STATE OF VERMONT
DEPARTMENT OF LABOR AND INDUSTRY

James LaValley	)	State File No.: M-10682
	)	
	)	By: Margaret A. Mangan
v.	)	Hearing Officer
	)	
Northeast Cooperatives	)	For: R. Tasha Wallis
	)	Commissioner
	)	
	)	Opinion No. 26S-02WC

RULING ON MOTION FOR STAY

EBI/Royal & Sun Alliance, by and through his attorneys, Kiel Ellis & Boxer, moves for stay of the Commissioner's Order No. 26-02WC, dated June 18, 2002. Wausau, by and through its attorneys, Mertz, Talbott & Simonds, PLC, and Claimant, by and through his attorney, Thomas W. Costello, oppose the motion.

Any award or order of the Commissioner shall be of full effect from issuance unless stayed by the Commissioner, any appeal notwithstanding. 21 V.S.A. § 675. To prevail on its request in the instant matter, Defendant must demonstrate: (1) it is likely to succeed on the merits on appeal; (2) it would suffer irreparable harm if the stay were not granted; (3) a stay would not substantially harm the other party; and (4) the best interests of the public would be served by the issuance of the stay. *In re Insurance Services Offices, Inc.*, 148 Vt. 634, 635 (1987). All four prongs must be met before a stay can be granted. The Commissioner has the discretionary power to grant, deny or modify a request for a stay. 21 V.S.A.§ 675(b)*; Austin v. Vermont Dowell & Square Co.*, Opinion No. 05S-97WC (May 29, 1997) (*citing Newell v. Moffatt*, Opinion No. 2A-88 (Sept. 20, 1988)). The granting of a stay should be the exception, not the rule. *Bodwell v. Webster Corporation*, Opinion No. 62S-96WC (Dec. 10, 1996).

The opinion challenged in this case ordered EBI/Royal to reimburse Wausau for benefits paid since 1999 and to assume coverage for Claimant's ulnar neuropathy. Persuasive expert evidence as a whole leads to the inescapable conclusion that the 1999 incident was an aggravation or new injury and that Claimant's ulnar neuropathy is work-related, making it unlikely that EBI/Royal will succeed on the merits of an appeal. Furthermore, EBI will not suffer irreparable harm; especially considering that any reimbursement ordered will simply be repaid if the opinion is reversed on appeal. Furthermore, there is no persuasive argument that the best interests of the public would be served by a stay.

THEREFORE, EBI/Royal Sun Alliance's Motion for Stay is DENIED.

Dated at Montpelier, Vermont this 12th day of August 2002.

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R. Tasha Wallis
Commissioner

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Northeast Cooperatives, Inc.	)	
	)	Opinion No 26-02WC

Hearing held in White River Junction on January 16, 2002
Record closed on February 25, 2002

APPEARANCES:

Thomas W. Costello, Esq. for the claimant
Alison A. Brodie, Esq. for EBI/Royal & SunAlliance and Northeast Cooperatives, Inc.
Frank E. Talbott, Esq. for Wausau and Northeast Cooperatives, Inc.

ISSUES:

1. Is the claimant's ulnar neuropathy compensable?

2. Did the claimant experience a recurrence, aggravation or flare-up of a preexisting condition?

3. Is the claimant entitled to additional permanent partial disability benefits?

EXHIBITS:

Joint Exhibit I:	Medical Records
Claimant's Exhibit 1:	Letter from Attorney Ellis to Dr. Levy 10/20/2000
Defendant's Exhibit A:	Letter from Attorney Talbott to Dr. Saunders 1/25/00
Defendant's Exhibit B:	Letter from Attorney Talbott to Dr. Jenkyn 1/25/00

FINDINGS OF FACT:

1. Judicial notice is taken of all Department Forms. The exhibits are admitted into evidence.

2. In addition to forms filed in this action, the Department has Forms 22 Agreements for Permanent Partial Disability in:

    a. State File No. C-9462 indicating that in 1990 this Claimant was paid 49.5 weeks for 15% loss of use of right side of neck.
    b. State File No. W-24047 indicating that in 1987 he was paid 52.8 weeks for 16% of the spine.

3. Claimant has worked as a trucker for many years. Prior to November 20, 1998 claimant had a long-standing history of bilateral cervical radiculopathy and ulnar neuropathy and received extensive treatments from 1993 to 1998.

4. The claimant's medical history prior to 1998 includes the following:

    a. April 1990: medial facetectomy C5-6 on left
    b. September 1991: medial facectectomy C6-7 on right
    c. August 1993: C5-6 and C6-7 discectomies and fusions
    d. 1994: Dr. Jenkyn wrote to Dr. Saunders "I agree that Jim is 100% disabled for all his usual activities in the trucking industry."
    e. December 1995: C4-C7 laminectomy
    f. August 1996: decompression facetectomy at C-5-6 on right

5. Dr. Jenkyn was not called as a witness in this case and Dr. Saunders characterized the quoted statement from 1994 regarding 100% disability as hyperbole, reflecting only that this claimant had an increased risk of injury.

6. Immediately prior to working for Northeast Cooperatives, Claimant worked at Morse Feed, in a job in which he would deliver feed once per week, having to lift 50-pound bags of feed.

7. Claimant began working for Northeast Cooperatives as a truck driver on July 11, 1997.

8. From 1997 until April 8, 1999, Claimant was an employee and Northeast Cooperatives his employer as those terms are defined in the workers' compensation act and rules.

9. Claimant's job entailed driving a truck for Northeast Cooperatives and delivering food to a number of customers. Although he did not load the truck before leaving the premises of the employer, when he arrived at the destination he placed the boxes on a dolly then moved them off the truck using the dolly. Depending on the order and without assistance, he sometimes moved pallets of food with a hydraulic dolly. Those pallets weighed up to 400 pounds.

10. Claimant worked from July of 1997 until November of 1998 without complaints of neck, right arm or shoulder strain or injury.

11. Wausau was the workers' compensation carrier for Northeast Cooperatives from January 1, 1997 through February 11, 1999.

12. While working on November 20, 1998 Claimant had an onset of neck pain and pain radiating down his left arm while he was pulling a pallet.

13. On November 23, 1998 Claimant saw Dr. Jenkyn for neck pain. In the record for that visit, Dr. Jenkyn noted that Claimant "had yet further recurrence of cervical neuropathy stemming from a work-related accident of 11/19/98, when pulling pallets." Further, he noted, "as with the past, pain in the left side of his neck has radiated to the left shoulder and arm, but there has been no weakness or numbness or paresthesias."

14. Claimant was out of work for the work related injury from November 23, 1998 to February 11, 1999. Wausau accepted the claim and paid benefits without reservation.

15. As a result of the injury, Claimant underwent physical therapy and conservative treatment at the direction and under the overall care of Dr. Jenkyn. On January 14, 1999 Julie Emond, physical therapist at Maple Valley Physical Therapy, assessed his rehabilitation potential as excellent. On February 8, 1999 Ms. Emond indicated that the Claimant had undergone 35 physical therapy visits, his pain level was at a 2 or 3 on a scale or 1 to 10, that he had the ability to lift up to 70 pounds from floor to waist, 50 pounds from waist to overhead, and to carry 70 pounds up to 30 feet.

16. Before the November 1998 incident, the Claimant had not been taking any medication for his neck and arm pain. Afterwards, he took some pain medication until February 1999 when he stopped taking them.

17. On February 11, 1999 Dr. Jenkyn released the Claimant to return to work without restrictions as a truck driver, with instructions to return to physical therapy as needed. The Claimant then returned to Northeast Cooperatives at the same job he held prior to November 20, 1998. Although he still had some pain in his neck and shoulders, overall, he felt like a "new man," and resumed full duties.

18. EBI/Royal & Sun Alliance (RSA) was the workers' compensation carrier for Northeast Cooperatives from January 1, 1999 to January 1, 2000.

19. On April 8, 1999 claimant was moving a pallet when he experienced a sudden and severe pain in his neck and shoulders, radiating to his shoulders, arms and into his right hand.

20. The Claimant was taken out of work on April 8, 1999 and has not returned to Northeast Cooperatives since. In his April 26, 1999 note, Dr. Jenkyn referred to the claimant's cervical radiculopathy as a "recurrence." He also noted that the situation was different from what it had been in the past, "because in addition to his usual left shoulder and arm pains, he now has some pain radiating into his right upper extremity."

21. Wausau began paying benefits to the Claimant, without prejudice, and asserted that EBI is the responsible carrier.

22. Wausau has been paying permanency benefits based on an evaluation by Dr. Donald Ayers.

23. After the April 1999 incident, the Claimant returned to physical therapy at Maple Valley Physical Therapy where he participated in therapy until August of 1999 when he was discharged. At the time of the discharge, he had pain at the level of 7 or 8 on the 1 to 10 scale and had numbness in both hands at the 4^{th} and 5^{th} digits. In the physical therapist's opinion, the Claimant had a work capacity at the sedentary/light physical demand level.

24. Next, Claimant was referred to Dr. Richard Saunders, the neurosurgeon who had treated him in the past. After determining that physical therapy produced little results, Dr. Saunders recommended surgery.

25. Nerve conduction studies performed in September of 1999 confirmed persistent injury to the ulnar nerve and acute and chronic partial denervation in the right C5-6.

26. On January 26, 2000 Dr. Saunders performed what was a sixth operation on the Claimant's cervical spine: medial facetectomy at C6-7 and C7-T1 on the left, C7-T1 on the right with incidental revision of paracervical muscle diastasis. Diastasis means the separation of muscle that can occur from a strain. Claimant subsequently developed complications from an infection.

27. In January 2000 Dr. Saunders opined that the Claimant was at a medical end result for his November 1998 injury by April of 1999 based on the facts that his symptoms had substantially reached a plateau and he was able to work. Further, because the Claimant had been incapacitated with discomfort and required narcotics for pain relief, he opined that the April incident when Claimant tried to move a 400-pound pallet contributed independently to his disability. That injury, he explained, strained already weakened musculature in the neck, causing the muscle to further separate from its normal anatomical position.

28. In January of 2000 Dr. Jenkyn also opined in his best medical judgment that: 1) Claimant had achieved the status of medical end result for the November 1998 incident by February 8, 1999 when he released him to return to work without restrictions; 2) the April 1999 incident was "directly responsible for the patient's current inability to work owing to severe chronic neck and arm pains;" the Claimant suffered a re-injury to the cervical spine and both arms including recurrent spondylosis and entrapment of the median nerve in the left carpal tunnel and the ulnar nerve in the left cubital tunnel; 3) at the time of the April 1999 injury, the Claimant was in remission from all prior cervical and upper extremity complaints. The difference in the pain problem after the April 1999 incident was directly related to that incident.

29. In a letter dated February 8, 2000, Dr. Saunders categorized claimant's symptoms of April 1999 as a "recurrence."

30. Since the April 1999 incident, claimant has taken pain medication consistently, something he did not need prior to that incident. The post April 1999 symptoms have been different and greater than those he had before, including pain radiating down both arms, numbness in his right hand, more severe headaches and more severe neck pain. The post April 1999 pain has been more pervasive, more severe, and more debilitating than any pain he had before. Because conservative treatment failed to provide relief, surgery became necessary. And even since the surgery he has had some pain.

31. Dr. Saunders released the claimant to work in a job where the maximum lifting requirement is 50 pounds, compared to the 70 pound lifting maximum in February 1999.

32. In October 2001 the Claimant went to work driving a fuel oil truck for a different employer. The lifting requirement is below the 50-pound maximum specified by his neurosurgeon.

33. On October 2, 2000 Dr. Richard Levy, at the request of EBI/RSA, performed an independent medical examination. At the time, Claimant was complaining of "sore neck, elbow discomfort on the right, numbness of the 4th and 5th digits, and … a documented right ulnar neuropathy which is requiring surgical decompression…. He has intrinsic hand muscle weakness."

34. Dr. Levy agreed with Dr. Saunders that the April 1999 incident caused the claimant to become incapacitated with discomfort, requiring narcotics on a frequent basis for relief. Yet, based on the claimant's medical history, he concluded that Claimant's problems never completely resolved or became stable. Therefore, he does not believe the April 1999 incident destabilized a condition that had become stable.

35. Further, Dr. Levy agreed that the need for the surgery in January 2000 was brought on by the strain in April 1999. That is because a strain can cause symptomatology to increase, bringing on the need for surgery sooner than it would have been necessary without the April 1999 incident.

36. On December 15, 2000 Dr. Donald Ayres, M.D. performed an independent medical examination to determine the Claimant's permanent partial impairment rating. Dr. Ayres concluded that he had reached medical end result with an impairment rating of 35%. That rating is based on the Guides, 5th Edition, sections 15.6, DRE: Cervical Spine and 15.7, Corticospinal Tract Damage. Using Table 15.5, he determined that the Claimant was best categorized as DRE Category 4 due to loss of motion integrity with an impairment range of 25 to 28%. Given this Claimant's deficit, he chose the high end of that range, 28%. Next, he added 5% for gait dysfunction and 5% for sexual dysfunction as outlined in Table 15-6. Using the combined values chart, the combined value is 33%. Finally, he concluded that a final 35% rating is appropriate. How he arrived at the additional 2% is unclear.

37. Next, on December 20, 2000 at the request of Wausau, Dr. Jon Thatcher performed an independent medical examination and impairment rating. Dr. Thatcher rejected the concept that claimant had ever reached medical end result after the November 1998 incident, reasoning that his condition was a continuing one and concluding that April 1999 incident did not contribute independently to his disability. Dr. Thatcher rated the claimant under the AMA Guides to the Evaluation of Permanent Impairment, 4th edition, with a 31% whole person impairment, of which he attributed 1% to the 1999 incident. He based his impairment on Table 75, section 4D which assigns a 10% rating of an impairment to the whole person for cervical decompression with residual symptoms, section 4E, 1 and 2 which adds an additional 2% for two other levels and an additional 5% for subsequent surgeries for a subtotal of 17%. Next, because of loss of cervical spine motion, he assigned an additional 14% based on Tables 76, 77 and 78, for a total of 31%, of which he attributed 1% to the 1999 incident.

38. In Dr. Saunders opinion, the April 1999 incident was responsible for the need to repair the diastasis during the January 2000 surgery. Although the diastasis predated the April 1999 incident, it had been merely an incidental finding prior to that time, one that did not require surgical repair. When the muscle separation was extended by that incident, it reached a point where surgical correction became necessary. The April 1999 incident also caused progressive disturbance of the C7 and C8 nerve roots corrected at the time of the January 2000 surgery.

39. Dr. Jenkyn noted that the symptoms after April 1999 were different in several respects, including location, with the presence of pain in his right arm, the previously uninvolved limb.

40. In addition to the cervical surgery in January 2000, Claimant underwent an ulnar nerve transposition in November 2000. In Dr. Saunders's opinion, the need for the ulnar nerve transposition was also caused by the April 1999 incident. Although the claimant had a long history of right elbow pain an ulnar nerve symptoms, he did not need surgery and was able to work. The April 1999 incident caused a "double crush syndrome," that is the nerve was trapped at two points—neck and elbow. The elbow site had been involved for years, but did not trigger the need for surgery until the April incident added to the initial injury by trapping the nerve at the neck.

41. Claimant submitted evidence of his fee agreement with his attorney, and a statement reflecting 50.98 hours on this case and $134.89 in necessary costs.

CONCLUSIONS OF LAW:

1. In workers' compensation cases, the claimant has the burden of establishing all facts essential to the rights asserted. *Goodwin v. Fairbanks,* 123 Vt. 161 (1963). The claimant must establish by sufficient credible evidence the character and extent of the injury and disability as well as the causal connection between the injury and the employment. *Egbert v. Book Press*, 144 Vt. 367 (1984).

2. There must be created in the mind of the trier of fact something more than a possibility, suspicion or surmise that the incidents complained of were the cause of the injury and the inference form the facts proved must be the more probable hypothesis. *Burton v. Holden & Martin Lumber Co*., 112 Vt. 17 (1941).

3. It is "black letter law that an employer takes each employee as is, and is thus responsible under our workers' compensation law for an accident or trauma which disables one person but which might not disable another." *Petit v. No. Country Union High Sch.*, Opinion No. 20-98WC (Apr. 28, 1998). "[C]ompensation is not based on any implied warranty of perfect health or immunity from latent and unknown tendencies to disease which may develop into positive ailments if incited into activity by accidental injury received in the performance for the work for which he is hired." *Morrill v. Bianchi*, 107 Vt 80, 87-88 (1935). As long as the work injury accelerates or exacerbates an underlying condition, the claim is compensable, even if the condition would inevitably lead to the same result. *Marsigli Estate v. Granite City Sales*, 124. Vt. 95, 103 (1964).

4. To determine which carrier must assume responsibility, we return to the oft-cited aggravation- recurrence analysis. If the April 1999 incident is an aggravation, EBI/RSA is the liable carrier. If it is a recurrence, the responsibility falls back to Wausau. And if the event was a flare-up, EBI/RSA is responsible for the flare-up until Claimant returns to baseline when Wausau must resume responsibility.

5. An aggravation is an "acceleration or exacerbation of a pre-existing condition caused by some intervening event or events." WC Rule 2.1110. A recurrence is "the return of symptoms following a temporary remission." Rule 2.1312.

6. This Department has traditionally examined the following factors when analyzing whether a condition is an aggravation or recurrence: 1) whether a subsequent incident or work condition destabilized a previously stable condition; 2) whether the claimant had stopped treating medically; 3) whether the claimant had successfully returned to work; 4) whether the claimant had reached a medical end result; and 5) whether the subsequent work contributed to the final disability. *Trask v. Richburg Builders*, Opinion No. 51-98WC (Aug. 25, 1998) and cases cited therein. When they are considered together, the factors complement the direction in *Pacher v. Fairdale Farms and Eveready Battery Company,* to ask whether "the second incident aggravated, accelerated or combined with a pre-existing impairment or injury to create a disability greater than would have resulted from the second injury alone." 166 Vt. 626, 627 (1997) (mem); See also, *Holland v. Okemo Mountain*, Opinion No. 65R-98WC (Dec. 9. 1998).

7. Aggravation and recurrence in this context are legal rather than medical terms. "Medical Practitioners, unschooled in the nuances of workers' compensation law, frequently use these terms interchangeably, and thus the words used by the practitioner are less important than the facts and reasoning underlying them." *Bushor v. Mower's News Service*, 75-95WC; (Oct. 16, 1995). Although the analysis requires a close consideration of medical evidence, the determination is ultimately a legal one. Id.; *Cote v. Vermont Transit*, 33-96WC (June 19, 1996).

November 1998 incident

8. In some instances an injury is neither an aggravation nor a recurrence, "but rather an injury distinct from claimant's prior injuries." *Pacher*, 166 Vt. at 628. It may be characterized as a "flare-up" which this Department defines as a temporary increase in pain and/or partial immobility, but with no addition to the claimant's permanent condition in any medically or legally significant way. *Smiel v. Okemo*, Opinion No. 10-93WC (Aug. 24, 1993).

9. When the Claimant saw his physician after the November 1998 incident, he had pain in the left side of his neck with radiation to his left shoulder and arm, but with no weakness or paresthesias. After 2 ½ months of physical therapy, he was released to work full duty with no restrictions. There is no indication that he suffered a permanent impairment as a result of that 1998 incident. In fact, all evidence is that he returned to his pre-injury baseline. As such, that incident is properly characterized as a flare-up. Because Wausau was on the risk during that time, was responsible for the flare-up and has paid those benefits.

April 1999

10. If a claimant's condition is aggravated or accelerated by a work injury or work condition, or if the disability comes upon earlier than otherwise might have occurred, the claimant is entitled to compensation for that condition. *Gillespie v. Vermont Hosiery & Machinery Co.*, 109 Vt. 409 (1938); *Jackson v. True Temper Corp*., 151 Vt. 592 (1989); *City of Burlington v. Davis*, 160 Vt. 183 (1993).

11. The expert evidence as a whole leads to the conclusion that the 1999 incident was an aggravation even though much of the testimony was couched in conclusory terms suggesting a recurrence. The opinions from Dr. Saunders, a neurosurgeon who performed several surgical procedures on this claimant, and Dr. Jenkyn, Claimant's primary care physician, prove that the injury from the Claimant's 1999 incident combined with his preexisting condition to create a disability greater than would have resulted from the 1999 incident alone. See, *Pacher*. Prior to the 1999 incident, claimant was able to work; afterwards he was not. Prior to the 1999 incident, he did not need narcotic pain medication; afterwards he did. Before the 1999 incident, the diastasis was an incidental finding; afterwards it was striking. The neck muscles separated further, disturbing the normal anatomic position and necessitating surgery. In addition, The C7-C8 nerve roots were further disturbed and ulnar nerve entrapped, causing arm discomfort. Prior to the 1999 incident he had no muscle weakness; afterwards he did.

12. By his own description, Claimant was like a "new man" when he returned to work after the November 1998 incident. He was released to work without restrictions, including a maximum lifting ability of 70 pounds. After the 1999 incident, his maximum lifting ability fell to 50 pounds and his surgeon, Dr. Saunders, determined that he could not return to his old job at Northeast Cooperatives. Claimant regained his level of functioning after the 1998 incident, but not after the incident in 1999. When physical therapy failed, surgery became necessary. Furthermore, claimant's increased limitations following the 1999 incident extended to his activities of daily living, not only to his work. The Claimant was released from medical care and physical therapy in February 1999 with instructions to return only if needed, a necessity realized only when he pulled a heavy pallet in the April incident.

13. Dr. Thatcher attributed 1% of the total permanency to the 1999 incident, further supporting the claimant's and Wausau's positions that the incident played a role in the development of the overall disability. And, Dr. Levy agreed that the need for the surgery in January 2000 was brought on by the strain in April 1999.

14. In reliance on *Whalen v. Lake Champlain Transportation, Inc*. Op, No. 21-93WC (1993), EBI/RSA argues that claimant is not entitled to compensation because one with "knowledge of a limiting condition, [who] engages in unreasonable conduct or activity which exacerbates or aggravates a condition, may not claim compensation for the exacerbation or aggravation." In *Whalen* this Department cited the leading authority who instructs that a claimant's acts or omissions—unreasonable conduct or the refusal of reasonable treatment—may break the crucial chain of causation. A. Larson and L.K. Larson, 1 Larson's Workers' Compensation Law, § 10.10. The question is one of degree. "[M]isconduct required to break the chain of causation should … be not mere negligence, but intentional conduct which is clearly unreasonable." Id. Therefore, one whose injured hand was healing nicely until he rashly decided to get into a boxing match, during which the wound was torn open and became infected, broke the causal link. Id. at 10-29, citing *Kill v. Industrial Comm'n*, 152 N.W. 148 (1915). But a construction worker who for five years worked well outside his medical restrictions by lifting heavy objects did not. Id., citing *Collins v. General Cas.*, 606 N.W.2d 93 (2000). In the case of the construction worker, the court determined that negligence alone would not disqualify the worker from benefits.

15. In *Whalen,* this Department noted that, with the benefit of hindsight, claimant's decision to take a job as a server was ill advised given her work-related shoulder injury. *Whalen*, Op. No. 21-93WC at 13. A view from the perspective of the claimant at the time the decision was made, however, led to a different conclusion. Before beginning the job, the claimant had consulted with her physician who did not specifically advise against it. And when she later treated with another doctor, he allowed her to return to the job. Therefore, "[i]n view of this evidence, it cannot be said that claimant acted unreasonably in accepting employment as a waitress …." Id. 14.

16. The Claimant's treating physicians in this case were well aware of the work he was doing. The physical therapist confirmed that he could lift up to 70 pounds. After a flare-up like the one in November of 1998, he actively participated in prescribed physical therapy then returned to work only after his physician released him to do so. The records do not support EBI/RSA's contention that the Claimant's continued work, with his physicians' knowledge and without a prohibition against it, was unreasonable conduct that broke the causal link, although with the benefit of hindsight, as in *Whalen supra,* it may have been ill advised.

17. The evidence supports the position of the Claimant and Wausau that EBI/RSA is responsible for benefits due the Claimant for his cervical and ulnar nerve injuries since April 1999.

18. With insufficient evidence on permanency, that issue shall be deferred. The current ratings must be evaluated in light of prior ratings that have been paid. See, 21 V.S.A. § 648; *Aker v. ALIIC* Opinion No. 53-98WC (Sep. 8, 1998).

19. A prevailing claimant is entitled to reasonable attorney fees as a matter of discretion and necessary costs as a matter of law. 21 V.S.A.§ 678 (a). Having prevailed in this complex action through his attorney, this Claimant is entitled to an award of fees based on 20% of the total award. WC Rule 10. In addition, the necessary costs of $34.89 are also awarded.

ORDER:

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

1. Claimant is entitled to compensation for his right-sided ulnar neuropathy.

2. EBI/RSA is ORDERED to reimburse Wausau for all benefits paid on behalf of the claimant since April 8, 1999 and to immediately assume adjustment of this claim.

3. Claimant is awarded attorney fees based on 20% of the award once permanency is determined and costs in the amount of $34.89.

4. If the parties cannot agree to a permanency award, they shall submit memoranda and supporting documentation on their respective positions by July 15, 2002.

Dated at Montpelier, Vermont this 18th day of June 2002.

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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 court or questions of law to the Vermont Supreme Court. 21 V.S.A. §§ 670, 672.