

Michael Simpson v. City of Burlington

(December 10, 2009)

**STATE OF VERMONT  
DEPARTMENT OF LABOR**

Michael Simpson

Opinion No. 48-09WC

v.

By: Phyllis Phillips, Esq.  
Hearing Officer

City of Burlington

For: Patricia Moulton Powden  
Commissioner

State File No. X-55319

**OPINION AND ORDER**

Hearing held in Montpelier on April 8, April 14, April 15, May 8 and June 1, 2009  
Record closed on July 10, 2009

**APPEARANCES:**

Michael Gadue, Esq., for Claimant  
John Leddy, Esq., for Defendant

**ISSUE PRESENTED:**

Was Claimant's intracerebral hemorrhage causally related to his work activities on September 12, 2005?

**EXHIBITS:**

Joint Exhibit I: Medical records  
Joint Exhibit II: Dr. Bruce Berryman affidavit, June 9, 2008  
Joint Exhibit III: Claimant's deposition, October 3, 2006

Claimant's Exhibit 2:	Memorandum from Lynne Perry to Claimant, October 14, 2005
Claimant's Exhibit 3:	Physician Certification for FMLA Leave (2 pages)
Claimant's Exhibit 5:	VLCT Claimant's Report, December 1, 2005
Claimant's Exhibit 6:	Letter from Darlene Bresett to Claimant, January 16, 2006
Claimant's Exhibit 8:	Appeal of claim denial, April 18, 2006
Claimant's Exhibit 9:	Transcript of recorded compact disc, July 2, 2007
Claimant's Exhibit 10:	Darlene Bresett handwritten note, February 15, 2006
Claimant's Exhibit 11:	Letter from Patrick Mahoney, M.D., October 27, 1975
Claimant's Exhibit 12:	Lynne Perry e-mail, February 28, 2006
Claimant's Exhibit 13:	Michael Simpson Workers' Compensation Chronological Record
Claimant's Exhibit 13 A:	Miscellaneous documents at end of workers' compensation files
Claimant's Exhibit 14:	FMLA Request Form (3 pages), with handwritten notations
Claimant's Exhibit 15A:	Walter Decker e-mail, September 21, 2005
Claimant's Exhibit 15B:	Memorandum from Lynne Perry to Claimant, October 11, 2005
Claimant's Exhibit 15C:	Memorandum from Lynne Perry to Claimant, September 21, 2005 (unsigned)
Claimant's Exhibit 15D:	Memorandum from Lynne Perry to Claimant, September 21, 2005 (signed) (5 pages)
Claimant's Exhibit 15E:	Thomas Tremblay e-mail, February 28, 2006
Claimant's Exhibit 16:	Brief <i>curriculum vitae</i> , Christopher Commichau, M.D.
Claimant's Exhibit 17:	Telephone deposition of Patrick Graupman, M.D., February 16, 2007
Claimant's Exhibit 18:	Deposition of Christopher Commichau, M.D., January 31, 2007
Claimant's Exhibit 20:	<i>Curriculum vitae</i> , Anya Koutras, M.D.
Claimant's Exhibit 22:	Claimant's affidavit, April 1, 2006
Claimant's Exhibit 27:	Brief <i>curriculum vitae</i> , Phil Aitken, M.D.

Defendant's Exhibit A: *Curriculum vitae*, Andres Roomet, M.D.  
 Defendant's Exhibit B: Dr. Roomet report, January 26, 2009  
 Defendant's Exhibit E: Walter Decker affidavit, June 14, 2006  
 Defendant's Exhibit E-1: Memo from Sergeant Donald Lilja to Deputy Chief Decker, April 5, 2006  
  
 Defendant's Exhibit F: Radio Log Listing, September 12, 2005  
 Defendant's Exhibit G: Unit Log Listing, September 12, 2005  
 Defendant's Exhibit H: Daily Shift Report, September 12, 2005  
 Defendant's Exhibit I: BPD Airport Perimeter Patrol  
 Defendant's Exhibit J: Burlington Police Department roster sheet, September 12, 2005 (4 pages)  
  
 Defendant's Exhibit K: Airport Division roll call sheets, September 11-13, 2005 (3 pages)  
  
 Defendant's Exhibit L-1: CD, BIAP 9-12-05  
 Defendant's Exhibit L-2: CD, Simpson 09122005-102602.WAV  
 Defendant's Exhibit L-3: CD, 2704 9-12-05 1017  
 Defendant's Exhibit L-4: CD, 9-12-05 2704 0907  
 Defendant's Exhibit M: Nextel Subscriber Activity Detail (4 pages)  
 Defendant's Exhibit P: Craig Bacon affidavit, May 7, 2008  
 Defendant's Exhibit Q-2: Memorandum from Lynne Perry to Claimant, September 21, 2005  
 Defendant's Exhibit Q-3: FMLA Request Form (3 pages)  
 Defendant's Exhibit Q-4: Memorandum from Lynne Perry to Claimant, October 11, 2005  
 Defendant's Exhibit Q-5: Memorandum from Lynne Perry to Claimant, October 14, 2005  
 Defendant's Exhibit Q-6: First Report of Injury  
 Defendant's Exhibit Q-7: Memorandum from Lynne Perry to Claimant, November 8, 2005  
 Defendant's Exhibit T: Sketch of Claimant's yard  
 Defendant's Exhibit U: VLCT PACIF, Claimant's statement, transcribed February 2, 2006  
 Defendant's Exhibit AA: Sketch of airport perimeter  
 Defendant's Exhibit BB: Aerial photograph of airport  
 Defendant's Exhibit CC: List of First Reports of Injury (3 pages)  
 Defendant's Exhibit DD: Letter from Attorney Gadue to Vermont Department of Labor, April 20, 2006  
  
 Defendant's Exhibit EE: Letter from Julie Heath, May 24, 2006  
 Defendant's Exhibit FF: Deposition of Robert Haynes, October 10, 2006  
 Defendant's Exhibit GG: "17 Separate Audio Recordings of MS' Transmissions"

## **CLAIM:**

All workers' compensation benefits to which Claimant proves his entitlement should his injury be deemed causally related to his work and therefore compensable.

## **FINDINGS OF FACT:**

1. At all times relevant to these proceedings, Claimant was an employee and Defendant was his 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. Until his retirement in 2006, Claimant had been a police officer with the Burlington Police Department for 34 years. For much of his career he was a uniformed patrol officer, ultimately obtaining the rank of corporal. Beginning in 2003 Claimant was assigned to the Airport Division. His duties there included maintaining the security of the premises, both inside and outside, assisting federal law enforcement officers and engaging in other routine police matters such as parking enforcement.
4. On September 12, 2005 Claimant was working the day shift, from 5:00 AM until 3:00 PM, with Corporal Mike Jordick. As was his practice upon starting his shift, Claimant first toured the interior of the terminal, making his presence known to TSA officials, airport ambassadors and the like. Then, at around 7:00 AM he began his patrol of the airport perimeter. This task involves using a four-wheel drive Jeep to maneuver around the airport's 3.5-mile inner fence line, which encompasses both paved ramp and runway areas and at least one off-road area skirting a ravine. The purpose of the patrol is to make sure that the airport's outer perimeter is secure, with no holes through which animals might gain entry, no debris that might blow onto a runway and into an airplane's path and no unauthorized personnel wandering about.

### *The "Jeep Incident"*

5. According to Claimant, he began his perimeter patrol in the ramp area at the northwestern end of the airport and then proceeded around towards the southern end. He reached an area where the perimeter line traverses a steep downgrade. There being no paved roadway, Claimant had to maneuver the Jeep downhill through the grass. As he did so, the Jeep's front wheel hit a deep rut. Claimant was wearing his seat belt but even so, the force of the Jeep's movement as it struck the rut caused him to hit the left side of his head on the metal post between the front and rear door.

6. Claimant testified that the force of the impact “really rang my bell.” He felt dazed, his ears were ringing and his head ached. He recalled<sup>1</sup> that he stopped the Jeep, got out and walked around it briefly. Then he got back in and resumed his perimeter patrol. As he did so, he observed that the sun seemed extraordinarily bright and was bothering his eyes.
7. Claimant followed the perimeter around to the Valley Air terminal. As he made his way through that area, he suddenly realized that he had driven under the wing tip of a parked plane and was close to hitting it with his windshield. Claimant testified that he had never come this close to hitting a plane before and was shaken by the experience. He attributed his failure to see the plane’s wing tip both to his headache and to what he felt to be the blinding sunlight.
8. After his near miss with the parked plane’s wing tip, Claimant backed up, maneuvered around it and continued back to the main terminal. Once there, he made his way to the security office, intending to sit down, take some Tylenol for his headache and rest for a bit.
9. Claimant testified that he returned to the office at around 8:00 AM. While there, he testified, he told his shift partner, Corporal Jordick, that he had “found a new rut” while out on perimeter patrol and that shortly thereafter he had almost hit the wing tip of a parked plane. It is unclear to what extent Claimant may have elaborated further – whether, for example, he told Corporal Jordick specifically that he had hit his head or whether he simply said that he had a headache. Claimant recalled that Corporal Jordick asked him if he wanted to go to the hospital, which Claimant declined to do.
10. Corporal Jordick could not corroborate any part of this conversation. He testified that he had no recollection of it whatsoever and denied that it had occurred. In particular, Corporal Jordick testified that he “absolutely” would have recalled asking Claimant if he wanted to go to the hospital.

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<sup>1</sup> Claimant’s recollection of events comes from three primary sources: (1) an unsworn, recorded statement he gave to Defendant’s adjuster, date unknown but transcribed on February 2, 2006; (2) his sworn affidavit dated April 1, 2006; and (3) his sworn testimony at formal hearing on April 8<sup>th</sup> and 14<sup>th</sup>, 2009. Claimant’s recollection of the fact of the Jeep incident itself – driving through the rut and hitting his head on the metal post – is consistent among all three sources, but many of the details conflict from one version to the next. I find that this most likely was due not only to the passage of time but also to the sequellae of Claimant’s head injury. The recitation of the details about which Claimant himself provided conflicting testimony is based on my determination as to which version, if any, was most likely accurate.

11. Claimant testified that although his severe headache persisted, he managed to complete his shift nevertheless. Shortly after 9:00 AM he handled an ATM alarm in the terminal. Later, at around 10:30 AM he handled a minor motor vehicle accident that had occurred down the road. Recordings of telephone conversations between Claimant and police dispatch personnel document both of these activities. In the recordings, Claimant is heard to multi-task on other radio frequencies, relay driver identification information to and from dispatch and otherwise engage in routine police business, all without apparent difficulty. Upon hearing the recordings, Claimant's fellow police officers described Claimant as sounding entirely normal – efficient, professional, jocular at times, and clearly in no apparent distress.
12. Claimant testified that in addition to telling Corporal Jordick of the Jeep incident he also reported it to his field supervisor, Sergeant Lilja. Specifically, Claimant recalled that he first attempted to reach Sergeant Lilja at around 8 or 9 AM, but was told by the police dispatcher that he was unavailable. Later, Claimant testified, he did speak with Sergeant Lilja by telephone and told him that he had hit his head while on perimeter patrol and had a bad headache. Claimant recalled that Sergeant Lilja advised him to complete a First Report of Injury. When Claimant told the sergeant that he had been unable to find any First Report forms in the airport security office he recalled that Sergeant Lilja advised him instead to wait until the following day and Sergeant Toof, Claimant's supervisor, would take care of the necessary forms.
13. There is no independent corroboration for any of this testimony. Sergeant Lilja testified that he did not recall speaking to Claimant at all on that day, and certainly that Claimant did not report any work-related injury to him. Both Sergeant Lilja and Deputy Chief Decker conducted a thorough search of landline and cell phone records, furthermore, and were unable to find any calls to Sergeant Lilja from any of the airport phones that Claimant might have used. Last, according to both Sergeant Lilja and Deputy Chief Decker had Claimant called to report a work-related injury this would have been noted on the daily shift report, so that future shift assignments could be adjusted if necessary. The September 12<sup>th</sup> daily shift report makes no mention of any injury, however.

The "Lawn Mowing Incident"

14. Claimant completed his shift at around 3:00 PM on September 12<sup>th</sup> and then made his way home. Over dinner he told his wife he had a headache. It is unclear whether he explained any further or otherwise mentioned that he had hit his head at work. After dinner Claimant's wife recalled that they were sitting outside and Claimant was rubbing his head. She suggested that he take something for his headache and rest, but Claimant declined, stating instead that he needed to mow the lawn. Claimant's wife testified that Claimant seemed agitated, on edge and "not himself."

15. While Claimant began mowing the lawn (with a rotary-type push mower), Mrs. Simpson tended to her gardening. She observed that Claimant, who had a long-established routine for mowing the lawn, was behaving in a most erratic and unusual manner. He started mowing in a different place, did not mow in a straight line and missed large swatches of grass. In all respects, Mrs. Simpson testified, Claimant's lawn mowing activities were dramatically different from the pattern he had followed for years. She found his demeanor unusual as well – he was uncharacteristically stubborn and aggressive, at once both hyper-focused on the task at hand and at the same time seemingly incapable of accomplishing it. Again, she suggested that he leave the chore for another time and rest instead, but again he refused.
16. As Mrs. Simpson resumed her gardening, she heard the mower stop. She came around to the front of the house and observed Claimant bending over and holding his head. When she inquired what had happened, Claimant told her that while mowing the patch of lawn nearest the road he had walked backwards into a stop sign post and hit the left side of his head, just above his left ear.
17. Claimant testified that after hitting his head on the stop sign post his headache, which already ranked as “about an 8 on a scale of 1 to 10,” worsened even more. Again Mrs. Simpson suggested that he go inside and rest, and again he insisted on continuing, as the task was almost completed.
18. Claimant took a few more swipes at the lawn and then, although many strips remained unmowed, determined that he was done. He took the mower to the garage, but contrary to his usual routine, did not put it away. Instead, he went inside, showered and went to bed.
19. Mrs. Simpson's testimony about Claimant's odd behavior even prior to hitting his head on the stop sign post was absolutely credible. She recounted the scene with convincing detail, recalling with some humor, for example, how strange the lawn looked after Claimant “finished” mowing it. I am convinced by her testimony alone that whatever injury process was occurring inside Claimant's head had begun *before* he backed into the stop sign post.

*The Events of September 13, 2005*

20. As was her practice, Mrs. Simpson had already left for work by the time Claimant awoke the next morning, September 13, 2005. Claimant testified that he arose from bed and hit the door casing with his left shoulder as he exited the bedroom. He did the same thing as he entered the bathroom.<sup>2</sup>

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<sup>2</sup> As will be seen *infra*, see Finding of Fact No. 30, as a consequence of his intracerebral hemorrhage Claimant suffered a visual field disturbance on his left side, which affected both his peripheral vision and his spatial orientation. Claimant testified that he was unaware on the morning of September 13<sup>th</sup> that he was not seeing things on the left side of his body, and did not realize until later that day that that was the case.

21. Claimant tried to follow his morning routine and prepare for his 3:00 PM shift, but his headache had returned and was again severe. He took some Tylenol and sat down to rest for a moment, then fell asleep and did not awaken until 1:00 PM. Realizing that he was going to be late, he telephoned Sergeant Toof, his supervisor, to tell him so. Claimant admitted that he did not tell Sergeant Toof that he had hit his head at work the previous day, because, as he explained, he was “having problems just dealing with . . . the present situation.”<sup>3</sup>
22. For his part, Sergeant Toof testified that he specifically remembered Claimant’s call. He recollected, however, that Claimant was calling not merely to say that he would be late, but rather to report that he would be out sick for his shift that day because his allergy medications were not working.
23. In any event, at some point after calling Sergeant Toof Claimant left his home and attempted to drive to work. His headache was severe, his vision was impaired and he experienced the sunlight as extraordinarily bright and painful. Driving south on Interstate 89 from St. Albans, Claimant felt nauseated, so he stopped at the Georgia rest area, where he fell asleep for at least two hours. When he awoke, he resumed driving, but soon realized that his left peripheral vision was impaired to the point where he could not see cars passing him. Claimant pulled off the highway again, and again fell asleep. When he awoke, it was dark. He decided to turn around and drive home.
24. Claimant arrived home at around 9:00 PM on the evening of September 13<sup>th</sup>, having spent approximately 7 hours attempting to drive to work, a commute that typically took 30 to 35 minutes. Both Mrs. Simpson and Tom Simpson, their adult son, had been attempting since late afternoon to determine his whereabouts, and were waiting for him when he drove in. Both recognized immediately that Claimant had suffered a serious injury and was very unwell. He was pale, sweating profusely, unsteady on his feet and quite clearly confused. He appeared to be in great pain, and repeatedly stated that his head was “killing him.” Together, Mrs. Simpson and Tom assisted Claimant back into his truck and drove him to the hospital.

*Medical Diagnosis, Etiology and Causal Relationship*

25. Claimant arrived at Northwestern Medical Center at around 10:30 PM. He complained of nausea, photophobia (excessive sensitivity to light), neck stiffness, blurred vision and severe headache. A CAT scan revealed a large hematoma, or blood clot, in Claimant’s brain. Claimant was in serious condition, and was transported by ambulance to Fletcher Allen Health care for treatment.

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<sup>3</sup> Mrs. Simpson provided important corroboration for the fact that Claimant was indeed having difficulty “dealing with [his] situation” as he tried to prepare for work on September 13<sup>th</sup>. When she arrived home from work that afternoon, she found that Claimant had failed either to close the garage door or to lock the house. He had forgotten to take with him police gear that he always carried and had left the kitchen in disarray after making his lunch. These omissions were all highly unusual for Claimant, a radical departure from his normal routine.

26. Ultimately Claimant was diagnosed with an intracerebral hemorrhage. There was objective evidence that the hemorrhage must have occurred at least 12 to 24 hours prior to its discovery on CAT scan, as it would have taken that long for the swelling that was visible in the area to have formed. With that finding in mind, Claimant's treating neurosurgeon, Dr. Graupman, concluded that the bleeding in Claimant's brain must have started some time *before* he hit his head on the stop sign post while mowing his lawn, as that incident had occurred only a few hours earlier. Thus, he surmised, Claimant most likely had suffered an earlier head trauma as well. Because Claimant was on anticoagulants for an unrelated medical condition, even a relatively minor trauma could have resulted in a significant bleed. A blood clot would have formed, and with a second trauma – hitting the stop sign post – it probably began bleeding again, then ruptured within his brain. The rupture would have caused photophobia, neck stiffness and a rapidly worsening headache. This clinical scenario is entirely consistent with Claimant's actual presentation on the night of September 13<sup>th</sup>.
27. Dr. Commichau, Claimant's treating neurologist, concurred with Dr. Graupman as to the etiology of Claimant's intracerebral hemorrhage. Initially Dr. Commichau posited that the hemorrhage might have occurred spontaneously as a result of amyloid angiopathy, a condition that causes the blood vessels in the brain to become more susceptible to bleeding. Ultimately Dr. Commichau discarded this diagnosis as unlikely and determined instead that Claimant's bleed most probably was traumatically caused.
28. Dr. Roomet, the neurologist retained by Defendant to review Claimant's medical records, disputed this analysis. In Dr. Roomet's opinion, there was no way to determine with any certainty whether Claimant's hemorrhage was traumatically rather than spontaneously caused. In particular, having listened to the audio recordings of Claimant tending to police business throughout the morning of September 12<sup>th</sup> Dr. Roomet concluded that it was unlikely Claimant would have been capable of doing what he did – multi-tasking, reciting strings of numbers, joking with the dispatcher – had he just suffered a significant head trauma while on perimeter patrol. Nor was there any mention of the Jeep incident in the contemporaneous medical records. Without any independent corroboration of the event, Dr. Roomet discarded it as a likely cause for Claimant's first hemorrhage.

#### *Claimant's Recovered Memories*

29. At first, neither Claimant nor Mrs. Simpson recalled the Jeep incident as the most likely “earlier head trauma” which Dr. Graupman deduced must have occurred. Both at the Northwestern Emergency Department and upon his admission to Fletcher Allen, it was Mrs. Simpson, not Claimant, who responded to most of the doctors' questions as to the onset of Claimant's symptoms. There was no reason at that point for either of them to understand the medical ramifications of Claimant having bumped his head at work the day before. Not surprisingly, therefore, the event that stood out in Mrs. Simpson's mind was the lawn mowing incident, and that was what she reported. As for Claimant, he was confused, disoriented and in severe pain. It is understandable that he too would have failed in the moment to recognize the importance of the Jeep incident and communicate the fact of its occurrence effectively.

30. Claimant remained hospitalized until the end of September, and then underwent extensive outpatient rehabilitation. Initially he had both motor and cognition deficits, including problems with balance, speech and language, memory and concentration. He had visual deficits as well, including impaired depth perception and a loss of peripheral vision on his left side.<sup>4</sup> Some of these issues have resolved over time, but some still remain. According to Mrs. Simpson, for example, Claimant's memory is still impaired, particularly as to current events such as who might have called during the day or what chores he needs to take care of. His vision deficit appears to be permanent, and he still has difficulty at times with concentration and information processing. He fatigues easily and lacks the same stamina and energy level that he used to have.
31. As for Claimant's memory of the events of September 12, 2005 this did not begin to return to him until at least mid-October, some two weeks after he had been released from the hospital. Mrs. Simpson testified that Claimant first began talking about having almost hit the wing tip of a parked plane, but could not recall the context of that event. Gradually, she recalled, Claimant's memories became more unified, until ultimately he recollected the Jeep incident itself more coherently. Later, he seemed to recall more details, such as telling Corporal Jordick of the incident and reporting his injury to Sergeant Lilja. Claimant's memory as to these latter details is inconsistent, unverifiable and unreliable. As to the core event itself, however, once retrieved Claimant's memory of hitting his head on the Jeep has remained consistent throughout.
32. Because Claimant did not recall the Jeep incident until many weeks after it occurred, and also because neither Claimant nor his wife at first appreciated the medical significance of that event in any case, Claimant did not initially report his intracerebral hemorrhage as work-related. Again, it was not until mid-October when Claimant first notified Lynne Perry, Defendant's human resources director, that he believed his medical condition was work-related and requested that a First Report of Injury be filed. Prior to that time, Claimant had completed the medical leave paperwork Ms. Perry had sent to him without any mention whatsoever of a possible work connection.

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<sup>4</sup> The visual deficits caused by Claimant's brain hemorrhage are likely what led both to his erratic lawn-mowing pattern and to his failure to perceive the stop sign post before he backed into it. Conceivably these deficits also might account for his near-miss with the wing tip of the parked plane during his September 12<sup>th</sup> perimeter patrol, but the evidence on this point is not clear.

## 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. As in many workers' compensation claims, the issues here are both medical and factual. In this case, however, they are unusually intertwined. Did the lawn mowing incident itself cause Claimant's intracerebral hemorrhage, or was there a prior precipitating event? And if there was a prior event, did it occur spontaneously or as the result of some work-related trauma, namely the Jeep incident? Is there sufficient evidence from which to conclude that the Jeep incident even occurred?
3. I conclude, first of all, that Claimant's brain bleed did not begin with the lawn mowing incident but rather must have been precipitated by some earlier event. In reaching this conclusion I rely with complete confidence on Mrs. Simpson's testimony. I cannot stress how truthfully her description of Claimant's odd behavior even before he hit his head on the stop sign post resonated.
4. Mrs. Simpson's testimony is buttressed by objective medical evidence, namely the CAT scan results showing significant edema in the area of Claimant's hemorrhage. I accept as credible Dr. Graupman's opinion that for that edema to have been present the original insult to Claimant's brain must have occurred at least 12 to 24 hours previously. Time-wise, that eliminates the lawn mowing incident as the precipitating cause of his initial hemorrhage.
5. The medical opinions differ as to whether the precipitating cause most likely was spontaneous or traumatic. Drs. Graupman and Commichau concluded that the inciting event was most likely traumatic. First, they considered and discarded possible diagnoses that would have accounted for a spontaneous hemorrhage. Having done so, they found in Claimant's recollection of the Jeep incident a plausible traumatic etiology consistent with his clinical presentation.
6. In contrast, Dr. Roomet considered Claimant's account of the Jeep incident, but ultimately rejected it. In Dr. Roomet's opinion, Claimant's recollection of the event was inconsistent and uncorroborated, and therefore too unreliable to accept. Without documented evidence of a specific traumatic injury to the head, Dr. Roomet concluded that there was no way to determine the etiology of Claimant's hemorrhage to the required degree of medical certainty.

7. Upon close consideration, therefore, the difference between the expert medical opinions is more factual than medical. Drs. Graupman and Commichau accepted Claimant's account of the Jeep incident as true; Dr. Roomet did not.
8. I too accept Claimant's account of the Jeep incident as true. To be sure, it is troublesome that in what Deputy Chief Decker described as the "environment of documentation" in which police officers routinely work, there is no independent corroboration of the details of the Jeep incident as Claimant recounted them. Corporal Jordick does not recall Claimant telling him that he had injured himself while on perimeter patrol. There is no record of the phone calls Claimant allegedly made to Sergeant Lilja, and no documentation on the daily shift report that Claimant had suffered a work injury. As to these details, Claimant's memory is most definitely faulty.
9. Nevertheless, I believe Claimant. His recollection of the Jeep incident itself rang true, and has never changed. To a one, all of the witnesses who testified as to their experience of him, including even those who appeared on Defendant's behalf, remarked on his integrity, his honesty and his unassailable character. He was a career police officer who loved his job, and I can discern no motivation for him to have created a story out of whole cloth.
10. Defendant appropriately questions the fact that Claimant's injury was both unwitnessed and, at least according to all available documentation, late-reported as well. When such questions arise, the trier of fact must evaluate the factual evidence carefully so as to explore any inconsistencies, investigate possible intervening causes and evaluate "hidden or not-so-hidden motivations." *Darrah v. Censor Security Inc.*, Opinion No. 16-09WC (June 3, 2009); *Jurden v. Northern Power Systems, Inc.*, Opinion No. 39-08WC (October 6, 2008); *Russell v. Omega Electric*, Opinion No. 42-03WC (November 10, 2003), citing *Fanger v. Village Inn*, Opinion No. 5-95WC (April 20, 1995).
11. In the past, the Commissioner has enumerated four questions to assist in this process. First, are there medical records contemporaneous with the claimed injury and/or a credible history of continuing complaints? Second, does the claimant lack knowledge of the workers' compensation reporting process? Third, is the work performed consistent with the claimant's complaints? And fourth, is there persuasive medical evidence supporting causation? *Darrah, supra*; *Jurden, supra*; *Larrabee v. Heavensent Farm*, Opinion No. 13-05WC (February 4, 2005), citing *Seguin v. Ethan Allen*, Opinion No. 28S-02WC (July 25, 2002).
12. Here, although admittedly there are no contemporaneous medical records documenting the Jeep incident, given the peculiar facts of this case the omission is understandable. Initially Claimant's memory of the event was confused, and in any event neither he nor his wife understood its medical significance until some weeks later. Those considerations also account for the fact that Claimant, although knowledgeable of the workers' compensation reporting process, apparently failed to report his injury immediately after it occurred.

13. As to the third and fourth questions, despite his faulty memory as to what he did in the hours *after* the Jeep incident, Claimant's recollection of the mechanism of injury itself has never changed, and is entirely consistent with the complaints he reported, including both severe headache and photophobia. Persuasive medical opinions from Drs. Graupman and Commichau supply the necessary causal link from these symptoms back to the work injury, forward to the lawn mowing incident and ultimately to the diagnosis of intracerebral hemorrhage.
14. I conclude, therefore, that Claimant has sustained his burden of proving that the Jeep incident occurred, and that it precipitated the chain of events that culminated in his hospitalization on September 13, 2005 for intracerebral hemorrhage. The injury is compensable and Claimant is entitled to whatever workers' compensation benefits he proves flow from it.

**ORDER:**

Based on the foregoing findings of fact and conclusions of law, Defendant is hereby **ORDERED** to pay:

1. All workers' compensation benefits to which Claimant proves his entitlement as causally related to his September 12, 2005 injury and resulting intracerebral hemorrhage; and
2. Costs and attorney fees in amounts to be determined according to 21 V.S.A. §678.

**DATED** at Montpelier, Vermont this 10<sup>th</sup> day of December 2009.

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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.