Daniel Lambert v. Caspian Arms (October 6, 2009)

STATE OF VERMONT
DEPARTMENT OF LABOR

Daniel Lambert

v.

Caspian Arms

Opinion No. 39-09WC

By: Jane Dimotsis, Esq.
Hearing Officer

For: Patricia Moulton Powden
Commissioner

State File No. Y-61498

OPINION AND ORDER

Hearing held in Montpelier on June 3, 2008
Record closed on July 14, 2008

APPEARANCES:

Steven Robinson, Esq., for Claimant
John Valente, Esq., for Defendant

ISSUES PRESENTED:

1. Did Claimant's work for Defendant cause and/or aggravate his cervical condition?

2. If yes, to what workers' compensation benefits is he entitled?

EXHIBITS:

Joint Exhibit I: Medical records

CLAIM:

Temporary total disability benefits pursuant to 21 V.S.A. §642
Medical benefits pursuant to 21 V.S.A. §640
Permanent partial disability benefits pursuant to 21 V.S.A. §648
Interest, costs and attorney fees pursuant to 21 V.S.A. §§664 and 678

FINDINGS OF FACT:

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

2. Judicial notice is taken of all relevant forms and correspondence contained in the Department's file relating to this claim.

3. Claimant has worked as a machine operator for Defendant since April 2006. Defendant manufactures component parts for handguns. Initially Claimant worked on a milling machine that made small parts for pistols. The work was repetitive, but not strenuous.

4. In August or September 2006 Claimant was reassigned to the CNC machine. His job entailed tightening and releasing the bolts that held the parts to be machined in place. To access the bolts, Claimant had to lean forward into the machine with his neck flexed in an awkward position for one to two minutes at a time. Claimant estimated that he repeated this procedure up to 350 times per day.

5. In January 2007 Claimant began experiencing pain in his neck, radiating into his right shoulder and arm. As time went on, the pain worsened. Claimant noticed that if he held his neck in an extended position the pain would radiate down to his hand and his right thumb would feel numb. Claimant associated these symptoms with his work on the CNC machine, but did not report any work-related injury to his foreman for fear of being sent home.

6. In mid-March 2007 Claimant took an unpaid one-week leave from work so that he could apply himself instead to a kitchen remodeling project at home. He removed old cabinets and installed new ones and also did some plumbing and electrical work. Some of the work required awkward positioning and overhead reaching. Nevertheless, Claimant testified credibly that his neck and arm pain did not worsen at all during this week, and in fact may even have abated somewhat.

7. Claimant returned to work on March 20, 2007. He did little work on his kitchen remodeling project over the next few weeks, as he was waiting for cabinets to be delivered.

8. On the morning of April 5, 2007 Claimant was working at the CNC machine. He pulled "just right" on a bolt and felt first a stabbing pain and then numbness and tingling in his right shoulder and arm. Claimant walked away, "shook it off," and continued working. At noon, he called his primary care provider, Dr. Kellogg, and made an appointment for later that day.

9. Dr. Kellogg diagnosed cervical radiculopathy. An MRI scan subsequently confirmed cervical spondylosis, or degenerative disc disease, at C5-6 and C6-7.

10. Cervical spondylosis is a degenerative condition characterized by bone spurs that form at the margin of the vertebral bodies in the neck. As the bone spurs take up more space, they may cause the nerve roots in the area to become impinged, which in turn can cause radicular symptoms into the upper extremities. Because spondylosis occurs as part of the natural aging process, it is a common finding among people over forty, but it is not always symptomatic. In fact, most people with evidence of bone spurs on MRI scan or x-ray do not develop symptoms, nor is it even inevitable that they will.

11. Claimant's prior medical records document evidence of cervical spondylosis as early as 1997, when he treated for neck and left-sided radicular symptoms. Claimant suffered another episode of neck pain, again with symptoms radiating into his left arm, in 2000. X-rays taken at that time documented degenerative narrowing of the disc spaces at both C5-6 and C6-7. Later, in 2002 Claimant experienced another episode of left-sided neck and arm pain associated with a work injury at his prior employment. Each of these episodes resolved with conservative treatment and home exercise. After concluding physical therapy for the last injury in May 2002, Claimant did not seek any medical treatment for neck pain until the episode now under consideration.

12. This time Claimant's symptoms radiated from his neck into his right arm, and this time they did not resolve adequately with conservative care. Ultimately Claimant was referred for further evaluation and treatment to Dr. Phillips, a neurosurgeon, who surgically decompressed the C6 nerve root in April 2008. As of the date of the formal hearing, Claimant was very pleased with his post-surgical progress and was progressively improving. Although he was still undergoing physical therapy, he was confident that he would soon be released to return to work.

13. Dr. Phillips testified that Claimant's work for Defendant involved the type of repetitive neck, shoulder and arm movements that were likely to irritate his C6 nerve root and cause his underlying spondylosis to become symptomatic. Thus, while Dr. Phillips acknowledged that Claimant had a pre-existing degenerative condition in his neck, in his opinion but for his work for Defendant Claimant would not have developed the symptoms that he did beginning in January 2007. These symptoms culminated in the April 5, 2007 episode and eventually required surgical treatment.

14. Dr. Phillips acknowledged that the kitchen renovation project Claimant undertook in March 2007 may have required him to work in awkward positions, to reach overhead and to perform other tasks that potentially could have been the cause of his symptoms thereafter. Dr. Phillips noted, however, that Claimant had been complaining of symptoms in his neck and right arm well before he began remodeling his kitchen, that his symptoms actually seemed to abate somewhat while he was so engaged, and that they suddenly worsened again while he was at work on the CNC machine. With these observations in mind, Dr. Phillips concluded that Claimant's work for Defendant was the more probable cause of his symptoms.

15. At Defendant's request Claimant underwent an independent medical evaluation with Dr. Ensalada in August 2007. Dr. Ensalada concurred with the diagnosis of Claimant's treating physicians – cervical spondylosis with C6 radiculopathy – and acknowledged as well that the treatment Claimant had undergone, including Dr. Phillips' surgery, was reasonable. Dr. Ensalada disagreed, however, as to the causal relationship between Claimant's work for Defendant and any aggravation or acceleration of his underlying condition. In his opinion, Claimant's job played no role whatsoever in causing his preexisting spondylosis to become symptomatic.

16. As support for his opinion, Dr. Ensalada cited to a work risk analysis of Claimant's job for Defendant that a licensed occupational therapist had conducted in June 2007. The therapist concluded that the tasks Claimant performed in the context of his job were not sufficiently repetitive as to be considered a risk factor for developing a repetitive strain disorder in either his right shoulder or neck. Nor did the awkward postures Claimant had to sustain qualify as risk factors in her opinion. In reaching these conclusions, the therapist referred both to an "Ergonomics Rule" apparently codified in the state of Washington and to a "2001 draft version of the Ergonomic Protection Standard." No evidence was introduced as to the basis for either of these standards, their intended purpose or the extent to which they currently are accepted as valid.

17. Dr. Ensalada concluded that the symptoms Claimant began experiencing in January 2007 represented the natural progression of his pre-existing underlying degenerative disc disease. In Dr. Ensalada's opinion, the most likely culprit for any aggravation or acceleration of this disease would have been the kitchen remodeling work Claimant undertook in March 2007, not his work for Defendant.

18. At Defendant's request, in May 2008 Dr. Gennaro reviewed Claimant's medical records and issued an opinion as to causation. Dr. Gennaro agreed with Dr. Phillips' observation that not all patients with cervical spondylosis develop radicular symptoms. He noted as well, however, that many patients do experience symptoms absent any injury at all. Dr. Gennaro believed that to be the case here. In his opinion, it was not possible to draw a causal link between Claimant's work for Defendant and his cervical radiculopathy. Rather, Dr. Gennaro attributed Claimant's symptoms to the natural progression of his preexisting degenerative disc disease.

CONCLUSIONS OF LAW:

1. In workers' compensation cases, the claimant has the burden of establishing all facts essential to the rights asserted. *King v. Snide*, 144 Vt. 395, 399 (1984). He or she 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). 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 resulting disability, and the inference from the facts proved must be the more probable hypothesis. *Burton v. Holden Lumber Co.*, 112 Vt. 17 (1941); *Morse v. John E. Russell Corp.*, Opinion No. 40-92WC (May 7, 1993).

2. The disputed issue here is one of medical causation. The parties do not dispute that Claimant already had developed cervical spondylosis long before April 5, 2007. The question is whether his work for Defendant aggravated or accelerated this condition in such a way as to result in his inability to work and need for medical treatment after that date.

3. Where expert medical opinions are conflicting, the Commissioner traditionally uses a five-part test to determine which expert's opinion is the most persuasive: (1) the nature of treatment and the length of time there has been a patient-provider relationship; (2) whether the expert examined all pertinent records; (3) the clarity, thoroughness and objective support underlying the opinion; (4) the comprehensiveness of the evaluation; and (5) the qualifications of the experts, including training and experience. *Geiger v. Hawk Mountain Inn*, Opinion No. 37-03WC (Sept. 17, 2003).

4. Here, I find Dr. Phillips' opinion to be the most credible. He adequately considered the possible reasons why Claimant's cervical disc disease became symptomatic when it did, and reasonably explained why his work for Defendant was the most likely culprit.

5. In contrast, by its heavy reliance on ergonomic standards for its primary support, Dr. Ensalada's causation opinion misses the mark. Such standards may establish that statistically, the risk of injury for a worker who performs a particular job task is no greater than it is for one who does not. They do not necessarily establish, however, that the cause of an injury can never be attributed to that job task. Bodies differ, and the way one body reacts to a particular task may be different from the way some, or even most, bodies react. Certainly, in appropriate circumstances standards and statistics may provide some support either for or against medical causation in the workers' compensation context, particularly when considered along with other relevant factors that are pertinent to the issue. *See, e.g., Daignault v. State of Vermont, Economic Services Division*, Opinion No. 35-09WC (September 2, 2009). Standing alone, however, they may not be enough to carry the day. *See, e.g., Brace v. Jeffrey Wallace, DDS*, Opinion No. 28-09WC (July 22, 2009).

6. In fact, it is troublesome that Dr. Ensalada relied so heavily on ergonomic standards to discount completely the role that Claimant's work for Defendant may have played in accelerating the course of his underlying disc disease, without conducting a similar analysis of the activities in which Claimant engaged while renovating his kitchen. I cannot ignore this gap in his reasoning, and find that it weakens his ultimate conclusion significantly.

7. I conclude, therefore, that Claimant has sustained his burden of proving that his work for Defendant aggravated, exacerbated and/or accelerated the progression of his underlying cervical disc disease to the point where he became unable to work after April 5, 2007. Defendant is responsible for temporary total disability benefits from that date forward. There being no dispute as to the reasonable necessity of the medical treatment that Claimant has undergone since April 2007, including ultimately Dr. Phillips' surgery, Defendant also is responsible for paying the associated medical costs. Last, Defendant bears responsibility for whatever permanent impairment, if any, is determined to be causally related.

8. Claimant has submitted a request under 21 V.S.A. 678 for costs totaling $535.96 and attorney fees totaling $9,522.00. An award of costs to a prevailing claimant is mandatory under the statute, and therefore these costs are awarded. As for attorney's fees, these lie within the Commissioner's discretion. I find they are appropriate here, and therefore these are awarded as well.

ORDER:

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

1. Temporary total disability benefits from the date these were discontinued until appropriately terminated in accordance with 21 V.S.A. §643 and Workers' Compensation Rule 18.0000, with interest as computed in accordance with 21 V.S.A. §664;

2. Medical benefits in accordance with 21 V.S.A. §640;

3. Permanent partial disability benefits in amounts to be determined in accordance with 21 V.S.A. §648; and

4. Costs totaling $535.96 and attorney fees totaling $9,522.00 in accordance with 21 V.S.A. §678.

DATED at Montpelier, Vermont this 6th day of October 2009.

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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.