STATE OF VERMONT
DEPARTMENT OF LABOR

Laurel Zeno

v.

University of Vermont

Opinion No. 29-12WC

By: Phyllis Phillips, Esq.
Hearing Officer

For: Anne M. Noonan
Commissioner

State File No. Z-00033

OPINION AND ORDER

Hearing held in Montpelier on September 25, 2012
Record closed on November 5, 2012

APPEARANCES:

Christopher McVeigh, Esq., for Claimant
Stephen Ellis, Esq., for Defendant

ISSUES PRESENTED:

1. Is Claimant's current right leg condition causally related to her June 2007 compensable work injury?

2. If yes, to what workers' compensation benefits is Claimant entitled?

EXHIBITS:

Joint Exhibit I:	Medical records
Joint Exhibit II:	Medical records
Claimant's Exhibit 1:	Dr. Campbell deposition, July 5, 2012
Defendant's Exhibit A:	Dr. Campbell deposition, September 13, 2010

CLAIM:

All workers' compensation benefits to which Claimant proves her entitlement as causally related to her current right leg condition

Interest, costs and attorney fees pursuant to 21 V.S.A. §§664 and 678

FINDINGS OF FACT:

1. At all times relevant to these proceedings, Claimant was an employee and Defendant was her employer as those terms are defined in Vermont's Workers' Compensation Act.

2. Judicial notice is taken of all relevant forms and correspondence contained in the Department's file relating to this claim.

3. Claimant has been employed by Defendant for many years as the Program Coordinator/Grant Administrator for the Vermont Space Grant Consortium.

Claimant's Prior Medical History

4. Claimant has a complicated medical history. She has suffered from cerebral palsy since infancy, as a result of which her left leg is approximately three inches shorter than her right. At various times since 1989, she has treated for pains in her neck, lower back, hips and bilateral shoulders (for which she underwent arthroscopic surgery, on the right in 1998 and on the left in 2006), as well as abdominal pain, gastroesophageal reflux disease, headaches, vocal hoarseness and contact dermatitis. As documented in the medical records, the picture painted by many of her treatment providers is of an extremely anxious patient with a persistent, near neurotic fixation on her symptoms.

5. Of particular relevance to the current action, Claimant's medical history also references treatment for right knee and leg pain, dating back to 2001. Her complaints at that time included tenderness on the medial (inside) part of her knee, burning pain radiating down her calf and swelling in her thigh. Claimant treated with Dr. Abate, an orthopedic surgeon, for these symptoms. In March 2001 she underwent arthroscopic surgery, during which a portion of her medial meniscus was removed. Thereafter, she continued to complain of occasional swelling in her leg and in the back part of her knee, as well as pain down the lateral (outside) part of her thigh. Dr. Abate could not determine the etiology of these complaints, though he noted the presence of both arthritis in her knee and tightness in her iliotibial (IT) band, the group of fibers that runs down the outside of the thigh from the buttocks to just below the knee.

6. Also of relevance to the current action, in 2004 Claimant reported to Dr. Ciongoli, the neurologist who was treating her at the time for diffuse, degenerative osteoarthritis in her lumbar spine, that as a consequence of her abnormal gait (which she attributed to her cerebral palsy and resulting leg length differential) she had developed hip pain.

Claimant's June 2007 Work Injury and Subsequent Treatment

7. On June 20, 2007 Claimant was walking through Defendant's parking lot on her way to a meeting when she stepped into a depression in the pavement and fell forward, landing on both knees. Her stockings tore and her knees were abraded and bloody.

8. Claimant continued on to her meeting, which lasted for two hours, and then returned to her office before meeting her husband at his dental appointment. While at the dentist's office, a hygienist brought her a wet cloth with which to clean her knees, and also ice to reduce any swelling.

9. Over the ensuing month, Claimant sought treatment for her right knee complaints with three primary care providers, Drs. Little, Slingerland and Bielinski. At the first visit, with Dr. Little on the day following her fall, she was observed to have superficial abrasions on both kneecaps, as well as tenderness on the inside part of her right knee, which she acknowledged was possibly chronic. One week later, Dr. Slingerland reported that she was walking with a limp, and that her right knee was somewhat swollen compared to the left. Dr. Bielinski reported similar findings on his July 24, 2007 exam, and noted some lower ankle swelling as well. Claimant demonstrated full range of motion in her knee at each of these examinations, with no signs of instability and no pain on palpation. The only treatment recommended was ice, rest and ibuprofen. Notwithstanding her persistently voiced concerns about possible internal damage, I find from this evidence that at least in the first month following her fall Claimant's knee did not appear to have been injured significantly.

Dr. Campbell's Treatment and Opinion as to Causal Relationship

10. Between September 2007 and June 2010 Claimant treated for her right knee symptoms with Dr. Campbell, an orthopedic surgeon. Over time, her complaints variably progressed, from their earliest focal point along the inside portion of her knee, to the outer part of her joint line, then up her outer thigh to her hip and down her leg into her calf. As treatment, she underwent injections and physical therapy, wore various knee braces and sleeves and used a Canadian crutch to assist with walking. By her report, none of these treatments offered sustained relief.

11. Dr. Campbell has never definitively diagnosed the specific etiology of Claimant's symptoms. Over the course of his treatment, he has proffered many theories, including osteoarthritis in her knee, deep varicosities in her lower leg, IT band tendinosis or friction syndrome and tibio-fibular joint hypermobility. Descriptors such as "multi-factorial," "mixed etiology" and "unclear cause" appear repeatedly in his office notes.

12. Dr. Campbell was aware that Claimant had undergone arthroscopic surgery on her right knee in 2001, but did not specifically review her medical records, either as to this or as to any other aspect of her medical history. Aside from her own report, he had no knowledge of the nature and extent of any prior complaints of right leg and/or knee pain. He did understand that Claimant suffered from cerebral palsy, and that, again according to her own report, this had caused her some ongoing problems with walking.

13. At his deposition, Dr. Campbell testified that he considers himself to be an advocate for his patients, and therefore he typically relies on them as his source of information. In this case, Claimant reported to him that her knee pain dramatically worsened after her June 2007 fall. From that, he concluded that the fall likely exacerbated the preexisting osteoarthritis in her knee and caused it to become more painful.

14. As for the symptoms in Claimant's calf and upper leg, Dr. Campbell believed these most likely were causally related to her gait abnormalities. From his own examinations, he observed that Claimant walked with a so-called varus, or slightly bow-legged, right knee. Whether this gait abnormality was due specifically to knee pain from her June 2007 fall, or to other factors, for example, tightness in her IT band, pain in her hip and/or preexisting osteoarthritis, he could not say for certain. Of note, Dr. Abate had reported IT band pain and tightness as early as 2001, Finding of Fact No. 5, *supra*, and Dr. Ciongoli had reported hip pain related to gait abnormalities in 2004, Finding of Fact No. 6, *supra.*

Claimant's Most Recent Evaluations

15. Claimant did not treat for her right knee and lower extremity symptoms between June 2010 and April 2012. Since then, she has undergone evaluations with Dr. Halsey, an orthopedic surgeon, Dr. Charlson, an orthopedist, and Dr. Endres, another orthopedic surgeon. Claimant's complaints now include burning pain along the outside of her lower leg, from just below her knee joint to her ankle and into her foot. She also has complained of instability in her leg, though there has been no evidence of this on either objective exam or diagnostic imaging.

16. Despite numerous imaging studies, neither Dr. Halsey, nor Dr. Charlson, nor Dr. Endres has been able to articulate a diagnosis that might account for Claimant's current symptoms. Like Dr. Campbell, they appear somewhat flummoxed by her complaints. As of the formal hearing, Claimant was continuing to treat with Dr. Endres and was scheduled to undergo additional diagnostic testing to evaluate the peroneal nerve as a possible symptom generator.

17. None of Claimant's recent treatment providers have stated an opinion as to the causal relationship, if any, between her current condition and her June 2007 fall at work.

Defense Expert Opinions as to Causal Relationship

18. At Defendant's request, Claimant has undergone two independent medical evaluations since her June 2007 fall, first with Dr. Levy, a neurologist, in March 2008 and more recently with Dr. Sobel, an orthopedic surgeon, in June 2012. In addition to their physical examinations, both evaluators also reviewed Claimant's prior medical records dating back to 1989.

19. Dr. Levy's opinion is straightforward. He believes that the most probable cause of Claimant's right knee and leg pain is degenerative arthritis, a chronic condition that preexisted her June 2007 fall. The fall, and resulting knee contusion as diagnosed by Dr. Little, likely caused a temporary flare-up of symptoms, but did not aggravate the underlying disease in any respect.

20. Viewed in the context of the contemporaneous medical records, I find credible Dr. Levy's opinion as to the cause of the symptoms Claimant first reported in her right knee. However, I find that it is somewhat incomplete in its failure to address her more recently reported complaints, which have focused more on her lower leg than specifically on the knee joint itself.

21. Dr. Sobel concurred with Dr. Levy on the question whether Claimant's current right leg symptoms are related in any way to her June 2007 fall at work, concluding to a reasonable degree of medical certainty that they are not. His analysis was more thorough, encompassing not only Claimant's prior history of treatment for right leg and knee pain but also her most recent diagnostic imaging studies.

22. To a reasonable degree of medical certainty, Dr. Sobel concluded that Claimant's current condition, including both knee and lateral joint line dysfunction, is the result of two factors – the collapse of the inner (medial) portion of her knee, combined with her longstanding gait abnormality. As to the first factor, Dr. Abate had documented significant loss of cartilage under Claimant's kneecap in the course of his arthroscopic surgery in 2001, as a result of which he removed a substantial portion of her medial meniscus. Thereafter, Claimant's continued gait pattern, which involves asymmetric loading and thrusting of her right knee, likely caused further deterioration, on both the medial and the lateral portions of the joint.

23. Dr. Sobel found particularly noteworthy the fact that Claimant's most recent MRI study revealed a nearly completely collapsed medial compartment, but no evidence of instability, major fragmentation or severe osteoarthritis under the kneecap itself. Had Claimant's June 2007 injury, which by all accounts involved a fall forward and directly onto the front of her knees, caused a significant worsening of her underlying condition, one would have expected more evidence of degeneration there. Instead, for the most part the disease had progressed only in the areas where it had long preexisted. I find this reasoning persuasive.

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 as well as the causal connection between the injury and the employment. *Egbert v. The Book Press,* 144 Vt. 367 (1984). There must be created in the mind of the trier of fact something more than a possibility, suspicion or surmise that the incidents complained of were the cause of the injury and the resulting disability, and the inference from the facts proved must be the more probable hypothesis. *Burton v. Holden Lumber Co.*, 112 Vt. 17 (1941); *Morse v. John E. Russell Corp.*, Opinion No. 40-92WC (May 7, 1993).

2. At issue in this case is whether Claimant's current right leg and knee symptoms are causally related to her June 2007 fall at work. The parties presented conflicting expert opinions on this issue. In such situations, 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).

3. Based primarily on the second and third factors, I conclude that Dr. Campbell's opinion is less persuasive than either Dr. Levy's or Dr. Sobel's. Having failed to review Claimant's pertinent medical history in any depth, Dr. Campbell was unaware of the extent to which many of her symptoms predated her June 2007 work injury. These included prior complaints of, and treatment for, burning pain and swelling both above and below her knee joint, IT band tightness, and hip pain associated with abnormal gait patterns. It is difficult for me to ignore the similarities between these complaints, many of which were never clearly diagnosed, and Claimant's current condition.

4. In fact, neither Dr. Campbell nor Claimant's more recent treating physicians have yet been able to definitively determine the etiology of her current complaints. Given her complicated medical history, to conclude, as Dr. Campbell did, that because her symptoms arose at some point after her fall at work, they necessarily must have been caused by it is overly simplistic. Particularly in a case such as this, much more than a temporal relationship is required to establish work-related causation. *Daignault v. State of Vermont, Economic Services Division*, Opinion No. 35-09WC (September 2, 2009), citing *Norse v. Melsur Corp.*, 143 Vt. 241, 244 (1983).

5. In contrast to Dr. Campbell's analysis, Dr. Sobel's causation opinion incorporated both Claimant's prior medical history and her most recent diagnostic studies to arrive at an objectively supported, well-reasoned conclusion. His opinion effectively disqualifies the June 2007 fall as a contributing factor to her current complaints. I conclude that it is credible in all respects.

6. I conclude that Claimant has failed to sustain her burden of proving that her June 2007 fall at work either caused or aggravated her current condition. Therefore, her claim for workers' compensation benefits must fail.

7. As Claimant has failed to prevail on her claim for benefits, she is not entitled to an award of costs or attorney fees.

ORDER:

Based on the foregoing findings of fact and conclusions of law, Claimant's claim for workers' compensation benefits referable to her current right leg and knee condition is hereby **DENIED**.

DATED at Montpelier, Vermont this ____ day of _____, 2012.

_____
Anne M. Noonan
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.