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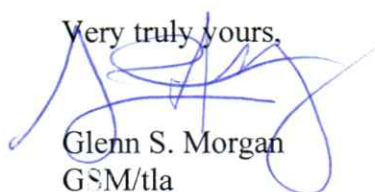
July 18, 2025

Michael Harrington, Commissioner
Vermont Department of Labor
P.O. Box 488
Montpelier, VT 05601-0488

Dear Commissioner,

Enclosed, pursuant to Rule 19.1900, is the arbitrator's opinion and order in connection with this matter. Copies of the opinion and order were sent to the parties via email. Please feel free to contact me with any questions or concerns.

Very truly yours,


Glenn S. Morgan
GSM/tla

Enclosures

Cc: Peter Cruice (email)
Jim O'Sullivan (email)
Daniel McCabe (email)



**STATE OF VERMONT
DEPARTMENT OF LABOR**

Danielle Shattuck,)	
Claimant)	
)	
v.)	
)	
Northeast Kingdom Community)	State File No. SS-00132
Action & Service American)	Claim No. 189886898-001
Indemnity Co. & Broadspire)	
Services, Inc.)	
Employer/Insurer)	
)	
)	
Northeast Kingdom Community Action)	State File No. SS-60915
& A.I.M. Mutual Insurance Co.)	Claim No. 800-010005389
Employer Insurer)	

ARBITRATOR'S OPINION AND ORDER

Hearing held via Teams on Tuesday, April 15, 2025. Record closed on May 28, 2025.

APPEARANCES:

Daniel McCabe, Esq., Addler McCabe for Claimant Danielle Shattuck.

James O'Sullivan, Esq., Tentindo, Kendall, Canniff and Keefe, for Defendant Northeast Kingdom Community Action / Service American Indemnity Co. / Broadspire TPA.

Peter R. Cruice, Esq., McCormick, Fitzpatrick, Kasper, and Burchard, P.C., for Defendant Northeast Kingdom Community Action / A.I.M. Mutual Insurance Co.

ISSUES PRESENTED:

1. Whether Service American Indemnity Company / Broadspire Services Inc. (hereinafter Service / Broadspire) or A.I.M. Mutual Insurance Company (hereinafter A.I.M.) is liable for the 5 percent whole person permanent impairment for claimant's back injury.

EXHIBITS:

- A. Medical Records bates stamped SHATTUCK 0001-SHATTCK 00290;
- B. Daniel O'Neill CV;
- C. Accident report;

D. Department of Labor Interim Order dated July 17, 2023;

E. Department of Labor Interim Order dated May 16, 2024.

FINDINGS & FACTS:

1. The claimant, Danielle Shattuck, was employed by Northeast Kingdom Community Action on February 5, 2022 and March 13, 2023. (Ex. D)
2. On February 5, 2022, Service / Broadspire was the worker's compensation insurer at the time of claimant's injury. (Ex. D)
3. On February 5, 2022, at the time of claimant's injury, Broadspire was the TPA and accepted liability. (Ex. D)
4. On March 13, 2023, A.I.M. was the worker's compensation insurer at the time of claimant's injury and denied liability. (Ex. D)
5. Claimant continued to work following her injury of February 5, 2022 and was continuing to treat medically when the March 13, 2023 incident occurred. (Ex. A 000001-00139)
6. The claimant had an increase in symptoms on 3/13/23 and obtained medical treatment for her medical complaints. (Ex. A 00139-00165)
7. Claimant filed an accident report on 3/13/23 stating she injured her lower back while she was getting a toothbrush area ready and twisted something as she reached up on the supply shelf. (Ex. C)
8. On March 13, 2023, claimant provided a history of fibromyalgia with lower back pain for a year. (Requests to find Service / Broadspire)
9. A.I.M. denied liability for the March 13, 2023 work incident on May 5, 2023. (Ex D)
10. A.I.M. asserted that the claimant's symptoms after 3/13/23 were a recurrence of the 2/5/22 work injury or at most a flare of the 2/5/22 work injury. (Ex. D)
11. On July 17, 2023, the department of labor found the 3/13/23 work injury to claimant caused a flare to her underlying preexisting symptomatic condition which took the claimant out of work. (Ex D)
12. On July 17, 2023 the department of labor ordered A.I.M. to pay all related medically reasonable and necessary medical treatment and to pay total temporary and partial temporary disability compensation benefits until such time as a medical professional places claimant at baseline. (Ex D)

13. On December 15, 2023, claimant underwent an independent medical examination with Dr. O'Neill. (A.I.M. Requests to Find)
14. Dr. O'Neill opined that based on reasonable degree of medical probability, claimant had reached baseline for both of her work injuries from February 5, 2022 and March 13, 2023. (Ex A 00283-00284; Ex E, pg. 2)
15. Dr. O'Neill also opined in his 12/15/23 report that claimant was at medical end for the 3/13/23 low back pain (flare) and opined that the claimant was back to baseline. No further treatment was necessary and related to the 3/13/23 work injury. (Ex E, pp. 1-2)
16. On January 12, 2024, A.I.M. filed a discontinuance based on Dr. O'Neill's 12/15/23 IME report (Ex E pp. 1-2)
17. On February 2, 2024, claimant underwent an independent medical examination with Dr. Leonard Rudolf who opined that claimant has a total 5% whole person impairment rating for both injuries (Ex A 00288-00289)
18. The Department of labor approved A.I.M.'s Form 27 discontinuation of claimant's indemnity benefits and medical treatment on January 23, 2024. (Ex. E pp. 1-2)
19. The Department of Labor issued an interim order of benefits on May 16, 2024 that the 5% whole person permanency found by Dr. Rudolf was the responsibility of Service / Broadspire. (Ex E, pp. 2-3)
20. No expert offered any credible medical opinion that claimant did not sustain a 5% whole person permanent impairment for her back injury.

CONCLUSIONS OF LAW:

21. This case involves a dispute involving two separate instances of alleged injury, the first, February 5, 2022 and the second instance on March 13, 2023, giving rise to an aggravation/recurrence/flare up of claimant's back while employed by Northeast Kingdom Community Action and is being adjudicated pursuant to arbitration Rule 19. The carriers at risk for Northeast Kingdom Community Action are:
 - a. Service / Broadspire
 - b. A.I.M.

22. From a statutory perspective, in analyzing aggravation/recurrence pursuant to 21VSA ¶ 662 (c) the Vermont supreme court has established, the temporary flare up doctrine to assign worker's compensation responsibility in situations where a specific event or activity triggers an increase in symptoms. *Cehic v Mack Molding Inc. 2006-VT 12*. As defined by the court, and encompassed in Rule 2.2300 "a flare up is a temporary worsening of a preexisting condition for which a new employer/carrier is responsible until the condition returns to baseline. Once baseline is reached, liability reverts back to the original carrier." Interpreted by the supreme court in *Wood v Fletcher Allen Health Care, 169 VT 419, 424 (1999)*, the court found when a specific new trauma or activity causes a flare up to occur, the employer on the risk at the time of the earlier injury is excused from worker's compensation responsibility, only until such time as the symptoms return to their baseline.

23. Typically the Department of Labor considers what is known as the *Trask* criteria when addressing an aggravation/recurrence/flare of a preexisting condition. These factors are:

- 1) A subsequent incident or work condition destabilized a previously stable condition;
- 2) The claimant had stopped treating medically;
- 3) Claimant has successfully returned to work;
- 4) Claimant has reached a medical end result;
- 5) The subsequent work contributed independently to the final disability.

Trask v Richburg Builders Op. No. s1-98wc (1998).

24. As it relates to A.I.M., Dr. O'Neill offered competent and credible medical testimony that the March 13, 2023 incident was a flare up, consistent with his report of 12/15/23, at which time he placed the claimant at medical end for the 3/13/23 low back pain (flare) and further opined that the claimant was back to baseline and no further treatment was necessary or related to the 3/13/23 work incident.

25. It was noted on March 20, 2023 by Emily Olson, MD, that claimant's CT of the lumbar spine disclosed a mild disk herniation at L4-5 which was unchanged from

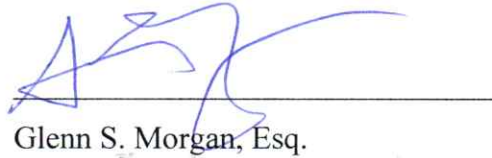
the MRI, the previous fall on October 11, 2022. Exhibit A 00166. Prior to March 13, 2023, the medical records of claimant do not find claimant reaching a medical end result and was treating 6 days prior to March 13, 2023. Exhibit A 00139-00141. In addition, claimant never returned to work full duty without any restrictions. The claimant has continued her medical treatment since February 7, 2022.

26. As the trier of fact, 'it is a province of the trial court to determine the credibility of the witnesses and weigh the persuasiveness of the evidence' *Obolensky v Trombley, 2015 VT 34, pp. 27, 198 VT 401*. Accordingly, "a court is not required to credit an expert witness's opinion whenever the witness is qualified to testify as an expert." Although the trier of fact must "consider qualified expert testimony that is offered," the "discretion to credit the evidence lies with the fact finder." *State v Sullivan, 218 VT 112 pp. 18, 208 VT 540*.
27. On the issue of whether the claimant sustained a flare on March 13, 2023, Dr. O'Neill points to the claimant's history of treatment before and after March 13, 2023 in finding she sustained a flare and that she was at medical end point and baseline on December 15, 2023. And no further treatment was necessary and related to the March 13, 2023 work injury and subsequent benefits again became the responsibility of Service / Broadspire. On the issue of whether or not the claimant sustained a permanent impairment, Dr. Rudolf's 5% impairment is credible and based on a reasonable degree of medical certainty as contained in his report of February 2, 2024.

Based upon the foregoing findings and fact and conclusions of law, it is hereby ordered:

- 1) Service / Broadspire shall bear responsibility for payment of claimant's 5% permanent impairment and on account of her injury of February 5, 2022.
- 2) A.I.M. is absolved for any further liability for any of claimant's proven worker's compensation benefits as of January 23, 2024.
- 3) Service / Broadspire and A.I.M. shall equally share the arbitrator's fees pursuant to the arbitration agreement entered into by both parties, which statement shall follow under separate correspondence.

Dated at Rutland, Vermont this 18th day of July, 2025.



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ARBITRATOR