

**STATE OF VERMONT
DEPARTMENT OF LABOR AND INDUSTRY**

)	State File No. S-16828
)	
Michele Rivers Osmer)	By: Margaret A. Mangan
)	Hearing Officer
v.)	
)	For: R. Tasha Wallis
Sunset Motor Inn)	Commissioner
)	
)	Opinion No. 52-02WC

Hearing held in Newport on December 10, 2002
Record closed on December 30, 2002

APPEARANCES:

Michele Rivers Osmer, Pro Se
Jeffrey W. Spencer, Esq. for the employer/insurer

ISSUE:

Did the Claimant, Michelle Rivers Osmer, suffer a compensable injury while employed at the Sunset Motor Inn?

EXHIBITS:

Joint I:	Medical records
Claimant's Exhibit 1:	Undated, unsigned letter from Cresta Perkins
Claimant's Exhibit 2:	Statement by Kenneth Osmer
Defendant's Exhibit A:	10/9/02 letter from Attorney Spencer to the claimant
Defendant's Exhibits B-F:	Photographs
Defendant's Exhibit G:	Staff work log January 13 to February 2, 2002
Defendant's Exhibit H:	Time sheets
Defendant's Exhibit I:	Physical therapy put out of work note, February 8, 2002

CLAIM:

Michele Rivers Osmer claims that she injured her back while making a bed at the Sunset Motor Inn in January 30, 2002. She claims that after tucking in a bed, she hit her back on a table near the bed when she straightened up.

FINDINGS OF FACT:

1. Michele Rivers Osmer was an employee and the Sunset Motor Inn her employer within the meaning of the Workers' Compensation Act (Act).
2. At all times relevant to this action Michele Rivers Osmer (Claimant) worked as a housekeeper at the Sunset Motor Inn (Inn). Her employment began on January 24, 2002.
3. Madeline Bourgeois is the owner of the Inn and generally worked at a desk in the reception area.
4. Sandra Lowell supervised the housekeeping staff. She met with them at the beginning of the day when she gave out assignments. She also met with the staff at the end of the day in the laundry room.
5. Housekeepers were assigned to rooms in pairs.
6. On January 30, 2002 Claimant was working with another housekeeper who was cleaning the bathroom while claimant was making the bed at the time of the alleged injury.
7. Claimant said nothing to her coworker at the time she alleges she was injured. In fact, she worked the rest of the day without reporting any incident to anyone at work.
8. When Claimant reported to the laundry room at the end of the day, she exhibited no obvious abnormality in her gait or any signs that she was in pain.
9. Her sister-in-law, Cresta Perkins, picked Claimant up after work on January 30, 2002. Ms. Perkins did not testify at the hearing, although she submitted a letter in which she asserted that the Claimant was barely able to move due to pain when she left the Inn that day.
10. The next morning, January 31, 2002, Kenneth Osmer, Claimant's fiancé, now her husband, called Lowell to report that Claimant was sick would not be in to work. Although Claimant intended to call Mr. Osmer as a witness at the hearing, he left at a break and did not return.

11. On Friday, February 1, 2002, Mr. Osmer called Lowell again and told her that Claimant was going to the emergency room that day and would not be in to work. At the emergency department visit, Claimant reported a twisting injury at work. Physical therapy was prescribed and she was instructed not to work for a week.
12. A friend of the Claimant's took the out of work note to the Inn, although there was nothing in that note to suggest that the problem was work-related.
13. The first time Ms. Bourgeois learned that the Claimant was alleging a work-related injury was in March 2002 when a medical care provider contacted her about the payment of bills. After contacting the insurance carrier for instructions, Ms. Bourgeois filled out and filed a First Report of Injury.
14. Claimant denied ever having back problems, except during labor, until the alleged incident at the Inn. However, her medical records show that she had several incidents of back pain in the past that pre-dated her employment at the Inn.

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. It is the province of the hearing officer to determine the credibility of the witnesses and weigh the persuasiveness of the evidence. See, *Bruntaeger v. Zeller*, 147 Vt. 247, 252 (1986). There is "no obligation to accept, interpret, or apply evidence in accordance with the views of either party. The weight, credibility and persuasive effect of the evidence is for the [fact finder] to determine." *Kruse v. Town of Westford*, 145 Vt. 368, 374 (state board of appraisers as trier of fact).
4. In a work environment where housekeepers worked in pairs, with another worker in the room where the Claimant was allegedly injured, it is inconceivable that claimant would have failed to mention that an injury occurred. Had claimant been injured as she now claims and her sister-in-law wrote in her statement, coworkers would have observed an altered gait or signs of pain. Claimant would have mentioned something at the end of the day meeting in the laundry room. Yet, no such reports were made while the Claimant was at work.

5. Although medical records support Claimant's assertion that she suffered a work-related injury, those records are based on a history lacking credibility and consequently do not support this claim.
6. Without a plausible basis to support her claim, Claimant cannot sustain her 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 30th day of December 2002.

R. Tasha Wallis
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.