Note: In the case title, an asterisk (*) indicates an appellant and a double asterisk (**) indicates a cross-appellant. Decisions of a three-justice panel are not to be considered as precedent before any tribunal.

ENTRY ORDER

SUPREME COURT DOCKET NO. 2019-042

JULY TERM, 2019

Kaisun Huang* v. Progressive Plastics, Inc.	}	APPEALED FROM:
	}	
	}	Department of Labor
	}	
	}	DOCKET NO. KK-62071

In the above-entitled cause, the Clerk will enter:

Claimant appeals pro se from the Commissioner of the Department of Labor's summary judgment decision in favor of employer in this worker's compensation case. We affirm.

The Commissioner relied on the following undisputed facts. Claimant is seventy-two years old and he has a prior history of degenerative changes in his neck. Claimant worked for employer as a machine operator. In July 2014, claimant was injured at work and he filed a worker's compensation claim. Many of claimant's treatment records following the 2014 accident note his degenerative spinal condition. Claimant subsequently accepted a full and final settlement of $5,169.52 to resolve his claim. The settlement agreement listed the covered injuries as "left chest pain and rib fractures, upper back, right shoulder, lung nodules, occupational exposure/asthma and all natural sequelae" and it encompassed "[a]ny and all workers' compensation benefits causally related" to these injuries, including past, present, and future benefits as well as "future aggravations, recurrences or flare-ups to any of the alleged work injuries." The Commissioner approved the settlement in November 2016.

In March 2018, claimant alleged that he was injured at work after engaging in heavy lifting. He stated that he experienced pain in the right side of his neck, chest, and right shoulder. Claimant noted that the injury was in the same location as the 2014 incident but that his right shoulder was now weaker, leading to difficulty in writing. A doctor recommended that claimant resign due to his neck issues but he did not believe that claimant's neck issues were work-related. A nurse practitioner later opined that claimant's symptoms "certainly could have occurred after the heavy lifting incident" at work, but she did not affirmatively assert that the lifting actually caused claimant's symptoms.

Claimant later asserted in response to employer's motion for summary judgment that, in addition to pain in his neck, chest, and shoulder, he also developed high blood pressure from the alleged 2018 lifting activities and that the lifting caused his right cervical vertebra to oppress a nerve. Claimant did not cite any medical records or other evidence to support his assertion that any change in his blood pressure resulted from the alleged heavy lifting in March 2018. His medical records showed that claimant was diagnosed with hypertension at least as early as August

2014. Claimant provided no medical record that referred to a nerve being oppressed, either by cervical vertebrae or otherwise. He cited no medical records or other evidence to support his assertion that his claims were causally related to his work for employer.

The Commissioner granted summary judgment to employer. It explained that, under the terms of the 2016 settlement, claimant was not entitled to benefits for any injuries causally related to the injuries identified in that agreement. It concluded that claimant's 2018 complaints relating to his chest, back, and shoulder regions were facially the same complaints he voiced following his 2014 injury. This was reflected in claimant's own description of his injuries. While claimant argued that these claims were not precluded by the 2016 settlement, he cited no evidence to support this assertion.

Although the 2016 settlement did not, by itself, preclude claimant's 2018 neck pain claim, the Commissioner concluded that claimant failed to prove that this injury arose out of and occurred in the course of his employment. See 21 V.S.A. § 618 ("If a worker receives a personal injury by accident arising out of and in the course of employment by an employer subject to this chapter, the employer or the insurance carrier shall pay compensation in the amounts and to the person hereinafter specified."). The Commissioner found that the causal origin of claimant's neck symptoms required an expert medical opinion, which claimant did not provide. See Egbert v. Book Press, 144 Vt. 374, 369 (1984) ("When the facts to be proved are such that any layman of average intelligence would know from his own knowledge and experience that the accident was the cause of the injury, no expert testimony is needed to establish the causal connection; however, where the causal connection is obscure, expert testimony is required."). It noted that claimant's medical records overwhelmingly showed that his neck symptoms were age-related degenerative changes. It added that the nurse practitioner who examined claimant did not assert that any of claimant's neck conditions were in fact caused by, or even probably caused by, any work activities. The Commissioner also concluded that claimant was required, and failed, to present expert medical evidence in support of his blood pressure and nerve oppression claims. Claimant appealed.

Pursuant to 21 V.S.A. § 672, our jurisdiction is "limited to a review" of the following questions certified by the Commissioner: (1) Did the Compromise Agreement and general release that the Commissioner approved on November 14, 2016 constitute a release of all injuries for which Claimant presently seeks compensation as a matter of law?; and (2) To the extent that any of Claimant's present claims for injuries were not released by his 2016 settlement, does the evidentiary record give rise to any genuine issue of material fact as to the work-relatedness of any unreleased claim as a matter of law?

It is difficult to discern claimant's arguments as they relate to these specific questions.[*] He appears to reiterate his assertion that heavy lifting caused his blood pressure to rise. He suggests

[*] On appeal, appellant appears to challenge the underlying approved Form 16 settlement agreement on several bases, including that he did not have the services of a translator and did not understand the agreement. This is a direct appeal from the Commissioner's grant of summary judgment to the employer denying coverage for a 2018 claim. For that reason, this Court does not have authority to review his collateral challenge to the underlying approved Form 16. He must raise any such challenge with the Commissioner in the first instance. Therefore, we do not address claimant's assertion that he was tricked into signing the settlement agreement. Appellant also

that his neck issues are not age-related. We agree with the Commissioner that expert medical testimony was required to establish that these alleged injuries were work-related. Absent such evidence, these claims necessarily fail. We thus affirm the court's summary judgment decision in favor of employer.

Affirmed.

BY THE COURT:

Paul L. Reiber, Chief Justice

Beth Robinson, Associate Justice

Harold E. Eaton, Jr., Associate Justice

appears to argue that the Centers for Medicare & Medicaid Services ("CMS") should not have asserted a lien against his settlement proceeds, and employer should not have paid CMS from those settlement proceeds. Any challenge to the CMS lien should be directed at CMS.