

Clifford Hill v. Lamell Lumber Corp.

(November 14, 2012)

**STATE OF VERMONT  
DEPARTMENT OF LABOR**

Clifford Hill

Opinion No. 27-12WC

v.

By: Phyllis Phillips, Esq.  
Hearing Officer

Lamell Lumber Corp.

For: Anne M. Noonan  
Commissioner

State File No. CC-00915

**OPINION AND ORDER**

Hearing held in Montpelier on August 29, 2012

Record closed on October 3, 2012

**APPEARANCES:**

Frank Talbott, Esq., for Claimant

Justin Sluka, Esq., for Defendant

**ISSUES PRESENTED:**

1. Did Claimant suffer an injury arising out of and in the course of his employment, either on or about December 21, 2009 and/or on December 31, 2009?
2. If yes, to what temporary total and/or permanent partial disability benefits is Claimant entitled?

**EXHIBITS:**

Joint Exhibit I: Medical records

Joint Exhibit II: Medical records

Claimant's Exhibit 1: Copy of time card for week ending 1/5/10

Claimant's Exhibit 2: Copies of time cards for weeks ending 1/5/10 and 12/29/09

Claimant's Exhibit 3: Employment termination notice, February 23, 2010

Claimant's Exhibit 4: Payroll register, January 1, 2009 to December 31, 2009

Claimant's Exhibit 5: Memo to employees, December 14, 2009

Claimant's Exhibit 7: Original time card, week ending 1/5/10

Claimant's Exhibit 8: Original time card, week ending 12/29/09

Claimant's Exhibit 9: Original time card, week ending 12/22/09

Defendant's Exhibit A: December 2009 – January 2010 calendar

Defendant's Exhibit B: Unemployment compensation determinations, 3-25-10 and 3-26-10

Defendant's Exhibit E: Cell phone record

**CLAIM:**

Temporary total disability benefits from January 4, 2010 to December 10, 2010, pursuant to 21 V.S.A. §642

Permanent partial disability benefits in accordance with a 39 percent whole person impairment referable to the spine, 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. As of December 2009 Claimant had been employed at Defendant's sawmill as a yard worker for approximately five years. His primary assignment was running the de-barker, the machine that removes the bark from logs before they are sawed for lumber. His other duties included stacking lumber, running the front-end loader and sweeping up various areas of the mill.

*Claimant's Alleged Work-Related Injuries and Subsequent Medical Course*

4. Claimant alleges two incidents at work in December 2009, both of which he asserts caused injury, neither of which were reported. The first incident occurred at some point during the week before Christmas.<sup>1</sup> Claimant was working in a basement room that houses the apparatus for processing wood chips. Slabs of wood or bark make their way through a chipper to a series of vibrating screens, which sort them according to size. Appropriately sized chips are directed first into a blower, and from there into a steel chute that runs uphill, through the concrete outer wall and into a trailer parked outside.
5. On the day in question, Claimant was shoveling wood chips back into the blower from where they had fallen on the floor. Thinking he was further away from the chute than he was, as he turned to walk around it instead he walked into it. Claimant hit the left side of his head on the chute and fell down. The impact left a red mark on his forehead, but did not cause any bleeding or bruising. He recalled that he had a slight headache thereafter, for which he took some aspirin from the first-aid station. Other than that, he did not seek medical attention.<sup>2</sup>

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<sup>1</sup> Claimant did not specify the date on which this incident allegedly occurred – December 21, 2009 – until almost a year later, in the context of the December 2010 independent medical exam that his attorney arranged with Dr. White. See *infra* at Finding of Fact No. 14. In fact, Defendant's time cards document that he did not work on that day. Claimant now asserts that the incident occurred at some point during the week prior to Christmas 2009, though he cannot recall exactly when.

<sup>2</sup> Claimant testified that as soon as he left the chipper area he told his supervisor, Keith Lamell, that he had hit his head on the chute. Mr. Lamell was not called by either party to testify, and therefore there is no corroborating

6. The second incident occurred approximately two weeks later, on Thursday, December 31, 2009. Although the sawmill was shut down for the Christmas holiday, Keith Lamell telephoned him that morning and asked him if he would help change a bearing in the debarker machine. Claimant agreed to do so.
7. Claimant alleges as follows: At some point during the day he made use of a plastic bucket to retrieve some used oil from the maintenance shop, so that he could lubricate the chains on the log deck. After completing the job, he began walking back to the garage, plastic bucket in hand. As he traversed an icy metal cross-over in the lumber yard, he slipped and fell. As he went down, he struck his right ribs and chest on the bucket.<sup>3</sup>
8. Because the mill was still shut down for the holiday week, Claimant did not work in the days immediately following this alleged incident. Nor did he seek medical treatment. The following Monday, January 4, 2010, he arrived at the mill for his scheduled shift. While working that afternoon, he slipped again on some snow and ice in the yard, bruising his ribs for a second time. Concerned that he had aggravated his injury from the week before, he left work early and presented to the local walk-in clinic for evaluation and treatment.
9. The medical record of Claimant's January 4, 2010 clinic visit is telling, both for what it contains and for what it omits. It reports the history of Claimant's presenting injury as having occurred two days previously, when he slipped on the ice and fell, striking his right chest on what is described first as "an ash bucket" and later as "a plastic bucket." Significantly, the record does not report the fall as having occurred at work. Nor does it reference the earlier incident, in which Claimant allegedly hit his head on the chipper chute, in any way.
10. As for symptoms, the January 4, 2010 record reports "persistent chest pain" as Claimant's only complaint. Of note, a review of neurological systems was described as negative for both dizziness and weakness. Claimant was diagnosed with a chest wall contusion, for which he was prescribed anti-inflammatories and pain medications.
11. Three days later, on January 7, 2010 Claimant returned to the walk-in clinic, this time complaining that he had caught himself from falling "due to dizziness and legs seizing up on him." He reported a three-week history of progressively worsening numbness and weakness in his extremities, gait difficulty and loss of balance, with the "current episode" beginning more than one week ago. This history is quite obviously different from the one reported in the context of Claimant's January 4, 2010 clinic visit. Significantly, even in reporting this revised account Claimant still made no mention of having hit his head on

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evidence for this testimony. Having reason to doubt Claimant's ability to recall the specifics of this and other events, I cannot find as a fact that his recollection in this regard is accurate.

<sup>3</sup> Claimant testified that he thought he reported this incident to Keith Lamell as well, though he admitted he was uncertain on this point. No First Report of Injury was filed, and Claimant did not seek workers' compensation benefits on account of either this or the chipper chute incident until the following November, *see* Finding of Fact No. 36, *infra*.

the chipper chute at work, though this would have occurred approximately three weeks previously. Nor did he recall any other recent head or neck trauma.

12. Claimant's neurological signs and symptoms were serious enough to warrant immediate hospitalization. An MRI study revealed a large cervical disc herniation at C5-6, with cord compression. With a diagnosis of cervical myelopathy,<sup>4</sup> on January 11, 2010 he underwent a C5-6 discectomy and fusion.
13. Claimant was followed post-operatively by his treating neurosurgeon, Dr. Jewell. Initially he reported some improvement in his symptoms, but this was relatively short-lived. By October 2010 he was complaining of "terrible" neck pain, ongoing numbness in his arms and legs and balance issues. A second MRI study demonstrated that his cervical spinal cord was well decompressed, leading Dr. Jewell to conclude that further surgery was not warranted. As a result, Claimant's treatment since that time has consisted primarily of narcotic pain medications.

#### Expert Medical Opinions

##### *(a) Dr. White*

14. At the request of his attorney, in December 2010 Claimant underwent an independent medical examination with Dr. White, an occupational medicine specialist. In the course of this examination, for the first time Claimant reported having "banged my head" on the chipper chute at work on December 21, 2009 as the inciting event for his subsequent symptoms. Following that incident, he recalled, he had no feeling in his legs or hands, and his balance was impaired.
15. Dr. White concurred with Dr. Jewell's diagnosis – C5-6 disc herniation with cervical myelopathy. He determined that Claimant had reached an end medical result and rated him with a 39 percent whole person impairment. A critical component of this rating was Dr. White's conclusion that Dr. Jewell's fusion surgery was not entirely curative, and that Claimant has continued to exhibit signs indicative of cervical myelopathy.
16. As for whether there was a causal link between Claimant's condition and the alleged chipper chute incident at work, Dr. White had this to say:

In discussing the onset of his symptoms today, Mr. Hill describes a fall in which he struck his head,<sup>5</sup> with immediate onset of symptoms at that time. If that is the correct description of the mechanism and chronology, there would indeed be a causal relationship, an aggravation of his underlying (previously asymptomatic) cervical problem.

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<sup>4</sup> Cervical myelopathy differs from radiculopathy in that it indicates damage to the spinal cord itself rather than to the peripheral nerve roots.

<sup>5</sup> Dr. White later clarified that his description of the chipper chute incident as involving a "fall in which he struck his head" was erroneous, and that in fact Claimant had told him that he simply struck his head. Regardless, his opinion that the occurrence was the inciting event for Claimant's subsequent symptoms remains unchanged.

17. Dr. White specifically acknowledged that the mechanism of injury Claimant described was not corroborated in the medical records. As to this, he stated:

Obviously, I was not there at the time and I did not observe Mr. Hill falling and hitting his head. Furthermore, it is really not a medical question as to whether or not this incident occurred. However, as noted above, if indeed this was the injury mechanism, there is a causal relationship.

18. As Dr. White correctly noted, the contemporaneous medical records do not corroborate the mechanism of injury Claimant described. The credible evidence also fails to corroborate Dr. White's assumptions as to the chronology of Claimant's symptoms, specifically, that they began immediately after he struck his head on the chipper chute. Notwithstanding what he reported to Dr. White, at the formal hearing Claimant himself testified that aside from a minor headache, he did not experience any deleterious effects from that incident. Nor do the contemporaneous medical records indicate a connection between the onset of his symptoms and either that event or any other recent head or neck trauma. *See Findings of Fact Nos. 9-11, supra.* Considering this evidence, I cannot accept as credible Dr. White's assumption that Claimant's neurological symptoms began with the chipper chute incident.

19. Dr. White also addressed the causal link between the chipper chute incident and Claimant's alleged slip and fall onto a plastic bucket at work, as follows:

In my opinion, the initial incident with the wood chipper represents the aggravating factor instigating Mr. Hill's symptoms. Falling onto a bucket with enough force to trigger medical attention for chest pain could certainly involve a "whiplash" mechanism that could further aggravate the situation.

20. Again, the credible evidence provides no support for Dr. White's theory that Claimant's fall onto the plastic bucket might have involved a whiplash component. Claimant did not describe the fall in that way, either in his testimony or, more significantly, in reporting the event to his medical providers at the time.

(b) Dr. Boucher

21. At Defendant's request, in May 2012 Dr. Boucher reviewed Claimant's medical records. Like Dr. White, Dr. Boucher is a specialist in occupational medicine. Unlike Dr. White, he did not personally examine Claimant. Dr. Boucher rendered opinions both as to the cause of Claimant's cervical condition and as to permanency.

22. As to causation, Dr. Boucher acknowledged that although Claimant likely suffered from preexisting degenerative disc disease in his cervical spine, his C5-6 disc herniation was likely the result of an acute event, not merely further degeneration. In this respect, he concurred with Dr. White. However, he strongly disputed Dr. White's conclusion that the chipper chute incident was the likely culprit. According to Dr. Boucher, for a cervical disc herniation to result from a blow to the head requires a very strong impact, one that would at least cause a visible abrasion and swelling, and more likely concussion and/or loss of consciousness as well. Even though the impact Claimant described caused him to fall and resulted in a red mark on his forehead, it was not serious enough to warrant medical treatment, and he did not mention it when, three weeks later, he first complained to his treating providers of neurological symptoms. Claimant himself treated the incident as relatively minor, and in Dr. Boucher's opinion, rightly so. I find this reasoning persuasive.
23. As Dr. White had, Dr. Boucher theorized that Claimant's alleged slip and fall onto a plastic bucket might have included a whiplash component, which could possibly have been a factor in causing his C5-6 disc herniation. As noted previously, the credible evidence does not provide any support for this hypothesis.
24. As for permanency, Dr. Boucher rated Claimant with a 26 percent whole person impairment rating on account of his cervical fusion surgery. Unlike Dr. White, Dr. Boucher did not add any additional impairment for ongoing cervical myelopathy. In his opinion, the numbness in his extremities and loss of balance that Claimant reported, both before and after his alleged work-related injuries, most likely resulted from peripheral neuropathy, not cervical myelopathy. According to Dr. Boucher, Claimant had a long history of alcohol dependence and abuse, and neuropathies of this type are common in such cases.
25. I find reason to doubt Dr. Boucher's conclusion in this regard. I am skeptical, first of all, of a diagnosis reached solely on the basis of a records review, particularly one that contradicts the treating neurosurgeon's diagnosis, both pre- and post-operatively. Second, while Claimant's history of alcoholism is well documented in the record, none of the diagnostic testing completed at the time of his January 2010 hospitalization, including liver function studies, brain scan, CT and MRI, revealed any evidence of alcohol-related disease or associated motor disturbance. Dr. Boucher did not consider these test results to be relevant. However, Dr. White credibly explained why they made it less likely that the physical signs Claimant displayed were a consequence of alcoholism-related peripheral neuropathy, and more likely that they were indicative of cervical myelopathy. I find his reasoning on this point more persuasive than Dr. Boucher's.

Defense Witnesses as to Claimant's Credibility

26. The importance that Dr. White in particular ascribed to the history Claimant reported warrants close examination of the latter's credibility. Three witnesses testified on Defendant's behalf on this issue – Ron Lamell, Sr., Ron Lamell, Jr. and Dennis Farley.

(a) Ron Lamell, Sr.

27. Ron Lamell, Sr. is Defendant's president and owner. His father started the sawmill, and he began working there as a teenager. Over the years he has worked at every aspect of the business' operation, though currently he spends most of his time in the office.
28. Mr. Lamell presented in all respects as a competent, responsible employer. His 35 employees, many of whom have been with the company for years, enjoy such benefits as health insurance, a generous profit sharing plan and Christmas bonuses. For the past four or five years, Mr. Lamell also has offered a workers' compensation bonus program. According to this program, so long as no work-related lost-time injuries are reported during the preceding year, in addition to their Christmas bonuses employees also are paid for the holiday shut-down week. In Mr. Lamell's experience, this program has not deterred employees from reporting work-related injuries as they occur. I find this testimony credible.
29. Mr. Lamell has known both Claimant and his father for many years. In addition to working at the mill, at times in the past Claimant had helped him work on antique cars and cut firewood. Claimant also was Mr. Lamell's tenant, and was helping him renovate the rental property in which he lived. Mr. Lamell testified credibly that he and Claimant had long enjoyed a cordial, friendly relationship.
30. Mr. Lamell found reason to doubt Claimant's account of having hit his head on the chipper chute, primarily because he could not believe that Claimant would have been in that area while the mill was running. The chipper machinery is particularly dangerous, and for that reason the room in which it is located is always chained off. The only time employees are instructed to clean up in that area is when the mill is shut down, on Saturday afternoons, for example. According to Mr. Lamell, for Claimant to have been shoveling chips there at the time he alleged, while the machinery was running, was prohibited.
31. At the same time, however, Mr. Lamell acknowledged that he knew Claimant to be an employee who did things his own way, including even wandering off occasionally to do whatever he thought needed to be done. I accept this characterization of Claimant's work habits as credible.

32. Mr. Lamell also doubted Claimant's account of having fallen onto a plastic bucket at work on December 31, 2009. His reasons for doing so can be summarized as follows:
- According to Mr. Lamell, given the ever-present risk of a calamitous fire, open buckets of the type Claimant described were not available at the mill. Instead, only closed buckets with spouts were used to retrieve flammables such as grease or used oil from the maintenance shop;
  - Claimant never reported the injury as work-related. To the contrary, when he left work early on January 4, 2010 and failed to show the next day, Mr. Lamell visited him at his home. According to Mr. Lamell, Claimant told him at that time that he had tripped over an ash bucket at home the previous Friday and hurt his ribs.

(b) Ron Lamell, Jr.

33. Ron Lamell, Jr. is the mill foreman. Like his father, he has worked there for his entire adult life. Unlike the senior Mr. Lamell, he spends most of his work day outdoors rather than in the office.
34. Mr. Lamell gave no testimony as to Claimant's first alleged injury, involving the chipper chute. As to the second injury, Mr. Lamell testified that Claimant told him on Monday, January 4, 2010 that he had slipped and fallen on an ash bucket at home and jammed his ribs. Later that day, he left work early and never returned.
35. In late February 2010 Mr. Lamell visited Claimant at his home, to inquire as to his medical status and particularly, whether and when he might be planning to return to work. Claimant's response was vague and indefinite, whereupon Mr. Lamell presented him with a letter terminating his employment. During the course of their conversation, Mr. Lamell never asked whether Claimant's condition was in any way work-related, nor did Claimant ever volunteer that it was.
36. Claimant testified that the reason he did not report either having hit his head on the chipper chute or having fallen in the mill yard as work-related accidents was because he did not want to disqualify his co-employees from receiving their year-end workers' compensation bonus. This reasoning might explain why he was reluctant to make a workers' compensation claim initially. I cannot accept it as a credible explanation for his failure to do so after February 2010, when his employment for Defendant terminated. Indeed, at that juncture, rather than pursuing a claim for workers' compensation benefits Claimant filed instead for unemployment compensation. Because he was as yet medically unable to work, his claim was denied. It was still some eight months after that before he first alleged having been injured at work. This he did by way of a Notice of Injury and Claim for Compensation (Form 5) filed by his attorney in November 2010.



(c) Dennis Farley

37. Dennis Farley has been employed at the sawmill for 30 years. He recalled drinking coffee and chatting with Claimant in the break room on Monday, January 4, 2010, their first morning back at work after the holiday shut-down. According to Mr. Farley, Claimant told him that he had been working with sheetrock at home over the weekend and had hurt his neck. To Mr. Farley's eye, however, Claimant did not look like he had hurt either his neck or his ribs.

Claimant's Intellectual Functioning and Possible Memory Deficits

38. In the years since his alleged work injuries, Claimant has struggled at times with major depression.<sup>6</sup> In the context of one such episode, in April 2011 he was hospitalized for more than two weeks for acute in-patient psychiatric treatment. In the course of that hospitalization, he underwent neuropsychological testing. Although the final report from that evaluation was not made part of the joint medical exhibit, preliminary results suggested that he suffered from longstanding memory deficits and other intellectual impairments. Notably, Claimant was described as being confident in his ability to recall information even though he did so incorrectly.
39. That Claimant was a vague historian is apparent from the medical records. The discrepancy between the history he reported to the walk-in clinic providers on January 4, 2010 and the one he reported only three days later has already been noted, *see* Finding of Fact No. 11, *supra*. Having closely evaluated his credibility as a witness, I can find no reason to believe that he concocted out of whole cloth either the chipper chute incident or the incident in which he fell on a bucket and injured his chest. That said, I have no confidence, and therefore cannot find, that those events occurred when and where he says they did, or that they led directly to the symptoms from which he subsequently complained.

**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).

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<sup>6</sup> The disputed claims in the pending litigation were limited solely to the compensability of Claimant's cervical injury. Whether his bouts with depression are causally related has not yet been put in issue.

2. This claim turns entirely on Claimant's credibility in describing two alleged work-related incidents, both unwitnessed, followed by a ten-month delay prior to asserting a claim for workers' compensation benefits. In such instances, the trier of fact must evaluate the factual evidence carefully so as to explore any inconsistencies. Whether these are due to "hidden or not-so-hidden motivations," *Fanger v. Village Inn*, Opinion No. 5-95WC (April 20, 1995), or merely to faulty recollections, if a claimant cannot sustain his burden of proving that the relevant events occurred as and when he alleges they did, his claim must fail.
3. The commissioner has in the past enumerated four questions to assist in the process of evaluating a claimant's credibility in such claims. First, are there medical records contemporaneous with the claimed injury and/or a credible history of continuing complaints? Second, does the claimant lack knowledge of the workers' compensation reporting process? Third, is the work performed consistent with the claimant's complaints? And fourth, is there persuasive medical evidence supporting causation? *Jurden v. Northern Power Systems, Inc.*, Opinion No. 39-08WC (October 6, 2008); *Larrabee v. Heavensent Farm*, Opinion No. 13-05WC (February 4, 2005), citing *Seguin v. Ethan Allen*, Opinion No. 28S-02WC (July 25, 2002).
4. The contemporaneous medical records here do not help Claimant's cause as to either of the work-related incidents he has alleged. They make no mention whatsoever of the chipper chute incident, and report vague and inconsistent histories as to both the timing and mechanism of his fall onto a bucket some three weeks later. The chronology of the symptoms Claimant reported at the time is likewise confused and variable. And while Claimant exhibited a credible history of continuing complaints *after* his cervical injury was discovered, this is of no use in determining what came *before* that injury.
5. No evidence was produced in answer to the second question listed above, whether Claimant lacked knowledge of the workers' compensation reporting process. Claimant was aware of Defendant's workers' compensation bonus program, and testified that he was deterred from reporting his injuries as work-related for fear of disqualifying his co-employees from receiving their bonuses. As noted above, Finding of Fact No. 36, *supra*, I cannot accept this as a credible explanation for his decision to delay for as long as he did.
6. Was the work Claimant was performing at the time of the alleged incidents consistent with his subsequent complaints? Notwithstanding Mr. Lamell, Sr.'s credible testimony that Claimant should not have been working in or around the chipper chute while the mill was running, I can accept that on some day during the week before Christmas he likely did so nevertheless. I can also accept that he hit his head on the chute, in exactly the manner he alleged. What I cannot accept is that that event led immediately to the neurological symptoms he later described. I simply cannot believe that Claimant would have failed to mention the chipper chute incident to his medical providers had the temporal link to those symptoms been as obvious as he later asserted. I thus conclude that the work he was performing at the time does not credibly account for his subsequent complaints.

7. As for the second alleged incident, I conclude that Claimant has failed to sustain his burden of proving that the event occurred at work rather than at home. Considered against Mr. Lamell, Sr.'s credible testimony regarding the ever-present risk of fire at a sawmill, Claimant did not adequately explain how he came to be carrying a flammable substance in an open container there. Nor did he once report the fall as having occurred at work, either to his medical providers, to Mr. Lamell, Sr. or to Mr. Lamell, Jr. It may be that despite these inconsistencies Claimant's version of events is accurate nonetheless, but in the end I am unconvinced.
8. Conflicting testimony was offered as to the final factor, whether the medical evidence supports work-related causation. Dr. White acknowledged that his causation opinion was based entirely on factual assumptions as to both the mechanism of Claimant's alleged chipper chute injury and the chronology of his subsequent symptoms. Dr. Boucher credibly assailed the first assumption, explaining why, given Claimant's own description of the incident, it was doubtful that he hit his head with enough force to cause a cervical disc herniation. Lacking persuasive evidence to support a clear temporal link between that event and the neurological symptoms Claimant later reported I must reject Dr. White's second assumption as well.
9. Even assuming that the second alleged incident, involving the fall onto a bucket, occurred at work rather than at home, the medical evidence establishing a causal link is similarly unconvincing. Both Dr. White and Dr. Boucher theorized that a fall of this type might have included a whiplash component, but their testimony was purely speculative, and unsupported either by Claimant's own description of the event or by the contemporaneous medical records.
10. Considering the totality of the evidence, and with due regard for the questions raised in cases such as this, I conclude that Claimant has failed to sustain his burden of proving that either of the work-related incidents he alleged were the likely triggers for his cervical injury. Therefore, his claim for workers' compensation benefits must fail.
11. Having concluded that Claimant's cervical condition is not compensable, I need not decide which of the two permanency opinions offered is the most credible. I note nevertheless that Dr. White benefitted from having personally examined Claimant, and therefore was better able to evaluate his current symptoms. To the extent this informed his decision to add an additional impairment for ongoing cervical myelopathy, whereas Dr. Boucher failed to do so, I already have found Dr. White's rating to be the more credible one. *See* Finding of Fact No. 25, *supra*.

12. Claimant having failed to prevail on his claim for benefits, he is not entitled to an award of costs and attorney fees.

**ORDER:**

Based on the foregoing findings of fact and conclusions of law, Claimant's claim for workers' compensation benefits causally related to his cervical condition is hereby **DENIED**.

**DATED** at Montpelier, Vermont this 14<sup>th</sup> day of November 2012.

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Anne M. Noonan  
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.