

**STATE OF VERMONT
DEPARTMENT OF LABOR**

Alberta Gauthier)	Opinion No. 41-05WC
)	
)	By: Margaret A. Mangan
v.)	Hearing Officer
)	
Moot WoodTurning)	For: Patricia A. McDonald
)	Commissioner
)	
)	State File No. S-02861

Pretrial conference on December 20, 2004

Hearing held on June 3, 2005

Record Closed on June 23, 2005

APPEARANCES:

Alberta Gauthier, pro se

John W. Valente, Esq., for the Defendant

ISSUE:

Did claimant's work-related lifting cause a perforated diverticulum?

EXHIBIT:

I: Medical Records

FINDINGS OF FACT:

1. Moot Wood Turnings, Inc. was an employer as defined by the Vermont Workers' Compensation Act at all relevant times. Alberta Gauthier was an employee as defined by the Vermont Workers' Compensation Act at all relevant times.
2. Eastern Casualty Insurance Company was the workers' compensation carrier for Defendant at the time of the injury at issue in this case.
3. Claimant is a 61 year-old female, who was employed by Defendant as a finisher at the time of the injury. Claimant worked a shift from 6:00 am to 3:30 pm.
4. Her responsibilities as a finisher included: lifting boxes off a skid, opening boxes, and separating the contents of the boxes. There were approximately 45 boxes on a skid, and

each box weighed approximately 75 pounds. Claimant and a co-worker would move the boxes from shoulder height to ground level.

5. On Monday, July 16, 2001, claimant felt achy, but she went on with her usual routine and ate her normal dinner. On Tuesday, July 17, 2001, claimant felt fine until after lunch when she started developing abdominal pains. As the day went on claimant's abdominal pain got worse. By 3:30, claimant's pains were severe. When claimant's husband got home, he immediately took her to the Emergency Room.
6. Prior to the July 16, 2001 achy feeling, claimant never had any abdominal problems.
7. On July 18, 2001 claimant was admitted into the hospital for five days and then returned home. She received repeated testing over the next month and antibiotics, but her pain was unresolved. Finally, on August 16, 2001 Dr. Mark Crane performed a sigmoid colectomy (removal of part of the colon) because of a diverticular perforation.

Expert Medical Opinions

8. Dr. Mark Crane testified for the claimant. He is Board Certified and has five years of practice as a general surgeon. Dr. Crane also holds a sub-specialty certificate from the Society of Gastrointestinal and Endoscopic Surgeons (SAGES).
9. Dr. Crane first examined claimant on July 18, 2001. He also repeatedly examined claimant prior to and after he performed her August 16, 2001 surgery.
10. Dr. Crane opines that lifting did not cause claimant's diverticulitis and diverticulum, but that the work-related lifting caused the perforation of the diverticulum. He bases his opinion on the unique set of facts surrounding claimant's diverticulitis. It is Dr. Crane's opinion that the atypical set of facts, including: the higher than normal location of the abscess around the small bowel, as well as the colon and sigmoid; the absence of thickening in the colon; the age of the abscess; and the sudden onset of the perforation, all contribute to the conclusion that the work-related lifting caused the perforation of the diverticulum. Dr. Crane opines that an infection, which causes the perforation of the diverticulum, normally has a gradual onset of symptoms, and is precipitated by cramping, diarrhea, constipation, and bowel changes. He opines that in claimant's case, none of these symptoms were present.
11. Dr. Crane also opines that repetitive lifting increases abdominal and intraluminal pressure. In claimant's case, it was the intraluminal pressure from lifting the boxes that caused the perforation of the diverticulum.
12. Dr. Victor Pisanelli, Jr. testified for the defendant. He is a Board Certified general surgeon with twenty-seven years experience.

13. Dr. Pisanelli opines that lifting did not cause claimant's perforation of the diverticula, but instead it was part of a natural intrinsic disease process. It is Dr. Pisanelli's opinion that it was merely a coincidence that claimant started having pains at work. Dr. Pisanelli opines that the perforation would have occurred regardless of the physical activities claimant engaged in. It is his theory that infection caused the perforation and claimant's high white blood count when she was admitted to the hospital shows that an infection was present. However, he notes that this is generally the case, but he would have to see the patient to be sure. Dr. Pisanelli also opines that the location of the diverticulum in the sigmoid colon is very common.
14. In formulating his opinion, Dr. Pisanelli reviewed all medical records from Central Vermont Hospital, but did not ever examine claimant.
15. Dr. Charles Bliss also testified for the defendant. He is a Board Certified gastroenterologist, who is on staff at Boston University Hospital and is an Assistant Professor of Internal Medicine at Boston University. In his practice, he provides care for people with diverticulitis before surgery and after surgery, but does not perform the surgeries.
16. It is Dr. Bliss's opinion that the diverticulitis was not caused by the work-related lifting. Dr. Bliss opines that the diverticulitis began as a result of an intrinsic colon disease. He goes on to opine that diverticulitis led to a weakening of the wall of bowels and the eventual perforation.
17. In formulating his opinion, Dr. Bliss reviewed all medical records from Central Vermont Hospital, but did not ever examine claimant.

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. 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).
3. 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).
4. The issue of causation does not center on whether claimant's lifting at work caused diverticulitis. No doctor disputes that lifting did not cause the diverticulitis. Instead, the current dispute is surrounds the cause of the perforated diverticulum.

5. In considering conflicting expert opinions, 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 relevant records. *Miller v. Cornwall Orchards*, Opinion No. WC 20-97 (1997); *Gardner v. Grand Union*, Opinion No. 24-97WC (1997).
6. In deciding this case, the unique set of facts surrounding the claimant's diverticulitis plays an important role. Even after nearly four years, Dr. Crane vividly recalls the uniqueness of claimant's diverticulitis.
7. Out of the three medical experts, Dr. Crane was the only one to examine the claimant. He not only examined the claimant before and after the surgery, but he performed the surgery. This put him in the best position to look at the facts surrounding the claimant's perforated diverticulum. Although Dr. Crane has not been practicing for the number of years that Dr. Pisanelli or Dr. Bliss has, he demonstrated a very knowledgeable understanding of diverticulitis and the facts of the case. Dr. Crane has also performed a considerable number of gastrointestinal surgeries and stays current in the field through his SAGES certification.
8. Dr. Pisanelli and Dr. Bliss were given all relevant records regarding claimant's injury, but neither doctor had the objective view of the surgeon, Dr. Crane. Dr. Crane vividly recalls the specific facts, where Dr. Pisanelli only had knowledge of an abscess in the sigmoid. Dr. Crane also saw first hand the lack of thickening around the colon, and the age of the abscess. None of these facts were even addressed by Dr. Pisanelli or Dr. Bliss.
9. Dr. Pisanelli and Dr. Bliss rely mainly on the high white blood cell count and a traditional progression of diverticulitis to conclude that an infection caused the perforated diverticulum. Even Dr. Bliss noted that a higher white blood cell count suggested an infection, but he would have to see the patient to be sure. Dr. Crane performed the surgery and he understands how a professional who did not perform the surgery could conclude that infection caused the perforation. However, when he looked at the unique facts surrounding the surgery, coupled with the lack of the normal symptoms of infection, he concluded that the repetitive work-related lifting caused the perforated diverticulum.

10. The objective evidence relied on by Dr. Crane is the most convincing. Dr. Crane agrees that under typical circumstances defendant's doctors' theories are appropriate, but not under claimant's highly unusual set of facts. Defendant's doctors simply did not have the objective evidence in front of them that the claimant's surgeon had.

ORDER:

Therefore, based on the foregoing findings of fact and conclusions of law, defendant is ORDERED to adjust this claim.

Dated at Montpelier, Vermont this 12th day of July 2005.

Patricia A. McDonald
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.