

**STATE OF VERMONT  
DEPARTMENT OF LABOR & INDUSTRY**

Fred Kellum	)	File No. E-08750
	)	
	)	By: Margaret A. Mangan
	)	Hearing Officer
v.	)	
	)	For: R. Tasha Wallis
	)	Commissioner
F.W. Webb and Company	)	
	)	Opinion No. 34-00WC

Hearing held on January 11 and 12, 2000 in Manchester, Vermont, and on March 1, 2000 by telephone.

Record closed on May 5, 2000

**APPEARANCES:**

Sam W. Mason, Esq. for the claimant  
Christopher J. McVeigh, Esq. for the defendant

**ISSUES:**

1. Whether the claimant's current cervical and thoracic back problems are compensable as causally related to his 1989 work-related injury.
2. Whether the claimant's carpal tunnel syndrome, basal thumb joint arthritis and left knee injury are causally related to his 1989 work-related injury.

**THE CLAIM:**

1. Temporary total benefits of three (3) weeks for carpal tunnel syndrome, three weeks (3) for the thumb and from May 1998 and ongoing for the left knee problem.
2. Permanent partial impairment of 40% of the upper extremities, not including the thumb.
3. Permanent partial disability compensation of the left knee, thumbs and right knee which have not yet been rated.
4. Payment of medical bills, including reimbursement to Medicare.
5. Payment for right knee replacement surgery and temporary total disability benefits after the surgery.
6. Payment of attorney fees and expenses.

## **EXHIBITS:**

Joint Exhibit I:	Medical Records
Claimant's Exhibit 1:	Medication List
Claimant's Exhibit 2:	Curriculum Vitae of William K. Ketterer, M.D.
Defendant's Exhibit A:	Letter to Board of Bar Examiners 3/10/99
Defendant's Exhibit B:	Board of Bar Examiners' six-month report
Defendant's Exhibit C:	CNA Workers' Compensation Claimant's Report 12/2/91
Defendant's Exhibit D:	First Report of Injury 11/3/89
Defendant 's Exhibit E:	CNA Workers' Compensation Claimant's Report 11/16/89
Defendant's Exhibit F:	Transcript of the deposition of Robert Long 2/28/00

### Department's Official Forms:

- Form 1, First Report of Injury, February 28, 1989
- Form 10, Certificate of Dependency December 2, 1991
- Form 1, First Report of Injury, November 3 and 13, 1991
- Wage Statements March 7, 1990, December 5, 1991, April 17, 1992
- Form 27, Notice of Intention to Discontinue Payments, June 4, 1992
- Form 21, Agreement for Temporary Total Disability Compensation, May 22, 1992
- Form 6, Notice and Application for Hearing, September 24, 1993
- Form 6, Amended Notice and Application for Hearing, November 22, 1993
- Form 6, Amended Notice and Application for Hearing, December 10, 1993
- Wage Statement, March 30, 1995

### Previous Opinion involving this claim:

*Kellum v. F.W. Webb*, Opinion No. 18-95WC (Nov. 2, 1996)

## **FINDINGS OF FACT:**

1. On November 1, 1989, the claimant, Fred Kellum, injured his back while he and two other employees were delivering a boiler to a plumbing contractor. As they were carrying the boiler down a flight of stairs, the boiler slipped and the claimant bore its weight. The injury occurred in the course of the claimant's employment with F.W. Webb.
2. At the hearing the claimant testified that he twisted his knee at the time of the boiler incident. He also testified that he had fallen on that knee in 1988 but never made a claim for the fall.
3. As a result of this work injury, the claimant sought treatment at the Southwestern Vermont Medical Center where emergency physician, Dr. Frank Venuti, treated him. Dr. Venuti reported the description of the injury as involving the muscles of the claimant's low back. Dr. Venuti noted that Mr. Kellum had a chronic low back condition.
4. On November 16, 1989, the claimant completed a workers' compensation incident report in which he described his injury as one to the back; he did not describe a twist to the left knee.

5. The claimant lost a short period of time from work as a result of his November 1, 1989 work incident, and returned to work at F.W. Webb with some work restrictions. F.W. Webb attempted to follow Mr. Kellum's restrictions in the work place.
6. Mr. Kellum left work in November 1991, because of increased low back pain. Again, he completed a worker's compensation accident description form in which he described the injury from November 1, 1989 as a low back muscle injury. At that time the claimant made no mention of a twisting injury to the left knee.
7. Dr. William Ketterer, an orthopedic surgeon, testified for the claimant in this case. He explained that he first treated Mr. Kellum for basal thumb joint pain on May 19, 1997. Dr. Ketterer acknowledged that Mr. Kellum did not treat at the Orthopedic and Hand Surgery Group, of which Dr. Ketterer is a part, between February 13, 1993, when Mr. Kellum last saw Dr. Robbins for a cellulitis condition, and May 19, 1997.
8. Under cross-examination, Dr. Ketterer conceded that his November 16, 1998 note stated that Mr. Kellum had been suffering from an osteoarthritic condition of multiple joints since the early 1980's. That same note offers an opinion of a causal connection between Mr. Kellum's work at F.W. Webb and his multiple claims. However, Dr. Ketterer agreed that an opinion on any causal connection between Mr. Kellum's multiple claims and his work at F.W. Webb was uncertain and needed further exploration through a factual discussion with Mr. Kellum about his work at F.W. Webb. Dr. Ketterer never had this detailed factual discussion with Mr. Kellum prior to testifying.
9. Dr. Ketterer conceded he was a patient advocate.
10. Dr. Ketterer conceded that other than general knowledge about a plumbing supply warehouse, he did not specifically know what Mr. Kellum did at work, the amount of weight he lifted at work, or the frequency with which he did any of his work at F.W. Webb. He did not more fully explore Mr. Kellum's work at F.W. Webb, and did not review documentary descriptions of that work.
11. Dr. Ketterer testified that the claimant suffers from a pervasive arthritic condition that affects both ankles, both knees, both wrists, both thumbs, the lumbar spine, the thoracic spine, and the cervical spine. Mr. Kellum has a more pervasive arthritic condition, which is likely hereditary, than a normal individual his age. Mr. Kellum's osteoarthritic condition that has been in existence since at least the early 1980's, is a progressive condition that worsens over time.

#### Left Knee Claim

12. When provided the opportunity to describe the injuries from the boiler incident of November 1, 1989, Mr. Kellum on two occasions, years apart, only described a low back injury on the forms he signed in support of his workers' compensation claim. On neither occasion did he describe a twisting injury to his left knee. Nor did the claimant describe any left knee injury to Dr. Venuti, the emergency room physician, who examined him on November 1, 1989.

13. In describing his knee condition, and its cause, to physical therapists after the November 1, 1989, boiler incident, Mr. Kellum described the left knee situation as one which arose from squatting and kneeling on the job, not from a twisting injury of November 1, 1989.
14. Dr. Ketterer and Dr. White agree that since the early 1980's, the claimant has been subject to a progressive degenerative arthritic condition which has slowly and bilaterally affected his knees, wrists, thumbs, his lumbar spine, his thoracic spine, and his cervical spine, and likely his feet.
15. In January 1995, the Department of Labor and Industry held a hearing on some aspects of Mr. Kellum's workers' compensation claim arising out of his November 1, 1989, work injury related to the boiler incident. In that decision, the Department concluded that Mr. Kellum's left knee condition, which his treating physician, Dr. Robbins, diagnosed as chondromalacia, resulted from Mr. Kellum's altered gait, not any twist to the knee. However, it also said that the altered gait was due to the back pain from the original injury. *Kellum v. F.W. Webb*, Opinion No. 18-95WC (Nov. 2, 1996).
16. Prior to March 25, 1998, when Mr. Kellum saw Dr. Ketterer for his left knee, no medical records, reports of the injury which Mr. Kellum prepared, physical therapy records, or the decision by the Department of Labor and Industry, indicated that Mr. Kellum injured his knee on November 1, 1989, with any type of twisting motion.
17. On March 25, 1998, Dr. Ketterer recorded that Mr. Kellum told him that he had injured his left knee with a twisting motion on November 1, 1989. Noticeably absent from that medical note (even through a February 11, 1998 note produced by the same office references it), is any reference to or history of Mr. Kellum's incident at the Bennington dump in February 1998, when he heard a loud popping sound in his left knee.
18. Significantly, Mr. Kellum testified at the hearing that he felt and heard the loud snap in his left knee as he was descending the stairs at the Bennington dump and that the pain of that event caused him to lose his balance and misstep, which almost caused him to fall to the ground. He was not engaged in any work-related activity for F. W. Webb at that time.
19. Beginning in 1997, Mr. Kellum began reading the law in Vermont's Clerkship Program, and under the supervision of Attorney Sam Mason. In that program, Mr. Kellum worked on workers' compensation cases, wrote briefs on workers' compensation cases, and researched Vermont case law and statutes on workers' compensation issues.
20. The claimant acknowledged that he understood that to receive workers' compensation benefits under Vermont's Workers' Compensation Act for any claim related to his left knee, that there needed to be a causal connection between the left knee condition, and his work at F.W. Webb, which ended in 1991.
21. On April 16, 1998, the claimant told his medical care providers at the Veterans Administration Hospital that he intended to sue someone for his back and knee condition, but he didn't know whom yet. Mr. Kellum made this statement after his incident at the Bennington dump, and after his left knee became significantly more painful requiring crutches and eventual surgery.

22. After the claimant injured his knee while descending steps at the Bennington City dump, his left knee pain became quite severe and remained very painful, more painful and disabling than it had been prior to the February 8, 1998, incident. Mr. Kellum conceded that his left knee was never the same after the February 8, 1998 incident, and that it was for that incident that he underwent the arthroscopic knee surgery on May 14, 1998 to repair a torn meniscus.
23. The claimant testified that prior to February 8, 1998, no doctor had ever mentioned or recommended an arthroscopic knee surgery to him for his left knee; the medical records support this statement. Because he did not recover well from the arthroscopic knee surgery, the claimant underwent a total knee replacement for the left knee on July 1, 1999. Prior to February 8, 1998, no doctor had suggested or recommended to Mr. Kellum that he would need a total knee replacement for his left knee.
24. For the claimant's left knee condition, it is undisputed that prior to February 8, 1998, no medical care provider had recommended that he have left knee arthroscopy or have total knee replacement of the left knee. After he hurt his knee at the Bennington dump, the claimant's left knee pain, by his own testimony, significantly increased, and never returned to the condition it was prior to that incident. It was for reasons related to that incident that he underwent the arthroscopic knee surgery on May 14, 1998 to repair a torn meniscus.
25. After the incident on the stairs of the town dump, the claimant's left knee condition required him to use crutches, required him to undergo arthroscopic surgery, and ultimately required him to undergo a total knee replacement on the left because the arthroscopic surgery did not cure Mr. Kellum's left knee difficulty.
26. Dr. Ketterer also testified that his arthroscopic surgery revealed a torn meniscus in the claimant's left knee and he opined that the meniscus was torn in 1989 when Mr. Kellum had his low back injury while carrying a boiler within the course and scope of his employment at F.W. Webb.
27. Several facts undermine Dr. Ketterer's opinion. First, the claimant did not complain of his left knee clicking or catching between November 1, 1989 and February 7, 1998; second, Dr. Robbins previously diagnosed Mr. Kellum with chondromalacia of the left knee when he evaluated Mr. Kellum on January 31, 1990; third, Mr. Kellum's degenerative arthritic condition can cause meniscal tears; fourth, Dr. Ketterer could not date with any degree of precision when the meniscal tear had occurred; and fifth, and most significantly, Mr. Kellum experienced significantly increased pain and clicking and catching in the left knee after he slipped on the steps at the Bennington dump on February 7, 1998, and testified that his left knee was markedly changed after that February 1998 incident.
28. Furthermore, Dr. White opined that the claimant's left knee condition which prompted the arthroscopic surgery and ultimately the left knee replacement, was not related to his work at F.W. Webb, particularly since Mr. Kellum had not specifically treated for left knee condition for a long period of time after leaving his work at F.W. Webb. The injury of November 1, 1989, and the work at F.W. Webb did not create a causal connection between Mr. Kellum's work at F.W. Webb and his need for surgery in 1998 and 1999.

29. Based on the entirety of the factual and medical evidence, the most reasonable hypothesis is that Mr. Kellum's torn meniscus in the left knee was caused when it snapped on the steps at the Bennington dump. That incident, and not his work at F.W. Webb, most likely necessitated his arthroscopic surgery and the total knee replacement surgery.

#### Basal Thumb Joint Claim

30. On September 25, 1997, the claimant underwent surgery on his left thumb to replace the basal joint of the left thumb. Dr. Ketterer performed his surgery because of the arthritic condition of the basal joints and the pain that it caused Mr. Kellum. Dr. Ketterer explained that the claimant had arthritis of the basal joint of both thumbs.
31. Claimant only began experiencing the painful condition in the basal joint of the left thumb in approximately 1993, almost two years after he last worked at F.W. Webb.
32. As a result of the surgery for the basal joints of the left thumb, the claimant was totally disabled from any and all work for three weeks. Not only did he have an arthritic condition in the basal joint of his left thumb, but consistent with his generalized bilateral osteoarthritic condition, he had an arthritic condition in the basal joint of his right thumb.
33. The sole basis of Dr. Ketterer's opinion that the basal joint of the claimant's left thumb became arthritic because of his work at F.W. Webb, is based on the claimant's history. Dr. Ketterer conceded that activities of daily living would also cause the basal thumb joints of his right hand to become more painful and require the surgery he performed in 1997. And Dr. White testified that the claimant's thumb condition resulted from his progressive arthritic condition, and was not causally connected to his work at F.W. Webb.

#### Carpal Tunnel Syndrome Claim

34. Dr. Ketterer performed a carpal tunnel release surgery bilaterally on the claimant's wrists on May 27, 1997. Dr. Ketterer, who acknowledged that he was his patient's advocate, offered the opinion that the claimant's carpal tunnel surgery was related to his work at F.W. Webb because of the allegedly repetitive nature of the work. Dr. Ketterer did not know exactly what job duties the claimant performed nor the amounts of weight he lifted nor the amount of time he spent performing any particular task.
35. Dr. Ketterer acknowledged that when Dr. Daniel Robbins examined the claimant on January 31, 1990, that the Phalen's test, a standard orthopedic test performed to determine whether an individual is suffering from carpal tunnel syndrome, he performed was negative. Dr. Ketterer also admitted that while the January 31, 1990 note referenced wrist pain, Dr. Robbins's notes of May 19, 1992, September 25, 1992, and February 16, 1993, do not reference any wrist pain for the claimant. In addition, Dr. Ketterer acknowledged that Dr. Keith Edwards, a neurologist, who examined the claimant on March 10, 1995, did not find any bilateral wrist symptoms, but examined him for hypesthesia (diminished sensitivity to stimulation) in the 4<sup>th</sup> and 5<sup>th</sup> digits of the right hand of the right arm, which had begun approximately six months prior to the March 1995 evaluation. Dr. Edwards did not find the claimant suffering from carpal tunnel

syndrome on March 10, 1995, almost three and a half years after the claimant left F.W. Webb.

36. Dr. Ketterer conceded that carpal tunnel syndrome can develop without a known cause and that the claimant was in the age group where individuals are more prone to carpal tunnel syndrome than younger individuals would be. Dr. Ketterer relied completely upon Mr. Kellum's history of numbness and wrist pain to conclude that his bilateral carpal tunnel condition was related to his work at F.W. Webb.
37. The claimant's primary care physician was Dr. Nancy Scattergood of Bennington, Vermont. In her handwritten and typed office notes, spanning from May 29, 1992, to April 29, 1998, Dr. Scattergood did not record any ongoing, persistent complaints of bilateral wrist difficulty by the claimant. The first record of any upper extremity complaints in Dr. Scattergood's note is a brief reference on February 24, 1995, and then no reference occurs again until May 23, 1997. Dr. Scattergood's reference temporally coincides with Dr. Edwards's evaluation of the claimant's right parestheias, which Dr. Edwards attributed to right cubital tunnel syndrome.
38. Dr. Eric White, after examination of the claimant and review of the medical records, testified that his carpal tunnel condition was not related to any work he did at F.W. Webb.
39. No evidence has been produced to suggest that the claimant reported hand and wrist symptoms to anyone during the time he worked at F.W. Webb.
40. Based on this confluence of factual evidence, medical evidence, and medical opinion with the first date when the claimant was actually diagnosed with carpal tunnel syndrome, i.e., May 19, 1997, it is unlikely that the claimant's carpal tunnel syndrome resulted from his employment at F.W. Webb.

#### Cervical and Thoracic Spine

41. Mr. Kellum has also made a claim that his work at F.W. Webb has aggravated the arthritic condition in his cervical and thoracic spine.
42. Mr. Kellum has presented no expert medical evidence supporting his claim that his work at F.W. Webb, which ended in November 1991, aggravated the arthritic condition in his cervical or thoracic spine.
43. Dr. White testified that Mr. Kellum's arthritic condition is a progressive one which gets worse over time even though the worsening can occur in fits and starts. Dr. White opined that Mr. Kellum's work at F.W. Webb did not aggravate Mr. Kellum's arthritic condition in his cervical or thoracic spine.
44. On November 9, 1999, the claimant visited with Dr. Daniel Robbins, an orthopedic surgeon who had previously treated him for his low back condition. The claimant visited with Dr. Robbins in an effort to obtain an opinion that his work at F.W. Webb aggravated the arthritic condition of his thoracic and cervical spines. Dr. Robbins wrote, "I felt that based on the history and the information at hand that there was no indication that further

working accentuated any arthritic process and I would be hard pressed to identify any literature that would have supported that." Mr. Kellum admitted that he was not happy with Dr. Robbins' opinion and it was not the opinion he had wanted or hoped for.

## 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, Morse Co.*, 123 Vt. 161 (1962). He 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).
2. 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. Generally, the claimant's evidence must create in the mind of the trier of fact, more than surmise, speculation, or possibility, *Burton v. Holden and Martin Lumber Co.*, 112 Vt. 17 (1941); the claimant's theory must be the more probably hypothesis.
4. When conflicting medical opinions are presented, the Department evaluates them by considering the following factors: 1) the nature of the treatment and length of time there has been a patient-provider relationship; 2) whether 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 included objective support for the opinions expressed; 4) the comprehensiveness of the examination; and 5) qualifications of the expert, including professional training and experience. See *Morrow v. Vermont Financial Services Corporation*, Opinion No. 50-98WC, (Aug. 25, 1998); *Martin v. Bennington Potters*, Opinion No. 42-97WC, (Dec. 30, 1997).
5. Although a treating physician is ordinarily granted additional weight to her or his opinion, the impression of partisanship or advocacy that adversely affects the physician's objectivity undermines this preference. *McEnany v. the Shoreline Corporation*, Opinion No. 31-97WC (Oct. 4, 1997); *Martin v. Bennington Potters*, Opinion No. 42-97WC (Dec. 30, 1997).
6. Generally, Dr. Ketterer demonstrated in his testimony a penchant for advocating for the claimant and his claim in a way which hampered the objectivity, and ultimately, the credibility of his opinions.
7. Where an injured worker has a pre-existing work related condition, but then has a non-work related, non-industrial event which worsened or aggravates the claimant's work related condition, then the non-industrial event constitutes a superceding/intervening event severing the causal connection between the previous work injury and any subsequent treatment resulting after the intervening event. See *Gilbeau v. Cepco, Inc.*, Opinion No. 24-95WC (May 23, 1995).



### Left Knee Claim

8. A review of the overall factual and medical evidence indicates that the claimant has failed to meet his burden of proving that the left knee arthroscopic surgery of May 14, 1998 and the subsequent left knee replacement surgery of July 1, 1999, were related to his November 1, 1989, work injury at F.W. Webb. First, on the workers' compensation forms prepared in 1989 and 1991, Mr. Kellum never mentioned a twisting injury to his left knee; those forms focus on a back strain injury. Further, throughout the medical records up until March 25, 1998, when the claimant saw Dr. Ketterer, there is no mention of a twisting left knee injury related to the November 1, 1989, work event.
9. Aside from these elements, is the superceding/intervening event of February 8, 1998, when Mr. Kellum slipped while descending the steps at the Bennington dump. Prior to this incident, Mr. Kellum had not experienced any locking or popping of his left knee, had not sought any medical treatment for his left knee for any arthroscopic or any other type of surgery, no doctor had proposed any arthroscopic or other surgery for his left knee, and, by his own testimony, the February 8, 1998 incident markedly and significantly damaged Mr. Kellum's left knee to a point where the pain increased significantly, he had to use crutches, and eventually sought a surgical resolution of the problem.
10. Although Dr. Ketterer testified that the claimant tore the medial meniscus which was the cause of his pain in the left knee on November 1, 1989 when lifting the boiler, that testimony is simply not credible. First, that event had occurred almost nine years prior to Dr. Ketterer's visit with the claimant on March 25, 1998. Dr. White and Dr. Ketterer both testified that the February 8, 1998 incident is the type of mechanism in which medial meniscus can be torn. Furthermore, the claimant's progressive and pervasive arthritic condition, which affected both of his knees, could also have been the cause of a medial meniscal tear.
11. For these reasons, the claim for workers' compensation benefits for anything related to his left knee must be rejected.

### Basal Thumb Joint Claim

12. On the claimant's bilateral basal thumb joint condition, Dr. Ketterer offered the opinion that it was related to his work at F.W. Webb theoretically because of an aggravation of the arthritic condition from work activities. However, Dr. Ketterer also conceded several facts: that the claimant's arthritic condition is a progressive one; that he is not aware of any specific injury to either thumb or thumb joint at F.W. Webb; that the claimant's complaints of pain at the basal thumb joint bilaterally first arose years after he last worked at F.W. Webb, and that activities of daily living can cause the arthritic pain of the basal thumb joint for which Dr. Ketterer operated on the basal thumb joint.
13. Given these factors, Dr. Ketterer's opinion is not soundly based nor credible as he in an advocate's role attempted to create a causal connection between the claimant's work at F.W. Webb, about which he knew very little, and the bilateral basal thumb joint complaints.

14. The sole basis of any expert testimony supporting the claim for the claimant's basal thumb joint is the alleged repetitive activity at F.W. Webb. Again, the factual medical evidence does not support any claim that his work at F.W. Webb caused or aggravated any condition requiring the basal thumb joint repair the claimant underwent in September 1997 on the left side.
15. Based on the medical and other evidence, the claimant has not met his burden of proving any causal connection between his basal thumb joint claim and his work at F.W. Webb. Like the other claims, a time gap existed between the time Mr. Kellum left his employment at Webb and the onset of the symptoms that resulted in the thumb surgery. Dr. Ketterer's notes and testimony demonstrated that the surgery he performed was designed to treat the pain condition caused by the claimant's arthritic condition. Dr. White demonstrated that nothing in the record created the necessary causal connection between the condition and work at F.W. Webb and I can find nothing objective in the record to the contrary. For these reasons, the claimant has failed to meet his burden of proof on this claim.

### Carpal Tunnel Syndrome

16. On March 10, 1995, almost four years after the claimant left work at F.W. Webb, Dr. Edwards, a neurologist, evaluated Mr. Kellum for hypothesia in his right arm. In his record there is no mention of left arm or wrist difficulties. Dr. Edwards diagnosed the condition as probable right cubital tunnel syndrome. Only on May 19, 1997, in Dr. Ketterer's note, is there a mention of a carpal tunnel condition bilaterally, after almost six years since the last time that Mr. Kellum worked at F.W. Webb. The sole basis for Dr. Ketterer's opinion that the claimant's carpal tunnel condition, bilaterally, was related to his work at F.W. Webb, was the purported "repetitive" nature of the claimant's work there. Dr. Ketterer demonstrated that he had very little factual information about Mr. Kellum's work at F.W. Webb, and his opinion is based more on speculation and advocacy for the claimant than medical fact. Dr. White testified that he found nothing in the record which would causally connect the claimant's carpal tunnel condition, diagnosed in 1997, with his work at F.W. Webb.
17. This confluence of factors demonstrates that Mr. Kellum has not met his burden of proving the causal connection between his bilateral carpal tunnel claim and his work at F.W. Webb.
18. Furthermore, Dr. Ketterer's permanent partial impairment finding of 20 percent of the upper extremity bilaterally cannot be accepted as a work-related impairment. Dr. White evaluated the claimant and found that he had a 10 percent impairment of each upper extremity based on his evaluation of the claimant in which he found no gross muscle atrophy and the presence of reasonably good but slightly diminished sensation. Dr. White described the claimant's post-surgical condition as mild. Dr. White explained how he reached this conclusion utilizing the AMA Guides to Permanent Impairment, Fourth Edition, Table 16.
19. Although Dr. Ketterer opined that the claimant had a moderate impairment based on his carpal tunnel condition, the term "moderate" is defined as, "the symptoms or signs have been documented medically to cause serious diminution in an individual's capacity to

carry out activities of daily living." (Guides to the Evaluation of Permanent Impairment, Fourth Edition, at 316) (emphasis original). The medical and factual evidence does not demonstrate that the claimant had a moderate impairment to both upper extremities because of his carpal tunnel condition. Little evidence demonstrated that he had a serious inability to perform activities of daily living and the actual pace of the activities he performed demonstrates that he does not have any moderate limitations based on his carpal tunnel condition, but has a mild one at best. For these reasons, and because Dr. White's more thorough analysis of the AMA Guides and Mr. Kellum's physical condition, outweighs Dr. Ketterer's, Dr. White's permanency evaluation should be accepted.

#### Back condition

20. Finally, the claimant has not provided any expert medical testimony to demonstrate that his work at F.W. Webb caused or aggravated any arthritic condition in his cervical, thoracic or lumbar spine. Dr. Ketterer provided no medical evidence on this point, and the medical evidence in the record, by way of Dr. Robbins's November 9, 1999 office note, undermines any claim that the claimant's work at F.W. Webb aggravated any existing arthritic condition in any part of his spine.
21. Based on this medical evidence, the claimant has failed in his burden of proving any causal connection between his work at F.W. Webb and any alleged aggravation or acceleration of his arthritic condition in the cervical or thoracic spine, and his claim for workers' compensation benefits related to the cervical and thoracic spine should be denied.
22. For these reasons, the claimant's claim for workers' compensation benefits related to any thoracic, cervical, or lumbar spine condition must be denied.
23. In sum, although Mr. Kellum has made a variety of claims against F.W. Webb for workers' compensation benefits for a variety of conditions, the medical record makes clear that the claimant, unfortunately, is dealing and must deal with an insidiously expanding web of arthritis which is affecting many parts of his body bilaterally. This arthritic condition did not arise out of his work at F.W. Webb, and the medical evidence does not fairly demonstrate that his work at F.W. Webb aggravated any one of these arthritic conditions. As a result, his workers' compensation claims cannot be granted.

#### **ORDER:**

Based on the foregoing Findings of Fact and Conclusions of Law, this claim is DENIED.

Dated at Montpelier, Vermont, this 12th day of October 2000.

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R. Tasha Wallis  
Commissioner