

Dzevad Karabegovic v. Monahan SFI (September 29, 2009)

**STATE OF VERMONT
DEPARTMENT OF LABOR**

Dzevad Karabegovic

Opinion No. 37-09WC

v.

By: Phyllis Phillips, Esq.
Hearing Officer

Monahan SFI

For: Patricia Moulton Powden
Commissioner

State File No. Y-63633

OPINION AND ORDER

Hearing held in Montpelier on May 1, 2009 and May 4, 2009
Record closed on June 5, 2009

APPEARANCES:

John Swanson, Esq., for Claimant
Craig Matanle, Esq., for Defendant

ISSUES PRESENTED:

1. Did Claimant suffer a work-related injury on June 14, 2007?
2. If yes, to what workers' compensation benefits is he entitled?

EXHIBITS:

Joint Exhibit I: Medical records

Claimant's Exhibit 1: *Curriculum vitae*, Karen Nepveu, M.D.

Defendant's Exhibit A: *Curriculum vitae*, Leon Ensalada, M.D.

Defendant's Exhibit B: Photographs (4) of Claimant's chest

Defendant's Exhibit C: *Curriculum vitae*, Steven Mann, Ph.D.

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

Vocational rehabilitation benefits pursuant to 21 V.S.A. §641

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 is a Bosnian immigrant who came to this country in 1997. His native language is Bosnian. Claimant speaks and understands English, though by no means fluently.
4. Claimant has worked for Defendant or its predecessor, Specialty Filaments, since 1999. Defendant manufactures synthetic fibers. Claimant's job involves cutting hanks of fibers as they come off a machine, then clamping, pulling and wrapping them in PVC tubing and packaging the final product in a box. The job entails constant bending, twisting and lifting while working with melting plastics and sharp tools.
5. On June 14, 2007 Claimant was at work. He had cut a hank of fibers, and as he bent, twisted and pulled them up to clamp them he felt pain in his right chest. Claimant finished the hank, then went first to his desk and then to the break room to rest. When the pain did not abate after an hour or so, Claimant drove himself to the Emergency Room. He thought he was having a heart attack.
6. After cardiac issues were ruled out, the Emergency Room physician diagnosed musculoskeletal chest pain and prescribed ibuprofen for treatment. Claimant's chest pain continued, however, and on June 18, 2007 he sought further evaluation and treatment with Dr. Hebert, his primary care physician. Dr. Hebert as well diagnosed musculoskeletal chest pain and again recommended rest, no work and Advil as treatment.
7. Claimant's chest pain continued. Further testing was negative, and although Dr. Hebert continued to believe that the pain was musculoskeletal, he was at a loss to explain why it was not improving with time. By August 2007 Dr. Hebert noted that Claimant was depressed, which likely was contributing to his pain. At this point, Claimant was taking narcotic pain medications, but still to no avail.
8. Also in August 2007 at Defendant's request Claimant underwent an independent medical evaluation with Dr. Ensalada. Dr. Ensalada is board certified in pain management and anesthesiology. As part of his evaluation, Dr. Ensalada palpated Claimant's chest, including his costochondral junctions, where the ribs connect to the sternum, but did not elicit any complaints of tenderness. In fact, Dr. Ensalada found that Claimant's examination was entirely normal, with no objective signs of injury whatsoever. From this he concluded that Claimant's pain was not musculoskeletal in nature, that it was not generated by any objectively verifiable underlying physical disorder, that it was not work-related and that further treatment was neither reasonable nor necessary.

9. In March 2008 Dr. Hebert referred Claimant to Dr. Nepveu, a rheumatologist, for further evaluation. Dr. Nepveu is board certified in internal medicine, with a sub-specialty in rheumatology. Rheumatology involves the study of both rheumatic and auto-immune diseases and musculoskeletal conditions.
10. As part of her evaluation, Dr. Nepveu conducted a meticulous, fingertip-by-fingertip examination of Claimant's costosternal joints. Once she palpated the right spot, between the third and fourth joints, she was able to reproduce Claimant's pain fairly easily. The site was exquisitely tender, such that Claimant winced and tried to withdraw. Dr. Nepveu observed that the second and fifth joints also were tender, but not exquisitely so.
11. Based on her examination, Dr. Nepveu diagnosed costochondritis, an inflammation of the cartilage between the rib and the sternum. Costochondritis is a condition that rheumatologists usually treat; in Dr. Nepveu's practice she sees four or five patients per year who suffer from it. Because the tissues, ligaments and cartilage in the area do not have a good blood supply, the condition can be very slow to heal, even with limited activity.
12. In Dr. Nepveu's opinion, the mechanism of injury Claimant described – lifting with some degree of torque – involves the type of movement that could strain the rib muscles and bring on costochondritis. Thus, based on Claimant's history she firmly believes that his work activities on June 14, 2007 caused the condition to develop.
13. Dr. Nepveu testified that she was somewhat surprised that neither Dr. Hebert nor Dr. Ensalada was able to discern that Claimant was suffering from costochondritis, as in her opinion the diagnosis was fairly straightforward. She theorized that they may not have conducted the kind of exacting, pinpoint palpation of Claimant's costosternal joints necessary to locate the source of his pain. In addition, she postulated that perhaps Claimant had lost some muscle mass in the intervening months between their examinations and her own, which would have made it easier for her to palpate the involved joints.
14. For treatment, Dr. Nepveu injected the involved joints with corticosteroids. When she did so, Claimant's pain disappeared, which in her opinion further substantiated her diagnosis. Over time, with further injections and topical anesthetics, Claimant has made considerable progress. He no longer takes narcotic pain medications and is able to participate in physical therapy. Dr. Nepveu anticipates that he will continue to improve; in her opinion, therefore, he is not yet at end medical result. She expects that he will be able to return to work, but probably only in a sedentary or light capacity, and therefore not at the level at which he was working before. Although admittedly she is not a vocational rehabilitation expert, in Dr. Nepveu's opinion Claimant's limited English language skills will hamper his ability to find suitable work at this level.

15. With Dr. Nepveu's diagnosis in hand, Dr. Ensalada re-evaluated Claimant in September 2008. He found no objective signs of costochondritis. Notably, however, Claimant had undergone a corticosteroid injection in his costosternal joints just one week prior to Dr. Ensalada's exam, which may have masked his pain somewhat. Nevertheless, Dr. Ensalada concluded that Dr. Nepveu's diagnosis was incorrect. Rather, he continued to maintain that Claimant had not suffered any physical injury as a result of his work activities on June 14, 2007.
16. In Dr. Ensalada's opinion, Claimant's symptoms are entirely psychogenic in origin, and have no physical basis whatsoever. Dr. Ensalada believes that Claimant's presentation represents somatization, the unconscious use of physical symptoms for psychological purposes. The symptoms are not voluntarily controlled, and therefore Claimant should not be perceived as malingering, but because they result from his longstanding psychological makeup rather than any single event, they are not work-related in any way.
17. Dr. Ensalada recommended that Claimant undergo a psychological evaluation to further delineate the nature, extent and cause of his condition. To that end, at Defendant's referral Claimant underwent an evaluation with Dr. Mann, a licensed psychologist doctorate, in October 2008. Drs. Mann and Ensalada are professional colleagues; they have discussed forming a clinical practice to allow them to work together in a multidisciplinary program, but to date they have not established any formal business relationship.
18. Dr. Mann administered an extensive battery of psychological tests. All were in English except for the MMPI-2, which was available in Croatian. Dr. Mann testified that based on his observation Claimant was sufficiently fluent in English to be able to understand the tests administered in that language. At the formal hearing, however, Claimant often spoke haltingly, searched for the appropriate words with which to express himself and at times appeared not to comprehend fully the questions put to him.
19. As for the Croatian version of the MMPI-2, Dr. Mann testified that he believed that language to be as similar to Bosnian, Claimant's native tongue, as American English is to British English. However, Claimant testified that Dr. Mann's understanding was incorrect, that the two languages are in fact dissimilar, and that he is far less fluent in Croatian than he is in Bosnian.
20. Claimant testified that because of the language difficulties he encountered trying to comprehend Dr. Mann's tests, it took him a total of 17.5 hours, spread over a three-day period, to complete them all. At one point, he testified, he asked permission to use a Bosnian-English dictionary to translate the words on a test, a process that was extremely time-consuming. Dr. Mann could neither confirm nor deny the amount of time it took Claimant to finish the testing battery, but acknowledged that typically his testing takes only four or five hours to complete.

21. Based on the results of the battery of tests he administered, Dr. Mann diagnosed Claimant with an undifferentiated somatoform pain disorder, a psychological condition characterized by physical complaints that after appropriate investigation cannot be fully explained by a known general medical condition. In other words, as Dr. Ensalada also had concluded, Dr. Mann deduced that Claimant's condition was entirely psychogenic in origin and not organically caused at all.
22. As support for his opinion, Dr. Mann pointed to Claimant's responses to the MMPI-2, which in his analysis evidenced extremely strong patterns of hysteria, defensiveness, hypochondriasis and neurotic denial. Dr. Mann described Claimant as a person who is incapable of expressing his emotions psychologically; he suppresses them and they manifest physically instead. In Dr. Mann's opinion, this personality trait is representative of Claimant's long-standing psychological makeup. It is not related in any way, therefore, to any work injury or incident.
23. Dr. Mann could cite to no other incidents in Claimant's personal history that might be interpreted as indicative of this longstanding psychological response pattern. Dr. Hebert, who has been Claimant's primary care physician since 2005 and sees him regularly for diabetes control, testified that in his experience Claimant was not one either to seek treatment for multiple physical issues or to exaggerate his complaints.
24. Both Dr. Hebert and Dr. Nepveu testified that in their opinion Claimant had been totally disabled from working as a result of his June 2007 injury from the time it first occurred, and that he remains so now. In contrast, Dr. Ensalada testified that at most Claimant would have been unable to work for a period of two weeks after the June 2007 incident, at which point he would have reached end medical result for whatever minor injury he may have suffered. Dr. Ensalada believes that Claimant is fully capable of returning to his prior job, and that the only "treatment" he requires is reassurance.

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. With Dr. Hebert's and Dr. Nepveu's expert medical opinions as support, Claimant contends that his work activities on June 14, 2007 caused him to develop costochondritis, a physical injury that requires physically based treatment. Defendant, on the other hand, cites to the expert medical opinions of Drs. Ensalada and Mann in support of its assertion that Claimant does not suffer from costochondritis or any other physically based injury, but rather that his condition is entirely psychogenic in origin and is not work-related in any respect.
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. In this case, I find Dr. Nepveu's opinion to be the most credible. As a rheumatologist, she has the most experience in diagnosing and treating costochondritis, a condition that requires an exacting, pinpoint examination to discern. Her diagnosis adequately accounts for Claimant's symptoms and convincingly explains their causal relationship to work.
5. In contrast, I find good reason to be skeptical of the theory that Claimant's symptoms are indicative of a long-standing psychological compulsion to suppress his emotions and manifest them as physical complaints instead, as Drs. Ensalada and Mann assert. Not only is there no support for this analysis in Claimant's prior medical history, but it rests primarily on the results of psychological testing that is suspect given what must have been a significant language barrier.
6. I conclude, therefore, that Claimant has sustained his burden of proving that his work activities on June 14, 2007 caused him to develop costochondritis, a physical injury for which he continues to treat. As Claimant has not yet reached end medical result, and as his condition continues to disable him from work, he is entitled to temporary total disability benefits from the date of the injury forward. As Claimant's temporary total disability has extended for more than 90 days, furthermore, Defendant is obligated to undertake the vocational rehabilitation screening process mandated by 21 V.S.A. §641 and Workers' Compensation Rule 30.0000 in order to determine whether he is entitled to vocational rehabilitation assistance.
7. As Claimant has prevailed on his claim for benefits, he is entitled to an award of costs and attorney fees. In accordance with 21 V.S.A. §678(e), Claimant shall have 30 days from the date of this opinion within which to submit his itemized claim.

ORDER:

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

1. Temporary total disability benefits beginning on June 15, 2007 and continuing until properly discontinued pursuant to 21 V.S.A. §§643 and 643a, with interest in accordance with 21 V.S.A. §664;
2. Medical benefits covering all reasonably necessary medical services and supplies causally related to treatment of Claimant's compensable injury;
3. Permanent partial disability benefits in amounts to be proven;
4. Vocational rehabilitation benefits in accordance with 21 V.S.A. §641;
5. Costs and attorney fees in amounts to be established in accordance with 21 V.S.A. §678.

DATED at Montpelier, Vermont this ____ day of September 2009.

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.