

**STATE OF VERMONT  
DEPARTMENT OF LABOR AND INDUSTRY**

|                             |   |                          |
|-----------------------------|---|--------------------------|
| Timothy Page                | ) | Opinion No. 56-03WC      |
|                             | ) |                          |
|                             | ) | By: Margaret A. Mangan   |
| v.                          | ) | Hearing Officer          |
|                             | ) |                          |
| State of Vermont,           | ) |                          |
| Department of Public Safety | ) | For: Michael S. Bertrand |
|                             | ) | Commissioner             |
|                             | ) |                          |
|                             | ) | State File No. S-04075   |

Submitted on written record without a hearing  
Record closed on October 28, 2003

**APPEARANCES:**

Thomas A. Zonay, Esq., for the Claimant  
Keith J. Kasper, Esq., for the Defendant

**ISSUE:**

Did the claimant suffer a compensable work related injury while jogging on August 1, 2001?

**EXHIBITS:**

I: Medical Records  
II: Stipulation  
III: Deposition of Kenneth A. Brown, M.D.  
IV: Deposition of Timothy Page

**STIPULATED FACTS:**

1. On August 1, 2001, claimant was an employee of defendant within the meaning of the Vermont Workers' Compensation Act (Act).
2. On August 1, 2001, defendant was the employer of claimant within the meaning of the Act.
3. On July 31, claimant was actively employed as a Sergeant in the Vermont State Police and as such was acting in the line of duty pursuant to 21 V.S.A. § 601(11)(D).

4. On August 1, 2001 claimant was jogging in order to prepare for the Department of Public Safety required physical fitness test. At that time he experienced shortness of breath and chest pain.
5. On August 28, 2001 claimant underwent heart bypass surgery.
6. Claimant alleges that his symptoms of August 1, 2001 qualify him for experiencing injury arising out of and in the course of his employment within 72 hours of his last service in the line of duty, rendering his heart surgery compensable.
7. The parties agree to the exhibits as listed above.
8. The parties agree that the hearing officer may take judicial notice of all official Labor and Industry Department Forms in this claimant's file.

**FINDINGS OF FACT:**

1. The facts as stipulated are accepted as true. The exhibits are admitted into evidence.
2. Judicial notice is taken of Department of Labor and Industry forms in this matter.
3. Although he had symptoms while jogging, claimant did not have a heart attack then or at any time since. After jogging about a quarter of a mile, he felt shortness of breath and constriction in his chest. He stopped jogging and walked home. When he arrived home he felt better.
4. The symptoms prompted claimant to seek medical attention, which included several diagnostic tests. A stress test resulted in the same symptoms he had when he was jogging.
5. A cardiac catheterization taken after the jogging episode revealed multi-vessel coronary artery disease.
6. Claimant had all but one of the classic risk factors for the development of coronary artery disease: strong family history, history of cigarette smoking (although he quit several months prior to the incident at issue here), high blood pressure and high cholesterol. The absent risk factor is diabetes.
7. On August 28, 2001, underwent a four vessel coronary bypass.
8. Claimant has since been released to full duty.

9. Dr. Brown, who testified for the defense, is board certified in cardiology and internal medicine. He opined that claimant's work had nothing to do with the development of his coronary artery disease and, in fact, the jogging served as a natural stress test, which prompted claimant to seek medical attention. Intervention by means of a coronary artery bypass occurred before any heart muscle was damaged. Claimant did not have a heart attack. The factors causing his coronary artery disease all predated the jogging and were the reason claimant needed bypass surgery.
10. Claimant did not offer an independent medical opinion on causation and none in support of his claim is contained in the medical records.

### **DISCUSSION:**

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).
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. "Personal injury by accident arising out of and in the course of such employment includes...in the case of a police officer ...disability or death from a heart injury or disease incurred or aggravated and proximately caused by service in the line of duty." V.S.A. § 601 (11)(A). (emphasis added). A heart injury or disease symptomatic within seventy-two hours from the date of last service in the line of duty shall be presumed to be incurred in the line of duty. § 601(11)(E).
4. As this Department explained in *Birchmore v. Whiting Fire Department*, Opinion No. 26-03WC (2003), even when a claimant is injured in the line of duty, he has the burden of proving that his condition was caused by work. Because the question of causation in a case such as this is beyond the ken of a layperson, expert medical testimony is necessary. *Lapan v. Berno's Inc.*, 137 Vt. 393 (1979).
5. Dr. Brown clearly and logically explained that claimant's coronary artery disease is unrelated to the jogging incident and, under competent cross-examination, refused to concede that jogging in any way accelerated or aggravated his cardiac condition. That convincing opinion is based on medical science and this claimant's record. It stands unchallenged.

**CONCLUSION AND ORDER:**

1. On the record presented, claimant has not met his burden of proving causation under V.S.A. § 601 (11)(A) and *Burton* 112 Vt. 17.
2. Therefore, this claim is DENIED.

Dated at Montpelier, Vermont this 22<sup>nd</sup> day of December 2003.

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Michael S. Bertrand  
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.