

Zenonos v. Town of Hardwick

(December 21, 2004)

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

Leonidas Zenonos

Opinion No. 56-04WC

v.

*By: Margaret A. Mangan
Hearing Officer*

Town of Hardwick

*For: Laura Kilmer Collins
Commissioner*

State File No. S-14148

Pretrial conference held on April 19, 2004

Hearing held in Montpelier on September 14, 2004

Record closed on October 13, 2004

APPEARANCES:

Vincent Illuzzi, Esq., for the Claimant

John T. Leddy, Esq., for the Defendant

ISSUES:

- 1. Has the claimant reached a medical end result for a February 3, 2002 work related injury?*
- 2. Is so, when did he reach medical end result?*
- 3. Is claimant entitled to temporary total disability benefits from May 15, 2003 to September 17, 2003?*
- 4. Is claimant entitled to temporary partial disability benefits from September 17, 2003 to the present?*

EXHIBITS:

Joint I: Medical Records

Claimant's

1: Letter from Attorney Illuzzi to Dr. Turek

Defendant's

A: Job Description

B: Claimant's memorandum to Acting Chief

C: First Report of Injury

D: Claimant's report to VLCT 2/27/02

E: Curriculum vitae of Dr. Rinehart

FINDINGS OF FACT:

- 1. The Town of Hardwick Police Department employed the claimant from February 2000 to May 2003. At first he worked part time, then in February 2001 became a full time officer.*
- 2. At the Vermont Police Academy in February 2002, claimant injured his back. He was taken out of work and received temporary total disability benefits. As part of his treatment for that injury, claimant attended a three-week functional restoration program at the Fletcher Allen Health Care (FAHC) Work Enhancement Rehabilitation Center (WERC) in Williston. Claimant successfully completed that program. At the time of his discharge, he met the requirements for a medium work level required of police officers.*
- 3. Next, claimant went to a Basic Training Class in February 2003. He experienced back pain while doing push-ups and went to the Rutland Regional Medical Center emergency department where he was told not to return to the program. Four months of physical therapy and temporary total disability payments followed.*
- 4. Physical therapy notes demonstrate claimant's progress with the therapy.*
- 5. At the employer's request, William Rinehart, M.D., an orthopedic surgeon, evaluated the claimant on March 19, 2003. Dr. Rinehart diagnosed disc degeneration at L5-S1 and recommended a vigorous exercise program.*

6. *In a supplemental report on April 22, 2003, Dr. Rinehart wrote, "given the patient's clinical picture today and his overall history, it is my opinion that he has reached medical end result." He assessed a 5% permanency rating. On May 4, 2003 claimant's temporary total and medical benefits were discontinued based Dr. Rinehart's supplemental opinion.*
7. *In May 2003 claimant underwent a post program evaluation at the Functional Restoration Program. Therapy notes from that evaluation indicate that claimant's lifting was adequate for his job and that he had met his goals except for a return to full time full duty work.*
8. *Claimant's workers' compensation benefits were terminated on May 4, 2003.*
9. *On August 19, 2003, Thomas Turek, D.C., a chiropractic physician, performed an independent medical examination for the claimant. Dr. Turek reviewed claimant's medical records and MRI scan. He noted that claimant's pre work related history was negative for back pain or leg pain.*
10. *Dr. Turek diagnosed chronic fact syndrome, which he defined as an inflamed, painful joint. On examination, he was able to appreciate spasm in claimant's back. Bending and other positional changes elicited pain. Dr. Turek concluded that claimant had not reached medical end result.*
11. *At the hearing Dr. Turek opined that claimant has not reached medical end result because he has not yet had the benefit of ultrasound treatment, facet injections, nerve blocks and medication to reduce inflammation.*
12. *After a medical record review he did on October 6, 2003, William Boucher, M.D. opined that claimant had reached medical end result. He stated, based on a review of claimant's records, that "further recovery and restoration of function can no longer be anticipated...."*
13. *Claimant's description of his own symptoms confirms Dr. Boucher's opinion that he had reached a substantial plateau in his recovery.*
14. *Claimant continues to smoke despite medical advice to stop.*

15. *Claimant submitted evidence that his hourly fee agreement with his attorney and evidence of 64.5 hours on this case and costs totaling \$479.51.*

CONCLUSIONS OF LAW:

1. *In workers' compensation cases, the claimant has the burden of establishing all facts essential to the rights asserted. Goodwin v. Fairbanks, 123 Vt. 161 (1962). The claimant must establish by sufficient credible evidence the character and extent of the injury and disability as well as the causal connection between the injury and the employment. Egbert v. Book Press, 144 Vt. 367 (1984).*
2. *There must be created in the mind of the trier of fact something more than a possibility, suspicion or surmise that the incidents complained of were the cause of the injury and the inference from the facts proved must be the more probable hypothesis. Burton v. Holden & Martin Lumber Co., 112 Vt. 17 (1941).*
3. *Medical end result is the point at which a person has reached a substantial plateau in the medical recovery process, such that significant further improvement is not expected regardless of treatment. WC Rule 2.1200. The fact that some treatment such as drug or physical therapy continues to be necessary does not preclude a finding of medical end result if the underlying condition causing the disability has become stable and if further treatment will not improve that condition. Coburn v. Frank Dodge & Sons, 165 Vt. 529 (1996). "[A] claimant may reach medical end result, relieving the employer of temporary disability benefits, but still require medical care associated with the injury for which the employer retains responsibility. Pacher v. Fairdale Farms 166 Vt. 626, 629 (1997); Coburn, 165 Vt. at 532. The necessity of treatment such as physical therapy or medications is not inconsistent with finding medical end result. Pacher, 166 Vt. 626.*
4. *At the time Dr. Rinehart evaluated claimant in April 2003, claimant had reached a substantial plateau in the medical recovery process, although some symptoms persisted. The May report from the Functional Restoration Program and the year that had passed from the time of the original injury confirmed as much. Therefore, the employer was justified in terminating benefits based on medical end result.*
5. *Although claimant still had pain after that time and may seek treatment to modulate the pain, any need for further, palliative treatment to relieve symptoms does not change a medical end result finding. He is not, therefore, entitled to additional temporary benefits.*

ORDER:

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

Dated at Montpelier, Vermont this 21st day of December 2004.

*Laura Kilmer Collins
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.