T. K. v. Green Mountain Steel Erectors (July 3, 2008)

STATE OF VERMONT
DEPARTMENT OF LABOR

T. K.

v.

Green Mountain
Steel Erectors

Opinion No. 29-08WC

By: Phyllis G. Phillips, Esq.
Hearing Officer

For: Patricia Moulton Powden
Commissioner

State File No. U-12876

OPINION AND ORDER

Hearing held in Montpelier on March 28th and April 15th, 2008

APPEARANCES:

Gregg Meyer, Esq., for Claimant
Nathaniel Seeley, Esq., for Defendant

ISSUE PRESENTED:

1. Whether Defendant was justified in discontinuing Claimant's workers' compensation benefits on the grounds that he had refused recommended treatment for his February 12, 2004 work injury;

2. Whether Claimant has reached an end medical result and if so, whether he is entitled to permanent total disability benefits; and

3. Whether the value of Defendant's contributions to Claimant's health insurance premiums and/or retirement savings should be included in Claimant's average weekly wage.

EXHIBITS:

Joint Medical Exhibit

Claimant's Exhibits:

Claimant's Exhibit 1: Lara Boutaugh-Commoss, RN, Nurse Case Manager file notes
Claimant's Exhibit 2: Jean Perrigo, claim file notes (redacted)
Claimant's Exhibit 3: Letter from Jean Perrigo to Claimant, 05/10/2005
Claimant's Exhibit 4: Memorandum from Shirley to Jean/Travelers, 8/8/06
Claimant's Exhibit 5: Photographs (4)
Claimant's Exhibit 6: Letter from Roger Bouchard, January 29, 2008
Claimant's Exhibit 7: John Krawchenko, MD office note, 4/18/08 (admitted post-hearing)

Defendant's Exhibits:

Defendant's Exhibit A: Letter from Jean Perrigo to Dr. Stewart, 05/10/2005
Defendant's Exhibit B: Letter from Jean Perrigo to Claimant with Form 27 attached, 05/24/2005
Defendant's Exhibit C: Letter from Jean Perrigo to Claimant with Form 22 attached, 05/24/2005
Defendant's Exhibit D: *Curriculum Vitae*, William A. Stewart, MD

CLAIM:

Temporary total disability benefits under 21 V.S.A. §642 retroactive from discontinuance and ongoing;
Medical benefits under 21 V.S.A. §640, including reimbursement for travel and meals under Workers' Compensation Rule 12.2000;
Attorney's fees and costs under 21 V.S.A. §678

FINDINGS OF FACT:

1. At all times relevant to these proceedings, Claimant was Defendant's employee and Defendant was an employer as those terms are defined in Vermont's Workers' Compensation Act.

2. Defendant is a Vermont company engaged in the business of erecting steel buildings, some as high as eight stories tall. Claimant has worked for Defendant as a steel erector since 1999.

3. On February 12, 2004 Claimant was working as a ground man on a crane at a job site in Massachusetts. As he bent over to attach a choker cable around a steel beam he felt a pop in his lower back. Over the next few hours the pain increased to the point where he could not straighten up.

4. Claimant reported his injury as work-related. Notwithstanding that the injury occurred in Massachusetts and that Claimant was (and continues to be) a New York resident, Defendant opted to file the First Report of Injury in Vermont, jurisdiction here having attached because Claimant had been hired in Vermont. Thereafter, Defendant accepted the claim as compensable and paid benefits in accordance with Vermont's Workers' Compensation Act.

5. Claimant treated for his injury with his primary care provider, David Vigeant, a physician's assistant. His symptoms included low back pain radiating to his buttocks and lower extremities, primarily on the left. Mr. Vigeant determined that Claimant was temporarily totally disabled. After an MRI performed on February 25, 2004 revealed a paracentral disc herniation at L5-S1, Mr. Vigeant referred Claimant to Dr. Krawchenko, a neurosurgeon, for further evaluation and treatment. Dr. Krawchenko concurred with Mr. Vigeant's assessment that Claimant was totally disabled from working and remains of that opinion today. Claimant has not worked since the February 12, 2004 accident.

6. Initially Dr. Krawchenko prescribed conservative treatment, including passive-modality physical therapy and lumbar epidural steroid injections. When Claimant's symptoms failed to abate with these measures, Dr. Krawchenko recommended surgery. Claimant underwent L5-S1 disc surgery on June 17, 2004.

7. Claimant's symptoms persisted post-surgery and in fact appeared to worsen. He experienced pain, burning and numbness radiating from his left buttocks down his left leg and into his left foot. He had difficulty ambulating, walked with a severe limp and could not sit on his left buttock. Notwithstanding these worsening symptoms, a repeat MRI performed in July 2004 revealed no new disc herniations.

8. In October 2004 Physician's Assistant Vigeant referred Claimant to Dr. Fayyazi for a second neurosurgical opinion. Dr. Fayyazi concurred with Dr. Krawchenko's assessment that there was no new disc herniation and instead believed that the majority of Claimant's ongoing symptoms represented early signs of reflex sympathetic dystrophy. For treatment of these symptoms Dr. Fayyazi recommended a more aggressive, active physical therapy program.

9. The physical therapy records document significant improvement with this more active program. By February 2005 Claimant had fewer pain complaints, better mobility, increased flexibility and an "essentially normal" gait pattern. Claimant was discharged from physical therapy in late February, all of the recommended visits having been completed.

10. At Dr. Krawchenko's referral, in March 2005 Claimant underwent a functional capacities evaluation in which he demonstrated a sedentary work capacity, much less than what would be required for a successful return to work at his pre-injury job. Significantly, the functional capacities evaluator also noted that Claimant scored very high on a depression index, an indication that he was severely depressed and possibly suicidal. Upon learning this, Dr. Krawchenko referred Claimant to Dr. Littell, a psychologist, for evaluation and treatment.

11. Claimant attended one one-hour session with Dr. Littell. Dr. Littell diagnosed Claimant with a major depressive disorder. He noted various stressors in Claimant's life, some related to his injury and some personal. As treatment he offered either ongoing therapy and/or anti-depressant medications, both of which Claimant declined.

12. By April 2005 Claimant again was favoring his left leg and walking with a limp, and seemed to have regressed from the significant gains he had realized in physical therapy. At Defendant's request, in late April he underwent an independent medical evaluation with Dr. Stewart, a neurosurgeon. Dr. Stewart reported that Claimant suffered from constant low back pain and pain, numbness and weakness in his left leg and foot. He walked with a marked limp and appeared to be in marked distress. Dr. Stewart concluded that Claimant continued to be totally disabled as a result of his work injury. As to ongoing treatment, Dr. Stewart stated:

> His present treatment is not reasonable. I say this for these reasons, he is not being properly treated for his depression. Depression magnifies pain ten times and until the depression is addressed he is not going to make any significant progress in his complaints of pain and disability.

13. Dr. Stewart predicted that Claimant would reach an end medical result for his work injury "after successful treatment of his depression and further exercise and therapy for his back." As to work capacity, Dr. Stewart predicted that following successful treatment of his depression Claimant would be able to return to work with a "moderate disability" – something more than the sedentary work capacity he had been given following his functional capacities evaluation, but probably not great enough to allow him to return to work in his pre-injury steel worker position.

14. Upon learning of Dr. Stewart's conclusions and treatment recommendations, the claims adjuster and nurse case manager assigned to Claimant's claim by Defendant's workers' compensation insurance carrier conferred as to the appropriate next steps. They agreed that the nurse case manager would contact Claimant to discuss his possible enrollment in the multidisciplinary program offered at the Vermont Center for Occupational Rehabilitation (VCOR) in Essex Junction, Vermont. The nurse case manager's computer claim file notes reflect that if Claimant declined to participate in that program, she would research the availability of similar multidisciplinary programs in New York, closer to Claimant's residence. There is no evidence that she did so, however, despite the fact that Claimant did in fact decline to participate in the VCOR program.

15. On May 6, 2005 the nurse case manager spoke with Claimant by phone. They discussed the VCOR program at length and the nurse case manager advised that she would send Claimant a brochure so that he could learn more about it. As to Claimant's willingness to participate in the program, the nurse case manager's computer claim file notes state:

> IW [Injured Worker] had no significant comment re: participating in this program. He stated wants all of this treatment done. I explained that none of his NY treating providers have documented that he's at medical end result.[1]
>
> . . .
>
> Explained that in speaking with [the claims adjuster], this carrier would arrange transportation for him to & from VT for his consultation & participation in program, as well providing & paying for lodging.
>
> IW stated he'd review the brochure and contact me the middle of next week.

[1] According to the nurse case manager's computer claim file notes, this was not the first time she had discussed the concept of end medical result with Claimant. Previously, on February 25, 2005 (the date on which Claimant was discharged from physical therapy after having completed all scheduled visits), she returned a phone call from Claimant in which he asked "what he would need to do to settle his workers' compensation claim." She responded by explaining both end medical result and permanency rating as the necessary first steps to doing so.

16. On May 10, 2005 the claims adjuster spoke with Claimant. Her computer claim file notes document the conversation as follows:

> I spoke with the injured worker this morning. He said he received the copy of the IME results. The injured worker said that he does not wish to pursue any further medical treatment for the work-related injury. He received the brochure which was sent by the nurse with regard to attending VCOR. He does not wish to pursue this treatment. He does not want to be involved with any therapy.
>
> The injured worker said he just wants to put it all behind him and move on with his life. He does not want to attend any further medical appointments. He does not want vocational rehabilitation. He wants a settlement. The injured worker was asked if he has thought this through and that he realizes the consequences of not following through with recommendations for treatment. He was adamant that he does not want any further treatment.
>
> A letter will be written to Dr. Stewart requesting that given the fact that the injured worker does not wish to pursue any further treatment recommendations, will he place him at medical end result and provide an impairment rating.
>
> A letter will also be sent to the injured worker requesting that he sign and return the letter with regard to his wishes not to pursue any further treatment recommendations.

17. At the formal hearing Claimant recalled the telephone conversation with the claims adjuster, and acknowledged that it was not a "friendly" discussion. He testified that he did not object to the VCOR program *per se*, but was concerned because he had been told that he would have to take a bus to Vermont and would be accommodated there without either his wife or his mother for support. In Claimant's opinion, that arrangement was "not acceptable." He testified that he would have been more receptive to a similar program in New York, closer to home. It is unclear to what extent Claimant conveyed this sentiment to the claims adjuster. In summing up the gist of his conversation Claimant testified that when he said that he was "refusing treatment," he was not referring to the medical treatment that had been proposed, but rather to the treatment he had received from the claims adjuster. Ultimately, Claimant hung up on the adjuster.

18. Following her conversation with Claimant, the claims adjuster corresponded with Dr. Stewart. She advised him as follows:

> Given . . . the fact that Mr. Kirby does not wish to pursue any further medical treatment, he is basically placing himself at maximum medical improvement. Please advise whether you are able to state that he has reached maximum medical improvement as defined by the Vermont Workers' Compensation Rules. Additionally, we would request that you address what percentage of whole person impairment Mr. Kirby has sustained based upon the 5th Edition of the AMA Guidelines.

19. The claims adjuster also corresponded with Claimant. She reiterated her understanding that Claimant did not wish to pursue the treatment recommended by Dr. Stewart and asked that he sign, date and return the letter to her to verify that this was in fact the case. If her understanding was incorrect, she asked that Claimant contact her immediately to discuss the matter further. Claimant did not take either action.

20. On May 12, 2005 Dr. Stewart responded to the claims adjuster's letter with a brief addendum in which he declared Claimant to be at end medical result with a 20% whole person permanent impairment. Dr. Stewart did not conduct any further examination of Claimant prior to issuing this addendum. He based his end medical result determination solely on the claims adjuster's assertion that Claimant was refusing further treatment and his permanency rating solely on the notes from his prior evaluation of Claimant.

21. On May 24, 2005 the claims adjuster filed a Form 27 Notice of Intention to Discontinue Payments with the Department in which it sought to discontinue workers' compensation benefits on the grounds that Claimant had reached an end medical result in accordance with Dr. Stewart's May 12, 2005 addendum. A copy of the Form 27 was mailed to Claimant. The Department approved the discontinuance effective June 2, 2005.

22. Also on May 24, 2005 the claims adjuster mailed Claimant a proposed Form 22 Agreement for Permanent Partial Disability Compensation in accordance with Dr. Stewart's 20% whole person impairment rating. She asked that Claimant sign the form and return it to her for filing with the Department. Claimant did not do so. Instead, on June 6, 2005 he telephoned the claims adjuster and advised that he would not sign the form because he disagreed with Dr. Stewart's impairment rating. The claims adjuster's computer claim file notes further report:

> The injured worker said he saw Dr. Krawchenko on 5/26/05 and Dr. Krawchenko said he is 100%. I advised the injured worker that if he was 100% he would be in a wheelchair. The injured worker said he just wants to be done with the whole thing. He does not want any further treatment, vocational rehabilitation, etc. He wants to settle this and have enough money so that he can buy a house with a pool and a hot tub and live comfortably. The injured worker said he would be willing to compromise at 50%. I advised the injured worker that I would not be willing to compromise anything at this time. I advised him I wanted to see what Dr. Krawchenko has to say in his report. I also advised the injured worker that Dr. Krawchenko may not be familiar with Vermont workers' compensation and how to go about assessing for permanent impairment.
>
> The injured worker was encouraged to call the Vermont Department of Labor and Industry to obtain their opinions and suggestions. The number was provided to him.

23. Claimant testified that he did not follow up with the Department of Labor & Industry, and instead sought legal advice. Claimant retained an attorney in June 2007.

24. Although Claimant never signed the proposed Form 22, Defendant advanced permanency benefits in accordance with Dr. Stewart's 20% impairment rating until they were fully paid. Twice during this period Claimant requested and was granted partial lump sum payments, once to assist with a down payment on a house and once to purchase exercise equipment.

25. Notwithstanding the discontinuance of his workers' compensation benefits, Claimant has continued to treat regularly with both Physician's Assistant Vigeant and Dr. Krawchenko. Mr. Vigeant's treatment has consisted primarily of monitoring Claimant's symptoms, which have continued unabated over time. Claimant testified that since the 2004 injury and subsequent surgery he has fallen more than a dozen times because of the weakness in his left lower extremity. Claimant testified that as a result of one such fall, in October 2006, he injured his left shoulder and neck. At the formal hearing, Claimant walked with a pronounced limp and needed physical assistance to negotiate even the short distance from one end of the room to the other. While seated, he changed positions frequently and appeared to be in marked distress throughout the day.

26. Dr. Krawchenko has continued to monitor Claimant's care as well. In terms of treatment, he has approved Claimant's strategy of heat, ice, anti-inflammatories and gentle exercises. While these measures provide some temporary relief of symptoms, none of them have resulted in any significant long-term improvement. On various occasions Dr. Krawchenko has suggested that Claimant might consider another course of epidural steroid injections. Initially he reported that Claimant did not wish to pursue that treatment option; more recently he reported that Claimant advised he could not do so because he could not afford it. Dr. Krawchenko also has recommended further diagnostic work-up for Claimant's left shoulder complaints.

27. As for Claimant's disability status, Dr. Krawchenko maintains that Claimant is permanently totally disabled as a result of his work injury. Dr. Krawchenko has not rated the extent of Claimant's permanent impairment in accordance with the AMA Guides. Nor has there been any formal assessment of Claimant's transferable vocational skills.

28. In February 2008 Claimant underwent an independent medical evaluation with Dr. Bucksbaum, a specialist in physical medicine, rehabilitation and pain management. Dr. Bucksbaum opined that Claimant remains temporarily totally disabled as a result of his work injury, that his condition has not yet stabilized and that he requires further treatment causally related to his work injury. Specifically, Dr. Bucksbaum believes that Claimant is a candidate for a course of intensive outpatient rehabilitation and chronic pain management. He also needs further diagnostic work-up and treatment for his cervical, left shoulder and left hip complaints, at least some of which Dr. Bucksbaum related to the falls Claimant has suffered as a result of the weakness in his left leg. According to Dr. Bucksbaum, Claimant will not reach end medical result until these next diagnostic and treatment recommendations are pursued.

29. At the formal hearing, Claimant testified that he would like to follow up on all of Dr. Bucksbaum's treatment recommendations.

30. Dr. Stewart also testified at the formal hearing. Having developed a better understanding of the concept of end medical result under Vermont's workers' compensation law, Dr. Stewart rescinded his prior determination that because Claimant purportedly had refused further treatment in May 2005 it was appropriate to deem him to be at end medical result. To the contrary, Dr. Stewart testified that because Claimant's condition is not stabilized and because he requires further evaluation and treatment, he is not at end medical result. Dr. Stewart believes that Claimant now needs a thorough neuropsychological evaluation to determine the extent of his chronic pain problem and the psychological factors, including depression, which might impact both diagnosis and course of further treatment.

31. Dr. Krawchenko's position as to Dr. Bucksbaum's and Dr. Stewart's treatment recommendations is unclear. In his January 19, 2007 office note Dr. Krawchenko suggested that Claimant "may need psychological help" for the depression associated with his chronic pain, but he did not make any specific referral. Beyond that, Dr. Krawchenko's office notes do not discuss the potential effectiveness of either Dr. Bucksbaum's or Dr. Stewart's proposed treatment paths.

32. At the time of his injury, Claimant's compensation package from Defendant included payments towards his health, dental and life insurance premiums as well as annual contributions to his 401(k) pension plan. Defendant contributed a total of $2,686.04 towards these benefits in 2003.

CONCLUSIONS OF LAW:

1. At issue in this claim is the extent to which a claimant can refuse to follow an independent medical examiner's treatment recommendations, and the lawful consequences an employer can impose when this situation occurs.

2. Vermont's workers' compensation law has been interpreted to impose upon claimants the obligation to participate actively in their medical care, and precludes them from refusing unreasonably to pursue recommended treatment designed to improve their condition. *Hall v. Maple Grove Farms, Inc.*, Opinion No. 33-95 (August 8, 1995); *Hoyt v. Vermont State Hospital*, Opinion No. 3-94WC (February 22, 1994); *Luther v. General Electric*, Opinion No. 9-93WC (July 29, 1993). A claimant who chooses unreasonably to refuse treatment risks temporary suspension of his or her workers' compensation benefits. *Hoyt, supra.* Benefits remain suspended until the basis for their suspension disappears, either because the claimant opts to undergo the treatment at issue or because circumstances change so as to negate the treatment's anticipated efficacy. *Luther, supra.*

3. In determining whether the facts of a particular claim warrant that a claimant's benefits be suspended, the key issue is whether the decision to refuse treatment is reasonable. In this context, reasonableness requires weighing the treatment's potential risk against its likely success in significantly reducing the claimant's disability. 1 Larson, *Workers' Compensation Law* §10.10[2]. After having been viewed through such a risk-reward prism, only those treatment refusals that are "clearly unreasonable" can justify a suspension of benefits. *Hall, supra.*

4. Applying that test to the current claim, I find that Dr. Stewart's recommendation that Claimant undergo psychological treatment for depression as an integral part of his ongoing rehabilitation program involved only limited risk and the potential for significant reward. I further find that Claimant refused to undergo such treatment, and that his refusal was clearly unreasonable. Defendant's decision to suspend benefits on those grounds, therefore, was appropriate.

5. As to the duration of the suspension, once Claimant was notified that Defendant had discontinued benefits on the grounds that he had refused treatment, and once the Department approved the action, it became incumbent upon Claimant to give some affirmative indication that he had changed his mind. I find that Claimant did not do so until the formal hearing, when he testified that he was willing to pursue Dr. Bucksbaum's treatment recommendations. Assuming that Claimant is willing as well to undergo the neuropsychological evaluation recommended by Dr. Stewart his benefit suspension should end as of that date.[2]

[2] Claimant did not address his willingness to undergo a neuropsychological evaluation at the formal hearing as Dr. Stewart did not make this recommendation known until his own formal hearing testimony, which came after Claimant already had testified.

6. Because Claimant requires additional treatment that if successful, will result in significant further improvement, he is not yet at an end medical result as that term is defined in Workers' Compensation Rule 2.1200. Until Claimant reaches that point, it is premature to determine the extent of his permanent impairment, either total or partial. For that reason, I cannot credit Dr. Krawchenko's opinion that Claimant is permanently totally disabled.

7. Having concluded that Claimant's refusal of treatment ended as of the formal hearing, Defendant is obligated to reinstate both temporary disability and medical benefits as of that date, provided of course that Claimant in fact complies with the treatment recommendations that Drs. Bucksbaum and Stewart have proposed. What remains is to determine the appropriate average weekly wage and compensation rate at which temporary disability benefits should be paid.

8. Claimant argues that the value of Defendant's contributions to his health insurance premiums and retirement savings should be included in his average weekly wage and compensation rate calculation. In keeping with the U.S. Supreme Court's holding in *Morrison-Knudsen Construction Co. v. Director, OWCP*, 461 U.S. 624 (1983), this Department consistently has rejected such arguments in the past. *P.M. v. L.F. Hurtubise*, Opinion No. 15-07WC (June 15, 2007) and cases cited therein. Claimant has provided no new reason to justify a different result here. His average weekly wage and compensation rate were calculated properly without including the value of any employer-paid contributions to health plans or retirement savings.

9. Claimant has submitted a request under 21 V.S.A. §678 for costs totaling $5,536.14 and attorney's fees totaling $16,672.50. An award of costs to a prevailing claimant is mandatory under the statute. As for attorney's fees, these lie within the Commissioner's discretion. Factors to be considered in fashioning an award of attorney's fees include the necessity of representation, difficulty of issues presented, time and effort expended, clarity of time reports, agreement with the claimant, skill of counsel and whether fees are proportional to counsel's efforts. *L.W. v. NSA Industries, Inc.*, Opinion No. 27A-05WC (April 27, 2005). When a claimant partially prevails, the Commissioner often exercises the discretion granted by the statute to award only partial fees, in an amount commensurate with the extent of the claimant's success. *Estate of Lyons v. American Flatbread,* Opinion No. 36A-03 (October 24, 2003).

10. Claimant's statement of the costs for which he seeks reimbursement includes various summary invoices from Dr. Bucksbaum. None of these invoices is itemized with sufficient specificity to determine whether the charges comply with Workers' Compensation Rule 40.110. It also is impossible to determine whether any of Dr. Bucksbaum's charges reflect time that he spent conferring with Claimant's attorney and preparing his testimony. These charges are not recoverable under 21 V.S.A. §678. *Hatin v. Our Lady of Providence*, Opinion No. 21S-03WC (October 22, 2003).

11. Claimant's statement of costs also includes a $455 charge for videotaping Dr. Stewart's deposition. Defendant argues that because Claimant's attorney deposed Dr. Stewart for discovery rather than preservation purposes videotaping was unnecessary and therefore the charge should not be allowed as a reimbursable cost. I do not find Claimant's decision to videotape the deposition to be so obviously unnecessary as to warrant disqualification. This charge is allowed.

12. Claimant is awarded costs of $3,051.14, the total amount submitted less Dr. Bucksbaum's charges. Claimant shall have 30 days from the date of this decision to submit Dr. Bucksbaum's detailed itemization of charges for further consideration.

13. As for attorney's fees, Defendant argues that because Claimant's attorney agreed to represent Claimant on a contingent fee basis, he cannot now request an award based on an hourly fee instead. Workers' Compensation Rule 10.1200 specifically gives the Commissioner discretion to award fees on either an hourly or a contingent fee basis. The Commissioner has exercised this discretion in the past to award fees on an hourly basis in circumstances where the nature of the award does not translate easily into a contingent fee. *McMillan v. Bertek, Inc.*, Opinion No. 95-95WC (January 29, 1996). I find that to be the case here. True, Claimant did not succeed in proving his entitlement to retroactive temporary total disability benefits, a claim that would have netted a significant cash award. But he did succeed in proving his entitlement to benefits going forward, including coverage for medical treatment that might significantly improve his condition and allow him one day to return to work. Success in this regard is difficult to quantify in money terms. For that reason, reimbursement of attorney's fees on an hourly rather than a contingent fee basis is appropriate.

14. Given that Claimant did not prevail on his claim for retroactive temporary disability benefits but only on his claim for benefits going forward, his attorney's fees award must be reduced to more accurately reflect the extent of his success. I find it appropriate to award sixty percent of the total fees requested. Prior to calculating the amount due, however, Claimant must submit an itemization that reflects billing in tenth-hour increments rather than quarter-hour increments. The Commissioner previously has found the latter impermissible. *Bertrand v. McKernon Group*, Opinion No. 20-03WC (April 16, 2003). Claimant shall have 30 days from the date of this decision to submit a revised billing statement.

ORDER:

Based on the foregoing findings of fact and conclusions of law, Defendant is ORDERED to pay:

1. Temporary disability benefits in accordance with 21 V.S.A. §642 commencing as of the date of the formal hearing, March 28, 2008, and ongoing until a statutory basis for their discontinuance occurs; such benefits to be calculated in accordance with Conclusion of Law No. 8 above;

2. Medical benefits in accordance with 21 V.S.A. §640 and consistent with Conclusion of Law No. 7 above; and

3. Costs and attorney's fees in accordance with Conclusions of Law Nos. 12 and 14 above, in amounts to be determined based on more detailed invoices and revised billing statements to be submitted.

DATED at Montpelier, Vermont this 3rd day of July 2008.

_____
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.