

**STATE OF VERMONT
DEPARTMENT OF LABOR**

Luong Nguyen

Opinion No. 08-26WC

v.

Rhino Foods, Inc.

By: Beth A. DeBernardi
Administrative Law Judge

For: Kendal M. Smith
Commissioner

State File No. WW-58127

OPINION AND ORDER

Hearing held via Microsoft Teams on January 30, 2026
Record closed on April 13, 2026

APPEARANCES:

Luong Nguyen, *Pro Se*
Peter R. Cruice, Esq., for Defendant

ISSUE PRESENTED:

Did Claimant's right knee condition, requiring arthroscopy, medial meniscus root repair, and physical therapy, arise out of and in the course of his employment?

EXHIBITS:

Joint Medical Exhibit ("JME")
Formal Hearing Transcript ("Exhibit A")

Defendant's Exhibit 1:	Workplace surveillance video, January 26 through 27, 2025
Defendant's Exhibit 2:	Workplace surveillance video, January 27, 2025
Defendant's Exhibit 3:	Form 2 denials dated February 11, 2025
Defendant's Exhibit 4:	Form 2 denial dated March 17, 2025

CLAIM:

Temporary disability benefits pursuant to 21 V.S.A. §§ 642 and 646
Interest pursuant to 21 V.S.A. § 664
Medical benefits pursuant to 21 V.S.A. § 640(a)

FINDINGS OF FACT:

1. Claimant is a 72-year-old man who lives in Essex Junction, Vermont. He began working for Defendant about five years ago and was still employed by Defendant at the time of

hearing. Claimant has performed various tasks for Defendant, including product production and preparing product for shipping.

The January 27, 2025 Workplace Incident

2. On January 27, 2025, Claimant was working in the bakery area, moving Defendant's completed bread products to a truck, for shipping to the warehouse. Claimant's work shift began around 10:30 PM on January 26, 2025, and was scheduled to end around 6:30 AM on January 27, 2025.
3. Throughout his shift prior to 6:15 AM on January 27, Claimant walked back and forth within a 20-meter area, performing his job duties. Claimant credibly testified that he felt "okay" until 6:15 AM, at which time he "feel my knee and I collapse and fell on the floor." *See Exhibit A, Formal Hearing Transcript, Page 9, Lines 2-4.* He described the moment of the incident as follows:

I kept moving back and forth between those positions and I think at one point *I just turned back like a sharp turn, a very sharp turn*, I could feel the knee hurt, and I collapsed.

Exhibit A, Page 9, Lines 18-21 (emphasis added).

4. Claimant credibly testified that there was not a specific event that caused his sudden onset of right knee pain, only that he kept walking back and forth in the work area and made a sharp turn coincident with the onset of severe knee pain.

Claimant's Medical Course

5. When Claimant collapsed at work, another employee called 911, and Claimant was taken by ambulance to the University of Vermont Medical Center.
6. The January 27, 2025 medical record from the Emergency Department states: "Patient presents with acute onset of hamstrings, knee, calf pain after walking backward." (JME 003). An x-ray identified no fracture, and the treating provider suspected muscle strain or meniscal injury as the cause of Claimant's symptoms. Claimant was discharged with a walker, prescription medication, and a referral to orthopedics. (JME 003). The medical record notes no relevant past medical history for Claimant's right knee and no pain prior to the incident. (JME 004). Finally, the Emergency Department provided a note stating that Claimant should remain out of work until cleared to return by orthopedics. (JME 008).
7. On January 30, 2025, Claimant saw orthopedic physician assistant Sarah Child. Her medical record notes that Claimant reported significant standing and walking at work, and that on January 27, he took a step backwards at work, felt sudden pain in his right knee, and could not stand or bear weight. (JME 009). Finding only mild degenerative changes on Claimant's knee x-ray, PA Child suspected an acute medial meniscus root tear, based on his medical history and the location of his pain. (JME 010). PA Child

diagnosed Claimant with gout¹ in his right knee and an “acute injury of his right knee cartilage.” (JME 012). She recommended an MRI, referred Claimant for physical therapy, and continued his out-of-work status indefinitely. (JME 011).

8. Claimant underwent a right knee MRI on February 19, 2025. The MRI evidenced a full-thickness tear of his medial meniscus, with longitudinal delamination at the root junction. (JME 013). Shortly thereafter, UVM Orthopedics submitted a preauthorization request for right knee arthroscopy, medial meniscus root repair, and post-operative physical therapy. (JME 015). The preauthorization request was not approved, and Claimant did not undergo that course of treatment.
9. Claimant saw orthopedic physician Andrew Geeslin, MD, at UVM Orthopedics, on March 7, 2025. Dr. Geeslin wrote that Claimant suffered a work injury on January 27, 2025, when he was walking backward and injured his right knee. (JME 016). Dr. Geeslin told Claimant that medial meniscal root tears are associated with a long-term risk for arthritis; he further explained that root repair procedures may improve pain and function. (JME 016). The plan going forward was for Claimant to try physical therapy first, and if that did not provide sufficient improvement, to consider his surgical options then. (JME 017).
10. On April 14, 2025, Claimant saw his primary care nurse practitioner, Blake McKnight. NP McKnight reviewed Claimant’s imaging studies and orthopedic notes and confirmed that Claimant had sustained a complete tear of his medial meniscus. NP McKnight noted that Claimant had completed a course of physical therapy, but with “incomplete improvement,” and that the next step in his treatment was to follow up with orthopedics to discuss his surgical options. NP McKnight also offered his opinion that Claimant’s right meniscal tear was related to his employment. (JME 038).
11. On April 18, 2025, NP McKnight wrote a letter stating that Claimant could return to work “with as little walking and standing as his position will allow.” (JME 040).
12. On May 16, 2025, Claimant returned to Dr. Geeslin. Claimant told Dr. Geeslin that he was doing well overall and felt ready to return to work. A new x-ray of his knee showed mild medial narrowing but no significant arthritis or osteophytes. (JME 044). Dr. Geeslin did not think that Claimant required any scheduled follow-up appointments at that time, and Claimant was not scheduled for any surgical procedures. (JME 045). This is the last medical record in the Joint Medical Exhibit.

Claimant’s Absence from Work

13. Claimant credibly testified that he was out of work from January 27, 2025 until sometime in June 2025, when he returned to work for Defendant. Neither party offered evidence of Claimant’s exact return-to-work date.

¹ Claimant was unaware that he had gout in his right knee.

Video Surveillance and Claimant's Pre-Injury Medical Status

14. Claimant credibly testified that he never had any medical problems with his right knee or right leg prior to the January 27, 2025 incident at work, nor had he had any problems with walking or standing. In particular, he never suffered a collapse related to his right knee or leg prior to January 27, 2025.
15. Workplace video surveillance on January 26, 2025 and January 27, 2025, shows the following:

Defendant's Exhibit 1: January 26, 2025 through January 27, 2025

- At 10:19:36 PM (24:12/31:06 on the video), Claimant is seen walking from his car into his workplace building. After multiple viewings of this video, I was able to see a barely perceptible unevenness to his gait on the right side. Specifically, Claimant's left foot pointed forward, while his right foot pointed slightly outward. Nevertheless, his overall movement was swift and sure-footed, with no indication of any pain while walking.
- At 11:20:05 PM (6:59/31:06 on the video), Claimant is seen walking over to a wire rack on the production floor. I cannot discern whether there is any unevenness or stiffness in his gait at this juncture on the video.
- At 3:02:44 AM (28:17/31:06 on the video), Claimant is seen walking over to the same wire rack. This time I see a barely perceptible unevenness or stiffness in his gait.

Defendant's Exhibit 2: January 27, 2025

- At 5:50:47 AM (0:37/5:09 on the video), Claimant is seen walking in the vicinity of the wire rack. He is clearly dragging his right leg and walking slowly.
 - At 5:50:58 AM (0:48/5:09 on the video), Claimant is seen walking forward, then turning around and walking back, then bending down and reaching for his right knee. When he resumes walking, his walk is stiff, and he is dragging his right leg.
 - At 5:53:58 AM (2:03/5:09 on the video), Claimant displays an obvious limp.
16. Claimant acknowledged that the videos depict him walking with an uneven gait, even upon his arrival at work. He attributed this gait to walking cautiously on black ice. As to walking inside the plant, he explained that his work boots might have affected his gait. I find that Claimant's explanations do not account for why he exhibited an uneven gait, as cautious walking or wearing boots would likely affect both legs, not just his right leg. Nevertheless, having viewed the videos, I find that his uneven gait was so mild as to be barely perceptible upon his arrival at work. Much later, about 20 minutes before the onset of severe pain the following morning, Claimant was dragging his right leg, and his gait was obviously and significantly uneven. Certainly, whatever was affecting his gait

when he arrived for his work shift did not prevent him from walking or performing his job duties all night. Accordingly, the videos support a finding that Claimant suffered the onset of new and significant pain and dysfunction in his right leg on the morning of January 27, 2025. His coworkers obviously noticed that too, as one of them summoned an ambulance.

Medical Evidence and Opinions on the Causation of Claimant's Right Knee Condition

Claimant's Treating Providers

17. All of Claimant's treating providers noted in his medical records that his right knee condition was acute and/or causally related to his employment. *See, e.g.*, emergency department medical record noting "acute" injury (JME 003); medical record of orthopedic physician assistant Sarah Child noting Claimant's "acute injury of right knee cartilage" (JME 012); medical record of orthopedic physician Andrew Geeslin, MD, noting Claimant's medial meniscal root tear, with a date and mechanism of injury of walking backward at work on January 27, 2025 (JME 016); and medical record from nurse practitioner Blake McKnight offering his opinion that Claimant's acute meniscal tear was causally related to his employment. (JME 038). None of these medical providers testified at the hearing.

Dr. Greditzer's MRI Review Report

18. On March 26, 2025, on Defendant's behalf, a business called "Best In Class MD" prepared a report addressing whether Claimant's torn meniscus was an acute or a chronic injury. (JME 018-021). The report was prepared by Harry "Tate" Greditzer, IV, MD, whose specialty is musculoskeletal radiology and whose qualification is The Royal College of Surgeons, in Ireland. Dr. Greditzer has experience working as a professor of radiology. (*See generally* JME 021). Dr. Greditzer did not examine Claimant or review his medical records; his report is based solely on his review of Claimant's February 19, 2025 MRI. In Dr. Greditzer's opinion, Claimant's meniscal tear is chronic, not acute. However, the report does not include a clear explanation of the doctor's review process. Further, Dr. Greditzer did not examine Claimant, nor was he available for cross-examination. Accordingly, I do not place much weight on Dr. Greditzer's opinion concerning the age of Claimant's injury.

Dr. Bernard's Records Review Report

19. On April 3, 2025, again at Defendant's request, Best In Class MD issued another report, this one prepared by sports medicine physician Johnathan Bernard, MD. (JME 022-027). Dr. Bernard is a graduate of the Yale University School of Medicine; he did an orthopedic residency at Johns Hopkins Hospital. Dr. Bernard is licensed to practice medicine in Virginia and Maryland (but not Vermont), and he currently works as a sports medicine orthopedic surgeon at OrthoVirginia in Ashburn, Virginia. (*See generally* JME 027).

20. Dr. Bernard performed a medical records review in this case and produced a report on April 3, 2025 addressing the causation of Claimant's right knee condition. (JME 022-027). Dr. Bernard did not meet, examine, or treat Claimant, nor did he perform an independent medical examination. In preparation for his report, Dr. Bernard reviewed Claimant's medical records and Defendant's Exhibit 2 (one of the videos that Defendant has submitted into evidence). He also reviewed Dr. Greditzer's age of injury report. (JME 022).
21. In his written report, Dr. Bernard offered his opinion that "it can be reasonably concluded that the employee's medial meniscus root tear is causally related to their employment." (JME 024).
22. In forming this opinion, Dr. Bernard relied on Claimant's medical records documenting that he experienced a popping sensation in the back of his knee during the incident and then was unable to bear weight on his knee. Further, Claimant's radiographs showed minimal osteoarthritis, and his MRI revealed a full-thickness medial meniscus tear with minimal changes in the medial compartment cartilage. In Dr. Bernard's opinion, all this evidence supports a reasonable conclusion that Claimant's meniscus tear was causally related to the work incident on January 27, 2025.
23. Dr. Bernard also relied on the video evidence identified as Defendant's Exhibit 2, which aligned with Claimant's reported description of his injury. The video showed Claimant carrying boxes and dragging his right leg as his foot moved sideways, suggesting a knee injury. Shortly afterward, he appeared to be in discomfort, touching his right knee and then walking with a significantly altered gait. Moments later, Claimant is seen unable to stand and drops to the floor in pain. Dr. Bernard's report continued:
- Although some frames are missing, the video suggests that while working, the claimant experienced worsening knee pain that prevented him from continuing his duties, which is consistent with the medical records indicating he felt pain and was gradually unable to bear weight.
- . . .
- Based on the video frames, around the 5:50:47:234 AM mark (0:37/5:09), it appears the claimant is dragging or favoring his right knee. From this point, the progression of symptoms – altered gait, inability to stand properly, and ultimately being unable to bear weight – suggests an acute injury.
- (JME 025).
24. Dr. Bernard further offered his opinion that Claimant's acute meniscus tear was unlikely to have occurred in a non-work setting at another time, given how such a tear would likely produce symptoms including pain and loss of range of motion; Claimant here did not have such symptoms before he went to the Emergency Department on January 27, 2025. (JME 026).

25. I find Dr. Bernard's opinion that there is a causal relationship between Claimant's employment and his right knee condition to be clear, well-supported by the medical records and the video, and persuasive.

Dr. Bernard's Hearing Testimony

26. Dr. Bernard testified at the formal hearing on Defendant's behalf, at which time he reversed the causation opinion he had offered in his written report, now stating that Claimant's right knee condition was *not* work-related. Defendant did not disclose this reversal of opinion to the *pro se* Claimant prior to the hearing, nor was Dr. Bernard's new opinion contained in any written report.
27. Dr. Bernard first supported his 180-degree reversal of opinion by reference to the video of Claimant's arrival at work on the evening of January 26, 2025. *Defendant's Exhibit 1*. Dr. Bernard did not see this video until after he wrote his written report. Dr. Bernard testified that he could see that Claimant had an uneven gait when he arrived at work. Accordingly, in his new opinion, Claimant's right knee injury (a full-thickness meniscal tear) happened prior to January 27, 2025 and outside of work.
28. I find this analysis unconvincing. As I watched the video of Claimant's arrival at work, I had difficulty discerning an uneven gait, even with repeated viewing. To the extent that the video showed an uneven gait, that unevenness was barely perceptible and did not interfere with Claimant's ability to briskly walk into the workplace and then perform his job duties for most of an eight-hour overnight shift. It was not until around 5:50 AM on January 27, 2025 that surveillance video showed a significant gait disturbance, after Claimant had already worked on his feet, walking back and forth, for many hours.
29. Further, Dr. Bernard did not address Claimant's treating physician's diagnosis of acute gout in Claimant's right knee on January 30, 2025. *See Finding of Fact No. 7 supra*. Dr. Bernard offered no testimony or analysis about whether gout might have been the cause of Claimant's slight gait unevenness when he arrived at work on January 26, 2025. Finally, Dr. Bernard did not explain why Claimant suddenly began to experience severe pain and the inability to stand on his knee around 5:50 AM, when he had no trouble standing or walking when he arrived at work the night before or throughout most of his work shift.
30. Finally, Dr. Bernard based his reversal of opinion on his review of an MRI study that he had not reviewed prior to writing his report.. He testified that MRI studies of an acute torn meniscus will "often" show bony edema, but Claimant's MRI did not show bony edema. He further testified that an MRI may also show the position of the meniscus under the bones and that such images may show some "extrusion," meaning that the meniscus is not seated properly. The appearance of extrusion on an MRI suggests that an injury is likely non-acute.
31. Although Dr. Bernard, as an orthopedic surgeon, is well-qualified to interpret MRI studies, his explanation of Claimant's MRI study, in the context of the workplace incident, is not well explained. He testified that acute meniscal tears will "often" show

bony edema, but this does not mean that every acute meniscus tear will display bony edema. Further, although he pointed to some extrusion in Claimant's knee joint, he did not explain how long it takes for a knee injury to develop extrusion, nor did he explain the mechanism of extrusion and how that mechanism would fit into Claimant's medical history.

32. Finally, in revising his analysis, Dr. Bernard was under the impression that Claimant's onset of symptoms happened when he was "walking backwards." In his opinion, walking backwards is not a sufficient mechanism of injury for a meniscus tear. Rather, a meniscus tear would be caused by "bending, twisting, loading the knee, lifting, falling that is the common mechanism of tearing one's meniscus." *Exhibit A, Page 61, Lines 16-20.*
33. Although Dr. Bernard characterized Claimant's activity at the time of the incident as "walking backwards," this is not an accurate description of the activity. Claimant was not "walking backwards" at the time of his injury. According to Claimant's credible testimony, he was walking *back and forth* between two positions at work and "*at one point I just turned back like a sharp turn, a very sharp turn, I could feel the knee hurt, and I collapsed.*" *See Finding of Fact No. 3 supra.* The description that Claimant was "walking backwards" at the time of injury is something that his medical providers wrote in some of his medical records; it was not Claimant's description of the incident. Claimant walked in one direction, and then he turned "sharply" and walked "back" in the direction he came from. This is the twisting and loading of the knee that Dr. Bernard considers a sufficient mechanism of injury for a meniscus tear.
34. Based on the foregoing, I find Dr. Bernard's original causation opinion more persuasive than the causation opinion he offered at the formal hearing.

CONCLUSIONS OF LAW:

Burden of Proof

1. In workers' compensation cases, the claimant has the burden of establishing all facts essential to the rights asserted. *King v. Snide*, 144 Vt. 395, 399 (1984). He or she must establish by sufficient credible evidence the character and extent of the injury, *see, e.g., Burton v. Holden & Martin Lumber Co.*, 112 Vt. 17 (1941), as well as the causal connection between the injury and the employment. *Egbert v. The Book Press*, 144 Vt. 367 (1984).

Causal Relationship Between Claimant's Right Knee Condition and his Employment

2. The Vermont Workers' Compensation Act provides that compensation shall be paid when a worker receives a personal injury by accident arising out of and in the course of his employment. 21 V.S.A. § 618(a)(1)(A).

3. This case involves conflicting medical evidence concerning the causal relationship between Claimant's right knee condition and the January 27, 2025 workplace incident. In such cases, the Commissioner traditionally uses a five-part test to determine which expert's opinion is the most persuasive: (1) the nature of treatment and the length of time there has been a patient-provider relationship; (2) whether the expert examined all pertinent records; (3) the clarity, thoroughness and objective support underlying the opinion; (4) the comprehensiveness of the evaluation; and (5) the qualifications of the experts, including training and experience. *Geiger v. Hawk Mountain Inn*, Opinion No. 37-03WC (September 17, 2003).
4. In this case, all of Claimant's treating providers thought that his knee condition was acute and/or causally related to the workplace incident. *See* Finding of Fact No. 17 *supra*. Thus, the first *Geiger* factor favors the opinions of Claimant's treating providers that his knee condition is causally related to his employment.
5. This is an unusual case, in that Defendant's expert offered two contradictory opinions on the causation of Claimant's knee condition. Thus, in determining which of Dr. Bernard's opinions is the more persuasive, I focus on the third *Geiger* factor, namely the clarity, thoroughness, and objective support underlying each of his opinions. Focusing on this factor, I conclude that Dr. Bernard's original written opinion was clearer, more thorough, and more objectively supported than the opinion he offered at the hearing. *See* Finding of Fact No. 34 *supra*. In short, Claimant had a barely perceptible uneven gait when he arrived for work, the origin of which has not been explained by any medical provider, that did not prevent him from walking briskly into his workplace and working a long shift on his feet all night. Eight hours later, he suffered the sudden onset of significant pain and symptoms in his right knee that prevented him from bearing any weight on that knee; this condition appeared just when Claimant walked in one direction, turned sharply, and walked back in the other direction.
6. Based on the opinions of Claimant's treating providers and on Dr. Bernard's written report, I conclude that Claimant likely sustained a torn meniscus arising out of and in the course of his employment with Defendant. He is therefore entitled to workers' compensation benefits for his injury.

Temporary Disability Benefits

7. Under the Vermont workers' compensation statute, an injured worker is entitled to temporary total or temporary partial disability benefits when a compensable injury causes temporary disability from work. 21 V.S.A. §§ 642 and 646.
8. Claimant here missed work from January 27, 2025 through some date in June 2025.² During this time, on or about April 18, 2025, his primary care provider released him to return to work with as little walking or standing as possible. *See* Finding of Fact No. 11 *supra*. Accordingly, I conclude that Claimant is entitled to temporary total disability benefits from the date of injury through April 18, 2025 and is entitled to temporary partial

² The evidence presented at hearing does not establish the exact date in June when Claimant returned to work, but Defendant's personnel records will contain that date.

disability benefits thereafter, through the date of his successful return to work in June 2025.

Medical Benefits

9. The Vermont workers' compensation statute provides that the employer must furnish "reasonable" medical treatment to the injured worker. 21 V.S.A. § 640(a). Treatment is reasonable when it is both medically necessary and causally related to the compensable work injury. *See Workers' Compensation Rule 2.3800.*
10. Claimant began his medical treatment with his emergency department visit on January 27, 2025. As of the hearing date, his last treatment date was May 16, 2025. Having reviewed the medical records, I find that all the treatment that Claimant has received, as reflected in the Joint Medical Exhibit, was reasonable. Defendant has offered no evidence to the contrary.
11. Defendant is therefore liable for the cost of such treatment, as well as any future medical treatment that is both medically necessary and causally related to Claimant's compensable injury.

ORDER:

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

- 1) Temporary total and temporary partial disability benefits from the date of injury through the date of Claimant's return to work in June 2025, pursuant to 21 V.S.A. §§ 642 and 646, with interest thereon, pursuant to 21 V.S.A. § 664;
- 2) Medical benefits for Claimant's compensable injury, pursuant to 21 V.S.A. § 640(a); and
- 3) Any other workers' compensation benefits to which Claimant may establish his entitlement in the future.

DATED at Montpelier, Vermont this 28th day of April 2026.

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.