

Estate of Randy Comes v. Middlebury College

(June 24, 2009)

**STATE OF VERMONT
DEPARTMENT OF LABOR**

Estate of Randy Comes

Opinion No. 20-09WC

v.

By: Jane Dimotsis, Esq.
Hearing Officer

Middlebury College

For: Patricia Moulton Powden
Commissioner

State File No. Z-00061

OPINION AND ORDER

Hearing held in Montpelier on May 8, 2008

Record closed on May 29, 2008

APPEARANCES:

Joseph Galanes, Esq., for Claimant

Keith Kasper, Esq., for Defendant

ISSUE PRESENTED:

Did the medical treatment Claimant received in conjunction with his May 8, 2007 work injury cause or contribute to his death on June 21, 2007?

EXHIBITS:

Joint Exhibit I: Medical records

Claimant's Exhibit 1: Deposition of Stephen Payne, M.D., taken on February 6, 2008

Defendant's Exhibit A: Deposition of Frank Dibble, Jr., M.D., taken on January 28, 2008

CLAIM:

Medical benefits pursuant to 21 V.S.A. §640

Death benefits pursuant to 21 V.S.A. §632

Interest pursuant to 21 V.S.A. §664

Costs and attorney's fees pursuant to 21 V.S.A. §678

STIPULATED FACTS:

1. On May 8, 2007 Claimant was an employee of Defendant within the meaning of the Vermont Workers' Compensation Act ("the Act").
2. On May 8, 2007 Defendant was Claimant's employer within the meaning of the Act.
3. On May 8, 2007 Claimant suffered a personal injury to his back arising out of and in the course of his employment with Defendant.
4. As part of the treatment for this work-related injury Claimant was prescribed Ibuprofen. Claimant's spouse has no information that Claimant did not take the Ibuprofen exactly as prescribed.
5. On May 8, 2007 Claimant had an average weekly wage of \$925.69, resulting in an initial compensation rate of \$617.13.
6. On May 8, 2007 Claimant was married but had no other dependents within the meaning of the Act.
7. On June 11, 2007 Claimant returned to work full time for Defendant.
8. On June 21, 2007 Claimant died.
9. The parties agree that the hearing officer may take judicial notice of all official Department forms filed in this matter.

ABBREVIATED FINDINGS OF FACT¹:

1. At the time of his work-related injury Claimant had a prior medical history that included hepatitis C and alcohol abuse, both of long-standing duration. Claimant also suffered from severe cirrhosis of the liver, although this condition was undiagnosed at the time.
2. Cirrhosis causes scarring in the liver. When this occurs it causes the blood that normally flows through the liver to back up into other blood vessels instead, including the veins in the esophagus. Normally these are small veins, but the extra pressure – medically described as portal hypertension – can cause them to become enlarged to the point where they break open and bleed. The enlarged veins are referred to as varices, and the condition, referred to as esophageal variceal bleeding, is dangerous and life-threatening.
3. As a result of his May 8, 2007 work injury Claimant suffered a compression fracture in his thoracic spine. As part of his treatment, he was prescribed 30 tablets of 800-milligram ibuprofen, to be taken three times a day for ten days.

¹ In accordance with 21 V.S.A. §663(b), the parties jointly have agreed to accept abbreviated findings of fact and conclusions of law in this claim.

4. Ibuprofen is known to have an irritating effect on the gastrointestinal system. It also can cause increased fluid retention. Last, because it interferes with platelet function ibuprofen can have an anti-coagulant effect as well. Each of these side-effects can exacerbate pre-existing portal hypertension and further weaken esophageal varices. However, the side-effects are transitory, meaning that within a week or two of discontinuing a course of ibuprofen, the drug's negative impact dissipates.
5. Claimant presented to the Porter Hospital Emergency Room early on the morning of June 13, 2007 having vomited blood two times upon awakening. He was diagnosed with an upper gastrointestinal bleed, treated and released. Claimant returned to the Emergency Room later that evening, having suffered another bleed. This time he was admitted to the Intensive Care Unit at Fletcher Allen Health Care, where he remained hospitalized for four days. Diagnostic testing established that Claimant was suffering from both esophageal variceal bleeding and cirrhosis of the liver. Claimant was discharged on June 17, 2007. Four days later, on June 21, 2007 he suffered a third – and fatal – bleed.
6. The medical records are inconsistent as to how long before Claimant's first episode of gastrointestinal bleeding he had discontinued taking ibuprofen for his work-related injury. Specifically:
 - According to the treating orthopedist's office notes, Claimant had discontinued his pain medications at least as of May 24, 2007 – approximately three weeks before the first bleed.
 - The Emergency Room record for the morning of June 13, 2007 reported that Claimant had discontinued his course of ibuprofen "about 2 weeks ago."
 - The Emergency Room record taken later in the evening of June 13, 2007 reported that Claimant "had been taking ibuprofen for a while, but has not been on it for a week or so."
7. Claimant's wife testified that Claimant was in the habit of taking prescriptions exactly as directed, meaning that if he had received a ten-day course of ibuprofen on May 8, 2007 (as is documented by the pharmacy records), he would have finished it ten days later, on May 18, 2007, approximately four weeks prior to the first bleed.
8. Three expert medical witnesses provided testimony as to the causal relationship, if any, between Claimant's use of ibuprofen as treatment for his May 8, 2007 work injury and his subsequent death from esophageal variceal bleeding. Dr. Stephen Payne, a primary care provider who is board-certified in internal medicine, testified that Claimant's use of ibuprofen was a contributing factor in his death from esophageal variceal bleeding. Dr. Frank Dibble, also a family practitioner, and Dr. Charles Bliss, a board-certified gastroenterologist, both testified that no such causal relationship existed.

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. 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 (Sept. 17, 2003).
3. I find that Claimant has failed to sustain his burden of proving that the ibuprofen he took to treat his work injury contributed to his death from esophageal variceal bleeding. In reaching this conclusion I am swayed both by the uncertainties in the record as to how long before the first episode of gastrointestinal bleeding Claimant discontinued his course of ibuprofen and by the opinion of Dr. Bliss, whose training and experience in the specialized field of gastroenterology afford him greater credibility.

ORDER:

Based on the foregoing findings of fact and conclusions of law, Claimant's claim for workers' compensation benefits is **DENIED**.

DATED at Montpelier, Vermont this 24th day of June 2009.

Patricia Moulton Powden
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.