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. 2021-048

JUNE TERM, 2021

Paul Reis* v. Windham Northeast Supervisory Union	}	APPEALED FROM:
	}	
	}	Department of Labor
	}	
	}	DOCKET NO. KK-63701

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

Claimant appeals a decision by the Commissioner of Labor granting his former employer, Windham Northeast Supervisory Union, summary judgment with respect to his workers' compensation claim. We affirm.

Claimant has not challenged any of the facts set forth in employer's statement of undisputed facts and the Commissioner's decision, which reveal the following. See Webb v. Leclair, 2007 VT 65, ¶ 4, 182 Vt. 559 (mem.) ("[W]e have consistently enforced the rule that a plaintiff's failure to controvert facts in a counter statement requires that the moving party's undisputed facts be taken as true."). Claimant worked for employer as a custodian for approximately nineteen years before he retired on May 31, 2018. He claimed both a low-back injury and a psychological injury—post-traumatic stress disorder (PTSD)—resulting from bullying during his employment with employer, with an alleged injury date of March 19, 2018.

Since at least the early 2000s, claimant has complained to various health providers—including a family therapist, nurse practitioners, and doctors—of lower back pain and PTSD. For the most part, documents from those health providers: (1) refer to flare-ups of a longstanding degenerative low-back condition, which claimant initially reported stemmed from a high school football injury; and (2) attribute his PTSD to reported childhood trauma and bullying he allegedly suffered while working at Ben & Jerry's Homemade, Inc. in 1994.[*] The only document that connected any of claimant's alleged injuries to his employment with employer was written in February 2017 by a nurse practitioner who indicated that she had been seeing claimant for PTSD and anxiety since March 2015. The nurse practitioner wrote: "[Claimant] reported to me incidences that have been occurring at work that would qualify as workplace harassment. In my opinion, these incidences are exacerbating his anxiety and triggering his PTSD and making it very difficult for him to function at work."

In response to the parties' cross-motions for summary judgment, the Commissioner denied claimant's motion and granted employer's motion. The Commissioner concluded that claimant

[*] In 2016, claimant pursued a workers' compensation claim against Ben & Jerry's, alleging, as here, low-back and psychological injuries. The claim was dismissed because the applicable statute of limitations had lapsed.

had not established a prima facie case that would support him being compensated for either of his claimed injuries because he had not offered any medical opinion, other than the document referenced above, relating the claimed injuries to his employment with employer. As for the nurse practitioner's letter, the Commissioner determined that the letter did not establish a genuine issue of material fact for trial because the statement in the letter was entirely conclusory and failed to provide a sufficient factual and analytical basis for the opinion stated therein.

Our review of the Commissioner's decision is limited to the questions of law certified by the Commissioner. 21 V.S.A. § 672. The Commissioner asks us to determine whether either claimant or the employer is entitled to summary judgment on the question of whether claimant sustained a compensable injury arising out of and in the course of his employment with employer. We will affirm the Commissioner's decision when the conclusions contained therein are rationally derived from evidentially supported findings of fact and are based on a correct interpretation of the law. Cehic v. Mack Molding, Inc., 2006 VT 12, ¶ 6, 179 Vt. 602 (mem.). We review "summary judgment decisions de novo, using the same standard as the trial court" or administrative agency. Gauthier v. Keurig Green Mountain, Inc., 2015 VT 108, ¶ 14, 200 Vt. 125. Summary judgment is appropriate "if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." V.R.C.P. 56(a). A fact is material if it might affect the outcome of the action. Gauthier, 2015 VT 108, ¶ 14. When we consider the facts, "we give the nonmoving party the benefit of all reasonable doubts and inferences." H&E Equip. Servs., Inc., v. Cassani Elec., Inc., 2017 VT 17, ¶ 10, 204 Vt. 559 (quotation and alteration omitted). "Where the record taken as a whole could not lead a rational trier of fact to find for the nonmoving party, there is no genuine issue for trial." Gauthier, 2015 VT 108, ¶ 14 (quotation omitted).

On appeal, claimant invites this Court to examine the entire record to see what has happened over the years. He identifies various witnesses he would call if the case came before a jury but does not challenge any of the Commissioner's findings or conclusions. Like the Commissioner, we conclude that claimant has failed to present a genuine issue of material fact sufficient to overcome employer's motion for summary judgment.

It is claimant's burden to prove that his injuries arose out of and in the course of his employment with employer. See State v. Great Ne. Prods., Inc., 2008 VT 13, ¶ 11, 183 Vt. 579 (mem.) ("[An employer] is liable for workers' compensation benefits . . . only if a claimant can prove that the injury was the result of an accident arising out of and in the course of the claimant's employment."). Like the Commissioner, we conclude that claimant failed to proffer any expert medical documents demonstrating that he could show a causal connection between his alleged injuries and his employment with employer. See Egbert v. Book Press, 144 Vt. 367, 369 (1984) (stating that expert evidence is required "where the causal connection is obscure"). As the Commissioner indicated, the nurse practitioner's letter—the only document suggesting a connection between claimant's alleged injuries and his employment with employer—offered only a conclusory statement that claimant's self-reported incidents qualified as harassment and exacerbated his anxiety or triggered his PTSD. The nurse practitioner's letter did not specify what incidents allegedly occurred, did not provide any detail regarding claimant's symptoms or increased anxiety or stress, and did not include any causal analysis that rejected other possible causes for his reported increased anxiety and stress. Thus, the letter was not sufficient to defeat employer's motion for summary judgment. See Morais v. Yee, 162 Vt. 366, 371-72 (1994) (stating that expert affidavit presenting nothing but conclusions without facts, inferential process, or discussion of hypotheses considered and rejected is insufficient to defeat summary judgment); see also Egbert, 144 Vt. at 369 ("Proof of a mere possibility of causation is insufficient unless the evidence excludes all other causes or shows a direct connection between the accident and injury.").

Accordingly, we discern no basis to overturn the Commissioner's determination that employer is entitled to summary judgment in this matter.

Affirmed.

BY THE COURT:

Paul L. Reiber, Chief Justice

Karen R. Carroll, Associate Justice

William D. Cohen, Associate Justice