STATE OF VERMONT
DEPARTMENT OF LABOR AND INDUSTRY

	)	State File No. R-03505
	)	
Lonnie Grandchamp	)	By: Margaret A. Mangan
	)	Hearing Officer
v.	)	
	)	For: R. Tasha Wallis
Acadia and Green	)	Commissioner
Mountain Forest Products	)	
	)	Opinion No. 26-01WC

Expedited Hearing Held in Montpelier July 6, 2001
Record Closed on August 9, 2001

APPEARANCES:

Scott Skinner, Esq. for the claimant
Eric A. Johnson, Esq. for the insurer/employer

ISSUES:

Did the claimant suffer a work-related injury at Green Mountain Forest Products on or about July 3, 2000?

EXHIBITS:

Claimant's Exhibit 1:	Medical Records
Claimant's Exhibit 2:	First Report of Injury
Claimant's Exhibit 3:	Transcript of the interview between insurance adjuster and the claimant

STIPULATION

The claimant was disabled from work for a total of 24 weeks, beginning on July 3, 2000.

FINDINGS OF FACT:

1. The exhibits are admitted into evidence and the stipulation is accepted as true.

2. At all times relevant to this action, the claimant was "employee" and Green Mountain Forest Products and its insurer, Acadia Insurance Company, his "employer" as those terms are defined in the Vermont Workers' Compensation Act and Rules.

3. Green Mountain Forest Products (GMFP) has employed the claimant for the past nine years as a laborer. He cleaned the grounds and shop buildings of the business, helped out on the farm and mowed the employer's lawn.

4. Brian Rowell is the President of GMFP and the claimant's supervisor. He owns the house in which the claimant lives. If claimant were not living there, the house would be rented to the public. Claimant did routine maintenance around the house.

5. On cross-examination, the claimant agreed that although he earned $10.00 per hour, he actually received $8.00 because the other $2.00 went to rent.

6. Claimant estimated the monthly rental value of the house at $1,000. However, when he first lived in the house the rent was $300.00 per month plus electricity.

7. Claimant first lost time from work on July 3, 2000. That was his last day of work.

8. Some time before July 2000, the claimant purchased a new toilet for his house on Brian Rowell's account. He and a friend then carried it into the house and put it in the living room where it sat for several months. After he met Tammie, the woman he married on June 26, 2000, he decided to move the toilet from the living room. At some point claimant moved it to the basement. Later he and his brother moved it to an upstairs bathroom. That was on a day when the weather was bad and he left work early.

9. On July 3, 2000 the claimant worked on a site where a building had burned, cleaning debris. He stopped working in the afternoon because it was raining.

10. On July 3, 2000 claimant did not tell any co-worker or Brian Rowell, who was at the site, that he had been injured.

11. When, on July 5, 2000, the claimant sought treatment from Dr. Corrigan for a back injury, he told the doctor he injured his back while lifting a toilet on July 3, 2000.

12. When the claimant spoke with Susan Ward, Acadia adjuster, on August 21, 2000, he told her that he did not work on July 3, 2000. He said that he was off work on July 3 and 4, then returned to work on the 5th when he was injured. He told Ms. Ward that he had injured his back moving a culvert.

13. After his appointment with Dr. Corrigan on July 5th, the claimant told Brian Rowell that he

injured his back and could not work. He did not say he had injured his back at work.

14. A few days later, claimant and his wife went to Maine for their honeymoon. On July 9, 2000 back pain promoted him to seek care at the Southern Maine Medical Center Emergency Room where he related a history of a herniated disc. The examining physician checked "no" for the question asking if there was a recent injury. Other medical records confirm that he had herniated a disc at L4-5 in 1996.

15. On July 17, 2000, now back in Vermont, the claimant had a CAT scan at the Northwestern Medical Center. That scan revealed a herniated disc at the L4-5 level.

16. On a referral, the claimant saw Nancy Binter, M.D., a neurosurgeon, on July 28, 2000. In her note for that visit, Dr. Binter wrote that it was "highly likely" that the herniation would require a discectomy.

17. Shortly after the appointment with Dr. Binter, claimant told Brian Rowell that he had been injured at work. The filing of the First Report followed.

18. The First Report of Injury, dated and signed by Brian Rowell on August 18, 2000, was filed with the Department on August 21, 2000. Claimant and his wife filled out the information on that form, specifying that the accident occurred on July 5, 2000 when he was cleaning up around shop grounds. Specifically it states that the accident occurred when he was lifting steel debris and a culvert.

19. Claimant filed a Certificate of Dependency, Form 10/10S, listing four children.

20. After the telephone interview with the claimant on August 21, 2000, the insurer denied the claim.

21. Although the employer provided health insurance benefits through Blue Cross & Blue Shield (BCBS), that insurer denied coverage on the grounds that this is a worker's compensation claim, even though Acadia, the workers' compensation carrier, also had denied coverage. Eventually BCBS assumed coverage for medical care subject to reimbursement if this claim is deemed compensable.

22. On April 19, 2001, Dr. Binter performed a bilateral laminectomy and discectomy. Claimant recovered well and was able to return to full time light duty work on May 6, 2001.

23. Claimant was often confused as to dates during his testimony. While it may be unrealistic to expect a claimant to remember each precise date in a complex chronology of medical events, this claimant's memory difficulties are more likely a result of fabrication than failure to recall accurately. Such proved to be the case when he was unable to remember having driven a truck into a pond in 1996. And he was not credible when he justified his failure to disclose an accident where he flipped a snowmobile and ended up in a hospital on the basis that he did not consider it a motor vehicle.

24. Claimant submitted evidence of his contingency fee agreement with his attorney and costs

incurred totaling $279.48.

CONCLUSIONS OF LAW:

1. In workers' compensation cases, the claimant had the burden of establishing the facts essential to the rights asserted. *Goodwin v. Fairbanks, Morse and Company*, 123 Vt. 161 (1962).

2. Claimant must establish by sufficient competent evidence the character and extent of the injury or disability and the causal connection between the injury and employment. *Egbert v. The Book Press*, 144 Vt. 367 (1984).

3. Claimant alleges that he injured his back while lifting a culvert at a clean up site on his employer's property on July 3, 2000.

4. In this case, compensability must be determined on the weight of the evidence, and in particular, the credibility of the claimant. Inconsistencies, exaggerations and lack of corroboration combine to undermine this claimant's credibility. To his treating doctor immediately after the alleged incident claimant said he was moving a toilet. To others he said he had been moving a culvert. Yet, the emergency department notes at the Maine Medical Center stated that there was no recent injury. Such widely disparate "histories" on a subject one is not likely to forget seriously challenge the credibility of the claimant.

5. At the clean up site on July 3rd the claimant worked with others, including his employer. Yet no one noticed an accident or any visible signs of injury. *Steimel v. Burgess Electrical Supply*, Opinion No. 64-96WC (Oct. 29, 1996). When claimant filled out information on the First Report, he wrote July 5th as the day of the incident, yet he later changed that date to the 3rd undoubtedly to conform to the date when he and his colleagues cleaned up the burn site. Claimant justifies not having seen a doctor until the 5th by emphasizing that it was a holiday period and he simply spent the time resting in bed. He argued that he is not good with dates. Yet, to remember that an event occurred the day before or the day after a holiday does not require expertise with dates.

6. With the inconsistencies in the claimant's testimony and lack of corroboration, I must reject his contention that he suffered an injury in the course of his employment on July 3, 2000.

7. Claimant argues that this claim would still be compensable even if the department rejects his contention that he injured himself cleaning up the burn site on July 3rd, because such a conclusion would implicate the toilet-carrying incident as the causative mechanism.

8. Any maintenance the claimant did in the house where he was living was not done in the course of his employment with Green Mountain Forest Products. He was not paid for that work. Claimant's and Brian Rowell's relationship vis-à-vis the house was one of landlord-tenant. Nothing in that relationship created an employer-employee relationship out of the living and rental arrangements. Therefore, to the extent that claimant was injured while lifting the toilet, that injury was not work-related.

9. In sum, the claimant has failed to prove that he suffered an injury out of and in the course of his employment with Green Mountain Forest Products in July 2000.

ORDER:

Therefore, Based on the Foregoing Findings of Fact and Conclusions of Law, this claim is DENIED.

Dated at Montpelier, Vermont this 20th day of August 2000.

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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 (county) court or questions of law to the Vermont Supreme Court. 21 V.S.A. §§ 670, 672.