

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

)	State File No. M-6971
)	
Daniel Bell)	By: Margaret A. Mangan
)	Hearing Officer
v.)	
)	For: R. Tasha Wallis
EHV Weidman)	Commissioner
)	
)	Opinion No. 03-01WC

Hearing Held in Montpelier on August 17, 2000.
Record Closed on September 25, 2000.

APPEARANCES:

Thomas R. Paul, Esq., for the claimant.
Keith J. Kasper , Esq., for the defendant.

ISSUES:

1. Did the claimant suffer a compensable mental injury resulting from the compensable work-related injury of September 27, 1997?
2. If the answer to the first question is in the affirmative:
 - a. Is the claimant entitled to temporary total disability benefits from September 9, 1998 through March 9, 1999 and from December 3, 1999 to May 19, 2000?
 - b. Has the claimant reached a medical end result for his mental condition? If so, when?
 - c. What, if any is the extent of the claimant's permanent impairment for his mental condition?
3. Is the claimant entitled to benefits in addition to what has been paid for the permanent impairment to his right foot?
4. Is the claimant's vocational rehabilitation plan of a certificate program with Georgia Power for heating, ventilating and air conditioning (HVAC) service and repair compensable?

DEPARTMENT FORMS:

1. Form 1 First Report of Injury: 5/9/97 for injury to cervical spine.

2. Form 21 Agreement for Temporary Total Disability: 5/27/97 for disability beginning on 4/21/97 related to C-6 herniation.
3. Form 1: 10/1/97 for fracture of heel after falling from a ladder.
4. Form 21: 12/1/97 for disability beginning 9/30/97 related to "shattered heel."
5. Form 1: 9/29/98 for job related stress when being reviewed.
6. Form 6 Notice and Application for Hearing, 1/7/99. Issue: employment related stress.
7. Form 6 12/6/99 Issue: whether the employee suffers Post Traumatic Stress Disorder as a result of his injury to his right foot on September 27, 1997.
8. Form 1: 12/9/99 for injury described as "stress???"
9. Form 27 Notice of Intention to Discontinue Payments: 1/19/00 based on medical end result supported with report from Dr. Bannerje.
10. Form 22 Agreement for Permanent Partial Disability: 3/20/00 for 82.5 weeks based on Dr. Bannerje's 15% whole person rating to the spine.
11. Form 22: 3/20/00 for 24.3 weeks based on 6% whole person rating relating to the foot.

EXHIBITS ADMITTED:

Joint Exhibit I: Medical Records.
 Joint Exhibit II: Stipulation.

Claimant's Exhibit A1: Newspaper clipping November 12, 1994.
 Claimant's Exhibit A-2: Photo: Saltillo, Mexico-floor.
 Claimant's Exhibit A-3: Photo: boiler.
 Claimant's Exhibit A-4: Photo: floor with cardboard.
 Claimant's Exhibit A-5: Photo: floor with cardboard.
 Claimant's Exhibit A-6: Photo: ladder.
 Claimant's Exhibit A-7 through A-13: Photos: Oven.
 Claimant's Exhibit A-14: Photo: electric wire.
 Claimant's Exhibit A-15: Photo: fuse panel.
 Claimant's Exhibit A-16: Photo: outlet with wires.
 Claimant's Exhibit A-17: Photo: spliced electrical wires.
 Claimant's Exhibit A-18: Photo: child worker.
 Claimant's Exhibit A-19: Photo: workers.
 Claimant's Exhibit A-20: EHV-Weidman Performance Appraisal 1/12/96.
 Claimant's Exhibit A-21: EHV-Weidman Industries, Inc. Salary Review and Wage Adjustment Form 1/6/97.
 Claimant's Exhibit A-22: Performance Evaluation Form 5/19/98.
 Claimant's Exhibit A-23: Letter dated 5/21/98 signed by Daniel Bell.
 Claimant's Exhibit A-24: EHV Performance Evaluation Form 8/4/98.
 Claimant's Exhibit A-25: Comments of Performance Evaluation signed by Daniel Bell 8/7/98.
 Claimant's Exhibit A-26: Letter from Mark Bechtold, Manager of Human Resources, at EHV-Weidman to Daniel Bell, 9/18/98.
 Claimant's Exhibit A-27: The Hartford's denial of workers' compensation claim 10/15/98 for lack of causal relationship to employment.
 Claimant's Exhibit A-28: Letter from Bechtold to Bell 12/2/98.

Claimant's Exhibit A-29: Letter from Attorney Thomas Paul to Attorney Patricia Sabalis 12/30/98.

Claimant's Exhibit A-30: Letter from Paul to Sabalis 1/26/99.

Claimant's Exhibit A-31: Letter from Paul to Sabalis 2/3/99.

Claimant's Exhibit A-32: Letter from Paul to Sabalis 2/8/99.

Claimant's Exhibit A-33: Letter from Sabalis to Paul 2/10/99.

Claimant's Exhibit A-34: Letter from Paul to Sabalis 2/19/99.

Claimant's Exhibit A-35: Supervisor/Engineer Department Assignments Effective 2/1/99.

Claimant's Exhibit A-36: Supervisor/Engineer Department Assignments 3/15/99.

Claimant's Exhibit A-37: Our Safe Work Policy.

Claimant's Exhibit A-38: Memo re: Task Team Projects Update from Steve dated 10/7/99.

Claimant's Exhibit A-39: September 1999 worksheet.

Claimant's Exhibit A-40: Georgia Power, "Skills Solutions" brochure with claimant's photo.

Claimant's Exhibit A-41: Georgia Power Certificates of completion to Daniel Bell 2/10/00, 2/17/00, 2/24/00, 3/2/00, 3/16/00, 3/30/0, 04/6/00.

Claimant's Exhibit A-42: Transcript.

Claimant's Exhibit A-43: Handwritten itemization of costs totaling \$12, 323.63.

Claimant's Exhibit A-44: Handwritten itemization for last week of training \$3,344.00.

Claimant's Exhibit A-45: Document marked "mileage for stress claim" (720 miles).

Claimant's Exhibit A-46: Photocopies of prescription receipts totaling \$278.98.

Claimant's Exhibit 47: Putney Inn bill related to IME (\$77.24).

Defendant's Exhibit 1: Transcript of deposition of Dr. James Grubman, 8/11/00.

Defendant's Exhibit 2: Letter from Attorney Kasper to Attorney Paul 12/17/99.

Defendant's Exhibit 3: The Hartford Explanation re: Glucosamino complex.

STIPULATION:

1. Claimant was an employee of defendant within the meaning of the Vermont Workers' Compensation Act ("Act") on September 27, 1997.
2. Defendant was an employer within the meaning of the Act on September 27, 1997.
3. On September 27, 1997 claimant suffered a compensable work-related injury to his right foot.
4. At the time of the injury, claimant's average weekly wage was \$836.88 resulting in an initial compensation rate of \$557.72.
5. At the time of the injury and currently, claimant has had no dependents within the meaning of the Act.
6. Claimant seeks temporary total disability benefits from September 9, 1998 through March 9, 1999 and from December 3, 1999 to May 19, 2000, unreimbursed medical expenses of \$2,500.00 and vocational rehabilitation reimbursement in the amount of \$15,500, and if successful, attorney fees and costs.

7. The parties agree to the submission of a joint medical records exhibit.
8. The parties agree that the hearing officer may take judicial notice of all forms on file with the Department of Labor and Industry.
9. There is no dispute as to the qualifications of any of the claimant's examining or treating health care professionals.
10. With the exception of a disagreement as to the extent of the claimant's permanent partial disability rating for his foot injury, the parties are in agreement as to compensation for the physical injuries.

FINDINGS OF FACT:

1. Claimant Daniel Bell was born on December 6, 1946. He lives in Wheelock, Vermont with his wife Mary. They have two children, both older than 21 and are not dependents for purposes of Workers' Compensation benefits.
2. In the 1960's claimant graduated from Vermont Technical College with an associate's degree in Engineering. Shortly afterwards, he began working for Fairbanks Scales ("Fairbanks") in St. Johnsbury, Vermont. Claimant worked at Fairbanks continuously until December 5, 1994 when he began employment with EHV-Weidman, the employer in this case.
3. There is nothing to dispute the claimant's testimony that he was a diligent and conscientious employee at Fairbanks, where he became manager of plant engineering. In that capacity he designed and implemented a waste stream reduction method which eliminated 1500 tons of toxic pollution from the plant's waste stream. In November 1994 he received the State's award for environmental excellence in recognition of his work.
4. The claimant described himself as one who used to believe that psychological illnesses were not real and that treatment was not necessary.

EHV Weidman

5. At an environmental conference a few weeks after the claimant received the award, John Goodrich at EHV offered the claimant a job. Because he wanted a change from plant engineering, the claimant accepted the offer in what he described as a "handshake deal."
6. EHV manufactures insulation board for electrical transformers. Part of the process requires drying the boards to reduce the moisture content to exact specifications. When the claimant began work at EHV in December 1994, electricity was the energy source used to operate the drying ovens. He designed and implemented a change from electricity to steam in the drying ovens. He testified that as a result, drying time was reduced by two-thirds and the energy cost to operate the ovens was dramatically reduced.

7. Supervisors at EHV reviewed the performance of the employees annually. On January 12, 1996 Terri Brooks provided the claimant with his first "Performance Appraisal." On a rating scale from 1 to 5 with 1 being the lowest and 5 the highest, Terri Brooks rated the claimant's work at 4's and 5's. The claimant took particular pride in the rating of 5 for safety consciousness. Mr. Brooks gave the claimant similar ratings on January 6, 1997.
8. On December 2, 1996 while walking along a catwalk, the claimant struck his head on a steel beam, resulting in a cervical 6 (C-6) vertebral injury. That injury was subject of a separate claim and a permanency award of 15% whole person impairment.
9. The claimant continued to work after the December 2, 1996 accident. However, because he experienced pain and weakness in his arm and shoulder, he eventually sought medical treatment from a physician who placed him on light duty status.
10. In 1997 EHV began constructing a new fabrication facility in Saltillo, Mexico. John Goodrich, who had hired the claimant almost three years earlier, was in charge of constructing the new plant.
11. In September 1997 Mr. Goodrich asked the claimant to go to Saltillo to help supervise the construction of a convection oven that would be used to dry the insulation panels. At the time, the claimant was still on light duty status for his neck injury.

Saltillo Work Site

12. The claimant left for Saltillo on September 15, 1997 with the expectation that he would return to Vermont in two weeks after supervising construction of the oven.
13. When he arrived in Saltillo, claimant learned that construction was behind schedule. He testified that the only completed project was the installation and sealing of the factory floor with epoxy. Workers covered the floor with cardboard to prevent damage to the floor by machinery during the construction of the oven. The boiler for the oven was still in the shipping crate. He had expected that it would have been installed by the time he arrived.
14. The claimant was frustrated by his perception that the employees in the Saltillo plant lacked proper tools and often improvised creating unsafe conditions from spliced and uninsulated electrical wires and inadequate scaffolding. He expressed his concerns about safety to Goodrich who he said failed to heed them.
15. Despite his light duty status the claimant felt compelled to work on the oven to insure its completion on schedule.
16. On September 27, 1997 the claimant needed to inspect some welds at the top of the oven, which was about 14 to 16 feet tall. He climbed a ladder that stood on cardboard covering the epoxy floor. When he was near the top of the ladder, it slid away from the oven and the claimant fell directly to the floor.

17. The claimant stands about 6'2" tall and weighs over 200 lbs. As he fell, he brought his knees into his chest and tried to lessen the impact of the fall. Because of his cervical spine injury, the claimant feared that the fall from the ladder would kill or paralyze him. He landed feet first, fracturing his right calcaneus (heel) upon impact.
18. Claimant testified that he experienced excruciating pain upon impact with the floor. Several co-workers lifted him into the back of a vehicle and drove him to the nearest hospital. Because EHV did not have proper Mexican working papers for the claimant, Goodrich told him not to tell anyone at the hospital that he was working for EHV at the time of the accident.
19. Claimant was unimpressed with the care he received. He stayed in the hospital overnight and received several ampules of Morphine for pain upon his discharge. The claimant embarked on his journey back to Vermont, alone. He was unable to walk and received increased scrutiny at customs because of the Morphine and syringes. To the claimant, his trip was harrowing and humiliating.

Medical Treatment

20. At the Burlington airport, the claimant's wife met him. The claimant was concerned that no one from EHV was present.
21. Next, the claimant was admitted to the emergency department at the Dartmouth Hitchcock Medical Center (DHMC) where it was determined that it was too late to perform any surgery to repair his fractured heel. Before any further treatment could be provided, the swelling in the heel needed to subside.
22. On October 6, 1997 the claimant was admitted to DHMC where surgery was performed to insert hardware in his heel. After convalescence at home, the claimant returned to work at EHV on February 9, 1998.
23. The claimant was concerned that no one from his employer expressed concern during his treatment and he met with resistance from the workers' compensation insurance carrier who he thought was refusing to accept the claim. Before the surgery he was assured that the claim was covered. Afterwards, he met with resistance from the carrier who challenged claims for a special bed and at-home services.

Return to Work

24. When he returned to EHV, the claimant worked under a new supervisor, Harry Morrison. On March 2, 1998 the claimant asked Morrison for an annual job review, typically performed at the beginning of the year. Morrison's response was to the effect that there was nothing to review since the claimant had been out of work.
25. Also in March of 1998 the claimant met with his superiors to explain his concerns about the lack of safety at the Saltillo plant. He was met with what he perceived as a lack of concern.

26. On March 18, 1998 the claimant was admitted again to the DHMC for surgery on the disc in his cervical spine. He was out of work until May 6, 1998.
27. Two weeks after his return to work after the neck surgery, the claimant met with Morrison to discuss his performance evaluation that rated the claimant at a 2 on the scale from 1 to 5. The claimant was stunned. After the discussion with Morrison, he understood that the low rating was because he was unavailable to do work. His unavailability was due to treatment for his work-related injuries.
28. The claimant did not sleep the night after the discussion with Morrison. When he returned the next day, he complained of pain in his shoulders and neck and numbness in his right hand. He also felt that he was having anxiety attacks. He wrote a response to the performance evaluation.
29. Claimant insisted and Morrison refused to change the performance evaluation. The day after a meeting between the two men on May 26, 1998, the claimant experienced anxiety, pain in his neck and shoulders and numbness in his right hand. He was out of work again on June 5, 1998 with the same symptoms.
30. When claimant met with Morrison again on July 9, 1998 he experienced the same pain and anxiety symptoms he had experienced after the previous two meetings. He never made it to the meeting scheduled for July 14th because he experienced heart palpitations that morning and was taken by ambulance to the Northeastern Vermont Regional Hospital in St. Johnsbury. Several tests were done at the hospital.
31. On July 20, 1998 the claimant returned to work.
32. On August 4, 1998 Morrison handed the claimant a revised written Performance Evaluation in a sealed envelope. The overall rating was a 3, which the claimant perceived as unfair and substandard. He responded with a five-page rebuttal.
33. On September 9, 1998 the claimant met for the last time with Morrison. The claimant became quite agitated and drove his hand through the door of Morrison's office, leaving a hole in the door.
34. On September 10, 1998 the claimant called his primary care physician, Dr. Brad Armstrong with complaints of palpitations and anxiety symptoms. Claimant's wife then drove him to the emergency department at NVRH where Dr. Armstrong met them.
35. On September 14, 1998 Dr. Armstrong gave the claimant a note indicating that he should not return to work until September 23, 1998.
36. The claimant did not return to work until March 6, 1999.
37. From September 9, 1998 through March 9, 1999, a period for which the claimant is claiming he was temporarily totally disabled, his primary physician was Dr. Brad Armstrong. Dr. Armstrong operates the Concord Health Center in Concord, Vermont

and has admitting privileges at Northeastern Vermont Regional Hospital in St. Johnsbury. The claimant maintains that Dr. Armstrong was his treating physician prior to July 1998, although no earlier records have been produced.

38. Dr. Armstrong opined to a reasonable degree of medical probability that on September 9, 1998 the claimant was experiencing anxiety arising solely out of work-related stress. He based his opinion on the facts that the EKG performed on July 14, 1998 showed a normal sinus rhythm with no change from a 1991 EKG, that a stress test on July 23, 1998 showed no signs of arrhythmia's or angina, and that the September 10, 1998 EKG at the emergency room showed a normal sinus rhythm. With the negative tests and symptoms of chest pain, Dr. Armstrong concluded that the chest pain was most likely secondary to panic attacks. He prescribed Zanax, an antidepressant.
39. The claimant had written instructions not to return to work until September 23, 1998. On September 18, 1998, he received a letter from EHV telling him to return to work on September 28, 1998. That letter greatly upset the claimant.
40. On September 23, 1998, Dr. Armstrong again examined the claimant. In his note for that visit, Dr. Armstrong wrote that the claimant had been "ordered back to work by the 28th, otherwise he will be suspended indefinitely." The doctor noted that the claimant was tense, was experiencing chest pains, headaches, shortness of breath and difficulty sleeping. Dr. Armstrong increased the dosage of a medication and ordered that the claimant not return to work until he was re-evaluated on September 30.
41. When Dr. Armstrong saw him on September 30, 1998, the claimant was not experiencing chest pains or panic attacks. Therefore, the doctor concluded that the panic attacks were secondary to the situation with his supervisor at work. Dr. Armstrong provided the claimant with a written excuse from work indicating that he must not return to his current job until there had been a meeting between his lawyer and the company to iron out conditions for re-employment. Dr. Armstrong expressed concern that there was a significant risk to that the claimant's health would suffer with a stroke or ulcer, unless the conditions were rectified. He recommended counseling for the claimant.

Psychological Treatment

42. In October of 1998 the claimant met for the first time with Dennis Casey, a licensed clinical mental health counselor. Mr. Casey is also a certified drug and alcohol counselor and holds national certification as a certified employee assistance professional. To maintain that certification, he must complete continuing education credits in the work place. For the last four years, Mr. Casey has been self-employed with a business consulting practice, which provides employee assistance programs for employers and their work force.
43. Mr. Casey has had a contract with EHV Weidman since August 1996 to manage its employee assistance program.

44. The claimant's first meeting with Dennis Casey lasted almost two hours. He spoke primarily about his injury in Mexico and his subsequent interactions with Mr. Morrison. Mr. Casey found that the claimant was angry, sad and frustrated. And he noted that the claimant's physical injuries and the difficult transition to work had "taken a pretty substantial emotional toll on him."
45. Mr. Casey found that the claimant had significant signs of depression in October 1998. The claimant was not sleeping well and was having recurring thoughts about his work stresses. Mr. Casey believed that the company was not taking care of the claimant.
46. Mr. Casey's initial plan was to encourage the claimant to continue to talk about what had happened and to assess the reality of his continuing to work at EHV. Although the goals were similar to those in other cases, implementing them was more complicated in this case, according to Mr. Casey.
47. When the work stressors were removed, the claimant's depression subsided. The claimant concedes that the poor relationship with Morrison was the trigger-point, but argues that the "real frustrations" revolved around the injuries he suffered in Mexico and the company's inability to care for him. Furthermore, he stated that working at EHV on a daily basis reminded him of his injury in Mexico.
48. On December 2, 1998 Mark Bechtold, Human Resource Manager at EHV wrote to the claimant stating that because the claimant would not apply for disability and because the worker's compensation claim had been denied, his employment status was uncertain.
49. In March 1999 Dennis Casey, the claimant and Mark Bechtold, met for 2 ½ hours to work out details for the claimant's return to work.
50. Dr. Armstrong examined the claimant on February 22, 1999 prior to his return to work. He opined that the claimant could return to work if he had proper support and prearranged plans for acute treatment if he had a panic attack or angry outburst. The claimant was to report to a new supervisor, not to Harry Morrison.
51. The claimant returned to work on March 9, 1999. Dennis Casey opined that it would have been inappropriate for the claimant to have worked at EHV from the fall of 1998 until March of 1999.
52. Mr. Casey and Dr. Armstrong both noted in March 1999 that the claimant's transition back to work seemed to have been going well.
53. The claimant testified that he was still feeling anxiety and that he was simply putting a "good face on" at work. He said that he continued to have difficulty obtaining reimbursement for prescription medications and that he had nightmares of the fall in Mexico. Furthermore, he believed that his superiors refused to acknowledge his deep concerns about safety. In the claimant's opinion, the "Safe Work Policy" outlined in the employee handbook was hypocritical.

54. The claimant had conflicts with the EHV management over capital expense reports, particularly when cuts were made in funds for programs he was responsible for completing.
55. Three times per week, the claimant attended physical therapy of his foot and neck. He testified that he felt stress from having to take time off from work to attend physical therapy. Completing his job assignments became more and more difficult because he was having difficulty concentrating at work.
56. In early August 1999 the claimant fell into a deep depression, He left on his motorcycle from his home in Wheelock, Vermont and drove to Maine with a loaded handgun. He left a suicide note behind. The claimant attributes a serendipitous contact with a priest in Maine as preventing his suicide.
57. Dr. Armstrong diagnosed the claimant with severe major depression and adjusted his medications. The claimant continued to work. For regular ongoing psychotherapy beyond what could be provided through an employee assistance program, Dennis Casey referred the claimant to Jeannette Keenan, a psychologist in St. Johnsbury.
58. At visits on August 23, 1999 and September 30, 1999, Dr. Armstrong further adjusted medications and noted that the claimant was doing better.
59. At work, the claimant was finding it increasingly difficult to concentrate. He felt as if he was letting his co-workers down and was feeling guilty. When he reviewed the capital budget plan for 2000-2002, he learned that many of the projects for which he was responsible had been cut.
60. Over the weekend of October 18, 1999 the claimant had difficulty sleeping and felt as though he was fighting a wall of depression coming over him. Dr. Armstrong altered his medications.
61. The claimant began his treatment with Jeannette Keenan on November 1, 1999. She is a licensed psychologist in this state.
62. The claimant became anxious with any activity related to this workers' compensation proceeding. He testified that conferences or hearings forced him to recall his ordeal in Mexico and what he perceived as subsequent abandonment by his employer.
63. The claimant testified that while taking the prescribed medication Zoloft he experienced headaches. Off of it he made mistakes at work.
64. On December 2, 1999 Ms. Keenan issued a written evaluation of the claimant whom she diagnosed as suffering from Post-Traumatic Stress Disorder (PTSD) as a result of his fall from the ladder at the work site in Saltillo in September 1997. In support of that diagnosis is the diagnostic criteria for PTSD taken from the *Diagnostic and Statistical Manual of Mental Disorders*, 4th Edition (DSM-IV).

65. Ms. Keenan found that the fall from the ladder resulted in a serious injury to the claimant, a fractured heel and reinjury to his cervical spine. She also found that the manner in which EHV handled the accident caused the claimant to feel helpless. In addition, Ms. Keenan noted that he has recurrent recollection and nightmares of the accident and its aftermath and when he remembered it, he shook visibly. She stated that the claimant attempted to avoid stimuli associated with the trauma and when he is in the presence of anyone at work who reminds him of Mexico or whenever he hears any mention of safety issues, he finds it impossible to stay at work. In Ms. Keenan's opinion, he felt alone and isolated at work and worried about his future both in terms of his physical limitations and his ability to earn money. December 3, 1999 the claimant stopped working at EHV. He has not worked there since. She documented his complaints of difficulty sleeping and uncontrolled angry outbursts. Finally, she noted the claimant's symptoms lasted longer than a month and that they had a dramatic impact on every aspect of his life.
66. Jeannette Keenan found the claimant to be highly ethical, extremely dedicated and a very professional and proud man.
67. Ms. Keenan also described the claimant as feeling " alone, unsupported and abandoned." The claimant claims those feelings began at the time of the injury and continue to the present. Keenan strongly recommended that the claimant stop working at EHV and not return.
68. At the insurance carrier's request, Dr. James Grubman examined the claimant on July 7, 2000 and used a written report. Before the examination, Dr. Grubman reviewed all of the claimant's pertinent medical records, Jeanette Keenan's report and the deposition of Dennis Casey.
69. Dr. Grubman concluded to a reasonable degree of medical probability that claimant's psychological disorders are more likely than not caused by the injuries and subsequent work stress in the claimant's employment at EHV. He diagnosed the claimant with an episode of major depression and an anxiety disorder. He did not agree with Keenan's diagnosis of PTSD because he believes that such a diagnosis is meant for traumas more serious than the one this claimant had.
70. However, Dr. Grubman agreed that claimant's symptoms would probably revive if he returned to EHV and recommended against it.
71. The parties agree that the claimant reached a medical end result for his psychological problem on May 19, 2000.
72. Dr. Grubman concluded that the claimant sustained a 10% whole person impairment as a result of his psychological disorders. This rating is undisputed.
73. The employer in this case has not provided the claimant with any vocational rehabilitation. Consequently, on February 2, 2000 the claimant began a course of training in Georgia with Georgia Power with the purpose of obtaining a certificate in heating, ventilation and air conditioning (HVAC).

74. By May of 2000 the claimant completed the course to obtain certification in HVAC with outstanding grades ranging from 92 to 100 on a scale of 0 to 100.
75. The claimant kept precise records of all his costs and expenses pertaining to this course. He testified that he lived frugally, lived in a trailer at a campground and commuted to school on a motorcycle. He testified that the total cost for tuition and supplies was \$8,048.99; the total cost of all expenses was \$15,668.27.
76. It is the claimant's plan to work on his own or in a small company. He continues to be fearful of safety concerns and feels that he would best be able to avoid triggering any recollection of his accident in Saltillo if he worked in a smaller company or on his own.

Permanency of the Foot

77. The claimant's treating physicians sent the claimant for a permanency evaluation with Dr. Banerjee on August 16, 1999. Dr. Banerjee evaluated the claimant for both his spinal impairment and his foot impairment. Claimant accepts Dr. Banerjee's rating for the spinal impairment but seeks a higher rating from Dr. Sparks for the foot.
78. The parties entered into an agreement to compromise the two ratings as evidenced by a Form 22 in March of 2000 for a 6% whole person rating. Dr. Banerjee found a 3% whole person rating for the foot impairments based upon findings of loss of range of motion and sensory deficit of the peripheral nerves. Dr. Sparks assessed the rating at 9%.

Mileage, attorney fees

79. The claimant seeks reimbursement for the mileage expenses incurred in connection with the treatment of his stress. He measured the distance from the driveway at EHV Weidman to the various locations where he received treatment for his psychological problems. These locations are the Concord Health Center, NVRH in St. Johnsbury, and Jeannette Keenan's and Dennis Casey's offices. The miles total 720.
80. The claimant also seeks additional expenses for prescription medication in the amount of \$278.98.
81. Finally, based on a contingency agreement if the claimant prevails, he seeks an award of attorney fees, calculated as 20% of the amount awarded. The claimant submitted an affidavit of his attorney in support of this attorney fee claim.

CONCLUSIONS OF LAW:

Compensability

1. The primary issue for decision is whether the claimant's claim for his psychological problems is compensable. A threshold question then becomes whether to characterize this claim as a physical-mental or a mental-mental claim. At first blush, this would seem to be a physical-mental claim because the claimant's psychological problems followed his

physical injury in time. However, the claimant's psychological problems were not diagnosed until after he received a negative performance review and almost a year after the physical injury, factors on which the employer relies in arguing that this is a mental-mental claim.

2. It is well established in Vermont that both types of claims are compensable, although the standards of proof differ. To prove a physical-mental claim, the claimant must establish a causal connection between the work-related injury and the resulting mental condition. *Blais v. Church of Jesus Christ of Latter Day Saints*, Opinion No. 30-99WC (Aug. 5, 1999). This is in keeping with the major of jurisdictions who have considered the subject. "When mental or nervous injury is preceded or followed by physical injury, the resulting disability is almost universally compensable." 3 *Larson's Workers' Compensation Law* § 56.03. The severity of the physical injury is not determinative in establishing the causal connection.
3. In contrast, greater objectivity is necessary in mental-mental cases because a high degree of uncertainty exists in diagnosing the cause of the injury. *Bedini v. Frost* 165 Vt. 167 (1996). A claimant's subjective impression that work-related stress caused an injury often forms the basis for the medical opinion that the injury was caused primarily by work-related stress. *Id.* Consequently, a claimant in a mental-mental claim must prove not only that job-related stress actually existed, *Mazut v. General Elec. Co.*, Opinion No. 3-89WC (October 26, 1990), but that the stress is of significantly greater dimension than the daily stresses encountered by similarly situated employees. *Id.*; *Bedini* 165 Vt. 167; *Crosby v. City of Burlington*, Opinion No. 43-99WC (Dec. 3, 1999).
5. In this case the claimant's testimony aptly described in a way that remains unchallenged the circumstances leading up to the fall from the ladder. He was still on light duty status after a work-related neck injury, which undoubtedly added to the fear inherent in the free fall from the ladder. It occurred from a ladder that he considered unsafe. And the circumstances that followed did nothing to alleviate the suffering caused by the fall. The "physical injury" in this case, therefore, encompassed the entire experience, including his fractured heel as well as the isolation and the medical treatment that followed.
6. According to the claimant and his experts, he suffers from PTSD as a result of the fall from the ladder. The employer's expert, Dr. Grubman, disagrees with that diagnosis because he believes that the diagnosis was not meant for the type of trauma this claimant experienced, but rather for war type of situations or abusive ones. Regardless of the diagnostic label, all evidence links the claimant's mental condition to his physical injury.
7. The defendant argues persuasively that a claimant's general dissatisfaction with his employer or stress created from litigation should not form the basis for a worker's compensation claim. See *Cardimino v. The Bennington School*, Opinion No. 81-95WC (Nov. 6, 1995); *Tebbetts v. Stowe Reporter*, Opinion No. 69-95WC (October 12, 1995). If either of these factors were the sole basis for the claim, the defendant would necessarily prevail. But in this case, the performance evaluations and the foot injury are inextricably intertwined. As a result, the causal chain from the work-related foot injury to the psychological problems remains unbroken.

8. An objective look at the job performance reviews suggests that the quality of the claimant's work declined somewhat after he returned to Vermont, although this is a point the claimant himself seriously challenges. The only possible explanation for a decline in his job performance is the experience surrounding the claimant's work and his injury in Saltillo. Therefore, the supervisor's documentation of the decline in performance cannot be separated from the incidents that led up to it.
9. This case is unlike those cases cited by the defendant where a negative performance evaluation was the sole cause of a claimant's psychological problems and, therefore, noncompensable. In this case, the performance evaluation was part of an unbroken chain from the injury in Saltillo to the diagnosis of a psychological problem, whether the problem is diagnosed as Post-Traumatic Stress Disorder or major depression. All experts agree that the claimant's psychological problems were caused by work stress. I conclude that the claimant's physical injury was the initial cause of that stress that overtime became worse. As such, the claimant has proven that he suffered a physical-mental compensable injury.
10. The claimant's delay in seeking treatment for his psychological problems was most probably due to his personality. Prior to the incidents at issue in this case, he rejected the notion that treatment for psychological problems was ever necessary. Therefore, his delay in seeking treatment was more likely due to his own denial of the legitimacy of a psychological illness and not to the lack of causation.
11. The defendant insists that this is a mental-mental claim and cites in support cases in which this Department: denied a claim for stress that was not deemed unusual or extraordinary for a firefighter (*Crosby v. City of Burlington*, Opinion No. 43-99WC (Dec. 3, 1999)); held that a suicide was not due to work (*Fatovich v. Burlington Free Press*, Opinion No. 19-97WC (July 24, 1997)); and found that a worker's stresses were not significant or objectively real. (*Cardimino v. The Bennington School*, Opinion No. 81-95WC (Nov. 6, 1995)). The medical evidence and credible expert testimony distinguish this case from the cases cited by the defendant.
12. With this determination that the claim is compensable, the next question is what benefits follow.

Claim for Temporary Total Disability Benefits

13. The claimant alleges that as a result of his work-related injury, he was totally disabled from work from September 9, 1998 to March 9, 1999 and from December 3, 1999 to May 19, 2000.
14. The claimant bears the burden of proving his entitlement to temporary total disability benefits. For the first period of claimed disability, the claimant received payment from his employer and is, therefore, not entitled to temporary total disability benefits. See, *Bishop v. Town of Barre*, 140 Vt. 564 (1987).

15. Although health care professionals opined that the claimant should not have returned to work at EHV Weidman, not one said that his mental or physical condition disabled him from any gainful employment. It is insufficient that the claimant honestly believes that his injury is totally disabling absent supporting medical evidence as to the disabling nature of the employee's condition. *Andreescu v. Blodgett Supply Co.*, Opinion No. 33-94WC (Nov. 3, 1994). The medical evidence is unanimous that the claimant was capable of gainful employment for someone other than the EHV Weidman. In fact, he was offered a job by his training school in Georgia which he turned down for reasons unrelated to his work-related medical condition.
16. Furthermore, the claimant had an obligation to conduct a good faith search for other work, which he did not do until May 19, 1999, which is not relevant for this decision.

Medical End Result

17. The claimant seeks a determination that he did not reach a medical end result for his work-related injury until May 19, 2000, the date of his first appointment with Dr. Grubman. Defendant argues that the claimant reached medical end result on February 9, 2000 when he began his classes in Georgia.
18. "Medical End Result" means 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. Workers Compensation (WC) Rule 2(h). (2.1200 in 2000 Rules).
19. Dr. Armstrong first found the claimant to have been at medical end result on March 31, 1999. When Dr. Grubman saw the claimant in July of 2000, he determined that the claimant had reached medical end. He clarified that opinion when he testified that the claimant had reached an end point months before the July appointment and in fact had reached that point when he went to school in Georgia in February of 2000.
20. Nothing in the testimony of Dr. Armstrong, Dr. Keenan or Mr. Casey or in the claimant's medical records contradicts Dr. Grubman's opinion as to medical end. When he saw the claimant on April 24th, Dr. Armstrong determined that the claimant was "doing great physically and mentally" and that he was off all of his medications.
21. A determination of medical end result is primarily a medical opinion. *Covey v. Boston International*, Opinion No. 52-96WC (Sept. 3, 1996). In this matter, Dr. Armstrong determined that the claimant had reached a medical end result on March 31, 1999 and Dr. Grubman opined that the claimant had reached medical end result in February of 2000. Given the claimant's subsequent problems, it is not clear that Dr. Armstrong's opinion was premature. Because no medical or factual evidence contradicts Dr. Grubman's opinion that the claimant had reached that point in February of 2000, his opinion on this issue must be accepted.

22. The typical necessity of filing a Form 27 to support a finding of medical end result is inapplicable to the instant case, because the defendant had denied the mental health aspect of this claim and was not paying benefits.

Permanency for Mental Impairment

23. There is no dispute as to the permanent partial disability rating for the claimant's psychological injury. It is 10% whole person rating determined by Dr. Grubman.

Permanency for the Foot

24. The claimant's treating physicians sent the claimant for a permanency evaluation with Dr. Banerjee on August 16, 1999. Dr. Banerjee evaluated the claimant for both his spinal impairment and his foot impairment. Claimant accepts Dr. Banerjee's rating for the foot but seeks a higher rating, one from Dr. Sparks, for the foot.
25. Apparently, Dr. Sparks did not perform any range of motion studies on claimant and based his opinion on Roentgenographic findings of 1 mm of cartilage interval in the joint, the same finding of sensory loss as found by Dr. Banerjee and an additional finding of dyesthetic (decrease in sensation) symptoms for a total of 9% whole person impairment.
26. The AMA Guides to the Evaluation of Permanent Impairment specifically provides that the range of motion method is the acceptable measure of permanent impairment of the lower extremity. *Guides* at 3.2e. Therefore, the employer argues that Dr. Banerjee undertook an appropriate methodology for determining impairment to the claimant's foot.
27. Based on the *Guides*, the rating of Dr. Banerjee is the more persuasive one. However, this does not mean that the agreed to compromise rating of 6% is to be reduced. Nor should it be increased as the claimant suggests. In fact, awarding a different amount than the voluntary compromise rating would only lead to additional litigation, which would be anathema to the informal procedures of the workers' compensation system.

Vocational Rehabilitation

28. Claimant seeks reimbursement for \$15,500 in educational expenses he incurred when he trained for HVAC systems in Georgia. While laudable that claimant seeks to improve himself and return to gainful employment, the educational expenses are not compensable.
29. Prior to his work-related injuries, the claimant had extensive professional licenses and relevant work experience. He has worked as an engineer since 1967 and holds an Associates Degree in electrical engineering. He is licensed in Vermont and New Hampshire as a Master Electrician and Power Plant Engineer. He also holds a Heavy Metals license, FCC Telephone License and Real Estate License.
30. The claimant has not proven that he was disabled from doing work for which he had training and experience. 21 V.S.A. § 642. He has not produced evidence demonstrating that suitable work outside of EHV Weidman was unavailable. No convincing medical or

other evidence has been produced demonstrating that his eligibility for vocational rehabilitation benefits was reasonably apparent. WC Rule 28(a). Nor has he shown that he was temporarily disabled from work at all, and not for at least ninety days. WC Rule 28 (b). Therefore, even if this had been an accepted claim, the employer would not have been obligated to provide vocational rehabilitation services. The claimant had extensive work experience and education. Indeed it is difficult to imagine a more employable workers' compensation claimant. Therefore the claimant's request for vocational rehabilitation benefits must be denied.

31. In sum, because the mental health aspect of this claim is compensable, the claimant is entitled to medical benefits, mileage to medical appointments, permanency and attorney fees. He is not entitled to temporary total disability benefits, an increase in permanency for his foot, or vocational rehabilitation benefits.

ORDER

Based on the Foregoing Findings of Fact and Conclusions of Law,

- 1) EHV Weidman is ORDERED to pay the claimant:
 - a) Health care benefits for his mental health treatment;
 - b) Mileage reimbursement for travel to medical appointments;
 - c) Permanency based on 10% whole person impairment;
 - d) Attorney fees based on 20% of the amount awarded.
- 2) All other claims are DENIED.

Dated at Montpelier, Vermont this 5th day of February 2001.

R. Tasha Wallis
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 (county) court or questions of law to the Vermont Supreme Court. 21 V.S.A. §§ 670, 672.