the process of moving the resident, Claimant suffered a low back strain.
5. Defendant accepted Claimant's injury as compensable and paid temporary total disability benefits until she reached an end medical result in 2020. Claimant was then assessed with a six percent whole person impairment, and Defendant has paid permanent partial disability benefits based on that impairment rating.
6. Claimant now contends that she is permanently and totally disabled due to the combined effects of her work injury and her pre-existing vision condition. She seeks permanent total disability benefits.

Claimant's Education, Work History, and Pre-Existing Vision Condition

7. Claimant completed high school at St. Johnsbury Academy. Her first job was scooping ice cream at age 15, and then the following year, she started a decade of work at a department store. Immediately prior to her work for Defendant, Claimant worked as a pharmacy technician for 15 years.
8. Claimant's pharmacy technician job required significant reading and computer use, as well as excellent attention to detail and accuracy. Over time, her visual deficits made this job difficult and dangerous to perform.
9. Claimant's eye doctor, Karena Shippee, OD, has identified Claimant's eye condition as idiopathic juxtafoveal telangiectasis ("IJT"), a condition that causes blind spots and difficulty with reading and close-up vision. Claimant receives periodic eye injections to treat her condition. (JME 2-3, 7).
10. In October 2020, Claimant's treating ophthalmologist, Arthur Walsh, MD, wrote a report explaining her visual problems in more detail. He explained that Claimant suffers from IJT with choroidal neovascularization¹ in both eyes. This condition affects her sight in two ways. First, IJT reduces her visual acuity. For patients with Claimant's level of

¹ Choroidal neovascularization is the growth of abnormal, leaky blood vessels in the eye, causing distorted vision and blind spots. See, e.g., [Neovascularization of the Eye: Types & Treatment](#), Cleveland Clinic, last accessed December 11, 2025, at 8:01 AM.

reduced acuity, reading is difficult and slow. Second, her IJT has produced small blind spots near the center of her vision. If Claimant is looking at a four or five letter word, for example, one or two of those letters would be missing; to read the word, she must direct her eyes back and forth over the word until she can see all the letters. These two manifestations of Claimant's IJT together impair her reading speed considerably and cause fatigue. Claimant's eye condition also affects her depth perception when performing fine tasks and can create the perception of double vision. In Dr. Walsh's opinion, a job that requires reading would be frustratingly slow and tiring for her; it would likely also cause stress and headaches. (JME 536-537). Although Dr. Walsh did not testify at the hearing, Defendant did not offer any medical evidence from an ophthalmologist contradicting Dr. Walsh's report, and I accept his report as persuasive.

11. Due to her poor vision, Claimant started making mistakes at her pharmacy technician job, including one mistake that posed a danger to the patient. She also experienced headaches from the constant visual scanning that she was doing to compensate for her blind spots. Ultimately, in 2014, Claimant left her pharmacy job due to her vision issues and accepted employment with Defendant. She continued working for Defendant for about five years, until her work injury. She has not worked since the injury.

Claimant's Course of Medical Treatment for her Injury

12. On November 5, 2018, Claimant sought medical treatment for her injury at Northeastern Vermont Regional Hospital. Medical staff assessed her with acute thoracic myofascial strain, lumbar strain and cervical muscle strain. (JME 15). She returned to the hospital on November 8, complaining of lumbar pain that seemed disproportionate to her injury. The provider expressed concern for an underlying inflammatory process and ordered some blood work. (JME 22).
13. Claimant began physical therapy on November 9, 2018. (JME 29). Upon examination, the physical therapist thought that her low back symptoms were caused solely by a soft tissue strain. (JME 33). On November 15, Claimant reported no improvement in her pain levels. (JME 39). She was able to do grocery shopping, housework, and other activities of daily living, but activity increased her pain. (JME 39). X-rays taken on November 16 found mild degenerative changes in her lumbar spine. (JME 41). Claimant continued to engage in frequent physical therapy, but she did not make significant gains. (JME 62, 68, 77).
14. There is some inconsistency in Claimant's medical records regarding her level of functioning in the months after her injury. For example, a record from December 3, 2018 states that she had returned to "all household activities." (JME 59; *see also* JME 39, 51, 54). However, a record from December 5 states that she was unable to vacuum and often needed to sit down while doing household chores, including dishes. (JME 66).
15. Claimant underwent an MRI on December 10, 2018. The scan showed a small left-sided disc protrusion at L3-4 and mild canal stenosis at L4-5. (JME 80).

16. On December 14, 2018, Claimant tried chiropractic treatment to relieve her constant, aching low back pain and left leg weakness and numbness. (JME 84). The chiropractor assessed her with lumbar strain with an MRI-confirmed disc protrusion at L3-4 on the left side, and with thoracic, lumbar and SI-joint dysfunction and muscle spasms. (JME 84). On December 20, the chiropractor expressed concern for possible nerve impingement and made a referral to neurosurgery. (JME 94).
17. Claimant saw neurosurgeon Harold Pikus, MD, for a surgical consultation on January 3, 2019 for her low back pain and her lower extremity pain and weakness. (JME 99-100). She reported pain from her buttocks down her left leg into her knee area. Dr. Pikus characterized this pain as L4 radiculopathy, and Claimant received an L4 nerve block for both therapeutic and diagnostic purposes. (JME 101-102). Before deciding on a surgical intervention, Dr. Pikus recommended injection therapy at the Pain Clinic.
18. On January 16, 2019, Claimant began treatment at the Pain Clinic, where she received a nerve root block and a steroid injection for her lumbar spine. (JME 120). These injections provided some relief, where physical therapy and chiropractic treatment had not. (JME 123). However, the injection therapy did not resolve her pain. Overall, treatment for Claimant's low back injury has included several rounds of physical therapy, a pain clinic evaluation, lumbar and SI joint injections, chiropractic care, and medications including Gabapentin and Tramadol (which she still takes). The medical records reflect uncertainty among her providers as to whether her symptoms were stemming from disc pathology, SI joint dysfunction, or both. (JME 81, 101, 130, 171).
19. Claimant saw Dr. Pikus again on February 13, 2019, and he recommended low back surgery. (JME 129-130). She underwent the surgery on June 4, 2019 (JME 203) and achieved "significant improvement" in her lower extremity symptoms following the surgery, as reported on June 28, 2019. (JME 244).
20. On July 23, 2019, Claimant saw William Spina, MD, for an independent medical examination arranged by her attorney. (JME 257-265). Dr. Spina noted that Claimant's surgery had relieved her lower extremity pain and weakness but that she continued to suffer from low back pain. (JME 258).
21. On August 1, 2019, Claimant's primary care physician, Joyce Dobbertin, MD, wrote that even if Claimant had a good surgical outcome, she should avoid medium duty work due to the risk of re-injury. (JME 272). On September 4, Claimant reported to Dr. Pikus that she was doing well and was pleased with the outcome of her surgery, although she continued to have left paraspinal and buttock pain. (JME 277-278).
22. Although the post-surgery medical records reflect a benefit from surgery, Claimant was still struggling with back pain, and her sleep continued to be disrupted. (JME 284). Physical therapy records from November 2019 through February 2020 document increased pain with standing or walking, lifting, bending, and sitting for long durations, as well as weakness and fatigue with tasks like grocery shopping. (JME 304-307). Claimant continued to seek treatment throughout 2020 for her low back, including injection treatment and physical therapy for her SI joint.

23. Claimant reached end medical result for her low back condition in 2020. Since that time, the medical evidence is consistent in reflecting that she has significant issues with positional intolerance. Her discomfort and pain increase with prolonged sitting or standing, such that she needs to move around frequently. Her most comfortable position is sitting in a recliner or lying on her side with a pillow between her legs. Her pain also increases with bending or lifting more than ten pounds. Claimant also has issues with concentration and distraction due to her pain levels.

Claimant's Family Life

24. Claimant lives in St. Johnsbury, Vermont, with her husband; her disabled sister lives next door. Claimant's sister was in a motor vehicle accident over 40 years ago that left her with limited speech and some impairments on her right side. She can cook, bathe, and clean her home, but she cannot drive and has difficulty communicating. For the past 20 years, Claimant has been the primary person to drive her sister to medical appointments, the store, and the pharmacy; she also makes telephone calls and otherwise communicates on her sister's behalf. Claimant does not perform any physical caregiving work for her sister.
25. Claimant and her daughter testified at the hearing. According to their credible testimony, Claimant is not employed by her sister as any type of caregiver. Rather, Claimant helps her sister with driving and communicating, as she has always done since her sister's accident 40 years ago. For the past four years, since Claimant's workers' compensation weekly benefits ran out, Claimant's sister helps her out financially by giving Claimant and her husband \$400 every month to help them pay bills. This money is not remuneration for caregiving, but rather family helping family.

Vocational Rehabilitation Efforts

26. Claimant engaged in vocational rehabilitation for four and a half years, between August 2019 and February 2024. (JVE 1-235.) Defendant initially assigned VR counselor Coleen Kearon to the claim.
27. On December 15, 2020, Ms. Kearon completed a Return-to-Work Plan ("RTWP"). On January 22, 2021, she submitted the plan to the Department for approval, after Defendant failed to provide any formal response to the plan. (See JVE 39-48). The Department approved the RTWP on January 25, 2021.
28. The RTWP identified Claimant's work capacity as sedentary, part-time work, and the plan focused on developing her basic computer skills as the first step. Although the stated goal of the plan was home-based customer service representative or other suitable sedentary work (JVE 42), Claimant applied for jobs within the local area as well as remote jobs on-line.
29. The vocational rehabilitation records document that Claimant was "very motivated to seek and secure work" (JVE 139) and that she applied for dozens and dozens of positions.

(JVE 139, 184-189). However, other than an interview for an online job that turned out to be a sophisticated scam and an interview for a hospital job that Claimant was not physically capable of doing, no employers expressed any interest in hiring her.

30. Claimant switched vocational rehabilitation counselors in May 2022 to Karina Dunigan. (JVE 145, 149). Ms. Dunigan drafted a new RTWP that focused on improving Claimant's computer skills, with a job goal of customer service representative. (JVE 182-195). Defendant did not agree with the need for computer training or the plan's stated goal. (JVE 209). In particular, Defendant questioned Claimant's prospect of success as a customer service representative, given her poor vision. Defendant thought that Claimant simply needed to do more local job searches to return to employment. (JVE 209). Ms. Dunigan disagreed with Defendant's assessment, noting in her report that Claimant "has already completed a robust job search under the previous plan which demonstrates that additional training is needed for her to compete for suitable jobs." (JVE 209).
31. In the wake of the parties' disagreement about the draft RTWP, Claimant sought an updated functional capacity evaluation. Meanwhile, she continued to search for a suitable position. (JVE 220).
32. Ms. Dunigan's next progress report, dated October 3, 2023, stated that the functional capacity evaluation had been performed and that Claimant was found not to have a work capacity. (JVE 222). In her final progress report, dated February 8, 2024, Ms. Dunigan noted that Claimant's primary care physician, Dr. Dobbertin, also indicated that Claimant could not work. (JVE 230). According to Dr. Dobbertin:

[Claimant] currently cannot work due to her low back injury. It's been 6 years so I doubt it will improve to the point she could have gainful employment. Her vision, which will most likely progress, also precludes her from many jobs. (JVE 230).
33. Based on Claimant's lack of work capacity, Ms. Dunigan closed vocational rehabilitation services on February 8, 2024. (JVE 232), after four and a half years with no success.

Functional Capacity Evaluation

34. Physical therapist Louise Lynch performed Claimant's functional capacity evaluation on September 20, 2023. (JME 765-793). Ms. Lynch earned a bachelor's degree in physical therapy from the University of Vermont in 1986 and has been performing functional capacity evaluations for over thirty-seven years. She is also an experienced Certified Work Capacity Evaluator. *See Claimant's Exhibit 2.*
35. Ms. Lynch spent five hours performing Claimant's functional capacity evaluation. Throughout the testing, Claimant made high levels of physical effort, as reflected in the strength tests, the signs of muscle recruitment, and the signs of competitive test performance. Ms. Lynch also found Claimant to be "fully reliable" in her reports of pain and disability. (JME 767).

36. Ms. Lynch offered her opinion, to a reasonable degree of certainty, that Claimant does not have a capacity for work. Her conclusion is based in part on her observation that Claimant is unable to sustain a functional work position: she cannot either sit or stand long enough at a workstation to do a job and would need to recline periodically while working. Ms. Lynch also noted that Claimant's vision deficits disable her from performing computer or other visual work that requires focus; those deficits also cause poor neck positioning, which increases her pain. Further, Claimant cannot lift more than fifteen pounds, and even then, the item must be conveniently placed at waist level to avoid any bending. (JME 769). Finally, Ms. Lynch noted Claimant's poor conditioning, fatigue, shortness of breath, lower extremity weakness and poor balance. (JME 770).
37. Ms. Lynch explained that three components are necessary for work capacity: (1) strength (lifting, carrying, pushing, pulling, hand strength), (2) position (sitting, standing, walking, reaching, bending), and (3) endurance (ability to sustain work over the course of a workday). Ms. Lynch noted Claimant possesses the first component, strength, but she does not possess the other two, as she does not have the positional capacity or endurance for regular, gainful employment.
38. While Ms. Lynch opined in her report that Claimant might be able to improve her endurance with a four-to-six week work conditioning program (JME 770), she noted such improvement was only possible, not probable. Moreover, any improvement would likely improve just her strength and endurance; such programs do not usually result in any improvement in an injured worker's positional tolerance for sitting and standing. Regardless of any improvement, Claimant would still need to sit in a recliner while working, and she would still have the limitations resulting from her vision issues. Accordingly, the possibility of participation in a work conditioning program did not change Ms. Lynch's opinion that Claimant has no work capacity.²
39. Finally, Ms. Lynch offered her opinion that it was appropriate for vocational rehabilitation efforts to have mainly focused on at-home jobs. Because of Claimant's positional intolerance, working from home would have allowed her to change positions as needed and sit in her recliner, as needed. Further, traveling to an away-from-home workplace would be risky due to her poor balance.
40. Based on Ms. Lynch's substantial qualifications and experience as a functional capacity evaluator, and based on her thorough testing and evaluation here, I find her opinion on Claimant's lack of work capacity to be persuasive.

Expert Opinions

41. The parties presented expert opinions from physicians and vocational rehabilitation counselors as to Claimant's ability to secure and maintain regular, gainful work. According to Claimant's experts, she has exhausted vocational rehabilitation and is

² Following Ms. Lynch's evaluation, Claimant's primary care physician offered her opinion that a four-to-six week work conditioning program would not likely restore Claimant to employment, although it might make her life better. (JVE 230).

permanently and totally disabled. According to Defendant's experts, Claimant has not exhausted vocational rehabilitation, so it is premature to find her permanently and totally disabled.

Medical Experts

(a) David Dent, DO

42. David Dent, DO, earned his medical degree from the Texas College of Osteopathic Medicine in 2000. He is board-certified in both occupational medicine and in pain medicine, with twenty years' experience treating patients. Dr. Dent has taught at the Geisel School of Medicine at Dartmouth College, and he ran Dartmouth Hitchcock's functional restoration program for three years. Dr. Dent is currently a staff physician and Chief of the Center for Pain Management at Northeastern Vermont Regional Hospital. *See Claimant's Exhibit 1.*
43. At Claimant's request, Dr. Dent performed an independent medical examination of her on April 29, 2025. (JME 976-1001). Dr. Dent performed a physical examination, took a medical history, and reviewed about one thousand pages of medical records; he also reviewed Ms. Lynch's functional capacity evaluation report.
44. Dr. Dent offered his opinion, to a reasonable degree of medical certainty, that Claimant is permanently and totally disabled from regular, gainful employment.
45. Dr. Dent based his opinion in part on Ms. Lynch's functional capacity evaluation, which concluded that Claimant has no work capacity. Dr. Dent agreed with her evaluation because Claimant made a good effort during the testing and the findings were consistent throughout the lengthy and comprehensive evaluation. (JME 976).
46. Dr. Dent also based his opinion on Claimant's sustained efforts, with two vocational rehabilitation counselors for four and a half years, to return to employment, with no success, despite dozens of job applications. He also relied on her physical restrictions, limited education, limited job training, chronic pain, exceedingly poor vision, and age in her 60s as additional factors limiting the likelihood of her return to work. (JME 976).
47. Dr. Dent noted that Claimant's medical treatment to date has included spinal surgery, spinal injections, physical therapy, medications, and a home exercise program. In his opinion, there are no other viable treatment options that are likely to improve her function. (JME 977). Further, as the former medical director of the functional rehabilitation program at Dartmouth Hitchcock, Dr. Dent offered his opinion that he would expect only marginal or minimal (not substantial) improvement if Claimant participated in such a program.
48. As an occupational medicine physician, Dr. Dent works hard to return injured people to the workforce, and he is reluctant to label someone as disabled from work. However, in this case, Dr. Dent offered his opinion that the label of "disabled" is "unfortunately

accurate” for Claimant, as it would be “near impossible” for her to return to regular, gainful employment.

49. Based on Dr. Dent’s training and experience as an occupational medicine physician, and his comprehensive examination of Claimant, I find his opinion to be thorough, well-supported, and persuasive.

(b) William Spina, MD

50. At Claimant’s request, orthopedic surgeon William Spina, MD, performed an independent medical examination of her on July 23, 2019. (JME 257-265). Dr. Spina noted her cervical and low back conditions, as well as post-traumatic radiculitis with an L4 distribution to her left leg and left lateral recess stenosis at L3-L4. He noted that Claimant underwent an L3-L4 lumbar laminectomy, partial facetectomy and foraminotomy in June 4, 2019. (JME 261). Dr. Spina re-evaluated Claimant at her request on June 16, 2020. (JME 470-477). At this time, he added left sacroiliac joint dysfunction to her problem list and placed her at end medical result for her work-related injuries. (JME 474-475).
51. Dr. Spina performed a third independent medical examination of Claimant on May 5, 2025. (JME 1002-1008). He noted that her most significant problem is chronic, constant low back pain. Her legs are weak, she feels shaky at times, she fatigues easily, and she has poor balance. She takes Tramadol and Valium daily for pain control. She also has chronic neck pain radiating into her shoulder. (JME 1002). Dr. Spina also noted Claimant’s ongoing visual difficulties, attention deficit disorder, tachycardia and asthma. (JME 1003). Dr. Spina reviewed the findings of the functional capacity evaluation performed by Louise Lynch and agreed with Ms. Lynch’s findings. (JME 1007).
52. Based on her chronic low back pain, left sacroiliac joint pain, poor balance, and limited motion in her lumbar spine, combined with her chronic neck pain, occasional radiculitis in her right arm, visual deficits, and very limited tolerance for sitting and standing, Dr. Spina offered his opinion that Claimant is permanently and totally disabled. (JME 1007). In his opinion, there are no options left to restore her work ability. (JME 1007). Dr. Spina’s reports are in evidence as part of the Joint Medical Exhibit, but he did not testify at the hearing.
53. Based on his training and experience as an orthopedic surgeon, and his three independent medical examinations of Claimant over a stretch of six years, I find Dr. Spina’s opinion to be clear and well-supported.

(c) Verne Backus, MD

54. Verne Backus, MD, 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 has substantial experience both in treating injured workers and in performing independent medical examinations. *See Defendant’s Exhibit A.*

55. At Defendant's request, Dr. Backus saw Claimant for two independent medical examinations, the first on March 6, 2020 (JME 397-447) and the second on January 16, 2024. (JME 826-868).
56. At Dr. Backus' first independent medical examination in 2020, he diagnosed Claimant with low back pain and neck pain radiating into her shoulder. (JME 397, 420). Dr. Backus wrote in his report that Claimant did not have the capacity to perform all the functions of her job for Defendant, especially the physical transfer of patients, and he recommended a functional capacity evaluation to determine her limitations. In the absence of a comprehensive functional capacity evaluation, Dr. Backus assessed Claimant with a light duty work capacity, with no lifting above 20 pounds occasionally and 10 pounds frequently. (JME 432).
57. When Dr. Backus saw Claimant for the second independent medical examination in 2024, Defendant asked him to review additional medical records and Ms. Lynch's 2023 functional capacity evaluation and offer his opinion on permanent total disability. Dr. Backus testified that Claimant's presentation at his second examination was similar to her presentation at the first: she was moderately uncomfortable, sat for only about ten minutes before needing to get up, alternated her positions, and limited her pain behavior to positional intolerance. In neither examination did Dr. Backus identify any non-physiologic findings. Further, he did not conclude that Claimant was malingering or magnifying her symptoms.
58. Dr. Backus testified that Ms. Lynch performs "one of the best FCEs around," that she provides "very valuable information" about a person's work capacity, and that he regularly "relies" on her reports. In this case however, while Dr. Backus agrees with Ms. Lynch's findings, he does not agree with her conclusion that Claimant does not have a work capacity. Like Dr. Dent, Dr. Backus is an occupational medicine physician who does his best to get people back to work; he is "hard pressed" to state that someone cannot work at all. Dr. Backus explained that finding someone incapable of working negatively impacts the person's prognosis and encourages iatrogenic disability, which in turn can contribute to further functional and psychological deterioration.
59. In Dr. Backus' opinion, Claimant would be better off if she were to do some volunteer work or part-time work within the limitations identified by Ms. Lynch because people generally do better when they are working. He further suggested that any work she tries should not require computer usage due to her eye condition. (JME 864.)
60. Dr. Backus acknowledged that it is "tough" to find an appropriate position for Claimant. Further, he testified that he was "not optimistic" about her work prospects and that her prognosis for returning to work at a level to support herself is "poor." Her prognosis might improve after a work conditioning program, but even so, he still described her prospects as "poor."
61. I accept Dr. Backus' opinion that finding someone to be permanently and totally disabled may have negative consequences for the person's health and recovery. Nevertheless, he

did not persuade me that Claimant has a work capacity and a reasonable chance of returning to regular gainful work. On the contrary, Dr. Backus honestly acknowledged that Claimant's prognosis for returning to work, even if she participated in a work conditioning program, is poor.

(d) William Boucher, MD

62. At Defendant's request, occupational medicine physician William Boucher, MD, performed an independent medical examination of Claimant on March 19, 2019. (JME 146-158). Dr. Boucher noted diagnoses of lumbar and cervical strain, both of which he thought were "clinically resolved." (JME 155). In his opinion, Claimant had no functional limitations at that time. (JME 156). Dr. Boucher's report is included in the Joint Medical Exhibit, but he did not testify at the hearing.
63. I find Dr. Boucher's opinion that Claimant's lumbar condition was "clinically resolved" to be unconvincing. Subsequent to his report, Claimant underwent spinal surgery that improved the condition of the pain that radiated into her leg. Further, her lumbar condition was not "resolved" in the sense that she fully recovered from it; rather, Claimant has chronic pain in her lumbar spine.
64. I am also unpersuaded by Dr. Boucher's opinion that Claimant has no functional limitations. As set forth in the more persuasive functional capacity evaluation report of Ms. Lynch, Claimant has significant functional limitations that affect her ability to engage in regular, gainful work.

Vocational Experts

(a) Tammy Parker, MA

65. Tammy Parker, MA, has been working as a vocational rehabilitation counselor for almost three decades. She earned a master's degree in rehabilitation psychology and is a Nationally Certified Rehabilitation Counselor. *See Claimant's Exhibit 3.*
66. Claimant hired Ms. Parker to perform an Independent Vocational Evaluation to assess whether she is capable of regular, gainful work. Ms. Parker reviewed Claimant's medical and vocational records, as well as Ms. Lynch's functional capacity evaluation report. She also met with Claimant on January 28, 2025 for a personal interview prior to forming her opinions. (JME 252-268).
67. Ms. Parker offered her opinion to a reasonable degree of certainty that Claimant is unable to perform regular, gainful work. Ms. Parker based her opinion on Claimant's residual functional capacity, considering both the limitations resulting from her work injury and the vision loss from her pre-existing eye condition.
68. In Ms. Parker's opinion, Claimant's primary limitation is her positional intolerance. She explained that a worker must be able to maintain a physical position long enough to complete work tasks, and Claimant cannot maintain such a position. Rather, Claimant

needs to change positions frequently, including sitting in a reclining position. Moreover, her pain from the work injury results in concentration problems that cause her to veer off task. Ms. Parker further opined that Claimant's visual impairment is significant, as most sedentary jobs require computer usage, reading or other tasks requiring good close-up vision, which Claimant lacks.

69. In considering whether Claimant is unable to perform regular gainful work, Ms. Parker relied heavily on Ms. Lynch's functional capacity evaluation, as that evaluation is the only detailed and objective assessment of Claimant's work capacity. Further, Ms. Parker relied on the 2024 opinion of treating physician Dr. Dobbertin, who agreed with the functional capacity evaluation and thought it unlikely that Claimant could work. Ms. Parker noted that no physicians have contested the findings of Ms. Lynch's functional capacity evaluation. (JME 265).

70. Ms. Parker also considered certain factors set forth in the odd lot doctrine, as follows:³

- Claimant's geographic location: the Northeast Kingdom has a depressed labor market, hazardous winter travel, and a lack of reliable Internet service. (JME 266).
- Claimant's age (now 62): Ms. Parker explained that older workers experience discrimination in hiring, especially if they also have a disability and a significant gap in their employment history, as Claimant does. (JME 265).
- Claimant's work experience, training and education: Claimant has limited transferable skills, no formal education beyond high school, and limited computer skills. (JME 266).
- Claimant's chronic pain: Claimant's chronic pain increases with activity and disrupts her sleep. (JME 266).
- Claimant's out-of-work duration: Claimant has been out of work for seven years, making her re-engagement in the workforce difficult and unlikely, especially as she approaches retirement age. (JME 266).
- Vocational rehabilitation services: These services included vocational research and exploration, review of labor market and current leads, vocational counseling, a transferable skills analysis, resume and cover letter development, computer skills training, exploration of assistive technology (due to vision deficits), consideration of remote work, coordination with other community support providers, and an ergonomic assessment. Claimant fully engaged in the process for almost five years and applied for a significant number of positions without ever receiving a job offer. In Ms. Parker's opinion, vocational rehabilitation services have been exhausted. (JME 267).

³ See Workers' Compensation Rule 10.1700, setting forth the odd lot doctrine.

71. Finally, in Ms. Parker's opinion, even if Claimant received a job offer, she would not be able to maintain that employment due to her positional intolerance and vision issues.
72. Based on Ms. Parker's education and extensive experience as a vocational rehabilitation counselor, I find her opinion that Claimant cannot perform regular, gainful work to be clear, well-supported and persuasive.

(b) Fran Plaisted, MA

73. Fran Plaisted, MA, is a vocational rehabilitation counselor with over 30 years' experience. She earned a master's degree in rehabilitation counseling and is a Fellow of the American Board of Vocational Experts. *See Defendant's Exhibit B.*
74. Defendant hired Ms. Plaisted as a vocational expert to perform an Independent Vocational Evaluation in this case. (JVE 236-251). Ms. Plaisted reviewed Claimant's medical records, vocational rehabilitation records, and Ms. Lynch's functional capacity evaluation report. She also interviewed Claimant on February 5, 2025, performed a transferable skills analysis, and administered some limited testing.⁴ (JME 248).
75. Ms. Plaisted offered her opinion that Claimant has not yet exhausted vocational rehabilitation. (JME 251). Accordingly, in her opinion, it is premature to conclude that Claimant is permanently and totally disabled. (*Id.*)
76. Ms. Plaisted identified several new avenues that could be tried as part of vocational rehabilitation services. First, Claimant could explore careers as a companion care person, a home health homemaker, a receptionist, or a career closet attendant at Vermont State University.⁵ (JME 250). However, Ms. Plaisted did not offer any details on the physical requirements for these jobs, including how the jobs could accommodate Claimant's positional intolerance.
77. Ms. Plaisted acknowledged that Claimant would have difficulty transitioning into any work position, after her absence from the workforce for seven years. She accordingly recommended that Claimant first seek a volunteer position with the assistance of the Vermont Division of the Blind and Visually Impaired, to help her with work experience and accommodations. (JME 250). However, although volunteer experience might help Claimant re-acclimate to a work environment, her lengthy absence from the workforce is only one barrier to returning to work. Unless the volunteer position would lead to employment that accommodates her positional intolerance and visual deficits, a volunteer position would not likely lead to regular, gainful employment.

⁴ Ms. Plaisted could not perform an aptitude assessment due to Claimant's visual impairments (JME 236), but she did test Claimant's word reading, math and spelling abilities. (JME 244). Claimant scored in the 30th percentile in word reading, 39th percentile in spelling and 7th percentile in math.

⁵ During Ms. Plaisted's hearing testimony, this job listing was noted to be currently open only to work-study students of the university.

78. Despite her opinion that there were additional services that could be tried to get Claimant back to work, Ms. Plaisted frankly acknowledged that Claimant has “a lot of barriers to employment.” Among other things, she acknowledged that competitive employment would not likely accommodate Claimant’s need to recline and be “off task” for a significant portion of her workday.
79. Finally, Ms. Plaisted thought that a work conditioning program would benefit Claimant, who is deconditioned from not working for seven years. Although conditioning would likely be beneficial, Ms. Plaisted did not explain how it would overcome the other barriers to Claimant’s re-employment. Further, Ms. Plaisted did not reconcile her opinion about work conditioning with the opinion of Claimant’s primary care physician that, even with the benefit of a work conditioning program, Claimant was unlikely to be able to return to work.
80. Overall, I find Ms. Plaisted’s opinion unpersuasive. The foundation of her opinion is that there are additional avenues that vocational rehabilitation services could try, before concluding that Claimant has exhausted those services. I agree with Ms. Plaisted that Claimant’s counselors did not try the avenues she suggested. However, I do not think it is reasonable to require Claimant to seek a job as a closet attendant or undergo a work conditioning program before declaring that vocational rehabilitation services have effectively been exhausted, as the likelihood of Claimant finding regular gainful work after doing these additional suggestions remains quite low.

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, 20 (1941), as well as the causal connection between the injury and the employment. *Egbert v. The Book Press*, 144 Vt. 367, 369 (1984).

Permanent Total Disability

2. The disputed issue is whether Claimant’s compensable work injury has rendered her permanently and totally disabled. Under Vermont’s workers’ compensation statute, a claimant is entitled to permanent total disability benefits if he or she suffers one of the injuries enumerated in § 644(a), such as total blindness or paraplegia. In addition, § 644(b) provides:

The enumeration in subsection (a) of this section is not exclusive, and, in order to determine disability under this section, the commissioner shall consider other specific characteristics of the claimant, including the claimant’s age, experience, training, education and mental capacity.

3. The Workers’ Compensation Rules provide further guidance. Workers’ Compensation Rule 10.1700 provides:

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. In evaluating whether or not an injured worker is permanently and totally disabled under this rule, his or her age, experience, training, education, occupation and mental capacity shall be considered, in addition to physical or mental limitations and/or pain. 21 V.S.A. §644(b).

10.1710 Unless the extent to which an injured worker's functional limitations precludes regular, gainful work is so obvious that formal assessment is not necessary, a claim for permanent total disability under the odd lot doctrine should be supported by the following:

10.1711 A functional capacity evaluation (FCE) that assesses the injured worker's physical capabilities; and

10.1712 A vocational assessment that concludes that the injured worker is not reasonably expected to be able to return to regular, gainful work, either with or without vocational rehabilitation assistance.

10.1720 For the purposes of this Rule, "regular, gainful work" refers to regular employment in any well-known branch of the labor market. Work that is so limited in quality, dependability or quantity that a reasonably stable market for it does not exist does not constitute "regular, gainful work."

4. As Professor Larson has described it, the essence of the odd lot test is "the probable dependability with which [the] claimant can sell his or her services in a competitive labor market, undistorted by such factors as business booms, sympathy of a particular employer or friends, temporary good luck or the superhuman efforts of the claimant to rise above crippling handicaps." 4 Lex K. Larson, *Larson's Workers' Compensation* § 83.01 at p. 83-3 (Matthew Bender, Rev. Ed.), quoted with approval in *Moulton v. J.P. Carrera, Inc.*, Opinion No. 30-11WC (October 11, 2011).

Functional Capacity Evaluation

5. As provided in Workers' Compensation Rule 10.1711, Claimant's claim for permanent total disability benefits is supported by the functional capacity evaluation performed by Louise Lynch in September 2023. Ms. Lynch, an experienced functional capacity evaluator, performed a thorough evaluation and offered her opinion that Claimant has no work capacity. I have found her opinion persuasive. See Finding of Fact Nos. 36-40 *supra*.

Vocational Assessment

6. As provided in Workers' Compensation Rule 10.1712, Claimant's claim for permanent total disability benefits is also supported by Ms. Parker's vocational assessment that Claimant is not reasonably expected to be able to return to regular, gainful work, either with or without additional vocational rehabilitation assistance. Ms. Parker is an experienced vocational rehabilitation counselor, and she performed a thorough assessment. I have found her assessment persuasive. *See Finding of Fact Nos. 67-72 supra.*
7. Accordingly, Claimant has offered persuasive evidence that satisfies both provisions of Workers' Compensation Rule 10.1710 for establishing permanent total disability under the odd lot doctrine.

Expert Medical Opinions

8. Claimant also supports her claim for permanent total disability benefits with expert medical opinions from her primary care physician, Dr. Dobbertin, and independent medical examiners Dr. Dent and Dr. Spina. I have found the opinions of all three physicians to be persuasive. *See Finding of Fact Nos. 32, 44-49, 52-53 supra.* Further, although Defendant's expert Dr. Backus did not agree that Claimant is permanently and totally disabled, he acknowledged that her prognosis is poor. *See Finding of Fact No. 60 supra.* Accordingly, I conclude that the weight of the credible medical evidence supports a conclusion that Claimant is permanently and totally disabled from regular, gainful work.

Conclusion

9. Claimant has sustained her burden of proving that, as a result of her work injury, she is unable to successfully perform regular, gainful work. This circumstance is unlikely to change even with the provision of further vocational rehabilitation services. She is therefore permanently and totally disabled.

Costs and Attorney Fees

10. As Claimant has prevailed on her claim for benefits, she is entitled to an award of necessary costs and reasonable attorney fees. In accordance with 21 V.S.A. § 678(e), she shall have 30 days from the date of this opinion within which to submit her itemized claim.

ORDER:

Based on the foregoing findings of fact and conclusions of law, Defendant is hereby **ORDERED** to pay:

1. Permanent total disability benefits commencing on the date when temporary total disability benefits ended in accordance with 21 V.S.A. § 645, with a credit for the

permanent partial disability benefits paid thereafter, in accordance with 21 V.S.A. § 648(a), with interest thereon pursuant to 21 V.S.A. § 664; and

2. Costs and attorney fees in amounts to be determined, in accordance with 21 V.S.A. § 678.

DATED at Montpelier, Vermont this 15th day of December 2025.

Chris Winters
Deputy 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.