Coburn v. Pompanoosuc Mills Corp. (July 11, 2003)

STATE OF VERMONT
DEPARTMENT OF LABOR AND INDUSTRY

Lisa Coburn	)	State File No. P-07870
	)	
	)	By: Margaret A. Mangan
v.	)	Hearing Officer
	)	
Pompanoosuc Mills Corp.	)	For: Michael S. Bertrand
	)	Commissioner
	)	
	)	Opinion No. 32-03WC

Hearing held on March 31, 2003
Record closed on April 28, 2003

APPEARANCES:

Andrea Gallitano, Esq., for the Claimant
John W. Valente, Esq., for the Defendant

ISSUE:

Did the Claimant's headaches arise from the work-related injury she sustained on September 22, 1999?

EXHIBITS:

Joint I: Medical, Vocational Rehabilitation and Department Records

Claimant's 1: Deposition of Morris Levin, M.D.
Claimant's 2: CV of Dr. Levin
Claimant's 3: Affidavit of Attorney Fees

FINDINGS OF FACT:

1. At all times relevant to this action, the Claimant was an "employee" of Pompanoosuc Mills Corporation ("PMC") and PMC was her "employer" within the Workers Compensation Act.

2. On September 22, 1999, Claimant was working at the PMC factory finishing furniture. Some time in the afternoon, she and a co-worker were moving a finished credenza to a storage area. While holding her side of the credenza with

3. Claimant reported the incident and was told by her supervisors to go to the hospital and seek medical attention. She drove herself to Dartmouth Hitchcock Medical Center.

4. The record shows only that she was treated for her injured shoulder at the hospital. The hand written notes of Lisa Hegel, ARNP, who saw the Claimant state: "helping someone lift a heavy object (credenza). The object started to slip or the other person let go-Lisa tried to stop it from falling with her arms over her head (reaching), C/o pain over right A-C joint area and sore feeling over entire right shoulder."

5. The Claimant was treated for her shoulder injury, her arm was put in a sling, and she was released with a "no-lifting" restriction. She tried to return to work, but was told that there was no work within her restrictions.

6. On September 24, 1999, Claimant had a follow up visit at Dartmouth Hitchcock. The notes reflect complaints of shoulder problems and sleeping problems. Headaches are not listed as a complaint in the handwritten notes.

7. On September 26, 1999, Claimant was evaluated at the emergency room at Central Vermont Hospital. Those records show her main complaint was a right shoulder injury. There were no complaints of headaches or of an injury to her face found in the report.

8. On September 28, 1999, the Claimant treated with Dr. Davignon, who is an orthopedic specialist. His note states:

   > It is a little unclear about the exact injury. She was moving a piece of furniture with an older employee. It was teetering, it fell back on her. She tried to protect herself, something popped in her right arm…Basically she has had pain in her right shoulder, some vague tingling of the middle 3 fingers of the right hand, nothing on the left…Most of her pain is again in her right shoulder.

9. On November 2, 1999, the Claimant followed up with Dr. Davignon. The notes from this visit indicate that the Claimant was complaining of tunnel vision. Although there was still no complaint of any headaches in the notes, Dr. Davignon referred the Claimant to Dr. Frederick Fries, ordered an MRI of Claimant's right shoulder and stated, "stumped as to what is going on here completely."

10. On November 12, 1999, the Claimant stated to Dr. Fries that pulling on her neck resulted in migraine headache. This is the first time a complaint of headaches had been mentioned by a doctor in the medical records.

11. Notes from later visits with Dr. Davignon on November 15, 1999, and an orthopedist, Dr. Meriam, on November 22, 1999, do not reflect any complaints of headaches by the Claimant.

12. However, the records from a visit to Dr. Meriam on December 30, 1999, to evaluate the MRI, show that the Claimant was experiencing headaches and nausea.

13. A visit with Dr. Asnis, a neurologist, on January 28, 2000, reflects that the Claimant was experiencing headaches, nausea and vomiting. This is the first recorded instance of the Claimant informing a doctor that she is suffering from "a constant headache." Dr. Ansis indicates in his notes: "I think she also has secondary migraine disorder, with a clear history of common migraine in the past."

14. On November 7, 2000, Morris Levin, M.D., saw the Claimant and examined her. Dr. Levin is a neurologist at Dartmouth Hitchcock Medical Center. He has a specialty in headaches and pain. During this visit, the Claimant complained of head pain, nausea, vision changes, dizziness, cognitive changes, and pain to the right arm.

15. The Claimant described the mechanism of her injury by saying that she had been hit by a 500 lb. desk on the right side of her face, forehead and right shoulder on September 22, 1999. Dr. Levin does not know how long after the incident it was until the Claimant was first treated and does not know if she was treated in an emergency room. Dr. Levin has stated that he did not review the notes of her treatment at the emergency room on the day of her injury, nor has he reviewed the entire medical record.

16. Dr. Levin does not know specifically what kind of head injury the Claimant sustained on September 22, 1999.

17. Dr. Levin recalled his examination of the Claimant as follows:

> It consisted of a general examination and neurological examination. Findings included a great deal of cervical muscle spasm and tenderness, particularly tenderness in the occipital cervical notch regions bilaterally. And neurological exam, which was essentially non-focal and essentially normal but the right upper extremity, right arm, was very difficult to examine because she was unable to co-operate due to pain with any movement and any touch. But she did have some changes in the skin of her right hand…The hand itself was warm and clammy, and she told me that it occasionally turned white and I seem to recall that as we spent some time together, I saw some color changes.

18. After completing his examination, Dr. Levin diagnosed the Claimant with post-concussive syndrome, headaches, cognitive changes, mood disturbance, sleep disturbance and reflex sympathetic dystrophy. Dr. Levin describes post-concussive syndrome as a combination of symptoms that arise after a head injury, including headaches, which are the most common symptoms, changes in thinking, changes in mood and behavior, as well as sleep disturbances.

19. Although post-concussive syndrome can occur if one is struck only in the neck and shoulder, the much more typical mechanism occurs when one is struck in the head.

20. Dr. Levin explained that post-concussive syndrome headaches do not necessarily occur immediately after an injury, and may be delayed for several weeks or even a month or two.

21. Dr. Levin does not recall when the Claimant first reported headaches to her previous medical providers. He also does not recall how the Claimant's headache symptoms may have changed or not changed between the day she first started having the headaches and the day that he examined her.

22. Brian Mercer, M.D., a neurologist, conducted a records review of the Claimant's entire medical record for the defense. His review included the notes taken by the Claimant's previous doctors, as well as transcripts from the depositions of Dr. Levin and the Claimant. He never conducted a physical examination of the Claimant.

23. Dr. Mercer's opinion is that the Claimant has a headache disorder that is not related to her work related injury of September 22, 1999. In order to be diagnosed with post-traumatic headache disorder, an individual must suffer from a clear history of head trauma. Dr. Mercer does not believe that the Claimant ever suffered from a direct head trauma, because according to the medical record, she did not mention being hit in the head to any of her doctors, until about six months after her work related accident.

24. According to Dr. Mercer, people who suffer from severe headache disorders usually experience the onset of headaches very shortly after the trauma occurs. The Claimant did not report any headaches until about six weeks after her accident at work on September 22, 1999. Dr. Mercer's opinion is that the long period of time between the work related injury and the report of headaches would be highly atypical of post-traumatic headache disorder.

25. Dr. Mercer has also relied on the results of several tests performed on the Claimant in reaching his diagnosis. There was an MRI scan of her neck done in December of 1999, which was normal. In 2002, there was an MRI scan of the Claimant's head that was shown to be normal. It is possible that patients experiencing post-concussive headaches may have normal MRI's, however. There was a second MRI scan of the neck area, which also came back normal. In October of 1999 there was a nerve conduction study done which was normal. Her examinations neurologically have not shown any reproducible neurological abnormalities.

26. Dr. Mercer cannot determine a good neurological explanation for the Claimant's headaches. In his opinion the headache disorder is not causally related to the injury of September 22, 1999.

27. Dr. Mercer does not believe that there is a clear history of reported head trauma in the Claimant's doctor visits in the latter part of 1999 and early 2000. This makes a post-traumatic headache disorder unusual.

28. Dr. Mercer also does not believe there are any major neck problems or injuries that would cause the Claimant's headaches. On September 28, 1999, at Dartmouth Hitchcock, her neck was described as fairly supple. On October 18, 1999, Dr. Fries noted she had a full range of motion in her neck. On December 30, 1999, Dr. Merriam indicated there was no evidence of cervical injury. In September of 2000, the Claimant had a normal range of motion in her neck. In 2003, during her two visits to the Dartmouth Pain Clinic, she had a full range of motion in her neck.

29. Dr. Mercer has also noted the presence of non-organic findings in his conclusions. The examinations of the Claimant by several doctors showed multiple instances of the doctors not having explanations for what they were seeing. In Dr. Mercer's opinion, this raises questions about the description of the headache problem.

30. Michael Kenosh, M.D., is a physiatrist at the Rutland Regional Medical Center. He deals with chronic pain management, including headaches, on a daily basis. Dr. Kenosh met with and evaluated the Claimant, and also reviewed the medical reports and records from the medical file.

31. Dr. Kenosh has indicated that the mechanism of injury described in the records that he reviewed, differed from what the Claimant described to him at their meeting. Dr. Kenosh believes that the Claimant has given conflicting reports regarding the mechanism of injury. The mechanism of injury seemed to change from a lifting and popping to being struck in the shoulder; then on May 22, 2000, the mechanism became the desk slipping and striking the patient in the head and shoulder. Dr. Kenosh believes that the Claimant changed the mechanism of injury to a falling desk when speaking to Dr. Fries in November.

32. After examining the Claimant and reviewing the records, Dr. Kenosh came to the conclusion that from a neurological standpoint, the Claimant was within normal limits. Dr. Kenosh does not believe that the Claimant suffers from post-traumatic headache syndrome as a result of the work related injury in September of 1999. The largest problem Dr. Kenosh has in attributing the headaches to the work related injury, is that she did not appear to have suffered any head trauma. Without evidence of a concussion, Dr. Kenosh finds it difficult to attribute post-concussive syndrome and headaches to the work related injury.

33. Claimant submitted evidence that her attorney worked 55.59 hours on this case and incurred $626.73 in costs.

CONCLUSIONS OF LAW:

1. In workers' compensation cases, the Claimant has the burden of establishing all facts essential to the rights asserted. *Goodwin v. Fairbanks,* 123 Vt. 161 (1963). The Claimant 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. When a causal connection between an accident and an injury is obscure, and a layperson would have no well-grounded opinion as to causation, expert medical testimony is necessary to establish the claim. *Lapan v. Berno's Inc.,* 137 Vt. 393 (1979).

4. In this case there is a true conflict in the medical opinions provided by several doctors as to whether the Claimant's headaches arise from the work-related injury she sustained on September 22, 1999.

5. The Department has historically examined certain criteria when considering the conflicting medical evaluations and opinions of physicians. These criteria include: (1) the length of time a physician has provided care to the Claimant; (2) the physician's qualifications, including the degree of professional training and experience; (3) the objective support for the opinion that the physician is advancing; and (4) the comprehensiveness of the respective examinations, including whether the expert had available all the relevant records. *Miller v. Cornwall Orchards,* Op. No. 27-97 WC (1997); *Gardner v. Grand Union*, Op. No. 24-97 WC (1997).

6. The Claimant's witness, Dr. Levin, undoubtedly has strong credentials to make his diagnosis of post-concussive syndrome in this case. However certain facts relating to his diagnosis are troubling. Dr. Levin was only able to meet with the Claimant on one occasion. This meeting did not occur until November of 2000, over one year after the Claimant's work related accident. Although Dr. Levin did review many of the Claimant's medical records, the fact that he was only able to meet with the Claimant once, over a year after her accident, creates doubt as to the first criterion set out above (dealing with the length of time a physician has provided care to a patient). Dr. Levin has also stated that he did not review the Claimant's entire medical record, including notes from her original emergency room visit after the injury; this addresses the fourth criterion set out above. He also believed that the Claimant had been struck in the head by a 500 lb. credenza. That belief, however, was not corroborated anywhere by facts in the rest of the record.

7. This doubt is furthered by the fact that Dr. Levin is the only witness put forward by the Claimant who has made a diagnosis of post-concussive headache syndrome, while two other, also well qualified physicians, who have reviewed the Claimant's case, have reached different conclusions. Dr. Kenosh, a pain specialist, and Dr. Mercer, a neurologist, both reviewed the Claimant's entire medical record. Both of these doctors came to a different diagnosis then Dr. Levin, finding that the Claimant was not suffering from post-concussive headache syndrome.

8. Dr. Mercer and Dr. Kenosh had two basic concerns with attributing the headaches the Claimant suffers from to her work related accident. First, there was no clearly identifiable head trauma suffered by the Claimant, and second, according to the medical records the onset of headaches was delayed after the accident. These two concerns address the Department's criterion of finding objective support for a medical opinion (the third criteria mentioned above) when considering conflicting medical opinions.

9. Both Dr. Mercer and Dr. Kenosh considered the fact that there was no identifiable head trauma in the record as very important in making their diagnoses. There was no eyewitness, no report of head trauma at the emergency department visit the day of the accident and no physical evidence of head trauma. With an object as heavy as Claimant said it was, it is inconceivable that it hit her face or head without leaving a mark.

10. In order for a person to be diagnosed with post-concussive syndrome, a person must sustain a head injury that is in the range of mild to severe. Therefore, the fact that there was no clear head injury sustained in the Claimant's work related accident makes it very difficult to attribute the Claimant's headaches to post-concussive syndrome. The lack of evidence of a head injury casts doubt on any diagnosis of post-concussive syndrome.

11. There is also a lack of objective evidence concerning the onset of the Claimant's headaches. Dr. Levin has stated that the International Headache Society has a protocol that in order to diagnose a person with post-concussive headaches they have to have the headaches develop within two weeks of a head injury. Dr. Levin has stated that his opinion differs from the Headache Society's protocol, in that he believes post-concussive headaches may take longer than two weeks to develop. However, even under that theory a delay of six weeks would be excessive, particularly in the absence of head trauma evidence.

12. The first objective, recorded complaint that the Claimant was suffering from headaches is found in Dr. Fries notes from a visit on November 12, 1999. This was about six weeks after the Claimant's accident. The Claimant had seen Dr. Fries, a neurologist, on a previous occasion and there had been no complaint of headaches. Dr. Mercer found this to be very important in making his diagnosis. He believes that it would have been very unusual for Dr. Fries, a neurologist, not to have made an indication of headache complaints in his notes on October 18, 1999. Thus, there were no objective reports of headaches until well after the standard two-week window for post-concussive headaches prescribed by the Headache Society. Dr. Mercer and Dr. Kenosh both relied on this fact in making their respective diagnoses. Based on the objective evidence in the record, it is therefore difficult to attribute the Claimant's headaches to post-concussive syndrome.

13. As previously stated, Dr. Levin, the Claimant's expert, did meet with and conduct an examination of the Claimant. According to the record, he apparently did conduct a thorough examination at that time. However, Dr. Levin has stated that he did not have all the Claimant's medical records available to him at the time he diagnosed her with post-concussive headaches. It was his impression that the Claimant had been struck in the head by a 500 lb. credenza. It is especially important to note that Dr. Levin did not review the records of the Claimant's visit to the emergency room on September 22, 1999. He was also not aware that other neurologists had performed exams of the Claimant. Those examinations, by Dr. Kenosh and Dr. Mercer, both concluded that the Claimant's headaches were not tied to her September 22, 1999 work related accident.

14. With the lack of evidence of head trauma and the delay in the onset of headaches, Claimant has not met her burden of proof in this case.

ORDER:

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

Dated at Montpelier, Vermont this 11th day of July 2003.

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Michael S. Bertrand
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.