

M. M. v. Mack Molding Co., Inc.

(September 9, 2005)

**STATE OF VERMONT
DEPARTMENT OF LABOR**

Melinda Magill)	Opinion No. 58-05WC
)	
v.)	By: Margaret A. Mangan
)	Hearing Officer
Mack Molding Company, Inc.)	For: Patricia A. McDonald
)	Commissioner
)	
)	State File No. W-02628

Pretrial conference on June 23, 2005
Hearing held in Springfield on July 27, 2005
Record closed on August 29, 2005

APPEARANCES:

Richard K. Bowen, Esq., for the Claimant
Eric N. Columber, Esq., for the Defendant

ISSUES:

Did the claimant suffer a compensable work-related injury at Mack Molding in September 2004?

If so, has her medical treatment been reasonable and causally related to that injury?

EXHIBITS:

Joint Exhibit I: Medical Records

Claimant's A: Evaluations at Mack Molding

Claimant's B: Accident Report

Claimant's C: Attorney Fee Request

Defendant's 1: Job Application

Defendant's 2: Health Questionnaire

FINDINGS OF FACT:

1. Claimant was an employee and Mack Molding her employer within the Workers' Compensation Act in September 2004.
2. Claimant began doing work as a molder at Mack Molding through a placement agency in May 2004 and then became a Mack Molding employee doing the same work at the end of July 2004.
3. Claimant operated molding machines used to produce plastic parts for various products. The job involved lifting, bending, twisting, and turning as well as use of both arms and hands.
4. After the offer of employment, claimant underwent a physical examination and completed a health questionnaire for Mack Molding. Her answers on the questionnaire were not honest. She did not disclose that she had a prior wrist injury, prior back injury or prior ankle injury, some of which were related to work with other employers. The examining physician determined that claimant was fit for the job as molder.
5. Claimant worked weekday and weekend shifts as a molder, doing good to excellent work.
6. Early in her shift on Saturday September 25, 2004, claimant reported to her supervisor that she had just slipped on a plastic piece (called a spew) and fell to the concrete floor, extending an outstretched arm to break the fall. She identified the work area that had not been cleaned by the previous shift as the cause.
7. No one saw the fall. The closest coworker was behind another machine. No one heard claimant yell; the machines were noisy.
8. A coworker noted, in response to the claimant's question, that her wrist looked swollen.
9. Claimant's supervisor sent her to the hospital emergency department. She was diagnosed with a sprained left wrist, instructed to follow up with an orthopedist and placed on work restrictions. On her return to work that day, her arm was in a sling. She was placed on light duty.
10. The employer filed a First Report of Injury on October 4, 2004.
11. Claimant followed up with physicians who reiterated the need to limit use of her left arm.
12. Claimant's left wrist pain continued to worsen. By the end of October, she was diagnosed with chronic pain and was taken out of work for three days.
13. Claimant was terminated from her job on November 3, 2004 for falsifying company records regarding prior injuries to the wrist.

14. At hearing, claimant admitted that she was not truthful on the job application and health questionnaire. In fact, she had injured her left wrist several times in the past.
15. At the hearing in this case, claimant denied under oath any previous workers' compensation claims. Department records indicate that claimant had four workers' compensation claims with other employers. While it is possible that a worker with a minor injury and no lost time from work might not realize that the employer filed a First Report of Injury, it is simply not credible that this claimant was unaware of a injury that resulted in 38 weeks of benefits paid in 2001.
16. Based on the claimant's report of a fall at work in September of 2004, Doctors Timora, Halsey, Wing, Muller and Thatcher all agreed that she sustained a workplace injury and that the injury is not related to her prior injuries.

CONCLUSIONS OF LAW:

1. Under our Workers' Compensation Laws, a worker is entitled to benefits for injuries that arise out of and in the course of her employment. 21 V.S.A. § 618. The claimant has the burden of establishing all facts essential to the rights asserted. *Goodwin v. Fairbanks*, 123 Vt. 161 (1962). She 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 from the facts proved must be the more probable hypothesis. *Burton v. Holden & Martin Lumber Co.*, 112 Vt. 17 (1941).
3. In unwitnessed and late reported cases, this Department considers four factors in evaluating the validity of a claim: 1) Are there medical records contemporaneous with the claimed injury and/or a credible history of continuing complaints? 2) Does the claimant lack knowledge of the workers' compensation reporting process? 3) Is the work performed consistent with the claimant's complaints? and 4) Is there persuasive medical evidence supporting causation? See *Seguin v. Ethan Allen* Opinion No. 28-02WC (2002).

4. Although claimant's supervisor initially accepted her representation that a fall occurred at work, and in good faith saw that she obtained prompt medical attention, further investigation has cast a dark shadow on that initial complaint. Claimant was dishonest on her job application. No one witnessed the fall she complained of. She has had experience with the worker's compensation process, yet lied under oath at hearing about prior worker's compensation claims. Medical personnel relied on her history of a work related fall that is not credible. As such, their opinions lose their crucial bases.
5. Weighing carefully the credibility of the witnesses and claimant's "not so hidden motivations," see *Fanger v. Village Inn*, Opinion No.5-95WC (1995), the support for this claim evaporates, based as it is on representations that simply cannot be trusted. Accordingly, claimant fails to carry the essential burden of proof.

ORDER:

Therefore, based on the foregoing findings of fact and conclusions of law, this claim is DENIED.

Dated at Montpelier, Vermont this 9th day of September 2005.

Patricia A. McDonald
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.