

IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

1996 MTWCC 14

WCC No. 9503-7257

DEBBIE I. GALLUP

Petitioner

vs.

STATE COMPENSATION INSURANCE FUND

Respondent/Insurer for

AMEX TAX AND DUTY FREE SHOPS

Employer.

FINDINGS OF FACT, CONCLUSIONS OF LAW AND JUDGMENT

Summary: 36-year old sales and delivery person developed a blister on the left side of her groin after unexpectedly performing delivery work involving substantial exertion in pantyhose and new slacks. The blister developed into an abscess and, despite medical treatment, claimant continued to develop abscesses and sores diagnosed as hidradenitis suppurative, a chronic disease. The insurer accepted the claim and conceded liability for treatment and disability associated with abscesses near the original blister, but disputed continued liability for claimant's chronic condition.

Held: From the medical evidence presented, WCC concluded that medical science is currently unable to determine what causes hidradenitis. Applying a line of cases decided under pre-1995 statutes, beginning with *Moffett v. Bozeman Canning Co.*, 95 Mont. 347, 26 P.2d 973 (1933), and most recently including *Prillaman v. Community Medical Center*, 264 Mont. 134, 870 P.2d 82 (1994), the WCC held that where the etiology of a condition is not known, the presence of ongoing symptoms of the disease post-injury, joined with medical testimony that the condition may spread from one infected site to another, creates strong evidence that claimant's condition became symptomatic because of the industrial injury.

Topics:

Causation: Medical Condition. 36-year old sales and delivery person developed a blister on the left side of her groin after unexpectedly performing delivery work involving substantial exertion in pantyhose and new slacks. The blister developed

into an abscess and, despite medical treatment, claimant continued to develop abscesses and sores diagnosed as hidradenitis suppurative, a chronic disease. The insurer accepted the claim and conceded liability for treatment and disability associated with abscesses near the original blister, but disputed continued liability for claimant's chronic condition. From the medical evidence presented, WCC concluded that medical science is currently unable to determine what causes hidradenitis. Applying a line of cases decided under pre-1995 statutes, beginning with *Moffett v. Bozeman Canning Co.*, 95 Mont. 347, 26 P.2d 973 (1933), and most recently including *Prillaman v. Community Medical Center*, 264 Mont. 134, 870 P.2d 82 (1994), the WCC held that where the etiology of a condition is not known, the presence of ongoing symptoms of the disease post-injury, joined with medical testimony that the condition may spread from one infected site to another, creates strong evidence that claimant's condition became symptomatic because of the industrial injury.

Medical Conditions (By Specific Condition): Hidradenitis. 36-year old sales and delivery person developed a blister on the left side of her groin after unexpectedly performing delivery work involving substantial exertion in pantyhose and new slacks. The blister developed into an abscess and, despite medical treatment, claimant continued to develop abscesses and sores diagnosed as hidradenitis suppurative, a chronic disease. The insurer accepted the claim and conceded liability for treatment and disability associated with abscesses near the original blister, but disputed continued liability for claimant's chronic condition. From the medical evidence presented, WCC concluded that medical science is currently unable to determine what causes hidradenitis. Applying a line of cases decided under pre-1995 statutes, beginning with *Moffett v. Bozeman Canning Co.*, 95 Mont. 347, 26 P.2d 973 (1933), and most recently including *Prillaman v. Community Medical Center*, 264 Mont. 134, 870 P.2d 82 (1994), the WCC held that where the etiology of a condition is not known, the presence of ongoing symptoms of the disease post-injury, joined with medical testimony that the condition may spread from one infected site to another, creates strong evidence that claimant's condition became symptomatic because of the industrial injury.

The trial in this matter was held on October 13, 1995, in Great Falls, Montana. Petitioner, Debbie I. Gallup (claimant), was present and represented by Mr. Cameron Ferguson. Respondent, State Compensation Mutual Insurance Fund, was represented by Ms. Ann E. Clark. Exhibits 1 through 9, 11, and 14 through 20 were admitted without objection. Exhibits 10, 12, and 13 were withdrawn. Claimant and Dennis Small were sworn and testified. Additionally, the depositions of claimant, Dr. Robert F. Stanchfield, Dr. David Baldrige and Dr. Paula A. Lantsberger were submitted for the Court's consideration.

Issues presented: Claimant contends that her continuing hidradenitis suppurative is the result of the industrial injury she suffered on May 18, 1992.

Having considered the Pre-trial Order, the testimony presented at trial, the demeanor and credibility of the witnesses, the depositions and exhibits, the Court makes the following:

FINDINGS OF FACT

1. Claimant is 36 years old. She has a high school education. She lives on a 20-acre farm on the outskirts of Sweetgrass, Montana, with her husband and 12 year old son.
2. On May 18, 1992, claimant was working as a sales and delivery person for Amex Tax and Duty Free Shops. Claimant's job required she take items purchased from the shop and transport them to the custom's station on the U.S./Canadian border. It was a very hot day and the claimant did a lot of walking, running and climbing stairs while delivering the goods. She did not anticipate working as the delivery person that day; rather, she thought she would be cashiering and had worn new slacks, pantyhose and heels. The clothes were inappropriate for delivery work; the combination of the heat and her physical exertion caused the inseam of her slacks to wear through the pantyhose, raising a blister on the left side of her groin.
3. The blister developed into an abscess and the claimant sought medical care from Dr. Robert F. Stanchfield on June 1, 1992. Dr. Stanchfield excised the apocrine (sweat) gland around which the abscess had developed and placed claimant on a course of antibiotics. (Ex. 3 at 1.)
4. Claimant's condition was diagnosed as hidradenitis suppurative (hidradenitis). (*Id.* at 4.) Hidradenitis is a chronic disease that causes recurring abscesses and draining sores in the groin, armpits, and/or anal/genital region. The condition occurs when bacteria, usually pyogenic, gain access to the apocrine glands through some sort of lesion in the dermis. The gland becomes infected and fills with pus. The resulting abscess eventually erupts, extending the infection to adjacent apocrine glands. Ultimately other bacteriological organisms may be introduced which result in "mild chronic inflammation that smolders despite resolution of the acute pyogenic lesions." (Ex. 20 at 1.)
5. Prior to May 18, 1992, claimant had never experienced an outbreak of hidradenitis. The Court notes that by that time claimant was 32 years old.
6. Claimant developed several additional abscesses on the left side of her groin over the course of the next year. Claimant testified at trial that almost immediately after removal of the sutures from the first excision, a second abscess developed directly in front of the original one. Shortly thereafter, a third abscess developed posteriorly to the original. These were excised in Dr. Stanchfield's office on December 29, 1992 and January 20, 1993, respectively. (Ex. 3 at 5, 8.)

7. Claimant underwent yet another excision on February 23, 1993, at the Toole County Hospital. (Ex. 9 at 1.)

8. Claimant was seen for follow-up of her February surgery on several occasions over the next six weeks. She appeared to be improving, however, she continued to have drainage and swelling. (Ex. 3 at 11-12.) At her six week post-operative follow-up examination on April 7, 1993, the doctor reported she was "doing well and then began to have some increased pressure and firmness over the excision area with some serosanguinous drainage the last few days." (*Id.* at 12.)

9. The State Fund accepted liability for the blister and initial hidradenitis. It paid temporary total disability benefits through April 7, 1993. At that time, the State Fund contends claimant had recovered from all aspects of the disease attributed to the work-related blister. However, claimant continued to experience work-related, recurrent episodes of hidradenitis.

10. Claimant called Dr. Stanchfield on September 15, 1993, reporting a recurrence of her hidradenitis. He prescribed antibiotics. (Ex. 3 at 13.)

11. Antibiotics were renewed in March 1994 due to swelling in her groin. (*Id.*)

12. Claimant was seen by Dr. Stanchfield on June 10, 1994. His medical report states " she is not having any problems with the cysts on her groin, but she does have an area on her right gluteus that festers up and drains once in awhile." (*Id.* at 15.)

13. Claimant was examined again by Dr. Stanchfield on July 15, 1994. Claimant had an abscess or boil on her perineum and a "little swollen, tender nodule rather high in the groin area on the left." (*Id.* at 15.)

14. On August 8, 1994, Dr. Stanchfield examined claimant and found she now had infected glands on the right side of her groin. (*Id.* at 16.)

15. Claimant testified at trial that she has had six or seven cysts excised. Additionally, she has had four or five more cysts drained. Symptomatically, she has pain, swelling, and discharge from the abscesses. She also experiences swelling and pain in her legs. (Ex. 3 at 23.) Dr. Baldrige testified swelling of this nature can occur in severe cases. (Baldrige Dep. at 16.) Claimant can feel the cysts beginning to develop below the surface of her skin. She testified that taking antibiotics helps, but that she can usually feel a new cyst developing shortly after finishing a course of antibiotics.

16. Claimant self-treats her condition when possible. (Gallup Dep. at 14, 17.) She testified that she sometimes drains the abscesses at home due to her dislike of surgery, the expense of medical care and embarrassment. Also, around the time she began having problems with the right side of her groin, she avoided scheduling appointments with Dr. Stanchfield in consideration of personal difficulties the doctor was experiencing. (*Id.* at 20.)

17. The claimant has demonstrated, both through her testimony and the medical records, that she has had active symptoms of hidradenitis constantly since June 1, 1992, the date she was first seen by Dr. Stanchfield. I found claimant's testimony credible.

18. At the request of the insurer, claimant was seen by Dr. David Baldrige for an IME on August 22, 1994. Dr. Baldrige specializes in dermatology and has treated several dozen cases of hidradenitis. Dr. Baldrige confirmed the diagnosis of hidradenitis. He noted that in the past her lesions were limited to the left side of her groin but were now beginning to appear on the right. (Ex. 14 at 2.) Dr. Baldrige testified by deposition. He gave the following opinions:

a. The cause of hidradenitis is unknown. (Baldrige Dep. at 7.)

b. While it is unclear what causes lesions to break out, there is evidence that tight fitting clothes exacerbates the disease. (*Id.* at 8.) Dr. Baldrige did not believe the work-related blister could be "blamed for causing the whole cascade of events of hidradenitis." (*Id.* at 12.)

c. At the time of his examination, claimant had a right-sided lesion and also a plugged pore "very distant from the original area that was excised." Dr. Baldrige did not believe these could be related to the original outbreak. (*Id.* at 14-15.) Counsel for respondent then asked the doctor about theoretical subsequent lesions closer to the original outbreak:

Q. Okay. If she developed subsequent lesions that were a quarter of an inch away from the original scar, the original area, are those related to the original one ?

A. Quarter inch, they could be.

Q. And could they not be ?

A. Yes.

Q. Is there any way of knowing ?

A. No.

(*Id.* at 15-16.)

d. He indicated that "there's no question that once this problem begins and you have significant inflammation and damage to the sweat ducts in the area, then it can trigger the same problem locally." He felt that because Dr. Stanchfield aggressively treated the initial cyst, it was unlikely others developed as a consequence of the first. (*Id.* at 18-19.) But he later testified that the first abscess led to further problems in the immediate area of the first abscess. (*Id.* at 27.)

e. Dr. Baldrige rejected the notion that the claimant's present symptoms of hidradenitis are related to the blister she developed at work. He candidly admitted, however, that he did not know what caused the current condition:

Was that one day at work the cause for it? Was it another day when she was walking one day and some irritation was caused and that triggered it? Was it a combination of events? I don't know. But just because it wasn't there before that event at work doesn't establish that was the cause of it.

(*Id.* at 21.)

f. He testified that the scarring caused by healing abscesses can "cause further ducts to become blocked and inflamed and trigger further lesions, so it can promote the disease further." (*Id.* at 28.)

g. He testified that if claimant was having ongoing problems in the area of the original cyst, he would consider those problems to be related to the initial abscess. (*Id.* at 30.)

h. On cross-examination, Dr. Baldrige was asked how far from the initial cyst a subsequent cyst may develop and be considered to have arisen due to the first:

Q. And so again, it can spread from the initial break out situation to an adjacent situation?

A. That's correct.

Q. Basically how -- when we're talking about adjacent, what are we talking about here in distance, I guess?

A. I don't know. That's very difficult to say what adjacent is. It depends on the severity of the inflammation and the infection as to whether adjacent is a millimeters [sic] or further. I think that's very, extremely variable.

Q. What's the furthest that you would feel reasonably possible, or reasonable and probable, I guess I should say.

A. Gosh, I don't know, I can't answer that question. I don't know that anybody can.

(*Id.* at 34.)

i. Claimant's counsel further pressed Dr. Baldrige about the relationship of the original abscess and those that developed later:

Q. All right . . . according to her . . . she says she has the swelling continuously, the pain continuously, the pus discharge continuously, and

one's developing right next to another; I mean what, what's more likely in that circumstance? Is it more likely that the one is spreading from the one spot right to the adjacent spot, or is it more likely that there's some new trauma that's causing the adjacent one to develop?

A. Your guess is as good as mine. That's a typical scenario, and popping up in distant sites, that's the nature of the disease. All of those areas are predisposed, and it can happen either way; some can be aggravated by local problems, other just pop up de novo. That's the nature of this disease. That's why she got it in the first place, she has a predisposition to this problem.

Q. Okay, but you're unable to say which is more likely, given that hypothetical and my question, if one pops up right next to the one that's previous right within a reasonable two weeks or something of the one that was infected and swelling, right next to it?

A. That's right, I don't think anyone can say for sure.

(*Id.* at 56-57.)

j. Dr. Baldridge testified that as of August 22, 1994, he saw no reason why the claimant would be unable to return to work immediately. (*Id.* at 13; Ex. 14 at 4.) He was unable to say when she would have been able to work prior to his examination because he was not the treating physician. While he testified the condition may be terribly disabling, he did not believe she had a permanent impairment due to the blister caused at work. (Baldridge Dep. at 12-13; Ex. 15.)

k. Dr. Baldridge adamantly maintains there is no connection between the industrial injury and claimant's present hidradenitis symptoms. (Baldridge Dep. at 14-15, 21, 38-40, 50-52, 54-55.)

19. At the request of the insurer, claimant was seen by Dr. Paula A. Lantsberger, an occupational medicine specialist, for an IME on November 8, 1994. She confirmed the diagnosis of hidradenitis. With regard to the relationship between claimant's job and her condition, Dr. Lantsberger was of the opinion that "the initial lesion and the subsequent several infections were due to the work-related nature and the innate subsequent right-sided or any further cysts are not related." (Ex. 11 at 7.) She further testified:

a. Hidradenitis may be caused by hormonal changes or lack of air and dampness in the area which becomes infected. She referred to these as "theories." (Lantsberger Dep. at 12.)

b. She considered the original cysts which arose immediately following the injury to be a temporary aggravation of her preexisting condition which had fully resolved. (*Id.* at 21.)

c. She disagreed that claimant had infected sweat glands. She referred to it as an "acne-like cystic lesion." (*Id.* at 26.) She further testified that hidradenitis is exclusive to the labial area. (*Id.* at 12.) This testimony is at odds with the other physicians' opinions and the literature entered into evidence as to the physiology of the disease.

d. She did not believe the infection in the original site on the left could have traveled to the right side. (*Id.* at 37.)

e. She based her opinion that there was no connection between the first three lesions and the latter lesions on her understanding claimant had a time period when she did not have any lesions present. (*Id.* at 39-40.)

f. She testified that for the cysts to develop, a lesion in the skin must exist to allow entry of the bacteria. (*Id.* at 41-42.) Dr. Baldrige disagreed. (Baldrige Dep. at 58.)

g. She felt claimant would have been able to return to work after recovering from the excision of the third cyst. Additionally, she felt the claimant had suffered no permanent impairment. (Lantsberger Dep. at 22-24; Ex. 17.)

20. At the request of the insurer, claimant was also seen by Dr. Richard S. Herdener on November 8, 1994, for an IME. Dr. Herdener is a dermatologist and an associate of Dr. Lantsberger. He indicated in his report and a follow-up letter that he was basically in agreement with the opinion of Dr. Lantsberger:

[I]n my opinion, Ms. Gallup's current medical condition was related to the reported incident at work. I feel that I agree with Dr. Lantsberger in terms of her answer. Basically the left inguinal area in terms of its initial cyst and infection and the subsequent cyst and infection and surgical removals of the left side are related to her initial injury. Any problem on her right side is probably related to her predisposition to hidradenitis suppurative. Any right-sided involvement would not be related to her incident at work.

(Ex. 16 at 1.) He felt the claimant would be able to return to work as of November 8, 1994, the date he examined her. He did not venture an opinion of whether she could have returned to work earlier. (Ex. 7 at 6.) He did not think she suffered any permanent impairment as a result of the injury. (Ex. 16.)

21. Dr. Stanchfield, a board certified family practitioner, is claimant's treating physician. He testified by deposition as follows:

a. The cause of hidradenitis is unknown. (Stanchfield Dep. at 9-10.)

b. He has treated 10 to 15 patients with hidradenitis in the last 40 years. (*Id.* at 10.)

c. He has not observed all of the cysts claimant has developed. (*Id.* at 12, 34-35.)

d. Dr. Stanchfield testified that he would defer to the opinion of Dr. Baldrige due to his expertise as a dermatologist. (*Id.* at 21.)

e. When questioned by claimant's counsel in regard to the more recent outbreaks claimant has had and their relationship to the original abscesses, Dr. Stanchfield testified as follows:

Q. How do you decide when, you know, the initial cysts that are related to the work, or the cascade of cysts that are related to the work end, and something else begins?

A. I don't know, I really don't know how you figure that out. **My only statement concerning this is that she didn't have it before that happened and she had it afterwards, and whether she'd have got it a year later from something else, I don't know. You know, just from the standpoint of that I can't tell you. But once it started, then it just, you know, it won't quit, just keeps going.**

(*Id.* at 37; emphasis added.)

f. Dr. Stanchfield theorized that claimant's condition may not resolve until all the apocrine glands are destroyed by inflammation or are excised. (*Id.* at 39.) At one point he referred claimant to Dr. Chris Conner to be evaluated for a complete excision of the glands in her groin. This option is still under consideration as a last resort. (*Id.* at 30-31; Ex. 3 at 25.)

g. Dr. Stanchfield released claimant to return to work in both October and November of 1992. He again took her off work in December of 1992 "until she heals from excision of a groin cyst." (Ex. 3 at 2-3, 5; Ex. 5 at 3.) In his deposition, Dr. Stanchfield testified claimant should be able to return to some sort of employment, however, she may have some degree of permanent impairment as a result of the hidradenitis. (Stanchfield Dep. at 25-26.)

22. Claimant testified she has almost constant drainage from the abscesses, making it difficult to be in public. Claimant returned to work for two days approximately one month after her injury. She worked for two hours each day. She was unable to continue due to drainage from her abscesses. She has not worked since that time.

23. Claimant has had, and been treated for cystic acne on her face, back, and chest in the past. The physicians who have treated claimant's hidradenitis disagree about the relation between her cystic acne and hidradenitis. Dr. Lantsberger testified that hidradenitis is much like cystic acne, the main difference being the area of the body that is affected. She felt claimant's cystic acne demonstrated her predisposition to hidradenitis. (Lantsberger Dep. at 12-16.) Dr. Baldrige felt claimant was predisposed to hidradenitis and associated

her predisposition to her acne. (Ex. 14 at 3.) Dr. Stanchfield did not feel the two were related and pointed out that cystic acne involves oil glands, while hidradenitis involves sweat glands. He said he would defer to the opinion of Dr. Baldrige. However, he indicated he was unaware of any scientific study showing a correlation between cystic acne and hidradenitis. (Stanchfield Dep. at 24.)

24. Based on the medical testimony in this case, I find that the exact etiology of hidradenitis is unknown to medical science. I also find that the initial onset of hidradenitis was the result of claimant's work on May 18, 1992, but that medical science is unable to confirm or refute that claimant's later episodes of hidradenitis would have occurred irrespective of the first event. The medical opinions do establish that the later left-sided episodes, at least in the immediate area of the first, were work related.

25. Dennis Small, senior claims adjuster at the State Fund, testified at trial that claimant was paid temporary total disability benefits from June 8, 1992 through April 7, 1993. At that time temporary total benefits were terminated based on Dr. Lantsberger's report that claimant was able to return to work at that time. The State Fund's discontinuance of benefits was reasonable.

26. Claimant reached maximum healing by April 7, 1993.

CONCLUSIONS OF LAW

1. Claimant's injury occurred on May 18, 1992. The statutes in effect on the date of injury apply in determining the benefits due. *Buckman v. Montana Deaconess Hospital*, 224 Mont. 318, 730 P.2d 380 (1986). Therefore, the 1991 version of the Worker's Compensation Act applies in this case.

2. The fact of injury is uncontested. The insurer accepted liability for the May 18, 1992 industrial accident.

3. The claimant seeks a determination that all symptomatic episodes of her hidradenitis are attributable to the blister she suffered at work. She further contends she has not reached maximum medical improvement and is entitled to additional temporary total disability benefits.

4. Claimant has the burden of proving by a preponderance of the evidence that she is entitled to compensation. *Ricks v. Teslow Consolidated*, 162 Mont. 469, 484, 512 P.2d 1304, 1312-13 (1973).

5. This case presents me with a difficult, if not impossible, medical determination. The difficulty arises due to the lack of definitive medical evidence concerning the etiology of hidradenitis, and, more importantly, the cause of the later symptomatic episodes the claimant suffered. All testifying physicians agree that the initial onset of hidradenitis was precipitated by claimant's clothing and work on May 18, 1992. They disagree, however, as

to the role the initial incident played in subsequent episodes. Dr. Baldrige related only those subsequent episodes occurring immediately adjacent to the initial site of the industrial injury. However, he cannot specifically circumscribe the area, although he was certain that occurrences on the right side of the groin were unrelated. Dr. Lantsberger was similarly certain that the original hidradenitis could not have migrated to the right groin area, and opined that at least the first three left-sided lesions were related to the injury. Similarly, Dr. Herdener related left-sided episodes to the original incident, but not the right-sided ones. Dr. Stanchfield, who has extensive experience in treating hidradenitis considering its relative infrequency, opined that by history the initial incident precipitated all that followed. In his words, "[o]nce it started, then it just, you know, it won't quit, just keeps going." (Stanchfield Dep. at 37.) None of the other physicians explained why claimant was symptom free for the first 32 years of her life but has had continuous episodes of hidradenitis since May 18, 1992. None identified the specific cause for the episodes they believed were too remote distance-wise to be related to the initial site.

6. The Montana Supreme Court has addressed the compensability of conditions for which the causes are unknown to medical science, beginning with *Moffett v. Bozeman Canning Co.*, 95 Mont. 347, 26 P.2d 973 (1933), and most recently in *Prillaman v. Community Medical Center*, 264 Mont. 134, 870 P.2d 82 (1994). A brief examination of these cases is important to the resolution of the present case.

A. *Moffett*.

In *Moffett*, the claimant, a "strong, able-bodied young man, twenty-four years of age," felt a pain in his back and hip when lifting an eighty pound box at work. Within three weeks claimant developed a tremor in his left foot which spread to his legs, tongue and head. The palsy was diagnosed as Parkinson's disease, an incurable, progressive condition which renders the patient totally disabled. The claimant contended the incident at work caused the condition. *Id.* at 349, 351.

Conflicting medical opinions regarding the cause of claimant's condition were presented at trial, the majority of which did not support claimant's position. All the doctors agreed, however, that the cause of Parkinson's is unknown to medical science and that the condition often follows on the heels of injury, trauma, infection or emotion. The Supreme Court gave limited weight to the opinions of the physicians, finding the testimony more in the nature of surmises based on pathology of the disease rather than upon facts on which an opinion of the theoretical cause of claimant's disease could be based. Regarding the claimant's burden to produce evidence of the work-related cause of his condition, the court held:

The record contains no direct evidence from which it can be said that the injury was the proximate cause of claimant's present condition; this, not because of failure on the part of claimant properly to present his case, but because, on the frank

admission of the doctors, no man on earth knows positively the exact cause of such an affliction in any given case; medical science has not advanced to a point where it can positively trace back from the effect and declare the cause of the disease in a given patient. But this fact alone need not bar the claimant from recovery, if, on the record, it can be said that he is entitled thereto.

Moffett at 358.

The Supreme Court held the claimant's condition compensable based upon indirect evidence of the causal link between the injury and the disease: He was healthy before the injury, his physical deterioration "commenced with the injury, and followed the usual course of the affliction from which he now suffers, until he was totally and permanently disabled." *Id.* at 359. Additionally, the Supreme Court gave credence to the fact that no other reasonable explanation for the condition was in evidence. Thus, *Moffett* holds that indirect, non-medical evidence of causation is sufficient when medical science is unable to explain the onset of a disease.

B. Conway.

In *Conway v. Blackfeet Indian Developers, Inc.*, 205 Mont. 459, 669 P.2d 225 (1983), the claimant was swept out of a backhoe cab when the wind caught the door as he was opening it. He was left dangling from the door for several seconds and then dropped 5 to 10 feet to the ground. Following the injury, claimant began to experience numbness and weakness which was ultimately diagnosed as multiple sclerosis. *Id.* at 460-61. On appeal, the Supreme Court upheld the Workers' Compensation Court's determination that the condition was compensable.

In *Conway*, the medical opinions were divided as to the relationship of the injury to the claimant's malady. The Workers' Compensation Court rejected the notion that medical testimony could conclusively prove or disprove causation in this circumstance. On appeal, the Supreme Court adopted much of the language used by the Workers' Compensation Court in upholding the lower court's decision:

"The extensive medical testimony elicited by both counsel can be reduced to two statements: (1) the cause of MS is unknown; (2) evidence regarding what may cause MS to become symptomatic is at best extremely tentative and at worst entirely speculative.

"Against this background, the [medical expert's] statement can be seen for what it is -- a concession to medical ignorance. Because the medical community cannot disprove that trauma may cause MS to become symptomatic, it does not follow that this failure is affirmative evidence of causation. For example, simply because one cannot conclusively disprove that there is intelligent life in distant galaxies, it does

not follow that this failure is somehow proof of their existence. The failure merely leaves the field clear for an argument that will affirm or refute the proposition.

"Similarly, [the medical expert's] statement merely recognizes that current medical knowledge has not foreclosed the possibility that trauma can cause MS to become symptomatic. Although [the medical expert] cited several articles in medical journals as the basis for his conclusion that trauma may cause MS in a person to become symptomatic, these articles also discuss causation only in terms of statistical correlations and tentative, inchoate possibilities. Those who investigate the cause of MS and what causes it to become symptomatic are at the frontier of medical science; until they have explored further no one will have affirmative evidence of what may cause MS to become symptomatic.

"This leaves the claimant in the seemingly impossible position of being required to prove proximate causation when there is no direct medical evidence on this point.

Id. at 464, emphasis in original.

Citing *Moffett*, the Supreme Court upheld the award of benefits based on the evidence of the temporal relationship between the injury and claimant's onset of MS symptoms. Important to its decision was the purpose of the Workers' Compensation Act, and the inability of medical science to answer the question of causation. The Supreme Court held that when "medical science is unable to provide definitive answers, the Workers' Compensation Court should look to indirect evidence to establish causation." *Id.* at 468. *Conway* provides perhaps the best explanation of the rationale behind this line of cases. According to the decision in *Conway*: when medical science is unable to determine what causes a particular disease, the claimant is placed in an impossible position in regard to providing direct evidence of the causal link between his condition and the industrial injury. He therefore is allowed to prove his condition was caused by the industrial injury through indirect evidence.

C. Lamb.

In *Lamb v. Missoula Imports, Inc.*, 211 Mont. 360, 684 P.2d 498 (1984), the claimant slipped and fell striking his head on the floor while working as a janitor. He was taken to the ER and a physician diagnosed a mild concussion. In the ensuing days after the injury, claimant suffered lapses of memory and later began to have seizures. Approximately five months after the injury he was diagnosed as suffering from epilepsy. Contending that his epilepsy resulted from the industrial accident, a claim the insurer refuted, the claimant proceeded to trial.

Medical evidence in the case was provided by three physicians, two siding with claimant and one with the insurer. Following an award of benefits by the Workers' Compensation Court, the insurer appealed, contending that the opinion of the physician who rejected the

work-related nature of the affliction should be afforded more weight due to his greater expertise. The insurer's doctor was the neurologist who first diagnosed claimant's condition. The Supreme Court rejected the insurer's argument, noting that "[i]n careful examination of the deposition[s] by the three medical experts, it is clear to this Court that medical science remains sufficiently undeveloped in the area of epilepsy and seizures to rely on any one witness's statements as dispositive." *Id.* at 363.

D. Hengel.

In *Hengel v. Pacific Hide & Fur*, 224 Mont. 525, 730 P.2d 1163 (1986), the claimant injured his back when grabbing some metal channels when they slipped off a forklift. He suffered continual pain after the injury and produced evidence at trial that the injury indirectly caused increased stress in his life. He later developed ulcerative colitis and contended the stress occasioned by the injury was the cause of his condition. The Workers' Compensation Court held the condition as compensable, accepting claimant's contention that the ulcerative colitis was caused by the stress originating with the industrial injury.

On appeal, the Supreme Court upheld the Workers' Compensation Court's application of the *Moffett* rationale to the case. The evidence at trial demonstrated that the cause of ulcerative colitis is unknown, that major stress can exacerbate symptoms of the disease, and that claimant did not have the condition prior to the industrial injury. The medical experts were split as to the cause/effect relationship of stress and ulcerative colitis and the Court rejected the insurer's contention that the opinion of one particularly well qualified doctor should be given more weight than the others. The Supreme Court upheld the award of benefits holding:

... the Workers' Compensation Court did not err in holding the claimant satisfactorily met his burden of proof by showing indirect evidence that stress occasioned by claimant's industrial accident caused him to develop ulcerative colitis. This conclusion is supported by the fact that claimant developed ulcerative colitis only after suffering major stress as a result of his back injury.

Hengel at 529. Thus, along with medical evidence that stress can exacerbate ulcerative colitis, the temporal relationship showing claimant did not develop the condition until after the injury supported the award.

E. Winchell.

The next case following this line of reasoning was *Winchell v. Falls Sheet Metal*, 235 Mont. 299, 766 P.2d 1313 (1989). The claimant in the case suffered an aneurysm shortly after arriving at his workplace. Claimant was engaged in the sale, installation and repair of heating and air conditioning systems. The doctors agreed that it was impossible for medical science to determine what actually caused his aneurysm to rupture and that hypertension is a major factor in the growth of an aneurysm. The experts varied in their

opinions about the causes of hypertension and what degree of hypertension would cause an aneurysm to rupture. The Supreme Court upheld the award of benefits based on evidence which showed claimant had suffered an increased level of stress due to his job in the months preceding the aneurysm, the medical testimony establishing the role of hypertension in the formation of an aneurysm, and the fact that no other significant sources of stress were present in claimant's life during the time period preceding the aneurysm.

Winchell is a slight departure from the previous cases. Each of the previous cases involved an undisputed injury, after which the claimant developed a condition which he alleged arose as a consequence of the injury. In *Winchell*, the claimant suffered no undisputed injury, rather, the cause of the condition itself, an aneurysm, was in dispute. Further, the real issue that this case raised was whether a stress-induced aneurysm may be considered an injury under the Workers' Compensation Act. The legislature addressed this issue in the 1987 session, redefining "injury" and severely limiting the compensability of stress induced conditions. *Compare* section 39-71-119, MCA (1985), with section 39-71-119, MCA (1987).

F. Giles.

The Supreme Court established some limits to the *Moffett* rationale in *Giles v. Bozeman Public Schools*, 257 Mont. 289, 849 P.2d 180 (1992). The claimant in *Giles*, a janitor, injured his back while dismounting a ladder. The insurer accepted liability. Benefits were paid and the claimant eventually agreed to a full and final compromise settlement as a resolution of his claim. He was later diagnosed as suffering from multiple sclerosis (MS) and attempted to reopen the settlement based on a mutual mistake of fact. Claimant alleged that both parties were mistaken about the nature of his injury and the point of time when he reached maximum medical improvement. He alleged his MS arose as a result of the injury. In addition to the question of mutual mistake, the Workers' Compensation Court was directly presented with the issue of whether claimant's MS arose as a result of his injury.

Based on the evidence presented, the Supreme Court upheld the determination that there was no connection between the injury and claimant's MS. The only expert testimony at trial was from a physician who denied there was any connection between claimant's injury and his MS. The testimony was unequivocal and undisputed. The court rejected claimant's contention that the rationale of *Moffett* and *Conway* was applicable to this case:

We note at the outset that *Moffett* and *Conway* do not stand for the proposition that a mere coincidence in time between an injury and the onset of disease symptoms mandates a determination that sufficient causal connection has been established. In both cases, the issue was whether sufficient evidence existed of a link between the injury and the disease . . . to support a judgment in favor of the claimant. We concluded in both cases that the indirect and circumstantial evidence of record was sufficient to uphold the judgment where direct evidence of causation was

impossible to produce because of the state of medical knowledge. Here, the Workers' Compensation Court was not persuaded by the totality of the evidence produced that a causal link existed between Giles' injury and the MS, and we have concluded that the record is sufficient to support the court.

Furthermore, *Moffett* and *Conway* are distinguishable from the present case on the basis of the record in each. There, the medical witnesses gave conflicting testimony as to any connection between the injury and the disease. In addition, in *Moffett* the record indicated that while medical science could not definitively establish the cause of the disease in an individual, the medical "authorities" generally agreed that there was a strong link between a trauma and the disease. In *Conway*, the question of whether trauma does or does not cause MS to become symptomatic was altogether "medically undemonstrable."

Giles at 294-95 (citations omitted).

Giles gives rise to two theories. First, it demonstrates that a temporal relationship between the onset of a disease and the injury, standing alone, is insufficient to prove causation. Rather, the Court should look at the totality of the evidence to determine whether the claimant has met the burden of proving causation. Second, it shows the importance of the particular medical testimony present in the case. In *Conway*, the medical testimony portrayed uncertainty concerning causation allowing the Court to look beyond the testimony. In *Giles*, the medical testimony was firm and certain concerning lack of causation, and could not be overcome by the evidence that the MS arose after the accident.

G. Plainbull

The Montana Supreme Court briefly revisited the *Moffett* rationale in *Plainbull v. Transamerican Insurance Co.*, 264 Mont. 120, 870 P.2d 76 (1994). In *Plainbull*, the claimant was struck in the eye with a rock while working on a movie set. It was later discovered claimant had a choroidal rupture in the left eye. He contended it was caused by the injury; the insurer contended the rupture predated the injury. At trial, the medical testimony established that it was *possible* the injury caused the rupture. The Workers' Compensation Court held the injury not compensable, concluding that section 39-71-407, MCA (1989), required claimant to prove that it was *medically more probable than not* that the injury caused the condition and that the claimant had failed to meet his burden of proof.

On appeal, the Supreme Court held that the lower court erred in requiring claimant to prove it **medically** more probable than not the injury caused the choroidal rupture. The Supreme Court cited section 39-71-407, MCA (1989), and noted it has no requirement that claimant establish the injury occurred through **medical** testimony:

Under our present statutory scheme, all that the legislature has required of a claimant is that he establish that it is "more probable than not" that his injury or aggravation of a preexisting condition occur out of and in the course of his employment and, implicitly, under the case law, that the injury cause the condition for which he is seeking workers' compensation benefits. Whether the claimant chooses to meet that burden with medical evidence, non-medical evidence or a combination of both, is up to him and, obviously, depends on the facts and circumstances of his particular case, the nature of the claimed injury, and the evidence available.

Plainbull at 126.

Citing the *Moffett* line of cases, the Supreme Court went on to hold that causation can be shown with indirect evidence where medical science is unable to provide definitive proof. *Id.* Thus, while *Plainbull* focused mostly on the then applicable statutory requirements to show causation, it also reaffirmed the rationale of *Moffett* and its progeny.

In *Plainbull*, the Supreme Court was careful to note the limited circumstances where medical evidence is not required to prove causation:

We emphasize the burden of proof remains the claimant's. He is entitled to prove his case with whatever probative evidence he chooses or has available. In order that claimants do not read into this case more than is intended, we also point out, however, that in most cases, while the occurrence of the injury maybe susceptible to proof without medical evidence, the causation of the claimant's condition may very well require medical evidence if the claimant is to successfully meet his burden of proof, especially in the face of contrary medical evidence presented by the carrier. While we will not read into the statute and into claimant's burden to prove causation the requirement that he use medical evidence, neither do we, here, in any manner, eliminate the necessity for such evidence where that sort of evidence is a necessary part of the claimant's case and where, without medical evidence, he will not successfully meet his burden of proof.

Plainbull at 120. But the court held the claimant in *Plainbull* had met his burden of proving the injury was the cause of the choroidal rupture. It held that medical testimony to the effect that it was possible the injury caused the condition, combined with the non-medical evidence, is sufficient to meet claimant's burden of proof. The non-medical evidence was a temporal connection between the injury and the rupture. Claimant did not have problems with his eye before the injury and then deteriorated substantially within two months of the incident.

H. *Prillaman*.

In *Prillaman v. Community Medical Center*, 264 Mont. 134, 870 P.2d 82 (1994), the Supreme Court reaffirmed the holding in *Plainbull*. In that case, the claimant, a nurse, alleged she hurt her back while lifting a patient. While there was no question that she had compression fractures of two vertebrae, both the **occurrence** of the injury and the **causal connection** between the injury and her condition were questioned by the insurer.

On appeal, the Supreme Court held that the Workers' Compensation Court erred in requiring claimant to produce medical opinion evidence in order to meet her burden of proof. The Supreme Court held that both the occurrence **and** the cause of the injury may be proven with non-medical evidence under the proper circumstances:

The facts of each case must dictate the degree to which medical evidence is needed, if at all. Here, where both facts surrounding the "occurrence" and conflicting views as to medical opinion of "causation" are at issue, it is essential that all testimony, including the medical, be considered by the Workers' Compensation Court. Yet neither "occurrence" of an accident nor the connection between the accident and the injury (cause) statutorily require medical opinion evidence

Id. at 139.

7. The holdings and rationale discussed in the previous conclusion of law govern disposition of this case. Under those holdings, the claimant may rely on non-medical evidence if medical science cannot identify the cause of her condition.

It should be noted that this scheme no longer applies due to revision of section 39-71-407, MCA, by the 1995 Montana legislature. As amended, the section now provides:

39-71-407. Liability of insurers - limitations. (1) Each insurer is liable for the payment of compensation, in the manner and to the extent provided in this section, to an employee of an employer that it insures who receives an injury arising out of and in the course of employment or, in the case of death from the injury, to the employee's beneficiaries, if any.

(2) (a) An insurer is liable for an injury as defined in 39-71-119 if the **injury is established by objective medical findings** and if the claimant establishes that it is more probable than not that:

(i) a claimed injury has occurred; or

(ii) a claimed injury aggravated a preexisting condition.

(b) Proof that it was medically possible that a claimed injury occurred or that the claimed injury aggravated a preexisting condition is not sufficient to establish liability.

....

(6) An employee is not eligible for benefits payable under this chapter unless the entitlement to benefits is **established by objective medical findings** that contain sufficient factual and historical information concerning the relationship of the worker's condition to the original injury. [Emphasis added.]

As a result of the bolded language, the *Moffett* rationale may not apply to cases arising after July 1, 1995. But we must now determine whether the claimant has met her burden of proof under the statutes in effect at the time of her injury.

Initially, there is no dispute claimant sustained an injury in the course and scope of her employment. The insurer accepted liability for the injury, has paid benefits, and does not contest the initial onset of hidradenitis was caused by her injury. The medical evidence also affirmatively establishes that at least some of the subsequent episodes in the left groin area are related to the initial injury.

Second, I note that the cause of hidradenitis is unknown. Dr. Stanchfield and Dr. Baldrige both testified as to this fact. Dr. Lantsberger advanced some theories about the cause, however, she also was unable to identify the exact cause of hidradenitis. The medical treatise entered as evidence states that the cause is unknown. All the doctors agree that claimant is predisposed to the disease, however, this is of little relevance because the employer and insurer must take the claimant as they find her, *Robins v. Anaconda Aluminum Co.*, 175 Mont. 514, 575 P.2d 67 (1978), and are liable where an injury makes a preexisting condition symptomatic, *Conway*, 205 Mont. at 466-67, 669 P.2d at 228-29 (1983).

Third, Drs. Baldrige, Lantsberger and Herdener all testified that claimant's current symptoms of hidradenitis are not related to her injury. Dr. Stanchfield believes it is, but defers to Dr. Baldrige. However, in light of the doctors' frank admissions of not knowing what causes hidradenitis, and particularly Dr. Baldrige's inability to state how far the original outbreak could spread, I consider the expert's testimony taken as a whole to be a concession that they have little understanding of this disease. Moreover, they did not explain how or why claimant could have developed the subsequent episodes in absence of the initial, triggering episode.

Fourth, the claimant did not have hidradenitis prior to the industrial injury. That fact is undisputed.

Fifth, I found the claimant's testimony to be credible and found that she has suffered from symptoms of hidradenitis continuously since shortly after the injury. Although the medical records do not reflect constant treatment for the condition, the claimant has treated herself at times. I find it reasonable and understandable that she has avoided outside treatment when possible.

The claimant's ongoing symptoms of the disease are strong evidence that her condition became symptomatic as a result of the industrial injury. The claimant has clearly established the temporal connection between the injury and her hidradenitis. To put it simply, she didn't have it before, she has it now, and she can't seem to get rid of it. This situation fits within the line of cases involving conditions which medical science is at a loss to explain. Given that medical science is unable to determine what causes hidradenitis, under the statutory scheme applicable to this case, the claimant is entitled to establish causation through indirect evidence. *Conway*, 259 Mont. 459, 669 P.2d 225 (1983). Considering the temporal relationship between her injury and the onset of her hidradenitis, the continual symptoms of hidradenitis she has suffered, and the medical testimony that the condition may spread from one infected site to another, I am persuaded by the totality of the evidence that claimant's hidradenitis arose as a consequence of her work-related injury in 1992.

8. The claimant asks the Court to award additional temporary total disability benefits. However, she has failed to show that she continued to be temporarily totally disabled after April 1993. Claimant's treating physician, Dr. Stanchfield, who has observed the claimant throughout the progression of her hidradenitis, feels she is able to work and indicated claimant reached maximum healing following the third excision. The evidence shows she suffers from a chronic condition of which, considering its nature, is as good as it is going to get in the foreseeable future. I am unpersuaded she has been temporarily totally disabled beyond April 7, 1993.

9. Claimant has failed to persuade me that the insurer's conduct was unreasonable. The issues in this case are reasonably debatable.

JUDGMENT

1. Claimant's continuing episodes of hidradenitis are the result of her industrial injury.
2. Claimant is entitled to medical benefits for the continued treatment of her hidradenitis.
3. Claimant is not entitled to further temporary total disability benefits.
4. The question of permanent partial disability is not before the Court.
5. Claimant is entitled to costs in an amount to be determined by the Court. She shall have 10 days in which to submit a memorandum for costs. State Fund shall have 10 days in which to reply.
6. Claimant is not entitled to attorney fees.
7. This JUDGMENT is certified as final for purposes of appeal pursuant to ARM 24.5.348.
8. Any party to this dispute may have 20 days in which to request a rehearing from these Findings of Fact, Conclusions of Law and Judgment.

DATED in Helena, Montana, this 9th day of February, 1996.

(SEAL)

/s/ Mike McCarter

JUDGE

c: Mr. Cameron Ferguson

Ms. Ann E. Clark

Date Submitted: November 7, 1995