

R. C. v. Consolidated Memorials, Inc. (January 2, 2007)

**STATE OF VERMONT  
DEPARTMENT OF LABOR**

R. C. Opinion No. 54-06WC

v. By: Margaret A. Mangan  
Hearing Officer

Consolidated Memorials, Inc. For: Patricia Moulton Powden  
Commissioner

State File No. W-03620

Hearing held in Montpelier on September 12, 2006  
Record closed on October 17, 2006

**APPEARANCES:**

Heidi S. Groff Esq., for the Claimant  
Joseph M. Lorman Esq., for the Defendant

**ISSUES:**

1. Did the Claimant sustain an April 2004 work injury that caused an infection, which led to the amputation of both legs above the ankles, resulting in permanent total disability?
2. Is the Claimant entitled to thirteen weeks of temporary total disability benefits?
3. If entitled to a workers' compensation award, may the Claimant receive a lump sum payment of benefits?

**EXHIBITS:**

Joint Exhibit No. I: Medical Records on CD

Claimant's 1: C.V. of Ernest Atlas, M.D.

Defendant's A: C.V. of Philip Carling, M.D.

**FINDINGS OF FACT:**

1. The Claimant was an employee within the meaning of the Vermont Workers' Compensation Act (Act) for all relevant periods.
2. The Defendant was an employer within the meaning of the Act for all relevant time periods.

3. By April 2004, the Claimant was working roughly sixty hours per week as the General Manager of Consolidated Memorials.
4. As General Manager, the Claimant chipped granite with a chisel and handset, used a saw, drove trucks, placed orders for materials, and performed other similar tasks.
5. The Claimant wore gloves to perform these tasks only when it was cold.
6. The Claimant always had cuts on his hands and arms from working with sharp granite.
7. On April 5, 2004, the Claimant cut and scraped his hands and arms while chipping granite with a chisel and handset. Some of these injuries bled. The Claimant was familiar with the first aid kit and used antibiotic ointment and bandages.
8. On April 9, 2004, the Claimant was performing his duties as General Manager. While at work, the Claimant suddenly became nauseated and began vomiting.
9. Later that day, the Claimant's wife came home to find the Claimant lying on the couch, shivering and wrapped in blankets. The Claimant was vomiting with chest pain and diarrhea.
10. That evening, the Claimant's was treated at the Central Vermont Hospital's Emergency room, where he was diagnosed with influenza and pulled chest muscles. Upon release, the Claimant was given medication and was instructed to return if his symptoms worsened.
11. The Claimant's symptoms continued throughout the night and into the following morning.
12. On April 10, 2004, the Claimant continued to experience nausea, vomiting, diarrhea, and chest pain. Additionally, the abrasions on the Claimant's hands and arms began to feel very itchy. The Claimant requested that his wife scratch these abrasions.
13. Upon scratching the Claimant's hands and arms, the Claimant's wife noticed that a cut on the Claimant's right pinky finger had opened and was exuding puss. She treated this wound with peroxide, triple antibiotic ointment, and a band-aid. She also noticed other scratches and abrasions on the Claimant's hands and arms.
14. At approximately 10 PM on April 10, 2004, the Claimant was admitted to the Central Vermont Hospital because of his worrisome and persistent symptoms.
15. In the early morning hours on April 11, 2004 the Claimant's vital signs continued dropping. As a result, he was admitted to the Intensive Care Unit and given intravenous fluids.
16. The April 11, 2004 medical records show that the Claimant had multiple sores on his hands from work related trauma. These records also note that one of the sores "had a

pustule that was I&D'd by the wife yesterday.” The records then state that the sores appeared to be healing with no active discharge.

17. A stool sample taken that day at the Central Vermont Hospital tested positive for a few colonies of Group A Streptococcus.
18. Later that morning, the Claimant's condition continued to worsen until he was in a state of septic shock. At this time he was transported by helicopter to Dartmouth-Hitchcock Medical Center (DMHC).
19. The Claimant became comatose as a result of his severe illness.
20. Also on April 11, 2004, a DMHC CT scan found that the Claimant's terminal ileum, cecum, and ascending colon were moderately thick-walled. The differential diagnosis of this condition included “typhilitis, Crohn's disease, lymphoma, infectious etiology such as Giardia; ischemia less likely without supporting clinical evidence such as acidemia.”
21. On April 12, 2004, a paronychia, infection in the tissue surrounding the nail bed, on the Claimant's right thumb tested positive for Group A Streptococcus.
22. By April 13, 2004, the Group A Streptococcus was found in the Claimant's bloodstream and urine.
23. DHMC repeatedly tested the Claimant's stool for the presence of white blood cells. These tests were all negative.
24. The doctors at DHMC found inflamed and necrotic tissue along the Claimant's left chest wall.
25. As a result of complications from the septic shock, the Claimant's lower extremities became gangrenous. This condition led to bilateral, below the knee amputations of the Claimant's legs.
26. Beginning on April 12, 2004, the Claimant was out of work for a total of thirteen weeks as a result of this experience.
27. On July 12, 2004, the Claimant returned to work as a General Manager at Consolidated Memorials.
28. The Claimant is requesting TTD compensation for the recovery period from April 12, 2004 through July 11, 2004.
29. The Claimant is requesting attorney fees and costs. Claimant's Counsel has a 25% Fee Agreement with the Claimant and an approved Attorney Lien. The Claimant has included an itemized list of litigation costs totaling \$5,762.54.

## Medical Testimony

Ernest Atlas, M.D.

30. Dr. Atlas is an expert in infectious diseases and has been practicing for over thirty years. He regularly consults in infectious disease cases and has personally treated over a dozen cases involving Group A Streptococcus.
31. After reviewing the Claimant's medical records, the Claimant's wife's deposition testimony, and interviewing the Claimant's wife, Dr. Atlas opined that the Group A Streptococcus entered the Claimant's body via the work related cuts and abrasions.
32. From there, Dr. Atlas believes that the bacteria spread through the Claimant's bloodstream to the deep tissue of the left chest wall, where it produced a necrotizing fasciitis and septic shock. This condition caused blood clotting in the small vessels of the Claimant's legs and gangrene. The septic shock also resulted in decreased blood flow and the need for vasoconstrictor medications. As a result of these factors, below the knee amputations of the Claimant's legs were required.
33. Dr. Atlas explained that a superficial scratch or abrasion is likely to heal quickly once pus is exuded, even if this was the initial source of the Group A Streptococcus infection.
34. Dr. Atlas stated that the vast majority of Group A Streptococcus infections originate from breaks in the skin. He also stated that once this infection enters the bloodstream, the bacteria can circulate throughout the body.
35. While not impossible, in over thirty years of infectious disease practice Dr. Atlas had never seen, read about, or heard of Group A Streptococcus entering the body through the bowel.
36. Dr. Atlas opined that if this type of infection were to begin in the bowel then the stool would have had heavy growth of Group A Streptococcus and a high white blood cell count.

Philip C. Carling, M.D.

37. Dr. Carling has specialized in infectious disease medicine for over thirty years. However, he does not have first hand experience treating patients with Group A Streptococcus resulting in necrotizing fasciitis.
38. After reviewing the Claimant's complete medical records, witness depositions, and medical reports, Dr. Carling opined that the work related scratches and abrasions were not the most likely source of the Group A Streptococcus.
39. Rather, Dr. Carling believed that the primary infection developed in the Claimant's terminal ileum and ascending colon. This infection led to overwhelming streptococcal sepsis, organ failure, and the need for a bilateral leg amputation.

40. Dr. Carling believed that the presence of a “few” colonies of Group A Strep showed that the bowel was the primary site of the infection.
41. Dr. Carling opined that the Claimant’s right thumb tested positive for Group A Streptococcus because the thumb came in contact with infected stool.
42. Dr. Carling agreed that gastrointestinal symptoms can be a result of the sepsis, no matter where the source of the infection is.
43. Dr. Carling could not recall any examples of cases, or any literature where Group A Streptococcus entered the body via the bowel.

#### **CONCLUSIONS OF LAW:**

1. In workers' compensation cases, the claimant has the burden of establishing all facts essential to the rights asserted. *Goodwin v. Fairbanks*, 123 Vt. 161 (1962). The claimant must establish by sufficient credible evidence the character and extent of the injury and disability as well as the causal connection between the injury and the employment. *Egbert v. Book Press*, 144 Vt. 367 (1984).
2. To qualify for workers’ compensation benefits, the personal injury must arise out of and in the course of employment. See 21 V.S.A. § 618 (a)(1).
3. In Vermont, a worker who is injured at work may collect temporary disability benefits depending upon his actual capacity to work during the period that he is healing, until such time as he or she reaches maximum medical improvement. *Hepburn v. Concrete Professionals, Inc./Traveler’s Insurance Co.*, Opinion No. 16-03WC (2003).; 21 V.S.A § 642.
4. A Claimant is entitled to temporary total disability benefits under 21 V.S.A. § 642, while either: (1) in the healing period and not yet at a maximum medical improvement, *Orvis v. Hutchins*, 123 Vt. 18 (1962), or (2) unable as a result of the injury either to resume the former occupation or to procure remunerative employment at a different occupation suited to the impaired capacity. *Roller v. Warren*, 98 Vt. 514 (1925); *Votra v. Mack Molding, Inc.* Opinion No. 44-02WC (2002).
5. Under 21 V.S.A. § 644(a)(2), a Claimant is entitled to at least 330 weeks of permanent total disability if the work related injury causes the loss of both feet at or above the ankle.

6. 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 Holden & Martin Lumber Co.*, 112 Vt. 17 1941. 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. *J.G. v. Eden Park Nursing Home*, Opinion No. 52-05WC (2005) (citing *Lapan v. Berno's Inc.*, 137 Vt. 393 (1979)).
7. When qualified medical expert opinions are in conflict, this Department has traditionally examined the following criteria: 1) the length of time the physician has provided care to the claimant; 2) the physician's qualifications, including the degree of professional training and experience; 3) the objective support for the opinion; and 4) the comprehensiveness of the respective examinations, including whether the expert had all the relevant records. *J.C. v. Richburg Builders*. Opinion No. 37-06WC (2006). (citing *Miller v. Cornwall Orchards*, Opinion No. 20-97WC (1997); *Gardner v. Grand Union*, Opinion No. 24-97WC (1997)).
8. The medical experts in this case were both highly qualified infectious disease experts. Neither physician provided treatment to the Claimant. Rather, both doctors relied on the Claimant's medical records, depositions, and their own extensive training and experience when rendering their expert medical opinions. As a result, the fact that Dr. Atlas has personal experience in treating patients with similar Group A Streptococcal infections lends greater weight to his opinion.
9. Dr. Atlas testified that Group A Streptococcal bacteria most often enters the body via a break in the skin. The Claimant had multiple work related cuts and abrasions on his arms and hands at the onset of his illness. The Claimant's medical records document signs of infection on two of these wounds, one testing positive for the infectious bacterium.
10. By contrast, neither expert could recall any case they had ever worked on, read about, or even heard of where the bowel was the point of origin for a Group A Strep infection. Furthermore, while a CT scan showed moderate thickening of the bowel wall, none of the DMHC physicians connected this finding with the Claimant's sepsis or took further action.
11. Furthermore, Dr. Atlas stated that if the bowel were the primary infection site then the Claimant's stool would have been teeming with white blood cells and bacterial colonies. Instead, white blood cells were absent each time the Claimant's stool was tested. Rather than finding a heavy concentration of bacterial colonies, the stool contained only a few colonies that were likely deposited via the Claimant's bloodstream.

12. Hence, the April 2004 work related injuries sustained by the Claimant caused the above infection and complications leading to a bilateral leg amputation. This is a scheduled injury under 21 V.S.A. § 644(a)(2); therefore, the Claimant is entitled to at least 330 weeks of permanent total disability.
13. Furthermore, from April 12, 2004 through July 11, 2004, the Claimant was recovering from complications resulting from his work related injury, unable to work and had not yet reached medical end result. As such, the Claimant is also entitled to TTD benefits for this thirteen-week period.
14. Based on 21 V.S.A. § 678(a) and Rule 10, Claimant is awarded Attorney fees of 20% of the total award or \$9,000, whichever is less.

#### Lump Sum Payment

15. In 2000, the legislature amended 21 V.S.A. § 652(b) to permit a Claimant to request an award payment in one lump sum. *Sanz v. Douglas Collins Const.*, ¶ 6, 2006 Vt. 102. The Commissioner will grant this request if it is in the best interest of the Claimant or his family. *Id.*
16. The Department considers the following factors when determining whether a lump sum payment is in the best interest of a claimant. The claimant and/or the claimant's household receives a regular source of income aside from any workers' compensation benefit, the lump sum payment is intended to hasten or improve claimant's prospects of returning to gainful employment or the lump sum payment is intended to hasten or improve claimant's recovery or rehabilitation; the claimant presents other evidence that the lump sum award is in their best interests. *Patch v. H.P. Cummings Const.*, Opinion No. 49-02WC (2002); Rule 19.5000.
17. A lump sum payment will not be awarded if: the award was based upon a hearing decision for which an appeal has been filed and the employer or insurer objects to the payment of the lump sum; or the claimant is best served by receipt of periodic income benefits; or the payment is intended to pay everyday living expenses; or the lump sum payment is intended to pay past debts. *Id.*
18. In the present case, this Claimant has returned to work, earning regular income outside of any workers' compensation award. Therefore, the Claimant need not rely on the periodic payment of benefits for everyday expenses. As such, the Department recognizes that a lump sum award is in the best interest of this Claimant.

**ORDER:**

THEREFORE, based on the above Findings of Fact and Conclusions of Law, the Claimant's claim is compensable and the Defendant is ORDERED to pay:

1. Related Medical Benefits;
2. TTD benefits from April 12, 2004 through July 11, 2004;
3. A lump sum payment of PTD, pursuant to 21 V.S.A. § 644(a)(2), for at least 330 weeks;
4. Statutory interest from the date the ordered benefits should have been paid had this case been accepted, pursuant to 21 V.S.A. §664;
5. Attorney fees of 20% of the total award or \$9,000, whichever is less.

Dated at Montpelier, Vermont this \_\_\_\_ day of December 2006.

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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.