

**STATE OF VERMONT  
DEPARTMENT OF LABOR**

Paula Ballantyne

Opinion No. 01-26WC

v.

By: Stephen W. Brown  
Administrative Law Judge

VNA & Hospice of the Southwest Region, Inc.

For: Kendal M. Smith  
Commissioner

State File No. LL-52259

**OPINION AND ORDER**

Hearing held via Microsoft Teams on January 31, 2025  
Record closed on April 14, 2025

**APPEARANCES:**

Robert D. Mabey, Esq., for Claimant  
William J. Blake, Esq., for Defendant

**ISSUES PRESENTED:**

1. Is Claimant entitled to workers' compensation benefits for her right knee condition?
2. Is Claimant entitled to medical benefits for her left leg prosthetic devices?
3. As of what date did Claimant reach end medical result for her compensable injury?
4. What is the correct permanent impairment rating for Claimant's compensable injury?

**EXHIBITS:**

Joint Exhibit I: Joint Medical Exhibit ("JME")

Claimant's Exhibit C: *Curriculum vitae* of Douglas Kirkpatrick, MD

Defendant's Exhibit 1: *Curriculum vitae* of George White, MD

Defendant's Exhibit B: *Curriculum vitae* of William Boucher, MD

Preservation Deposition of George White, MD, taken December 18, 2024

**FINDINGS OF FACT:**

1. Claimant is a 56-year-old woman who resides in West Pawlet, Vermont.
2. In November 2017, Defendant hired Claimant to work as a traveling licensed nursing assistant ("LNA").

### Claimant's Work Injury and Claim for Benefits

3. Claimant asserted a claim for a right foot overuse injury on July 7, 2018.
4. Defendant accepted Claimant's right foot claim and paid temporary total disability benefits. It sought to terminate those benefits based on a purported end medical result date of August 5, 2022, but the Department rejected the proposed discontinuance. Later, Defendant sought to discontinue temporary disability benefits based on a purported November 13, 2023 end medical result date. The Department approved this discontinuance effective November 27, 2023. The parties agree that Claimant has reached end medical result now, but they dispute the date of end medical result.
5. Following the approved discontinuance of temporary disability benefits, Defendant advanced the uncontested portion of permanent partial disability benefits based on a three percent whole person impairment related to Claimant's foot, assessed by Defendant's independent medical examiner George White, MD. Claimant seeks benefits based on an eight percent impairment rating offered by her independent medical examiner Douglas Kirkpatrick, MD, related to the condition of her right foot *and knee*. Defendant contests the compensability of Claimant's knee condition.
6. Finally, the parties dispute whether Defendant is responsible for payment for two left leg prosthetic devices that Claimant obtained after her work injury.

### Claimant's Prior Medical History and Status

7. In 1974, as a child, Claimant underwent an above-the-knee amputation of her left leg due to bone cancer. Following the amputation, she used a prosthetic leg to walk. However, in 2006 or 2007, Claimant's prosthetic leg was destroyed in a motor vehicle accident. From then on, she walked with crutches and had no plan to obtain another prosthetic leg.
8. Claimant was adept at walking with crutches. She worked at TJ Maxx on crutches, raised six children on crutches, went about town running errands on crutches, walked in her garden on crutches, and engaged in many other activities on crutches, all without experiencing symptoms in her right lower extremity.
9. In 2010 or 2011, Claimant slipped and fell at Walmart, landing directly on top of her right knee. Although the medical records are not available for this injury, Claimant credibly testified that she underwent two medical procedures for her knee. Following the second procedure, she made a full recovery with no lingering symptoms or limitations.

### Claimant's Workplace Injury and Subsequent Medical Course

10. Claimant began working for Defendant as a traveling LNA in November 2017. Initially, she worked ten-hour days, five days per week, and a full day every other weekend. In early 2018, her hours significantly increased due to staffing shortages, requiring her to work up to 14 hours per day.

11. Claimant's job required her to stand or walk for most of her workday. Driving between appointments was the only time she could sit down. Once at a client's home, she would be on her right foot the entire time. Using crutches, it was difficult for her to shift her weight off her foot. One option was to use the crutches to bear her full weight. However, she could only use this technique sparingly, as it would cause pain in her armpits and shoulders. Another option was to lean against a table for a moment between tasks. Claimant never had a job prior to this one where she had to be on her foot all day.
12. After several months, Claimant developed pain along the arch of her right foot. By June 2018, the pain was severe and starting to interfere with how she planted her foot on the ground while walking and standing.
13. Claimant reported her foot pain to Defendant as an overuse injury on July 7, 2018, and she began treatment with Occupational Health Partners in August 2018. (JME 1). She continued working for Defendant with some accommodations at that time.
14. By September 2018, as Claimant continued to experience right foot pain that affected how she could plant her foot, she developed pain in her right knee. (JME 20, 30, 32). She credibly testified that this right knee pain was located on the inside of her knee, in a different location from the knee pain she suffered when she fell at Walmart. Claimant never had pain on the inside of her knee prior to her job with Defendant.
15. In October 2018, Claimant began treating her foot and knee pain with Physician Assistant Megan Hutchins at Dartmouth Hitchcock. (JME 74). PA Hutchins thought that Claimant's pain was related to her having only one leg to bear her weight. Accordingly, she recommended a left limb prosthesis to even out Claimant's weight distribution. (JME 75). In the meantime, Claimant continued working for Defendant with restrictions.
16. While awaiting the arrival of her new prosthetic device, Claimant's symptoms continued to wax and wane, depending on her activity level. By late November 2018, her symptoms worsened whenever she worked standing on her foot and improved when she sat and rested frequently throughout the day. (*See, e.g.*, JME 107).
17. Although Defendant initially accommodated Claimant's work restrictions, over time her duties increased to the point where she was expected to perform vacuuming, window washing, and snow shoveling. (JME 74, 120). On January 14, 2019, Claimant was taken completely out of work so she could remain off her foot, and the parties entered into an Agreement for Temporary Compensation (Form 32) for an initial period of temporary total disability beginning on January 19, 2019.
18. On March 11, 2019, Claimant was released back to work part time with restrictions. (JME 234). However, those restrictions could not be accommodated, and her employment was terminated. (JME 251).

19. Claimant continued her course of conservative medical treatment, including physical therapy, while she awaited her new left leg prosthesis. Obtaining the prosthesis took a long time; it finally arrived in January 2020.<sup>1</sup>
20. Use of a prosthetic leg requires significant training and practice. On January 8, 2020, the Certified Prosthetist-Orthotist at WillowBrook Prosthetics wrote a letter opining that Claimant would need 18 to 36 months of training before she would be a full-time, independent ambulator with her prosthetic device. (JME 390).
21. Two months after Claimant received her prosthesis, the Covid-19 pandemic disrupted medical care throughout Vermont, including Claimant's specialized prosthetic physical therapy training. Accordingly, she continued to use her crutches full time, and her foot and knee pain worsened.
22. Claimant finally began prosthetic training in November 2021. (JME 473). As she worked to learn how to use her new device, she encountered several difficulties, including the device pulling on her skin, causing a burning sensation. She also had difficulty putting it on and taking it off; it dug into her hip; and she could not bend forward while wearing it. (JME 506).
23. During a March 18, 2022 prosthetic training visit, Claimant declined to participate in the training exercises, as her prosthesis was too painful. Even though she had had the device for two years, she was not able to use it regularly. (JME 522). As a result of the problems with her prosthesis, Claimant underwent a consultation for a new, different type of prosthetic device on March 29, 2022. (JME 529).
24. In May 2022, Claimant's physical therapists continued to advocate for a different type of prosthetic device to offload the pressure on her right side. (JME 546).
25. On August 17, 2022, Claimant attended an appointment at Next Step Bionics and Prosthetics. (JME 597). That provider recommended a transfemoral prosthetic device that would not hurt Claimant's skin and would eliminate the problems that she was having with her first device. (JME 599). A preauthorization request was submitted to Defendant for this device on October 19, 2022; the request was denied on November 1, 2022.
26. Claimant received her transfemoral prosthesis on April 19, 2023<sup>2</sup> and began training on May 5, 2023. (JME 750, 756). Her symptoms improved when she was able to use the device to offload her weight from her right foot. Over the next several months, she slowly built up a tolerance for distributing her weight on the new prosthesis. (JME 761, 766). Claimant credibly testified that she had much better results with this second device.

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<sup>1</sup> Defendant did not pay for the device; another medical insurance program paid for it.

<sup>2</sup> After Defendant denied payment for the transfemoral prosthesis, another insurance program paid for it.

### Expert Opinions

27. Claimant offered expert opinions from Dr. Kirkpatrick. Defendant offered expert opinions from Dr. Boucher and Dr. White.

### Douglas Kirkpatrick, MD

28. Douglas Kirkpatrick, MD, earned his medical degree from the New York Medical College in 1990 and completed an orthopedic surgical residency at the New England Medical Center in 1995. He is board-certified in orthopedic surgery and had a clinical practice until his retirement four years ago. Currently, Dr. Kirkpatrick works as an independent medical examiner. *Claimant's Exhibit C.*
29. Dr. Kirkpatrick performed two independent medical examinations of Claimant at her request, the first on October 5, 2022 (JME 627-645) and the second on March 29, 2024. (JME 868-888).

### Causal Connection between Claimant's Employment and her Right Knee Condition

30. In Dr. Kirkpatrick's opinion, Claimant's right knee condition is causally related to her compensable work injury. Specifically, he opined that her work injury worsened her underlying knee arthritis, causing it to become symptomatic. The worsening of her knee condition not only increased her pain but also caused a loss of mobility and function.
31. Dr. Kirkpatrick explained that Claimant's placing significant weight on her foot at work created abnormal stress on her knee. Her foot injury also caused an altered gait that affected her knee. The impact of her knee stress and altered gait caused Claimant's underlying knee arthritis to worsen and become symptomatic. In Dr. Kirkpatrick's opinion, in the absence of the work injury, Claimant's knee would not be at its current arthritic state.
32. Dr. Kirkpatrick further explained that Claimant placed significant extra weight on her right foot and ankle at work because she lacked an opposing left leg to share the weight. He noted that Claimant had been missing her left leg since childhood but did not develop right foot and knee symptoms until she began significant weight bearing while working for Defendant. Even for people who have two legs, an ankle injury can produce an antalgic gait that causes knee dysfunction; having just one leg makes a person even more susceptible to knee problems caused by ankle injuries.

### Causal Connection between Claimant's Employment and her Left Leg Prostheses

33. In Dr. Kirkpatrick's opinion, a left leg prosthesis was "necessary" for Claimant's maximum recovery from her work injury. *See Recording of Dr. Kirkpatrick's Testimony, January 31, 2025, at 20:00.* He explained that a prosthetic device would shift some of Claimant's weight off her right leg, which would in turn improve the condition of her right foot and knee and allow them to heal better.

34. Dr. Kirkpatrick noted that Claimant's symptoms ebb and flow, and he offered his opinion that a prosthetic leg would be part of a long-term solution to avoid the periodic worsening of her symptoms. Further, in his opinion, a prosthesis would likely lead to significant functional restoration.

End Medical Result Date

35. Dr. Kirkpatrick did not place Claimant at end medical result at his first examination on October 5, 2022 because she was still receiving treatment for her knee and because she was still waiting for a prosthetic device that he expected would improve her right ankle and knee conditions. (JME 630). He explained that, given her expected improvement, Claimant would not be at end medical result for her compensable injury until she received her prosthesis and underwent six months' training on how to use it.
36. In Dr. Kirkpatrick's opinion, Claimant had reached an end medical result for her compensable injuries by the time of his second independent medical examination on March 29, 2024. He based this opinion on the stability of her condition and the fact that she had received her transfemoral prosthesis and had undergone six months of specialized physical therapy on how to use it prior to his March 2024 examination.
37. Dr. Kirkpatrick disagreed with Dr. Boucher's opinion that Claimant had reached end medical result as early as September 15, 2020, and certainly no later than August 5, 2022. See Finding of Fact Nos. 48-49 *infra*. Dr. Kirkpatrick and Dr. Boucher agreed that a left leg prosthesis was a component of Claimant's recovery from her workplace injury, but Dr. Boucher was mistaken as to when Claimant received her transfemoral prosthetic device. In fact, she did not receive the device until April 19, 2023, which is later than either of his purported end medical result dates.

Permanent Impairment Rating

38. Pursuant to the *AMA Guides to the Evaluation of Permanent Impairment, Fifth Edition*, (the "*AMA Guides*"), Dr. Kirkpatrick assessed Claimant with an eight percent whole person impairment for her work-related conditions, using the range of motion method. (JME 871). During his examination, Dr. Kirkpatrick took three measurements of Claimant's relevant ranges of motion, as required by the *AMA Guides*. See *AMA Guides*, § 17.2f.
39. Section 17.2f provides the framework for assessing lower extremity conditions using the range of motion method. Table 17-11 describes how to assess ankle conditions, and Table 17-12 describes how to assess hindfoot conditions. Dr. Kirkpatrick assessed a three percent impairment under Table 17-11 for Claimant's ankle loss of motion and an additional one percent impairment under Table 17-12 for her hindfoot loss of motion. He combined these assessments into a four percent impairment for Claimant's foot and ankle. (JME 871).
40. Table 17-10 of the *AMA Guides* provides an assessment method for knee conditions based on range of motion. Here, Dr. Kirkpatrick measured the range of motion in

Claimant's right knee and assessed a four percent impairment. He then combined the ratings for her foot, ankle and knee into an eight percent whole person impairment. (JME 871).

*The Persuasiveness of Dr. Kirkpatrick's Opinions*

41. Based on his education, training and experience as an orthopedic surgeon, and on his thorough examinations of Claimant, I find all of Dr. Kirkpatrick's opinions in this matter to be clear, well-explained and credible. Further, he had a solid understanding of the chronology of Claimant's medical treatment and was well versed in the application of the *AMA Guides*. Accordingly, I find all his opinions in this matter to be persuasive.

*William Boucher, MD*

42. William Boucher, MD, earned his medical degree from Hahnemann University in Philadelphia in 1972 and completed an internal medicine residency in 1974. He is board-certified in preventive medicine and occupational medicine. After many years with a clinical practice, Dr. Boucher has been focusing primarily on performing independent medical examinations since 2002. *Defendant's Exhibit B*.
43. Dr. Boucher performed two independent medical examinations of Claimant at Defendant's request, one on December 12, 2019 (JME 370-381) and one on September 15, 2020 (JME 432-441). He also performed a medical records review (JME 841) and testified on Defendant's behalf at the formal hearing.

*Causal Connection between Claimant's Employment and her Right Knee Condition*

44. Dr. Boucher diagnosed Claimant with right plantar fasciitis, Achilles' tendinopathy and possible arthritis in her right foot. In his opinion, Claimant's right foot symptoms were causally related to her employment for Defendant. Specifically, in his opinion, Claimant's right foot symptoms were caused by her abnormal gait secondary to her left leg amputation, significantly aggravated by her work activities for Defendant, where she worked long hours on her foot. (JME 379). Dr. Boucher did not offer an opinion on the causal connection between Claimant's compensable foot condition and her right knee.

*Causal Connection between Claimant's Employment and her Left Leg Prostheses*

45. In Dr. Boucher's opinion, reasonable treatment for Claimant's work-related right foot condition would include obtaining an appropriate left leg prosthesis and undergoing training in how to use it. (JME 379).

*End Medical Result Date*

46. In Dr. Boucher's opinion, offered in connection with his first independent medical examination on December 12, 2019, Claimant had not yet reached an end medical result and would not reach end medical result for her right foot condition "until at least 6 months after she obtains a left leg prosthesis." (JME 379).

47. In connection with his second examination, on September 15, 2020, Dr. Boucher offered his opinion that, while Claimant had obtained a prosthesis after his first examination, she had not yet learned how to use it, as the Covid-19 pandemic prevented her participation in the necessary physical therapy. Accordingly, he again offered his opinion that Claimant was not at end medical result because she needed at least six months' instruction in the use of her prosthesis before she would reach end medical result for her work injury. (JME 439).
48. In January 2024, Defendant provided Dr. Boucher with additional medical records and asked for his updated opinion on end medical result. In response, Dr. Boucher reversed his opinion in a letter dated January 29, 2024. (JME 841). Dr. Boucher now offered his opinion that Claimant had reached end medical result as of his second examination, on September 15, 2020, because she never obtained success with a prosthetic leg, despite trying two different prostheses and undergoing physical therapy to learn to use them. Further, in his new opinion, Claimant had "certainly" reached end medical result by the date of Dr. White's independent medical examination on August 5, 2022, as further treatment would clearly be of no benefit after that date. (JME 841).
49. When he changed his end medical result opinion in January 2024, Dr. Boucher understood that Claimant had tried two prosthetic devices, with months of training on each, without ever adjusting to daily wear of either device. However, Dr. Boucher did not have an accurate understanding of Claimant's medical history when he reversed his opinion. As set forth in his letter and his hearing testimony, Dr. Boucher thought that Claimant had tried and failed to adapt to two separate prostheses by the time of his September 2020 examination and certainly by the time of Dr. White's examination in August 2022. However, Claimant did not even receive her transfemoral prosthetic device until April 19, 2023. (JME 750). By Dr. Boucher's own admission, Claimant's need for a prosthetic device was reasonable treatment for her work injury and it takes "at least 6 months" to learn how to use such a device. Dr. Boucher's confusion about Claimant's medical history significantly undermines his end medical result opinion.

George White, MD

50. George White, MD, earned his medical degree from the University of Vermont Medical School in 1982 and completed an occupational medicine residency in 1991. He is board-certified in occupational medicine and has experience as a practicing occupational medicine physician. For the past 20 years, Dr. White has engaged in an occupational health consulting practice, including performing independent medical examinations. *Defendant's Exhibit 1.*
51. Dr. White performed two independent medical examinations of Claimant at Defendant's request, one on August 5, 2022 (JME 585-594) and one on November 13, 2023 (JME 812-822). Dr. White also reviewed some additional records and provided two addenda to his first IME report on October 12, 2022 (JME 648) and October 14, 2022 (JME 654). Dr. White testified by preservation deposition.

52. At his first independent medical examination, Dr. White identified Claimant's injury as a right foot and ankle condition suggestive of Achilles' tendinosis, plantar fasciitis and possibly peroneal tendinosis. (JME 592). In his opinion, Claimant's condition was the result of an abnormal gait, significantly aggravated by her work activities. (JME 592). Dr. White did not offer an opinion on whether Claimant's right knee condition was work-related at that time.

*Causal Connection between Claimant's Employment and her Left Leg Prostheses*

53. In October 2022, Dr. White responded in writing to specific questions that Defendant proposed to him. (JME 648-656). Dr. White expressed doubt about how a prosthetic left leg would help to offload Claimant's body weight from her right leg to her left leg more than her crutches were already doing. In his opinion, Claimant's crutches had the added advantage of allowing some of her weight to be supported by her arms and hands, reducing the weight-bearing load on her right leg. However, on cross examination, Dr. White acknowledged that a prosthetic left leg would help to divide Claimant's body weight between her left and right sides, especially when she was standing. Accordingly, he acknowledged that a prosthetic left leg would alleviate the pressure on Claimant's right lower extremity, thereby reducing her symptoms.
54. In Dr. White's opinion, reducing Claimant's right lower extremity symptoms would be reasonable but palliative. (JME 655). However, on cross examination, he acknowledged that reducing Claimant's symptomology would lead to improved functioning of her right lower extremity and would also potentially improve her work capacity. Further, he acknowledged that the benefits of a prosthetic left leg would include the potential of stabilizing Claimant's right lower extremity condition, thereby avoiding the ongoing ebb and flow of her symptoms.
55. Although Dr. White initially stated that a left leg prosthesis would not help to offload Claimant's weight from her right lower extremity, he later conceded the point. Given his changes of opinion, Dr. White is less persuasive on this issue than Dr. Kirkpatrick, who articulated a clear, consistent and persuasive opinion.

*End Medical Result Date*

56. In Dr. White's opinion, Claimant reached end medical result for her work-related medical condition as of the date of his first examination, on August 5, 2022. Dr. White based his opinion on the fact that Claimant's foot condition had persisted for four years and was not likely to see substantial change in the short term. (JME 592). However, at the time of his first examination, Dr. White was not aware that Claimant had an upcoming appointment to be evaluated for a transfemoral prosthesis.
57. During his testimony, Dr. White agreed that the purpose of a new prosthesis was to more permanently alleviate Claimant's chronic pain during standing and walking. He acknowledged that since the work injury, Claimant's symptoms waxed and waned along with her activity level. Dr. White agreed that the long-term solution to Claimant's waxing and waning symptomology was to even out her weight distribution. Although he

is not an expert in prosthetics, Dr. White acknowledged that the use of a prosthetic leg is one method of balancing out Claimant's weight distribution.

58. Despite recognizing the potential value of a new prosthetic device to Claimant's recovery from her work injury, Dr. White did not take that device into consideration when he offered his end medical result opinion. Accordingly, I find that his opinion fails to account for the impact of the prosthetic device and is therefore incomplete and less persuasive than the opinions of Dr. Kirkpatrick and Dr. Boucher.

#### Permanent Impairment Rating

59. Using the *AMA Guides* and the range of motion method, Dr. White assessed Claimant with a seven percent whole person impairment. (JME 593). Specifically, under Tables 17-10 and 17-11, Dr. White assessed three percent impairment for Claimant's ankle and four percent for her right knee.<sup>3</sup> He then combined these figures into a seven percent whole person impairment. (JME 593). Although Dr. White made findings about Claimant's hindfoot as set forth in Table 17-12 (JME 590, 592), he did not assess her hindfoot for any permanent impairment. (JME 593).
60. Overall, I find Dr. White's permanent impairment rating to be credible and well-grounded in his examinations and in the *AMA Guides*. The only issue is that he made findings about Claimant's hindfoot but then did not include any assessment for her hindfoot condition in his permanent impairment rating, nor did he explain why those findings did not factor into his rating. This omission makes his opinion slightly less persuasive than Dr. Kirkpatrick's.
61. At Dr. White's second independent medical examination, on November 13, 2023, Claimant reported that her right foot pain was about the same as it had been during the first examination. (JME 818). Dr. White noted that she had received her prosthesis and was using it for about three to four hours per day. (JME 819). Dr. White then offered his opinion that Claimant remained at end medical result with a seven percent whole person impairment, unchanged from his first examination in August 2022.<sup>4</sup> (JME 821).

#### Causal Connection between Claimant's Employment and her Right Knee Condition

62. The week before his formal hearing testimony, Dr. White offered an opinion for the first time on the causal relationship between Claimant's right knee condition and her employment. In his opinion, Claimant's work injury worsened her right knee symptoms, but he did not believe that there was any objective new pathology in her knee.

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<sup>3</sup> In assessing Claimant's permanent impairment, Dr. White "assumed" that Claimant's knee condition was causally related to her work injury, rather than offering an opinion on the causal relationship between her knee condition and her employment. (JME 593).

<sup>4</sup> Dr. White took new measurements of Claimant's range of motion at his second examination. Those measurements were quite close to those taken at the first examination, with no resulting change in his whole person impairment rating. However, in measuring Claimant's range of motion, Dr. White took only one measurement of each relevant component, rather than three separate measurements, as required by the *AMA Guides*, § 17.2f.

Nevertheless, Dr. White acknowledged that there is no evidence that Claimant's knee was symptomatic prior to her 2018 work injury and that her knee has never returned to its pre-injury state.

63. I find Dr. White's opinion about Claimant's knee condition to be somewhat conclusory. Further, he did not take into account that her knee condition went from asymptomatic to significantly symptomatic after she developed an altered gait from her work injury. Accordingly, I find Dr. White's opinion to be less persuasive than Dr. Kirkpatrick's.

## CONCLUSIONS OF LAW:

### Burden of Proof

1. A claimant has the burden of proof to establish all facts essential to the rights asserted. *Goodwin v. Fairbanks Morse & Co.*, 123 Vt. 161, 166 (1962); *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 *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).

### Causal Connection between Claimant's Employment and her Right Knee Condition

2. An injury is compensable if it arises out of and in the course of the worker's employment. 21 V.S.A. § 618(a)(1)(A). The workplace accident need not be the sole cause of the injury to be compensable. Rather, a workplace injury is compensable if it "accelerates the progression of a pre-existing condition, or disrupts its stability such that an individual's ability to work and function is disabled[.]" *Taub v. Shippee Family Eye Care, PC*, Opinion No. 12-23WC (May 15, 2023), quoting *S. B. v. Homebound Mortgage*, Opinion No. 29-07WC (November 6, 2007).
3. In the context of progressively degenerative conditions, the standard for causation is "whether, due to a work injury or the work environment, the disability came upon the claimant earlier than otherwise would have occurred." *Stannard v. Stannard Co.*, 2003 VT 52, ¶ 11. The "[m]ere continuation or even exacerbation of symptoms, without a worsening of the underlying disability, does not meet the causation requirement." *Id.*
4. In this case, Claimant relies on the opinion of Dr. Kirkpatrick to support her assertion that her right knee condition was caused or accelerated by her work injury. Defendant relies on the opinion of Dr. White to deny a causal relationship. Where expert medical opinions are conflicting, the Commissioner traditionally uses a five-part test to determine which expert's opinion is the most persuasive: (1) the nature of treatment and the length of time there has been a patient-provider relationship; (2) whether the expert examined all pertinent records; (3) the clarity, thoroughness and objective support underlying the opinion; (4) the comprehensiveness of the evaluation; and (5) the qualifications of the experts, including training and experience. *Geiger v. Hawk Mountain Inn*, Opinion No. 37-03WC (September 17, 2003).

5. As is often the case, the third *Geiger* factor is the most important here. For the reasons explained in greater detail at Finding of Fact Nos. 30-32 *supra*, I find Dr. Kirkpatrick's causation opinion to be clearer and better supported than Dr. White's. In particular, Dr. Kirkpatrick persuasively explained that Claimant placed significant extra weight on her right foot and ankle working long hours for Defendant. This created abnormal stress on her right knee and altered her gait. The impact of the added stress and altered gait caused Claimant's underlying knee arthritis to worsen and become symptomatic sooner than it otherwise would have. Dr. Kirkpatrick also opined that Claimant's knee arthritis would not be at its present level of severity had it not been for her work injury. Dr. Kirkpatrick's opinion is persuasive on all counts.
6. Accordingly, I conclude that Claimant's right knee condition arose out of and in the course of her employment with Defendant, when she sustained a compensable right foot and ankle injury that in turn caused or accelerated the condition of her right knee.

#### Medical Benefits for Claimant's Left Leg Prostheses

7. Under the workers' compensation statute, the employer or carrier is responsible for furnishing "reasonable" medical services to the injured worker. 21 V.S.A. § 640(a). Vermont law defines reasonable treatment as treatment that is both medically necessary and causally related to the work injury. *Baraw v. F.R. Lafayette, Inc.*, Opinion No. 01-10WC (January 20, 2010); *Brodeur v. Energizer Battery Mfg., Inc.*, Opinion No. 06-14WC (April 2, 2014).
8. Claimant seeks medical benefits for the two left leg prostheses that she obtained after her compensable right lower extremity injury. Based on the persuasive testimony of Dr. Kirkpatrick, I conclude that the prosthetic devices were medically necessary and causally related to Claimant's recovery from her work injury. *See* Finding of Fact Nos. 33-34 *supra*. As Dr. Kirkpatrick explained, a left leg prosthesis would shift significant weight off Claimant's injured right lower extremity, which would help her right foot and knee recover, leading not just to pain relief but to significant functional restoration.
9. Defendant's expert Dr. Boucher agreed that a left leg prosthetic device, including training in the use of the device, was reasonable treatment for Claimant's work-related right foot condition. *See* Finding of Fact No. 45 *supra*. Defendant's other expert, Dr. White, agreed that a left prosthesis would alleviate some of the pressure on Claimant's right lower extremity and improve her functioning and potentially her work capacity. *See* Finding of Fact Nos. 53-55 *supra*.
10. The determination whether a medical treatment is reasonable must be made prospectively, at the time it is undertaken, not retrospectively and with the benefit of hindsight. *Chubbuck v. New England Career Connection, Inc.*, Opinion No. 10-22WC (May 5, 2022). As it turned out here, Claimant's first prosthetic device did not work for her. She then obtained a transfemoral prosthesis that worked better, even though she is not using it full time. Nevertheless, when the recommendation was made for the first device, it was reasonable to think that she would be able to use it. Accordingly, I conclude that both devices were reasonable treatment for Claimant's compensable work

injury, including the specialized physical therapy that she underwent to learn how to use the devices.

11. In their Proposed Findings of Fact and Conclusions of Law, both parties cited *Hall v. Safelite Group*, Opinion No. 10-16WC (July 15, 2016) and analyzed the reasonableness of Claimant's prosthetic device as ancillary treatment. The claimant in *Hall* was undergoing injection treatments for an elbow injury that he sustained at work. However, his treatment was placed on hold because he had a dental infection that made it unsafe to continue with the elbow injections. The Department ruled that, under the specific facts and circumstances of the *Hall* case, the defendant was required to pay for treatment of the claimant's dental infection, so that his elbow treatment could resume.
12. The reasonableness of Claimant's prosthetic device here is not analogous to the ancillary treatment provided to the claimant in *Hall v. Safelite Group*. Here, Claimant's prosthetic device is specifically treatment for the compensable work injury to her right foot and knee and was anticipated to help her make as full a recovery from her injury as possible. As supported by the opinions of the medical experts, a left leg prosthesis would remove some of Claimant's weight from her injured right foot and knee, allowing her foot and knee to heal better. Accordingly, the left leg prosthesis is direct treatment for her compensable right lower extremity condition, not ancillary treatment.
13. Based on the foregoing, I conclude that Claimant's reasonable medical treatment includes the two prostheses that she obtained after her compensable right foot and knee injury, including the specialized physical therapy that she underwent to learn how to use those devices, as provided in 21 V.S.A. § 640(a). To the extent that other health insurance programs have paid for this treatment, Defendant shall reimburse those costs. However, this determination does not mean that any future prosthetic devices would necessarily be reasonable treatment for Claimant's work injury. Whether additional prosthetic devices would be reasonable in the future will depend on the circumstances presented at the time a treating provider recommends such devices.

#### Permanent Partial Disability Benefits

14. Where an injury results in a partial impairment that is permanent, the injured worker is entitled to permanent partial disability benefits. 21 V.S.A. § 648(a). Under the workers' compensation statute, determination of the existence and degree of permanent impairment shall be made in accordance with the whole person determinations set out in the Fifth Edition of the *AMA Guides to the Evaluation of Permanent Impairment*. 21 V.S.A. § 648(b).

#### End Medical Result Date

15. Workers' Compensation Rule 2.2000 defines "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." A treatment that offers the prospect of further improvement in the medical recovery process is

sufficient to negate a finding of end medical result. *Cochran v. Northeast Kingdom Human Services*, Opinion No. 31-09WC (August 12, 2009).

16. Dr. Kirkpatrick and Dr. Boucher agreed that one way to alleviate Claimant's right lower extremity condition and increase her functional abilities in the long-term was to get her weight off her right foot by using a left leg prosthesis. Even Dr. White acknowledged the benefits of transferring Claimant's weight off her right foot. Thus, it was only after Claimant began to regularly use her transfemoral prosthesis that she reached a substantial plateau in her recovery process such that significant further improvement was not expected. Dr. Kirkpatrick's opinion that Claimant reached end medical result on March 29, 2024 is persuasive because Claimant received her transfemoral prosthesis in April 2023 and started a course of training on its use in May 2023. In contrast, the opinions of Dr. Boucher and Dr. White both place Claimant at end medical result before she even received her transfemoral prosthesis.
17. Accordingly, I conclude that Claimant reached an end medical result for her compensable injury on March 29, 2024.

*Permanent Impairment Rating*

18. Claimant's expert, Dr. Kirkpatrick, assessed her with an eight percent whole person impairment: three percent for her ankle, one percent for her hindfoot, and four percent for her knee. Defendant's expert, Dr. White, assessed Claimant with a seven percent impairment: three percent for her ankle and four percent for her knee.<sup>5</sup> The one percent difference is Dr. Kirkpatrick's assessment of permanent impairment for Claimant's hindfoot. Although Dr. White did not make a similar assessment, he did make physical findings during his independent medical examination as to the condition of Claimant's hindfoot.
19. Relying again on the third Geiger factor, the clarity, thoroughness, and objective support underlying the opinion, I find Dr. Kirkpatrick's opinion to be clearer and more thorough than Dr. White's. Not only did Dr. Kirkpatrick include the condition of Claimant's hindfoot in his assessment, but he took three measurements of her range of motion, as required by the AMA Guides. In contrast, Dr. White did not include his findings about Claimant's hindfoot in his assessment, and he only took one measurement of her range of motion during his examination, rather than three. See AMA Guides, § 17.2f.
20. I therefore accept Dr. Kirkpatrick's eight percent whole person impairment rating for Claimant's compensable work injury.

**ORDER:**

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

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<sup>5</sup> Dr. White offered his opinion that Claimant's right knee condition was not work-related, but that does not change his measurement of her range of motion or his calculation of a four percent impairment for this condition.

- (1) Pursuant to 21 V.S.A. § 618, to adjust Claimant’s claim for her right knee condition as a compensable workplace injury, including payment for reasonable medical treatment of the condition pursuant to 21 V.S.A. § 640(a);
- (2) Pursuant to 21 V.S.A. § 640(a), to pay for Claimant’s two left leg prosthetic devices as reasonable treatment for her work injury, including payment for the reasonable physical therapy and other training associated with learning how to use those devices;
- (3) Pursuant to 21 V.S.A. § 642, to pay Claimant’s temporary total disability benefits from the date of discontinuance through the date when she reached end medical result on March 29, 2024, with interest thereon pursuant to 21 V.S.A. § 664, as applicable;
- (4) Pursuant to 21 V.S.A. § 648, to pay permanent partial disability benefits based on Dr. Kirkpatrick’s eight percent whole person impairment assessment, less any amounts already paid based on Dr. White’s undisputed three percent whole person impairment, with interest thereon, as applicable, as provided in 21 V.S.A. § 664; and
- (5) To pay necessary costs and reasonable attorney fees in amounts to be determined, provided a timely petition for costs and attorney fees is filed pursuant to 21 V.S.A. § 678.

**DATED** at Montpelier, Vermont this 20th day of January 2026.

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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.