

L. R. v. Fletcher Allen Health Care

(January 4, 2007)

**STATE OF VERMONT  
DEPARTMENT OF LABOR**

L. R.

Opinion No. 57-06WC

v.

By: Margaret A. Mangan  
Hearing Officer

Fletcher Allen Health Care

For: Patricia Moulton Powden  
Commissioner

State File No. W-03811

Hearing held in Montpelier on October 17, 2006

Record closed on November 20, 2006

**APPEARANCES:**

William B. Skiff, II, Esq., for the Claimant

Stephen D. Ellis, Esq., for the Defendant

**ISSUES:**

1. Is the treatment Claimant has received after she was placed at maximum medical improvement compensable?
2. If this is a compensable claim, what degree of permanent partial impairment is due?

**EXHIBITS:**

Joint I: Medical Records

Claimant:

- |    |               |         |
|----|---------------|---------|
| 1. | Form 2        | 6/13/05 |
| 2. | Form 2        | 5/23/05 |
| 3. | Form 25       | 1/3/05  |
| 4. | Interim Order |         |

Defendant:

- |   |   |
|---|---|
| A | Letter from Staff Attorney 3/24/06      |
| B | Department's Referral to Hearing Notice |

### **STIPULATED STATEMENT OF UNCONTESTED FACTS:**

1. Claimant is an employee within the meaning of the Vermont Employer's Liability and Workers' Compensation Act (Act).
2. Fletcher Allen Health Care (FAHC) is an employer within the meaning of the Act.
3. Claimant has no dependents within the meaning of the Act.
4. On November 14, 2004, Claimant suffered an injury while in the employ of FAHC.
5. At the time of her injury, Claimant was making \$23.60 per hour.
6. Claimant's average weekly wage for the twelve weeks prior to the injury was \$981.44.
7. Claimant's compensation rate as of December 6, 2004 was \$654.45.

### **FINDINGS OF FACT:**

1. Claimant is a CT scan technician at FAHC. Her daily routine includes preparing for a scan, starting intravenous fluids, injecting dyes, and sliding or lifting patients to and from the table.
2. In November 2004, Claimant worked four ten-hour days per week, including one weekend a month.
3. During a particularly busy weekend shift in November 2004, Claimant left work with neck and arm pain and numbness in her hands. She assumed the symptoms would resolve. However, when the symptoms persisted, she sought care from Dr. Pierre Angier on November 19, 2004.
4. On examination, Dr. Angier noted "some weakness of the right bicep and the right grip strength" and some diminished sensation in the C5-6 distribution (in the arm and thumb side of the hand). He diagnosed "cervicalgia with right upper extremity pain and paresthesias consistent with bulging or herniated disk" and he released Claimant to work in a sedentary capacity until rechecked. Later that day Susan Anderson, a Physician's Assistant, also examined Claimant, noting tenderness at the trapezius and top of shoulder. Carpal tunnel testing was negative. Ms. Anderson diagnosed right upper extremity overuse strain.
5. A November 19, 2004 MRI revealed central disc protrusions at C2-3, C5-6, C6-7, with the most prominent at C6-7. The C6 nerve supplies the forearm and the radial (thumb) side of the hand; stimulation from C7 goes to the middle finger.

6. In late November 2004, Claimant was referred for physical therapy with Heather Berg who identified specific goals for Claimant. They were: 1) to abolish right upper extremity radicular symptoms; 2) to decrease neck pain by 75% or more; 3) that she would be able to resume full duty work and sleep consistently without neck and arm pain; 4) that her upper back strength would be five out of five and right shoulder range of motion would reach normal limits. Time set for the goals was six to eight weeks.
7. By January 10, 2005 Claimant was back to her regular 10-hour shift with continued light duty restrictions.
8. On January 17, 2005, Claimant reported to Dr. Angier that she was having very little pain and stiffness in her neck. Range of motion was free. The doctor detected no spasm or tenderness.
9. Claimant then went to the Austrian Alps for a ski vacation for two weeks.
10. On January 31, 2005, shortly after her return, Claimant visited Dr. Angier with complaints of discomfort in her neck. On examination, she had guarding. Dr. Angier told her she could work without restrictions. She had stopped taking pain medication.
11. On February 11, 2005, Dr. Angier placed Claimant at medical end result. On examination, he found some restriction with range of motion, palpable guarding and a C7 “rib complex” on the right. He assessed her with a 5% whole person impairment based on DRE Category II from the AMA Guides to the Evaluation of Permanent Impairment, 5<sup>th</sup> edition.
12. On March 13, 2005 Claimant fell while skiing at Stowe. Afterwards she treated for an injury to her left leg; denying any injury to head or neck.
13. On April 19, 2005, Claimant returned to Dr. Angier for treatment for a flare up of her neck and shoulder symptoms. Dr. Angier noted sensory deficits in both hands and muscle guarding in the cervical spine. Claimant began taking pain medication. Muscle guarding was detected on examination. Range of motion was decreased.
14. Although Claimant is convinced that she did not hurt her neck and shoulders when she fell at Stowe, her report of symptoms and result of physical examination prove otherwise.
15. Dr. Angier assessed Claimant’s permanent partial impairment at 5% based on DRE category 2. That assessment is based on a diagnosis of a disc herniation. He uses the terms “disc herniation” and “disc bulge” interchangeably. However, Dr. Angier opined that Claimant would still be entitled to a 5% without proof of herniation because she had palpable guarding in the paracervical muscles extending to the trapezius.
16. On May 12, 2005, Dr. McLean opined that Claimant had no permanent partial impairment. Dr. McLean noted that the MRI ordered by Dr. Angier does not show a frank disc herniation; it shows only disc bulges.

17. In July 2006, Dr. John Johansson, an osteopathic physician with an emphasis on orthopedic medicine, examined the Claimant at the request of the insurance carrier. He agreed with Dr. McLean that there was no permanent impairment related to the work related injury.
18. Dr. Johansson agrees that Claimant's symptoms suggested a herniated disc, but that the MRI failed to confirm it. The MRI report states that disc protrusions were identified at C2-3, C5-6 and C6-7, with no cord compression and no compromise of the foramen. Dr. Johansson determined that Claimant met none of the criteria that would support a DRE Category 2.
19. In March 2006, Dr. Angier noted that Claimant had thoracic outlet syndrome that was "only symptomatic with specific activities."
20. The carrier accepted that Claimant suffered a work related injury. However, it denies that she is entitled to any permanent partial impairment or to any benefits after she reached medical end result because a non work-related event intervened to break that causal connection.
21. Claimant submitted a claim for attorney fees of \$5,499.00 and costs of \$1,528.38.

#### **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 (1963). 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).

#### **Causation**

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. The objective evidence shows that Claimant had reached medical end result in February of 2005, that is: she had reached a substantial plateau in the recovery process such that significant further improvement was not expected, regardless of treatment. See Workers' Compensation rule 2.1200.
4. After Claimant's skiing that winter, she presented to her physician with symptoms that were different from what she had before she reached medical end result. Pain levels were higher than they had ever been. Guarding was detected on examination. Some time later, she had thoracic outlet symptoms related to activities.

5. Although progressive worsening of a work related condition is compensable, that is only “so long as the worsening is not shown to have been produced by an intervening nonindustrial cause.” 1 A. Larson and L.K. Larson, Larson’s Workers’ Compensation Law § 10.
6. In this case, a nonwork related worsening occurred, thereby severing the causal connection between Claimant’s symptoms and her work related injury.
7. Next, is the question of the degree of permanency, if any, due the Claimant. Even if I were to accept Dr. Angier’s 5% rating, it cannot be awarded because the permanency is not related to the work related injury. Dr. Angier based that rating on muscle guarding and diminished range of motion, symptoms that had resolved before she took the ski vacation. Again, the causal connection is lacking.

**ORDER:**

Therefore, based on the foregoing findings of fact and conclusions of law, this claim is DENIED.

Dated at Montpelier, Vermont this 4<sup>th</sup> day of January 2007.

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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.