

**STATE OF VERMONT
DEPARTMENT OF LABOR**

L. R.

Opinion No. 31A-06WC

v.

By: Margaret A. Mangan
Hearing Officer

Regular Veteran's Assoc.
Post #514

For: Patricia Moulton Powden
Commissioner

State File No. G-14847

RULING ON DEFENSE MOTION TO RECONSIDER OR STAY

The defense, by and through its attorney, Andrew C. Boxer, Esq., asks the Commissioner to reconsider the decision in favor of Claimant, Op. No. 31-06WC, or to stay that judgment pending appeal to the Chittenden County Superior Court. Claimant, by and through her attorney, Thomas C. Nouvo, Esq., opposes reconsideration or stay.

Defendant argues that the Commissioner erred by accepting Dr. Kristiansen's testimony, suggesting that the opinion was no more than speculation or surmise. On the contrary, when the logic of Dr. Kristiansen's opinion was combined with this Claimant's history and the research on the subject, the conclusion regarding causation was clearly the more probable hypothesis. See *Burton v. Holden & Martin Lumber Co.*, 112 Vt. 17 (1941). Accordingly, the defense motion to reconsider is denied.

Next, Defendant asks that the order be stayed pending appeal. Any award or order of the Commissioner shall be of full effect from issuance unless stayed by the Commissioner, any appeal notwithstanding. 21 V.S.A. § 675. To prevail on its request in the instant matter, Defendant must demonstrate: "(1) a strong likelihood of success on the merits; (2) irreparable injury if the stay is not granted; (3) a stay will not substantially harm the other party; and (4) the stay will serve the best interests of the public." *Gilbert v. Gilbert*, 163 Vt. 549, 560 (1995) citing *In re Insurance Services Offices, Inc.*, 148 Vt. 634, 635 (1987) (mem); *In re Allied Power & Light Co.*, 132 Vt. 554 (1974). The Commissioner has the discretionary power to grant, deny or modify a request for a stay. 21 V.S.A. § 675(b); *Austin v. Vermont Dowell & Square Co.*, Opinion No. 05S-97WC (1997) (citing *Newell v. Moffatt*, Opinion No. 2A-88 (1988)). The granting of a stay should be the exception, not the rule. *Bodwell v. Webster Corporation*, Opinion No. 62S-96WC (1996).

Defendant fails to meet its burden. The compelling evidence of Claimant's weak bones and the consequences that followed will undoubtedly lead a jury to decide in the same way as the Commissioner. Further, Defendant is unlikely to be harmed from paying the award. On the contrary it is Claimant who has been harmed by the delay in having the recommended surgery, a delay that will only be prolonged with a stay. Finally, the best interests of the public will best be served by providing the necessary surgery to this injured employee.

Therefore, the motion for reconsideration and stay are DENIED.

Dated at Montpelier, Vermont this 20th day of September 2006.

Patricia Moulton Powden
Commissioner

L. R. v. Regular Veteran's Assoc. Post #514 (July 21, 2006)

**STATE OF VERMONT
DEPARTMENT OF LABOR**

L. R.

Opinion No. 31-06WC

v.

By: Margaret A. Mangan
Hearing Officer

Regular Veteran's Association Post # 514/
St. Paul Travelers Insurance Company

For: Thomas W. Douse
Acting Commissioner

State File No. G-14847

Hearing held in Burlington on June 23, 2006
Record closed on July 3, 2006

APPEARANCES:

Thomas C. Nuovo, Esq., for Claimant
Andrew C. Boxer, Esq., for Defendant

ISSUES:

1. Whether Claimant's hip replacement surgery proposed by Dr. James Howe is causally related to her employment with Regular Veteran's Association Post #514.
2. Is Claimant entitled to a current minimum compensation rate of \$317.00?
3. If so, whether Claimant is entitled to retroactive Temporary Total Disability benefits beginning from 2002.
4. Whether Claimant is entitled to attorney's fees and costs in connection with this claim.

EXHIBITS:

Joint: Medical Records

Claimant: Time Line of Significant Issues and Documents
Summary of Operative Reports
Copy of bills through June 20, 2006
Copy of all expenses through June 29, 2006
Summary of time spent since June 21, 2006 to present

Bills from Dr. Kristiansen for Deposition and Testimony

FINDINGS OF FACT:

1. Claimant, a fifty-seven year old woman, worked as a bartender for the Regular Veteran's Association Post #514 in Winooski, Vermont for five and a half years until 1993.
2. At all relevant times, Claimant was an employee and Regular Veteran's Association (RVA) her employer, within the meaning of the Vermont Workers' Compensation Act.
3. On October 8, 1993 while bartending at RVA, Claimant was carrying a full case of beer when she slipped on a wet floor. Consequently, she twisted her left ankle and suffered a contusion on her left shin.
4. The Department received a Form 1 First Report on Injury on January 27, 1994.
5. The parties entered into a Form 21 Agreement for Temporary Total Disability Compensation on October 7, 1994. The Department approved the form on October 9, 1994.
6. At the time of the 1993 injury, Claimant's average weekly wage was \$278.55. At that time, the minimum compensation rate was \$215.00 and the maximum compensation rate was \$644.00.
7. Claimant returned to work the following Sunday, but pain prevented her from performing her duties. She has not worked since her 1993 injury. Over a twelve-year span Claimant has undergone approximately eighteen surgeries. All of these surgeries have been work-related. Claimant has been on crutches and unable to bear weight on her lower left extremity the majority of this time. Even now she is using bilateral crutches.
8. On October 27, 1993, Claimant sought treatment for pain in her lower left leg. Dr. Howard B. Graman at the University Health Center examined Claimant. Dr. Graman noticed the development of a blood clot. He diagnosed Claimant with deep vein thrombosis.
9. On November 5, 1993, Claimant was admitted into the hospital for pain and cellulitis in her left leg.
10. Seven days later, Claimant underwent an incision and drainage (I&D) by Dr. Frederick B. Rogers, at the Medical Center Hospital of Vermont. Dr. Rogers drained material from an abscess cavity that protruded to the bone. A similar procedure was done three days later. She was further diagnosed with severe fasciitis.

11. Two months after the surgery, Claimant still experienced pain and drainage around the wound. A third I&D was performed by Dr. Rogers. X-rays revealed osteomyelitis (bone infection). He referred Claimant to Dr. Thomas Kristiansen, an Orthopedic Trauma Specialist at Fletcher Allen Healthcare.
12. Claimant began treatment with Dr. Kristiansen on January 7, 1994. A month later, Dr. Kristiansen confirmed that Claimant was suffering from osteomyelitis of the left tibia and that her surgical wound had not closed. A fourth I&D was performed, then a fifth I&D a few days later.
13. In March of 1994, Claimant's pain had returned. Another infection was discovered in her bone. Dr. Kristiansen performed surgery on Claimant's left tibia to close the wounds. A month later, Claimant was placed in a short leg cast and was advised not to bear weight on her left leg.
14. On May 3, 1994, Dr. Kristiansen wrote to Traveler's Insurance, the carrier at risk, and opined that Claimant's condition was causally related to her 1993 work injury.
15. On July 5, 1994, John M. Peterson, D.O. performed a records review of Claimant at the request of Traveler's Insurance. Dr. Peterson concluded that Claimant's medical status was causally related to her work injury.
16. Throughout this time, Claimant still complained of pain and her wound continued to drain.
17. On two separate occasions in 1995, Dr. Kristiansen instructed Claimant to bear weight on her left tibia. As a result, Claimant suffered stress fractures to her left tibia.
18. In April of 1996, Dr. Kristiansen performed a bone graft and installed hardware in Claimant's left leg. Several months later, he referred Claimant to physical therapy.
19. In November of 1997, Claimant complained of pain around the plate site. Plate removal was not considered given the likelihood of another stress fracture in her tibia.
20. The next year Dr. Kristiansen attributed the pain to loose screws around the plate. The hardware was removed on January 26, 1998. After the surgery, Claimant continued to experience pain.
21. In August of 1998, another stress fracture of the tibia was discovered. Claimant underwent another surgery. Dr. Kristiansen installed a medial plate with multiple screws.

22. On May 17, 1999, another I&D was performed. Claimant began to improve after the surgery. However, the pain returned in the plate over the medial aspect of the left tibia. Another hardware removal was considered.
23. On January 20, 2000, Claimant underwent surgery to remove the hardware from her infected tibia. An I&D was also performed.

24. The following year, Dr. Kristiansen found a fibular stress fracture with osteomyelitis and nonunion of Claimant's tibia. On February 8, 2001, Dr. Kristiansen performed an osteotomy excision of the tibia, another bone grafting, and plating with osteoclasia of the fibula.
25. Throughout 2001 Claimant continued to experience pain around the plate and was unable to bear weight on her left leg.
26. In 2002, Claimant began to complain of back pain. Dr. Kristiansen noticed numbness in her foot following the 2001 surgery. He concluded that an additional surgery was needed to remove her hardware.
27. Since her injury, Claimant received a cost of living adjustment to her temporary total benefits every July 1. However, on July 2, 2002, a Form 28 Notice of Change in Compensation Rate reflected that the carrier did not apply the full adjustment. The minimum wage rate of \$288.00 would have exceeded her average weekly wage. Therefore, Claimant's temporary total benefits were capped at her average weekly wage of \$278.55.
28. On August 26, 2003, Dr. Kristiansen diagnosed Claimant as having "low back pain secondary to degenerative disease at L4-5 exacerbated by crutch walking, walking boot and abnormal gait." Dr. Kristiansen was concerned that her back symptoms were more painful than her leg pain. He referred Claimant to a neurosurgeon, Dr. Elizabeth Ames.
29. Claimant sought back treatment from Dr. Ames on August 13, 2003. Dr. Ames's diagnosis was spondylolisthesis. She opined that a spinal fusion was the only surgical option. Dr. Ames, however, was concerned about placing a metal instrument in Claimant's back given her diagnosis of osteomyelitis. Dr. Ames recommended transforaminal injections at L4-5 instead.
30. Dr. Martin Krag at the Spine Center examined Claimant on October 27, 2003. He concluded that fusion surgery was necessary given the instability at L4-5. Dr. Krag also opined that Claimant's back condition was directly linked to her left tibia problem. Hence, her current status was caused by her 1993 work injury.
31. On December 3, 2003, at the request of the carrier, Dr. Wing at Occupational Health and Rehabilitation Inc. performed an Independent Medical Examination (IME) on Claimant. Dr. Wing's diagnosis was right lumbar radiculopathy, probably involving the L4 and L5 roots. He opined that it was causally related to her 1993 injury. In addition, Dr. Wing stated that back surgery was reasonable and medically necessary.

32. On January 20, 2004, Dr. Krag performed back surgery on Claimant, a L4-5 foraminotomy with nerve root decompression. Subsequently, Claimant's back pain improved to a certain extent.
33. Claimant resumed physical therapy. She continued to experience back pain and pain in her left leg, but she also developed pain in her right leg.
34. On January 13, 2005, Dr. Kristiansen removed hardware from Claimant's left tibia. The plate had been in place since her 2001 surgery.
35. Claimant continued physical therapy at the Rehab Gym. On or about June 2, 2005, Claimant's usual physical therapist was unavailable. Instead, a different therapist coached Claimant and additional workouts were added to her routine.
36. Claimant then noticed a pull in her left groin area when she was doing a leg exercise. The pain worsened over the weekend. Claimant informed Traveler's Insurance that she might have pulled a muscle during the new exercise regime.
37. The pain in her anterior thigh worsened. Claimant visited with Dr. Kristiansen on June 21, 2005. Dr. Kristiansen concluded that the pain was stemming from the L3-4 nerve roots. He referred Claimant back to Dr. Martin Krag.
38. Dr. Krag examined Claimant on July 21, 2005. A few weeks later a myelogram revealed disc protrusions at L2-3 and L3-4 on the left, no compression of the nerve root, and stenosis at L3-4 on the right with a disc bulge.
39. On September 12, 2005, Dr. Krag recommended a partial discectomy at L3-4. Claimant sought a second opinion from Dr. Robert D. Monsey, an orthopedic spine surgeon at Fletcher Allen Health Care.
40. Dr. Monsey examined Claimant on October 17, 2005. He concluded that avascular necrosis had caused her left femoral head to collapse. He was unable to state whether or not the hip condition was related to her 1993 occupational injury.
41. Dr. Monsey then referred Claimant to Dr. James Howe, a total joint specialist at Fletcher Allen, to consider total hip replacement surgery. Dr. Howe examined Claimant on November 2, 2005.
42. Dr. Howe's diagnosis was endstage osteoarthritis of her left hip with avascular necrosis and erosion of the superolateral aspect of the neck. He concluded that Claimant was a candidate for total left hip replacement given the severity of the pain and the nature of the deformity.
43. Dr. Howe also opined, within a reasonable degree of medical certainty, that the collapse of her femoral head was causally related to her 1993 work injury.

44. On December 12, 2005, Dr. Victor Genarro reviewed Claimant's records at the carrier's request. Later he performed an examination. Dr. Gennarro found that there was no causal relationship between the development of avascular necrosis in her left hip and her occupational injury.
45. Defendant relied on Dr. Genarro's opinion. Defendant then filed a Form 2 and denied Workers' Compensation benefits for the hip replacement surgery. The Department received Defendant's denial on January 17, 2006.
46. Claimant now seeks: 1) medical and hospital benefits associated with the total left hip replacement surgery; 2) a minimum compensation rate of \$317.00; and 3) retroactive temporary total disability from 2002.

Medical Opinions

47. Dr. Kristiansen, orthopedic surgeon and Claimant's treating physician of twelve years, testified that Claimant's hip condition was work-related. Dr. Kristiansen opined that Claimant's osteoporosis, the long-term disuse of her left leg, and the loss of function had increased her susceptibility to fractures. Also, a stress fracture would only be visible during the healing process. Thus, if the bone had completely healed, the fracture would not be visible on X-ray. However, when viewing the X-rays at formal hearing, he saw signs of healing. He also testified that the aggressive physical therapy following her back surgery and the increased reliance on the lower left extremity most likely led to the stress fracture in her femoral neck. Stress fractures to the femoral neck or head have been known to cause a disruption of the blood supply, thus leading to avascular necrosis and an eventual collapse of the femoral head. Dr. Kristiansen testified that "idiopathic" is a term used when uncertainty surrounds what really happened, but there is always a cause. Given that the common causes of avascular necrosis, i.e. alcoholism and use of high dose of corticosteroids, do not apply to Claimant, the most logical explanation would be that she suffered a non-displaced fracture of the femoral neck or several micro-fractures as the result of her weakened bone. Either possibility could be what is visible on the x-ray. Thus, taking all of these factors into consideration, Dr. Kristiansen concluded that Claimant's hip injury was work-related.
48. Dr. Victor Gennaro, orthopedic surgeon, performed an IME on Claimant. Dr. Gennaro opined that Claimant's current hip condition was not work-related. He agreed with Dr. Kristiansen on two main points. First, her bones were abnormal due to disuse and were compromised by osteoporosis. An abnormal force on a weak bone could cause a microfracture or stress fracture. Second, he also testified that a fracture might not be visible on X-ray until it begins to heal, which may be months after the accident. However, in contrast to Dr. Kristiansen's opinion, Dr. Gennaro concludes that there is not enough evidence to support Claimant's theory. There is no evidence that Claimant suffered a fracture. No

signs of healing are apparent. In addition, non-displaced stress fractures are not recognized as a factor of avascular necrosis. He states that Claimant's theory is not plausible. Instead, it is a stretch of medical reasoning. Dr. Gennaro opines that the cause of Claimant's hip condition is idiopathic. In other words, there is no known cause for the collapse of the femoral head, it just happened. He testified that as much as thirty percent of all avascular necrosis cases are idiopathic. None of the common causes of avascular necrosis were present in Claimant's record. As such, there is not enough evidence to support a causal link between Claimant's hip condition and her 1993 occupational injury.

CONCLUSIONS OF LAW:

1. The claimant has the burden of establishing all facts essential to the rights asserted in this workers' compensation case. *Goodwin v. Fairbanks*, 123 Vt. 161 (1962).
2. In workers' compensation cases, where the causal connection between an accident and an injury is obscure and a layperson would have no well-grounded opinion as to causation, expert medical testimony is necessary. *Lapan v. Berno's Inc.*, 137 Vt. 393 (1979).
3. 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 inference from the facts proved must be the more probable hypothesis. *Burton v. Holden & Martin Lumber Co.*, 112 Vt. 17 (1941).
4. To address divergent opposing medical opinions, the Department considers the following criteria: 1) The nature of treatment and length of time there has been a patient-provider relationship; 2) whether all accident, medical, and treatment records were made available to and considered by the examining physician; 3) whether the report or evaluation at issue is clear and thorough and includes objective support for the opinions expressed; 4) the comprehensiveness of the examination; and 5) the qualifications of the experts, including professional training and experience. *Wallace v. Velan Valve Corp.*, Opinion No. 51-02WC (2002); *Yee v. IBM*, Opinion No. 38-00WC (2000); *Miller v. Cornwall Orchards*, Opinion No. 20-97WC (1997); *Martin v. Bennington Potters*, Opinion No. 42-97WC (1997); *see also, Morrow v. VT Financial Services*, Opinion No. 50-98WC (1998).

Causation

5. Claimant relies on the testimony of an orthopedic surgeon, Dr. Kristiansen, to establish a causal connection. Defendant relies on the IME performed by Dr. Gennaro, an orthopedic surgeon, to support that there is no causal connection.
6. In this case, a thorough analysis reveals that the factors weigh in Claimant's favor.
7. Dr. Kristiansen has had a treating relationship with Claimant for twelve years. He has performed numerous surgeries on Claimant and has witnessed her lack of functional improvement. All experts reviewed the relevant records and took complete histories. Dr. Kristiansen's opinion is the more objective of the two. Dr. Howe and Dr. Monsey were not subject to cross-examination, yet they both support Dr. Kristiansen's ultimate conclusion. Moreover, Dr. Kristiansen examined Claimant thoroughly. Both orthopedic surgeons are well qualified to

render opinions in this case. In sum, the advantage is in favor of the Claimant's experts by the first criterion, third criterion, and fourth criterion.

8. Defendant argues that Dr. Kristiansen's opinion is more speculative than probable because he lists too many possible scenarios and because of an absence of physical evidence to support his conclusion. Thus, the defense contends that Dr. Gennaro's opinion is more convincing.
9. I conclude that Dr. Gennaro's opinion is not more probable. Dr. Gennaro indicates that the collapse of the femoral is not work-related since there is no identifiable cause. He testified it is idiopathic since the common causes of avascular necrosis do not exist in this case. Instead, avascular necrosis just happened. However, it seems more logical that Claimant's bones and muscles were weak from years of disuse. Then, an abnormal force, i.e., a new physical therapy routine, caused a stress fracture or microfractures that led to avascular necrosis. This is more probable given the Claimant's complicated medical history and the weight that must be granted to Dr. Kristiansen's conclusion. I accept Dr. Kristiansen's opinion.
10. When all the evidence is considered as a whole, the more probable hypothesis is that Claimant developed avascular necrosis as a result of her 1993 work injury. Claimant has met her burden of proof. Therefore, Claimant's hip replacement surgery is work-related and compensable.

Annual Cost of Living Adjustment

11. Presently, the Worker's Compensation Act provides that temporary total disability benefits shall be paid by employer "equal to two-thirds of the employee's average weekly wages, but not more than the maximum nor less than the minimum weekly compensation...However, in no event shall an employee's total weekly wage replacement benefits...exceed 90 percent of the employee's average weekly wage prior to applying any applicable cost of living adjustment." 21. V.S.A. § 642.
12. As far back as 1982, and more importantly at the time of Claimant's injury, § 642 provided that "the weekly benefits under this section shall not exceed the employee's average weekly wage." The phrase "weekly net income" was added in 1993, however that amendment is not outcome determinative.
13. The Act further provides for benefits to undergo an annual cost of living adjustment (COLA) each July 1. These benefits are adjusted "to bear the same percentage relationship to the average weekly wage in the state as computed under this chapter as it did at the time of the injury." 21. V.S.A. § 650(d).
14. Under the mandate of § 650(d), Workers' Compensation Rule 16.2000 provides for annual adjustments but limits temporary benefits to the average weekly wage or weekly net income, "in no event may a claimant's compensation rate for

temporary total disability exceed his or her average weekly wage or his or her weekly net income.”

15. Claimant argues that the average weekly wage was a “moving target” at the time of her injury. She claims that § 650, in 1993, was dispositive since it provided for benefits to increase each year by COLA’s. Thus, it is permissible if the COLA exceeds her average weekly wage of \$278.55.
16. However, the plain language of § 642 defeats Claimant’s § 650 argument. A canon of statutory construction provides that when a “statute is unambiguous and the words have plain meaning,” we must “accept and enforce that plain meaning as the intent of the Legislature.” *In re S. Burlington-Shelburne Highway Project*, 174 Vt. 604 (2002), ¶ 5. By its terms, § 642, then and now, does not permit a compensation rate for temporary total benefits to be above the average weekly wage.
17. Furthermore, the Vermont Supreme Court in *Morin v Essex Optical*, 178 Vt. 29, advanced the long-standing policy reasons for capping temporary total disability benefits. See also, *Dickinson v T.J. Maxx*, Op. No. 13-03WC (2003); *Roethke v Jakes’ Original Bar & Grill*, Op. No. 51-99WC (1999); *Fischer v Karne Choling*, Op. No. 28-93WC (1994); *Runnals v. Can Do Special Events*, Op. No. 56-96WC (1996). In *Morin*, the Court distinguished between capping both temporary and permanent benefits. The Court ruled against capping COLA’s for permanent total disability benefits given the absence of legislative intent. *Morin*, 2005 Vt. 15, ¶9. Instead, capping was limited to temporary total disability pursuant to statutory provisions, such as 21 V.S.A. §§ 601(19), 642. Moreover, the policy reasons only justified capping temporary benefits. *Id.* at ¶14. Temporary disability benefits are wage-based and must be capped so they do not exceed the claimant’s average weekly wage. Otherwise, a claimant’s compensation benefits would become more lucrative than working, hence providing a disincentive for a prompt return to work. *Id.* In contrast, if a claimant is permanently and totally disabled, there is no expectation for a timely return to work. *Id.* Accordingly, *Morin* articulates the purpose behind the Departments decision that Claimant’s COLA’s to her temporary total disability benefits cannot be above her average weekly wage of \$278.55.
18. The plain language of § 642 coupled with the underlying policy reasons supports the carrier’s discontinuance of COLA’s in 2002. Therefore, Claimant’s current minimum compensation rate is \$278.55, her average weekly wage.

Attorney’s Fees and Costs

19. Claimant, because she has prevailed, is entitled to reasonable attorney’s fees as a matter of discretion and necessary costs as a matter of law when the claim is supported by a fee agreement and details of costs incurred and work performed. 21. V.S.A. §678(a); WC Rule 10.000.

20. Factors considered in fashioning an award include the necessity of representation, difficulty of issues presented, time and effort expended, clarity of time reports, agreement with the claimant, skill of counsel and whether fees are proportional to the efforts of counsel. See *Hojohn v. Howard Johnson's, Inc.*, Op. No. 43A-04WC (2004); *Estate of Lyons v. American Flatbread*, Op. No. 36A-03 (2003).
21. Claimant's success in this case was due to the efforts of her attorney who needed to spend 156.5 hours given the complexity of this case. Claimant has submitted sufficient proof of time expended. The lion's share of this case involved proving the issue of causation. Since Claimant prevailed on this issue, the time spent on other issues is not relatively significant. Here the attorney's time in the case preparation and presentation in the amount of 156.5 hours is reasonable.
22. Claimant is entitled to necessary costs in this case. Claimant requests the following costs: 1) \$915.50; 2) \$1200.00 for Dr. Kristensen's deposition; 3) \$1200.00 for Dr. Kristensen's testimony; and 4) \$1200.00 for Dr. Gennaro's deposition. This is a total request of \$4515.50.
23. The cost of \$915.50 is a necessary cost. However, under WC Rule 40.111, deposition costs are limited to \$300.00. Hence, Dr. Kristensen's total cost awarded is \$1500.00, instead of \$2400. In contrast, Claimant is awarded the full cost of \$1200.00 for Dr. Gennaro's deposition. WC Rule 40.080. This cost is necessary given that a prevailing claimant should not pay the cost of deposing the defense's expert.
24. Thus, Claimant is awarded fees of \$14,085 (156.5 hours at \$ 90.00 per hour) and necessary costs of \$3,615.50.

ORDER:

Therefore, based on the foregoing findings of fact and conclusions of law,

- a. Defendant is hereby ORDERED to pay Claimant's reasonable and necessary medical expenses related to the hip replacement surgery.
- b. Claimant's current minimum compensation rate is \$278.55.
- c. Claimant's request for retroactive Temporary Total Disability benefits from 2002 is hereby DENIED.
- d. The claim for attorney's fees of \$14,085 is hereby GRANTED.
- e. The claim for costs of \$3,615.50 is hereby GRANTED.

Dated at Montpelier, Vermont this 21st day of July 2006

Thomas W. Douse
Acting Commissioner