STATE OF VERMONT
DEPARTMENT OF LABOR AND INDUSTRY

Andre Menard	)	State File No. J-14175
	)	
	)	By: Margaret A. Mangan
v.	)	Hearing Officer
	)	
	)	For: R. Tasha Wallis
Vermont Castings	)	Commissioner
	)	
	)	Opinion No. 17S-00WC

RULING DENYING DEFENDANT'S MOTION FOR A STAY

Defendant, Vermont Castings, through its counsel, Kiel & Ellis, moves pursuant to 21 V.S.A. § 675(b) for a stay of the order under Opinion No. 17-00WC pending appeal. Claimant, through his attorney Joseph C. Galanes, opposes that motion.

Defendant argues that the hearing officer ignored critical evidence and over-emphasized evidence favorable to the claimant.

Pursuant to 21 V.S.A. § 675(b), any award or order of the Commissioner shall be in full effect from its issuance unless stayed by the Commissioner, any appeal notwithstanding. The Commissioner has the discretionary power to grant or deny a request for a stay. *Austin v. Vermont Dowell & Square Co.*, Opinion No. 2A-88WC (Sept. 20, 1988). In order to justify the issuance of a stay, the moving party must demonstrate: (1) that it is likely to succeed on the merits; (2) that it would suffer irreparable harm if the stay were not granted; (3) that a stay would not substantially harm the other party; and (4) the best interests of the public would be served by the issuance of the stay. *In re. Insurance Services Offices, Inc.*, 148 Vt. 634, 635 (1987); *see also Longe v. Boise Cascade*, Vt. Supreme Court Slip Op. 98-384 (Dec. 21, 1998) *(*expressly clarifying that the four part *In re. Insurance Services Offices, Inc*. test applies to requests for stay under 21 V.S.A. § 675(b)).

At issue in this case is whether the claimant has carpal tunnel syndrome, and if so, whether it is work-related. In cases such as this, the Department necessarily looks to expert opinions that are essential to the fundamental determinations. When considering the weight of expert testimony, consideration is given to their education, training and experience, knowledge of the patient, objective support and comprehensive nature of the examination underlying their opinions. *Crosby v. City of Burlington*, Opinion No. 43-99WC (Dec. 3, 1999). In addition, the Department considers the objectivity of the experts themselves. *Id.*

Eight different doctors examined claimant and/or reviewed his medical history. Seven of the eight examining physicians either diagnosed claimant with carpal tunnel syndrome or, at the least, did not dispute the carpal tunnel diagnosis. Basically, either the claimant had carpal tunnel syndrome or not. Clearly, an inference can be made from the various physician diagnoses that the claimant suffered from carpal tunnel syndrome.

On the issue of causation, Dr. Minsinger, claimant's primary treating physician since 1996, has performed around four or five hundred carpal tunnel releases, and opined that if a person uses his hands very heavily, then he is very likely to have a thickened mid-palm ligament. He further stated that this thickening can cause carpal tunnel symptomology, but it is dependent on the size of the carpal tunnel. He also asserted that although it was hard to determine claimant's carpal tunnel size from a surgical point of view, there is usually a presumption of small carpal tunnels because those who have small carpal tunnels usually become symptomatic. Additionally, people's ligaments thicken as they do more activities, and this thickening makes certain people more prone to develop carpal tunnel syndrome.

In his experience, Dr. Minsinger posits that carpal tunnel syndrome slowly but inevitably worsens with time: it does not get better as time passes. Yet, some people have episodes that make their symptoms worse. Claimant was one such person who slowly developed enough findings to warrant a surgical release. Dr. Minsinger has opined that claimant's work injury of November 1995 was an initiating event in an evolution of activities that ultimately resulted in claimant's carpal tunnel syndrome.

Although Dr. Minsinger opines that claimant's work did not directly cause his carpal tunnel syndrome, he asserts that it resulted from work hardening exercises in line with claimant's treatment for a work-related injury. He has been clear, thorough and objective in his assessment.

Although Dr. Bucksbaum examined claimant on only one occasion, he examined all of claimant's medical and treatment records, except those of Dr. Murphy. He opines that a thick transverse ligament at mid-palm is similar to a callous that could be caused by continuous manual labor, yet infers that this condition in the claimant could have been caused by the operation of a joystick to play computer games. The Department found the comparison between heavy manual labor and the operation of a computer joystick peculiar.

The defendant has not made the necessary showing to justify issuance of a stay. The defendant's only suggestion that it is likely to succeed on the merits is with regard to the medical testimony on causation. Defendant's argument that it is likely to succeed on the merits on appeal is based on its hope that a jury will hear the evidence differently than the hearing officer did. Clear, convincing and compelling evidence was presented at the formal hearing, and the Department found the claimant's case more persuasive. The Department found Dr. Minsinger's treatment history with the claimant persuasive and his diagnosis the more probable hypothesis. On the evidence presented, claimant has met his burden of proving that he suffered an injury as a result of his work for defendant.

The payment of money by an insurance company is not necessarily irreparable harm. *Fredericksen v. Georgia-Pacific Corp.*, Opinion No. 28S-97WC (Dec. 12, 1997). If it were, every order in favor of a claimant would be subject to a stay. The defendant presented no persuasive reason why payment of money in this case would result in such harm to the employer.

The defendant's argument that a stay would not substantially harm the claimant because he is back to work is also not persuasive. Claimant incurred debt during the time he was out of work and uncompensated. After careful scrutiny and thorough review, the Department finds a delay of payment due to defendant's appeal to be unwarranted.

The granting of a stay should be the exception, not the rule. *Bodwell v. Webster Corp.*, Opinion No. 62S-96WC (Dec. 10, 1996). A stay will be granted only under exception circumstances. *Fredericksen*. The claimant established, by sufficient competent evidence, the character and extent of the injury and disability, as well as the causal connection between the injury and the employment. The claimant met his burden to establish all facts essential to support his claim. The public's best interest would not be served by the issuance of a stay when there is no basis for one.

Accordingly, Defendant's Motion for a Stay is DENIED.

It is further ORDERED that Defendant, Vermont Castings, pay additional attorney's fees incurred with this matter of $132.

Dated at Montpelier, Vermont, this 24th day of August 2000.

_____

R. Tasha Wallis
Commissioner

STATE OF VERMONT
DEPARTMENT OF LABOR AND INDUSTRY

Andre Menard	)	State File No. J-14175
	)	
	)	By: Margaret A. Mangan
v.	)	Hearing Officer
	)	
Vermont Castings	)	For: Steve Janson
	)	Commissioner
	)	
	)	Opinion No. 17–00WC

Formal Hearing held in Montpelier on December 6, 1999.
Record closed on January 10, 2000

APPEARANCES:

Joseph C. Galanes, Esquire, for the Claimant
Andrew C. Boxer, Esquire for the Defendant

ISSUE:

Whether claimant's carpal tunnel syndrome is work-related.

THE CLAIM:

1. Temporary disability benefits from April 5, 1999 forward.

2. Medical and hospital benefits pursuant to 21 V.S.A. § 640.

3. Attorney fees and costs pursuant to 21 V.S.A. § 678(a).

4. Legal interest pursuant to 21 V.S.A. § 664.

UNCONTESTED FACTS:

1. On November 17, 1995, Vermont Castings, Inc. was an employer within the meaning of the Vermont Worker's Compensation Act and Rules.

2. On November 17, 1995, claimant Andre Menard was an employee of Vermont Castings, Inc. as defined under the Vermont Worker's Compensation Act and Rules.

3. Claimant, Andre Menard, was employed by Vermont Castings packaging stoves for shipment. He was compensated at the rate of $6.58 hour.

EXHIBITS:

Joint Exhibit I:	Medical Records
Claimant's Exhibit: 1	Pay Stubs
Claimant's Exhibit 2:	Deposition of Dr. Minsinger
Defendant's Exhibit A:	Computer Game List

FINDINGS OF FACT:

1. On November 17, 1995, claimant suffered an injury arising out of and in the course of his employment with defendant, Vermont Castings.

2. Claimant's coworker dropped a 600-pound stove on the claimant's arms. When the accident occurred, claimant's hands were turned palm down and the stove made contact about three inches from his elbow on the top of his forearms and across his wrists.

3. Claimant went to the emergency room at Gifford Hospital in Randolph where x-rays were taken and the physician determined that there was no fracture.

4. Claimant took off one to two days of work before returning to full duty work at Vermont Castings. He remained on regular full-time duty with Vermont Castings until February of 1996.

5. When claimant began to experience pain, numbness, and tingling in his fingers and pain in both of his elbows in February of 1996, he returned to his family doctor at Gifford Family Health Clinic.

6. Claimant was seen by Dr. Mark Seymour on February 13, 1996. Dr. Seymour found tenderness over the lateral aspect of claimant's elbow and diagnosed lateral epicondylitis/extensor tendinitis of the left elbow. He recommended light duty work for one week.

7. When, after one week's time the claimant's pain continued, Dr. Seymour referred him to orthopedic surgeon, Dr. William E. Minsinger of the Hitchcock Clinic in Randolph, Vermont. Claimant first saw Dr. Minsinger on March 14, 1996. Dr. Minsinger has closely followed claimant's care and treatment since then.

8. After an initial examination, Dr. Minsinger concluded that claimant had bilateral epicondylitis. He injected claimant's elbows with Aristocort and Marcaine which gave some immediate relief.

9. Claimant returned to light duty work in March of 1996. He remained on light duty work for about seven months. Throughout his light duty work assignment, claimant experienced increased pain in his arm, hand and elbow.

10. Claimant's supervisor at Vermont Castings, Hubert A. Bent, testified that the only symptom the claimant complained to him about after his accident was regarding pain in his elbows. Mr. Bent testified that the claimant never mentioned anything about having pain, tingling or numbness in his hands. Mr. Bent testified that if the claimant were to

report experiencing pain on the job, such a report would ultimately have come to his attention.

11. Gifford Physical Therapy records dated from March 13, 1996 through May 29, 1996 noted claimant's full range of motion and strength in both elbows.

12. At defendant's request, claimant was examined by independent medical expert, Dr. Christian Bean on September 4, 1996. Although both elbows had full range of motion, Dr. Bean noted pain, numbness and tingling in claimant's fingers, and that he kept his fist in a clenched position almost constantly. Dr. Bean recommended that the claimant remain out of work for four weeks to allow the pain to subside.

13. Although Dr. Minsinger noted improved condition on October 15, 1996, he also noted that the claimant had continued pain in his forearms, elbows and hands. He authorized claimant to return to sedentary work.

14. Claimant's pain returned and appeared to intensify upon his return to work. Dr. Minsinger recommended surgical intervention, and a pre-op history and physical on January 20, 1997 revealed continued pain with resisted extension of both wrists and pain with resisted flexion of both wrists. Claimant had surgical intervention in his right elbow. Claimant reported to a physical therapy program at Occupational Health and Rehabilitation in Berlin, Vermont, in April of 1997.

15. At defendant's request, claimant was examined by a second independent medical expert, Dr. Frederick Fries, on June 16, 1997. Dr. Fries performed a neurological examination at the request of defendant's initial expert physician, Dr. Bean. Dr. Bean wanted claimant evaluated for cubital tunnel syndrome and posterior interosseous syndrome, which involves the ulnar nerve of the elbow. Dr. Fries concluded that claimant was suffering from ulnar nerve entrapment over the elbow and carpal tunnel syndrome. The testing did not support a finding of posterior interosseous entrapment.

16. Dr. Bean examined claimant again on July 14, 1997 and noted that claimant experienced pain and achiness in his hands at the end of the day. Dr. Bean reviewed the report of Dr. Fries, and did not dispute the carpal tunnel diagnosis. Dr. Bean referred claimant to Occupational Health and Rehabilitation for a course of physical therapy and work hardening.

17. Claimant returned to Dr. Minsinger on August 5, 1997. Dr. Minsinger noted that the work hardening program had not improved claimant's condition and, instead, appeared to have created bilateral shoulder pain. Dr. Minsinger referred claimant back to Occupational Health and Rehabilitation for physical therapy.

18. Claimant returned to Occupational Health and Rehabilitation on August 7, 1997. Claimant reported tingling in his first and second fingers on the left side when interviewed by the physical therapist. It was noted that claimant had an extensive history of upper extremity complaints, including bilateral hand pain.

19. At the request of Dr. Minsinger, claimant was examined by Dr. James M. Murphy, a neurologist at Dartmouth Hitchcock Medical Center in Lebanon, New Hampshire, on

September 15, 1997. He noted parasthesia complaints in a median nerve distribution with the left hand more symptomatic than the right. He concluded that claimant suffered from mild to moderate carpal tunnel syndrome but did not believe surgery was necessary.

20. As of September 19, 1997, claimant's physical therapists noted that, despite diligent compliance, his progress had plateaued and his pain complaints and functional limitations had not changed.

21. At defendant's request, claimant was examined by a third independent medical expert, Dr. Steven L. Brown, on November 18, 1997. Dr. Brown noted in his review of the medical records that no mention was ever made within the records of any symptomatology or problem with regard to pain at the level of the carpal canal. Dr. Brown found that the ulnar nerve entrapment at the level of the cubital tunnel and any bilateral carpal tunnel syndrome were not attributable to claimant's work-related injury. Dr. Brown also opined that the lateral epicondylitis would result in limited utilization of the elbow that would tend to improve an ulnar nerve problem, not exacerbate one. Dr. Brown noted that any carpal tunnel symptoms were completely unrelated to claimant's work injury.

22. At defendant's request, claimant was examined by a fourth independent medical expert, Dr. Philip Davignon, on February 10, 1998. Dr. Davignon noted: negative bilateral impingement and supraspinatus testing; no evidence of laxity in either shoulder; full range of motion in the elbows, wrists and digits without any deficit or pain; symmetrical grip strength; no evidence of atrophy in either the arms, forearms, or interosseous muscles bilaterally; and positive Phalen's sign at the wrist.

23. Although Dr. Davignon also noted claimant's complaints of constant numbness and tingling in both of his arms; pain while sleeping which wakes him every night; and a feeling that claimant will drop things, Dr. Davignon did not find any evidence of carpal tunnel syndrome. Instead, he diagnosed claimant with medial and lateral epicondylitis in both elbows.

24. Gifford Memorial Hospital x-ray reports dated January 16, 1997 and May 21, 1998 note claimant's right elbow as normal and show no fractures or AC separation of his left shoulder.

25. Claimant continued to experience problems with his hands and wrists into the summer of 1998. On July 2, 1998, Dr. Minsinger noted that claimant was complaining of numbness and tingling over his hands and surmised that claimant might have a component of carpal tunnel syndrome.

26. Dr. Minsinger wrote a letter to defendant on October 27, 1998 in which he explained that claimant initially had mild findings of carpal tunnel on EMGs that improved over time, but lately appeared to worsen.

27. At the request of Dr. Minsinger, claimant was examined by Dr. Thomas Ward, a neurologist at Gifford Hospital in Randolph, Vermont, on January 20, 1999. Dr. Ward performed electromyoneurography and concluded that claimant was suffering from

bilateral median nerve entrapment at the wrists. Dr. Ward's assessment was bilateral carpal tunnel syndrome.

28. In a follow up visit with Dr. Minsinger on January 25, 1999, surgery was recommended and scheduled for March of 1999. Dr. Minsinger wrote a letter to the defendant's agent, Walterine Masterson, explaining that he had always felt that the claimant had a component of carpal tunnel syndrome and over time the symptoms had worsened. Dr. Minsinger also opined that the carpal tunnel was a progression of complaints originating from claimant's work-related injury.

29. At defendant's request, claimant was examined by a fifth independent medical expert, Dr. Mark J. Bucksbaum, on February 27, 1999. Dr. Bucksbaum found the claimant had full range of motion of the elbows, wrists and fingers, as well as full supination and pronation at the elbows. All tests (Anterior/Posterior Apprehension, Hawkins, Neer's, Speed's, Yeagerson's, Allen's, Phalen's Reverse Phalen's and Tinel's) were negative. Dr. Bucksbaum diagnosed claimant with mild right epicondylitis with no evidence of carpal tunnel syndrome. He associated no permanent impairment with claimant's injury.

30. Defendant discontinued claimant's medical and indemnity benefits on March of 1999.

31. Dr. Minsinger had not released claimant to full duty work prior to March of 1999. Following the discontinuance of his benefits, claimant remained in his light duty job at Vermont Public Interest Group until his position was eliminated on May 15, 1999.

32. Dr. Minsinger performed a surgical release of claimant's right carpal tunnel on July 9, 1999. The release improved claimant's pain symptoms, and he no longer experiences the same degree of numbness or tingling as he did before the surgical intervention.

33. Dr. Minsinger's operative findings noted a very thick transverse ligament at midpalm. The findings also noted that there was no marked tenosynovitis or other abnormalities found.

34. Dr. Minsinger authorized claimant's return to light duty work on August 3, 1999. Claimant secured light duty work through a Vermont state program and began working on or about October 18, 1999. He has remained at work since that date.

35. Claimant purchased a Tandy computer in 1993. At this time, he also purchased a sound card and joy stick so that he could play certain computer games. In 1996, after his accident at Vermont Castings, and while he was on light duty at Vermont Castings, claimant purchased a new Packard Bell computer. Additionally, claimant has had Internet access since 1995 or 1996.

36. Claimant testified at the formal hearing that sometimes his hands would go numb when he used his computer keyboard at home.

37. The claimant has presented an itemized statement for $464.94 in costs and attorney's fees of $4,032 based on the statutory rate of $60.00 for 67.20 hours of time.

CONCLUSIONS OF LAW:

1. In a worker's compensation claim, it is the burden of the claimant to establish all facts essential to support his claim. *King v. Snide*, 144 Vt. 395 (1984); *Goodwin v. Fairbanks, Morse and Co*., 123 Vt. 161 (1963). Sufficient competent evidence must be submitted verifying 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. Where the causal connection between an accident and an injury is obscure and a lay person would have no well-grounded opinion as to causation, expert medical testimony is necessary to establish the claim. *Lapan v. Berno's Inc*., 137 Vt. 393 (1979). "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." *Brown v. E.B. & A. C. Whiting*, Opinion No. 21-94WC, (Aug.1, 1994); *Burton v. Holden & Martin Lumber Co*., 112 Vt. 17 (1941).

3. When evaluating and choosing between conflicting medical opinions, the Department has traditionally considered several factors: (1) the nature of 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) the qualifications of the experts, including professional training and experience. *Morrow v. VT Financial Services Corp*., Opinion No. 50-98WC (Aug. 25, 1998); *Durand v. Okemo Mountain*, Opinion No. 41S-98WC (Sept. 1 & July 20, 1998); *Miller v. Cornwall Orchards*, Opinion No. 20-97WC (Aug. 4, 1997).

4. Eight different doctors examined claimant and/or reviewed his medical history: (1) Dr. William E. Minsinger/orthopedic surgeon; (2) Dr. Christian Bean/orthopedic surgeon; (3) Dr. Frederick Fries/neurologist; (4) Dr. Thomas Ward/neurologist; (5) Dr. James Murphy/neurologist; (6) Dr. Philip Davignon/neurologist; (7) Dr. Mark Bucksbaum/physical medicine and rehabilitation specialist; and (8) Dr. Steven Brown/hand surgeon (record review only).

5. Five of the eight doctors were defendant's independent medical experts. Out of these, one diagnosed the carpal tunnel syndrome (Dr. Fries); two did not dispute the carpal tunnel diagnosis (Dr. Bean and Dr. Brown); one had an examination that resulted in a positive Phalen's test – which is one of the symptoms consistent with the diagnosis of carpal tunnel syndrome (Dr. Davignon); and only one disputed the carpal tunnel diagnosis (Dr. Bucksbaum).

6. Three of the eight doctors belonged to the claimant: one was his ongoing treating physician (Dr. Minsinger); and two were specialists referral by Dr. Minsinger (Dr. Murphy and Dr. Ward). All three of the claimant's physicians diagnosed carpal tunnel syndrome.

7. Contrary to defendant's assertion that there had been no mention of carpal tunnel symptoms or pain in claimant's hands in any medical records until July 2, 1998, their own independent medical expert, Dr. Fries, was the first to diagnose claimant with carpal tunnel syndrome. This happened on June 16, 1997.

8. Summarily, it appears that seven of the eight examining physicians have either diagnosed claimant with carpal tunnel syndrome or, at the least, did not dispute the carpal tunnel diagnosis.

9. Since a right median nerve release was performed on July 2, 1999, claimant's complaints of numbness and pain have lessened. There is no evidence to suggest that the median release was an unnecessary surgical procedure. It is also unreasonable to believe that Dr. Minsinger would perform an unnecessary surgical procedure. This being the case, it appears that the claimant did have carpal tunnel syndrome.

10. Sufficient competent evidence verifying the character and extent of claimant's injury and disability having been submitted, only the causation issue is left for determination.

11. Only two physicians have been asked to render opinions regarding the issue of causation in this case: Dr. Minsinger and Dr. Bucksbaum.

12. Both physicians also agree that claimant's work injury of November 17, 1995 did not cause the carpal tunnel syndrome. However, the physicians differ on their determination of the cause of the carpal tunnel syndrome.

13. Dr. Minsinger, claimant's primary treating physician since 1996, concluded that claimant suffered from carpal tunnel syndrome. His conclusion was based upon claimant's longstanding reports of increased pain, numbness and tingling in his hand and wrist that extended into his first and second fingers; and the electrodiagnostic tests of Dr. Ward and Dr. Fries.

14. Dr. Minsinger has opined that the November 17, 1995 injury did not result in carpal tunnel syndrome, but rather from the claimant's activities after the accident; specifically, the work hardening activities that were recommended by Dr. Bean. Yet, Dr. Minsinger was unaware of what activities the claimant was engaging in as part of his physical therapy work or work hardening program and thus, could not pinpoint any specific activities that caused claimant's carpal tunnel syndrome.

15. However, Dr. Minsinger asserts that the claimant had a propensity towards developing carpal tunnel symptomology and that several factors contributed to its worsening: compensatory behaviors associated with his lateral epicondylitis and was further exacerbated by the work hardening and strengthening programs.

16. Dr. Minsinger testified that lateral epicondylitis results in pain when the wrist is extended. Because of this, he posited that the claimant would try and alter what he was doing in that regard. Dr. Minsinger stated that flexion extension of the wrist is also sometimes bothersome for carpal tunnel syndrome, and that constant flexion and extension of the wrist is bothersome for both lateral epicondylitis and carpal tunnel syndrome.

17. Dr. Minsinger noted that claimant improved following his median nerve release of his right carpal tunnel, (claimant's complaints of numbness and pain have lessened), and would improve from a release of his left carpal tunnel. He speculated that claimant may reach medical end result following a left carpal tunnel release.

18. In spite of having five independent medical experts examine claimant, defendant only relies on the fifth, Dr. Bucksbaum, in its assertion that claimant did not have carpal tunnel syndrome. Yet, Dr. Bucksbaum appears actually to have three different opinions: (1) claimant may not have carpal tunnel because the studies were not corrected for temperature; (2) claimant's carpal tunnel was not caused or aggravated by physical therapy; and (3) claimant does not have carpal tunnel at all.

19. Dr. Bucksbaum examined claimant on only one occasion and examined all of claimant's medical and treatment records, excepting those of Dr. Murphy.

20. Dr. Bucksbaum testified that he did not find any evidence of carpal tunnel syndrome in either of claimant's hands. He also noted that there were numerous problems with the tests performed by Dr. Fries and Dr. Ward. These problems consisted of computation errors, incomplete hand/wrist examinations and insufficient data. Yet, it was only at the formal hearing that Dr. Bucksbaum revealed that all three electrical studies demonstrating carpal tunnel syndrome were fatally flawed. In his original report, Dr. Bucksbaum made reference to only one study that may not have been corrected for temperature.

21. Dr. Bucksbaum also testified that his review of claimant's medical records demonstrate that claimant's physical therapy activities did not cause or aggravate carpal tunnel syndrome. Dr. Bucksbaum asserts that there was no evidence that suggested that the claimant ever had carpal tunnel syndrome because Dr. Minsinger's operative report evidenced that the carpal tunnel cavity was found to be adequate and not impinging on the median nerve.

22. He noted that Dr. Minsinger's operative finding of a thick transverse ligament at mid-palm was similar to a callous that could be caused by continuous manual labor, such as farming. Dr. Bucksbaum testified that the claimant's accident in November of 1995 could not have caused the thickening of his transverse ligament at mid-palm, and that a single event does not cause this type of condition. He testified that the operation of a joystick to play computer games could cause this type of thickening.

23. Dr. Bucksbaum further testified that the thick transverse ligament would not cause irritation at the carpal tunnel because they are anatomically unrelated, and because in this case, Dr. Minsinger's operative findings were not consistent with such a conclusion. (Dr. Minsinger's operative report stated that there was no marked tenosynnovitis or other abnormalities, no inflammation of the tendon, and of pathological change in the tissues surrounding the carpal tunnel).

24. Dr. Minsinger agreed with Dr. Bucksbaum that the claimant's thick mid-palm transverse ligament resulted from heavy use of the hand over the course of a lifetime and not from a one-time incident. In his opinion, it contributed to claimant's carpal tunnel syndrome. He asserts that the increased pressure created by the transverse ligament mid-palm caused

a pressure on the nerve running through the carpal tunnel and thus, contributed to the claimant's carpal tunnel syndrome. Dr. Minsinger also felt that computer keyboarding activity would aggravate carpal tunnel syndrome.

25. Yet, according to Dr. Minsinger, tensosynovitis is more significant in patients who do a lot of keyboarding than in those who do not. Dr. Minsinger's operative report documents no marked tensosynovitis. Thus, it seems unlikely that claimant's computer games significantly contributed to his carpal tunnel syndrome.

26. Both physicians are in agreement that only continuous manual labor could cause a thickening of the transverse ligament at mid-palm, not a single event.

27. I find that Dr. Minsinger's treatment history with the claimant is persuasive.

28. Although Dr. Minsinger opines that the carpal tunnel was not directly work related, he does assert that it resulted from work hardening exercises in line with claimant's treatment for a work-related injury. He has been clear, thorough and objective in his assessment.

29. Conversely, I find Dr. Bucksbaum's varied opinions problematic. Dr. Bucksbaum simultaneously denies the existence of the carpal tunnel while asserting that the carpal tunnel was not caused or aggravated by the physical therapy.

30. Dr. Minsinger has the more probable hypothesis. In his deposition, he asserts that "… there are patients who are destined to develop carpal tunnel symptomatology, … and there are oftentimes initiating events that will cause trouble, … what happens is that the patient develops carpal tunnel over a period of time [that is] aggravated by what they're doing…"

31. In this instance, the work hardening program was such an aggravating event. Thus, not only was the carpal tunnel syndrome directly work-related, it was also work-aggravated.

32. But for the claimant having injured his forearms, he would not have been in a work hardening physical therapy program. But for the claimant being in a work hardening physical therapy program, he would not have aggravated his carpal tunnel symptomatology. Therefore, the carpal tunnel syndrome is compensable.

33. Having determined that claimant suffered from carpal tunnel syndrome, and that the carpal tunnel syndrome is causally related to his work injury of November 17, 1995, claimant is entitled to an award of benefits in this case. Claimant is entitled to receive temporary disability benefits dating from April 5, 1999 to the present.

34. The claimant has prevailed on the merits of his claim and is therefore entitled to an award of his costs as a matter of law and attorney's fees as a matter of discretion. 21 V.S.A. § 678(a); Worker's Compensation Rule 10(a). The claimant has presented an itemized statement for $464.94 in costs and $4,032 in attorney's fees. Since the claimant has succeeded on his claim because of his attorney's efforts, costs and attorney's fees will be awarded in the aforementioned amounts.

35. The law in effect at the time of the injury here provided the commissioner with the discretion to award interest from "the date the original award became a due and payable obligation." *Marsigli's Estate v. Granite City Auto Sales, Inc*., 124 Vt. 467 (1965). The Department does have a policy to award prejudgment interest if there is a clear breach of duty. *Heany v. Southwestern Vermont Medical Center,* Opinion No. 22-96 WC (April 29, 1996); *Berno v. Stripping Unlimited, Inc.*, Opinion No. 42-98WC (July 20, 1998); *Paini v. Twin City Subaru,* Opinion No. 17-99WC (Apr. 2, 1999).

36. The claimant has established, by sufficient competent evidence, the character and extent of the injury and disability, as well as the causal connection between the injury and the employment. When four of its five independent medical experts either diagnosed the claimant with carpal tunnel syndrome or did not dispute this diagnosis, the defendant was put on notice. Just because the defendant chose to align its position with its fifth independent medical expert who disagreed with the diagnosis does not excuse the defendant from its duty.

37. Thus, under Department policy, the claimant is entitled to prejudgment interest at the rate of 12% dating from April 5, 1999 forward.

ORDER:

Based on the foregoing Findings of Fact and Conclusions of Law, Vermont Castings is ORDERED to pay claimant:

1. Temporary disability benefits from April 5, 1999 forward until claimant reaches a medical end result.

2. Medical and hospital benefits.

3. Attorney fees and costs; a total combined amount of $4,496.94.

4. Legal interest dating from April 5, 1999 forward.

Dated at Montpelier, Vermont, on this 29th day of June 2000.

_____

Steve Janson
Commissioner