

**STATE OF VERMONT
DEPARTMENT OF LABOR**

Donna Pratt)	Opinion No. 69-05WC
)	
)	By: Margaret A. Mangan
v.)	Hearing Officer
)	
Fletcher Allen Health Care)	For: Patricia A. McDonald
)	Commissioner
)	
)	State File No. U-08019

Pretrial conference held on April 21, 2005
Record closed on October 5, 2005
Hearing held in Manchester on September 2, 2005

APPEARANCES:

Theodore F. Robare, Esq., for the Claimant
Wesley M. Lawrence, Esq. , for the Defendant

ISSUES:

Did the claimant sustain compensable injury arising out of and in the course of her employment with Fletcher Allen Health Care in August or November 2003?

EXHIBITS:

Joint: Medical Records

Claimant:

1. Medical Bills
2. Letter from Dr. Woodward dated August 3, 2004
3. Job Description
4. Evaluation 2002
5. Evaluation 2003
6. November 2003 Unit Schedule
7. Incident Report
8. Incident Report dated March 24, 2003
9. Michael Dickinson's Statement
10. List of Job Duties

Defendant:

- A. 2000-2001 Evaluation
- B. FAHC On the Job Injury Policy
- C. Ruth Rudnick memorandum (November 2003)
- D. SAFE Reports (2 pages)

FINDINGS OF FACT:

1. Claimant was an employee in the Bennington Renal Services Department of Fletcher Allen Health Care (FAHC) and FAHC was her employer at all times relevant to this action.
2. Claimant worked as a dialysis technician. Her duties included caring for patients, storing supplies, preparing materials, cleaning machines and maintaining equipment.
3. In August of 2003 claimant was caring for a patient in a room that had a television attached to the wall with a moveable arm. Cindy Levitte worked with claimant on the day claimant alleges she was injured.
4. Claimant treated with Dr. Ronald Woodworth for arm and neck pain in August, September and October 2003.
5. On Tuesday November 11, 2003 claimant's 52-pound dog was hit by a car and needed veterinary care. Claimant left work, went home, put the dog in her car and drove it to the vet. Ruth Rudnick was called in to cover for claimant at work in her absence.
6. On November 12, 2003, claimant began a shift at 5:00 a.m. and worked until 4:30 p.m. During that shift, claimant put away supplies, including boxes of sodium bicarbonate.
7. Claimant did not work on November 13 and 14, scheduled days off.
8. At about 3:30 a.m. on Thursday November 15, 2003, claimant went to an emergency department with the complaint that she had severe pain in her arm, limiting movement. She was treated and told not to work.
9. Claimant returned to the emergency department on November 16, 2003 for neck and right shoulder pain. She reported that the pain had started on Tuesday. Claimant denied any specific incident as the cause of the pain.
10. Later a herniated disc in her neck was diagnosed and claimant had surgery.
11. Claimant claims that she later remembered having been hit by the TV arm back in August of 2003. She also claims that she injured herself while lifting boxes of bicarbonate in November 2003.

12. Not one medical record references a work related injury.
13. Claimant did not report an incident to her employer in August of 2003. A clear policy directs employees on reporting requirements. In fact, claimant had followed the required procedures back in March of 2003 when she reported a work related injury.
14. On November 21, 2003, claimant reported that she had injured herself at work on November 11, 2003. She later changed the date to November 12th.
15. Cindy Colvin, disclosed as a witness for the claimant, was never called to testify.
16. Michael Dickinson, allegedly a witness to the August incident, was disclosed as a witness for the claimant and offered a statement, but was never called to testify.
17. Dr. Woodworth offered an opinion supporting this claim, based on the claimant's history. His records do not include a reference to a work related event.

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 (1962). 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. Before the formal hearing, the defense motion for summary judgment was denied. That ruling was based on two affidavits attached to the claimant's opposition from affiants Michael Dickinson and Cindy Colvin who were not called to testify at hearing.
4. The lack of corroborating evidence by witnesses or contemporaneous medical records, clear proof that claimant had transported a large dog around the time she alleges a work related injury and her failure to report a work related incident in the required manner, even though she had experience reporting a work related injury are factors that combine to defeat this claim. See generally, *Newton v. Fab-Tech*, Opinion No. 13-05 (2005). Claimant's testimony standing alone is insufficient given the totality of these circumstances.

ORDER:

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

Dated at Montpelier, Vermont this 29th day of November 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.