

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

*Vicky Paton*

*Opinion No. 47-04WC*

*v.*

*By: Margaret A. Mangan  
Hearing Officer*

*State of Vermont,  
Department of Corrections*

*For: Michael S. Bertrand  
Commissioner*

*State File No. P-00601*

*Hearing held in Montpelier on March 6, 2004  
Record closed April 26, 2004*

**APPEARANCES:**

*Joseph C. Galanes, Esq., for the Claimant  
Keith J. Kasper, Esq., for the Defendant*

**ISSUES:**

- 1. Did claimant's work injury of June 24, 1999 cause or aggravate her pre-existing psychological condition?*
- 2. If so, is claimant entitled to ongoing psychiatric benefits and temporary total disability benefits?*

**EXHIBITS:**

- I: Medical Records (Joint Exhibit No. I (a & b))*  
*II: Deposition transcript of Dr. Ehret (Claimant's Exhibit No. 1)*  
*II: Deposition transcript of Dr. Drukteinis (Defendant's Exhibit No. A)*

**STIPULATED FACTS:**

- 1. On or about June 24, 1999, claimant was an employee of defendant within the meaning of the Vermont Worker's Compensation Act (Act).*
- 2. On or about June 24, 1999, defendant was the employer of claimant within the meaning of the Act.*

3. *On or about June 24, 1999, claimant suffered a personal injury by accident arising out of and in the course of her employment with defendant.*
4. *On June 24, 1999, claimant had an average weekly wage of \$432.51 resulting in an initial compensation rate of \$288.34.*
5. *On June 23, 2002, defendant filed a Form 27 to terminate claimant's medical benefits, which was approved by the Department.*
6. *Effective August 29, 2002, defendant filed a Form 27 to terminate claimant's temporary total disability benefits, which was approved by the Department.*
7. *Claimant seeks ongoing temporary total disability benefits and psychiatric medical benefits retroactive to their date of termination, and, if successful, attorney fees and costs of the litigation process.*

**FINDINGS OF FACT:**

1. *Claimant originally injured her head and back after falling down some stairs on June 24, 1999 while working as a corrections' officer. She did not seek medical care that day, but did so the next day.*
2. *At the time, of the injury, claimant had been working only a few weeks at the corrections department job although she had attended a seven-week training program before that.*
3. *The carrier accepted the claim and commenced temporary total disability (TTD) benefits effective June 25, 1999.*
4. *Reports from June 25, 1999, the day after the accident, and a few days later, June 28, 1999, showed claimant to have been very tender over the occiput and extremely tender over her entire cervical spine. She refused pain medication. Skull x-rays revealed no fracture. A CT scan showed no significant abnormality.*
5. *A July 8, 1999 follow-up found claimant doing better overall. Although she still had a headache, it was dull and she was not taking anything for it.*

6. *Following medical clearance, claimant returned to work on July 14, 1999.*
7. *Not until July 16, 1999, did claimant report increased depressive symptoms. Claimant was told to restart medication (Paxil) for depression. As of July 26, 1999, claimant's depression was getting worse and she was not sleeping well. She had flashbacks of a burning death she witnessed while working as an emergency medical technician years earlier. By August 9, 1999, the Paxil had taken the edge off of claimant's severe depression, but she was not any better. Claimant had a hard time going out in public and continued to be "haunted" by the images of the young man in the burning accident. She was strongly encouraged to get counseling and a psychiatric consultation.*
8. *Claimant has been compensated for the physical disability resulting from her head injury. Temporary total disability payments for claimant's head injury began on June 25, 1999 and continued through August 29, 2002 when Dr. Orecchio found her to be at medical end result for the physical component of the injury.*
9. *Dr. Rose Ehret is claimant's treating psychiatrist. Now a specialist in child psychiatry, she began treating claimant before limiting her practice to children. Dr. Ehret has been monitoring claimant's pharmacology.*
10. *Gary Gordon, a Vermont emergency service worker (WCMH), was among the response team following claimant's alleged suicide attempt in April 2000. Gordon referred claimant to Mental Health Practitioner, M. Corbin Gould, M.A., for psychiatric treatment. Claimant met with Ms. Gould three times weekly beginning in April 2000 and tapering off to one meeting per week in February 2002.*
11. *Since at least 2000 claimant has had stress in her family life that prompted her to move out of her house and into her car.*
12. *Based on a report from Dr. Albert M. Drukteinis stating that claimant had reached medical end result, the carrier discontinued medical benefits concerning the psychological component of this claim as of June 28, 2002. Dr. Roger Kessler, however, believes the claimant is not at a psychological end point and requires further treatment.*

### Work History

13. *Claimant has held several jobs in her adult life, including a security job. That job began in November or December of 1998, and was the one she held immediately before she began working at the Department of Corrections. At the security job she worked weekends and filled in for "no-shows."*
14. *Her job with the Department of Corrections began in April 1999 with seven weeks of training. At that time she was also exploring going to nursing school.*

*Medical and Psychiatric History*

15. *Claimant has long history of post-concussive symptoms and psychological illnesses.*
16. *Claimant incurred a work-related injury to her back in 1994. Although she described repeated incidences of herniated discs, the only true pathology found was some narrowing at the L5-S1 level. Objective studies were essentially normal. She had a two-year period of disability from work following that injury.*

17. *Before the work-related injury at issue here, claimant had been diagnosed with dissociative identity disorder, post-traumatic stress disorder, major depression, and panic disorder. Claimant also has a history of abuse, head injuries and migraine headaches. She began psychiatric treatment at the Clara Martin Center in 1994 and counseling two years earlier.*
18. *In 1995 claimant discontinued psychological treatment against professional advice.*
19. *Claimant was hospitalized for suicidal ideation twice in June 1997 and once in October 1997 for psychological problems. The June 1997 Brattleboro Retreat admission was her third lifetime psychiatric admission.*
20. *According to Dr. Jamie Asnis, claimant's neurologist, who began treating her for chronic headaches in April 1998—before the accident—claimant had been having headaches for two and a half years at that time. She reported having three concussions with loss of consciousness over the summer of 1997.*
21. *Treatment notes from the Montpelier Health Center begin in October 1998, more than six months before claimant's work-related injury. Claimant was treated for headaches, hypertension, and depression/anxiety. Notes from claimant's November 3, 1998 session report that she was feeling much better, particularly since she had removed herself from a difficult home situation.*
22. *In early June 1999, just weeks before the injury, claimant was seen for ongoing migraines and dizziness.*

#### Expert Medical Opinions

23. *Dr. Rose Ehret, the claimant's treating psychiatrist, diagnosed claimant with recurrent major depressive, disorder, social phobia, and posttraumatic stress disorder. In her opinion, claimant's work-related injury worsened each of the conditions. Dr. Ehret's opinion is based in part on the premise that claimant had had an eight month period of stability in her life before the June 1999 injury.*
24. *George P. White, Jr., M.D. of the Occupational Health Service at Fletcher Allen Health Care performed a second opinion evaluation of claimant on August 27, 1999. All of his observations pertained to the*

25. *At the request of the insurance carrier, Albert M. Drukteinis, M.D., performed an independent neuropsychiatric evaluation of claimant on January 29, 2002. Dr. Drukteinis assessed claimant's mental state in relationship to her claims, her current mental health treatment, and any work impairment from the injury of June 24, 1999. He reviewed all medical records.*
26. *Dr. Drukteinis also interviewed claimant for approximately two-and-a-half hours and administered numerous psychological tests.*
27. *Dr. Drukteinis directly addressed the issues considered in this opinion: 1) whether claimant's counseling sessions should continue and, 2) if so, if they should be part of her workers compensation claim of 1999. He also provided an opinion on whether claimant had reached psychological end result with regard to the work-related injury.*
28. *Dr. Drukteinis found claimant in need of psychiatric and psychological treatment and recommended psychotherapy as well. In his opinion, however, claimant's psychiatric and psychological treatment needs are no longer due to the injury of June 24, 1999, but rather due to factors within her personality and traumatic past. Further, claimant has reached a psychological endpoint with regard to the work-related injury of June 24, 1999.*
29. *Rodger Kessler, Ph.D., performed a medical and psychological records review in October 2002, specifically on the records of Dr. Drukteinis, Dr. Asnis, and Ms. Gould.*
30. *Although Dr. Kessler agreed with Dr. Drukteinis that claimant presents a complicated psychosocial history, a lengthy psychiatric history, and a history of suicidality, he disagreed with Dr. Drukteinis diagnostically. Dr. Kessler found claimant to clearly meet the criterion for dysthymic affective disorder and chronic posttraumatic stress disorder (PTSD).*
31. *Dr. Kessler found that, despite her history, claimant had been functioning successfully in her vocational and personal life until her accident whereby she "developed an aggravation of her psychiatric functioning that persists to this date." Subsequent to the injury, claimant's sense of worth associated with work, income, and*

32. *Because claimant's neurological treatment has continued, Dr. Kessler reasons that this active condition's psychiatric sequelae, which are part of the injury are also active and that claimant is not at psychological end.*
33. *Dr. Kessler also recommends further psychological treatment.*

## **CONCLUSIONS OF LAW:**

1. *At issue is whether claimant's work related injury caused or aggravated her mental health condition and, if so, whether she is entitled to ongoing psychiatric treatment and temporary total disability benefits.*
2. *It is well established in Vermont that claimant has the burden of proof on this claim. King v. Snide, 144 Vt. 395 (1984). 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. The Book Press, 144 Vt. 367 (1984).*
3. *An employer takes each employee as is and is responsible under workers' compensation for an injury which disables one person and not another. Morrill v. Bianchi, 107 Vt. 80 (1935); Perkins v. Community Health Plan, Opinion No. 39-98WC (1998); and Winckler v. Travelers & Foley Rail Co., Opinion No. 29-01WC (2001).*
4. *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 injury and the inference from the facts proved must be the more probable hypothesis. Burton v. Holden Lumber Co., 112 Vt. 17, 19 (1941).*
5. *The trier of fact may not speculate as to an obscure injury that a layperson could have no well-grounded belief as to its causation, and under those circumstances expert testimony is the sole means of laying a foundation for an award. Lapan v. Berno's, Inc., 137 Vt. 393, 395-96 (1979).*
6. *To establish a physical-mental claim, a claimant must prove a causal nexus between a compensable physical injury and psychological impairment. See Blais v. Church of Jesus Christ of the Latter Day Saints, Op. No. 30-99WC (1999).*
7. *In this, as in all cases with conflicting expert opinions, this Department weighs several factors in deciding which opinions to accept: 1) whether a medical expert has had a treating physician relationship with the claimant; 2) the professional education and experience of the expert; 3) the nature of the evaluation performed, including whether the expert had all the medical records in making*



8. *Dr. Ehret was a treating psychiatrist, but had a limited relationship with the claimant. Her opinions were based on the limited information claimant chose to give her and were based on the misperception that claimant had not returned to work after the injury and had been stable beforehand for nine months.*
9. *Neither Dr. Drukteinis nor Dr. Kessler has had a treating physician relationship with the claimant. Dr. Drukteinis interviewed the claimant once for 2-1/2 hours; Dr. Kessler interviewed the claimant three times for a total of 5 hours. Both administered a battery of standardized psychological tests to her. In terms of education and experience, Dr. Drukteinis is certified by the American Board of Psychiatry and Neurology with added qualifications in forensic psychiatry, the American Board of Forensic Psychiatry, and the American Academy of Pain Management. Dr. Kessler is a clinical psychologist. He is a Fellow of the American Psychological Association, the Society of Clinical and Experimental Hypnosis, and the American Society of Clinical Hypnosis. Both Doctors Drukteinis and Kessler had access to a wide range of claimant's treatment records. Dr. Drukteinis's evaluation is more objective than Dr. Kessler's, based on particular test results, a more accurate history, symptomology, the claimant's statements to him, and his review of claimant's medical records. Dr. Kessler mistakenly believed that claimant had not returned to work after her injury and that the work injury caused the break-up of a significant relationship. On balance, then, Dr. Drukteinis's opinion must be given the greatest weight.*
10. *Based on Dr. Drukteinis's opinion, I conclude that claimant's entire life history is what is disabling her now. Her extremely traumatic life experience resulted in repeated regressions and more current stressful family experiences added to them. A minor work-related injury pales in comparison to the overall psychological and family events claimant has had to endure. Claimant's condition was not stable prior to the accident. And she did not fall apart until after she was faced with returning to work.*
11. *On such a record, it has not been proven that the fall at work in June 1999 caused or aggravated claimant's psychological condition.*

**ORDER:**

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

*Dated at Montpelier, Vermont this 19<sup>th</sup> day of October 2004.*

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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.*