

M. P. v. Berlin Motor Car

(January 4, 2007)

**STATE OF VERMONT  
DEPARTMENT OF LABOR**

M. P.

Opinion No. 58-06WC

v.

By: Margaret A. Mangan  
Hearing Officer

Berlin Motor Car

For: Patricia Moulton Powden  
Commissioner

State File No. X-02826

Hearing held in Montpelier on July 25, 2006

Deposition of Dr. Weinberg taken on October 27, 2006

Record closed on December 4, 2006

**APPEARANCES:**

Christopher McVeigh, Esq., for the Claimant

J. Christopher Callahan, Esq., for the Defendant

**ISSUE:**

Whether Claimant tore a meniscus in her left knee while working for Berlin City Auto Sales in April 2005.

**EXHIBITS:**

Claimant:

1. Medical Records (paper copy)
2. Deposition of Michael Lowe

Defendant:

1. Medical records on CD
2. Statement of Claimant
3. Deposition of Donald Weinberg, M.D.

**FINDINGS OF FACT:**

1. Claimant, 71 years old at the time of the alleged injury, worked for Berlin City Auto Sales from 1998. She worked primarily as a driver delivering automobiles to customers and transporting automobiles between Berlin City's Gorham, New Hampshire location to its Williston, Vermont location.

2. Claimant also closed sales, completed contracts and transported trade-ins. In doing so, she handled money and was a business representative of Berlin City Auto Sales.
3. Claimant was an active person. Outside of work she had many activities, including gardening, dancing, walking and even clearing her roof of snow in winter.
4. Although Claimant hit her knees in a motor vehicle accident in 1999, she did not have problems with her knees until April of 2005.
5. The date Claimant claims she was injured was April 1, 2005 when she was transporting a truck from Williston to Mooers, New York to complete a sale. The truck was a large one for her, requiring that she pull herself up with a handle attached to the vehicle frame to get into the truck and hold on to that handle to control her balance as she got out of the truck.
6. Claimant got out of the truck when she arrived in New York. The customer then took a test drive. Because the customer decided not to buy the truck, Claimant drove it back to Williston.
7. Claimant did not have driving assignments the next day. She told the coworker who booked trips not to assign her to vehicles with standard transmission. She did not tell anyone that she had hurt her knee.
8. On April 18, 2005, Claimant saw Dr. Weinberg, her primary care physician, who noted a two-week history of left knee problems, without specific trauma. On examination, the knee was hot and swollen. The knee was injected twice to reduce the inflammation. An injury could have caused the inflammation.
9. By the time Claimant saw Dr. Weinberg again on May 26, 2005, he noted that she was having difficulty walking and that the knee was locking and giving way. The knee was tender and a test for a meniscal tear positive. Dr. Weinberg again noted that lack of trauma. He described Claimant's condition as degenerative meniscal disease.
10. Next, Claimant saw Dr. Rebecca Winkour, an orthopedic surgeon on April 28, 2005. On a new patient information form at Dr. Rebecca Winkour's office, Claimant wrote that her problem began two weeks earlier when she was walking and her knee snapped and locked.
11. The MRI Dr. Winkour ordered revealed tears in the medial and lateral menisci of Claimant's left knee.
12. In December 2005, Claimant had surgery for "a complex tear of the medial meniscus" that the surgeon, Dr. Howe, characterized as "degenerative."
13. In December 2005, Claimant first alleged that the torn meniscus was work related.
14. In pursuing this matter, Claimant's attorney spent 60.6 hours and incurred \$1,473.16 in necessary costs.

## CONCLUSIONS OF LAW:

1. The Claimant in this workers' compensation case 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 truck incident was the cause of the torn meniscus. The inference from the facts proved must be the more probable hypothesis. *Burton v. Holden & Martin Lumber Co.*, 112 Vt. 17 (1941).
3. Claimant has failed to sustain her burden of proof. No record close to the time of the incident corroborates her testimony that she injured her knee when she got out of the truck on April 1, 2005. No witness corroborated her testimony about knee complaints after April 1. The only incident described in the medical records is the one where Claimant was walking and her knee gave way.
4. It is possible that Claimant hurt her knee when she got out of truck. However, with no corroboration of symptoms at that time and clear medical records describing the condition as degenerative, no more than a possibility has been proven. Under the clear precedent of *Burton*, that is an insufficient basis for an award.

## ORDER:

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

Dated at Montpelier, Vermont this 4<sup>th</sup> day of January 2007.

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Patricia Moulton Powden  
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.