STATE OF VERMONT
DEPARTMENT OF LABOR AND INDUSTRY

Thomas A. Hempstead	)	State File No. P-03214
	)	
	)	By: Margaret A. Mangan
v.	)	Hearing Officer
	)	
Hammond Electric	)	For: Michael S. Bertrand
	)	Commissioner
	)	
	)	Opinion No. 31-03WC

Hearing held in Montpelier on April 1, 2003
Record closed on April 28, 2003

APPEARANCES:

Thomas A. Hempstead, pro se
Christopher McVeigh, Esq., for the Defendant

ISSUE:

Was Claimant's left knee meniscal tear due to his June 1999 work related injury with Hammond Electric?

EXHIBITS:

Claimant's Exhibit 1: Packet of miscellaneous materials

Defendant's Exhibit A: Medical Records

CLAIM:

Medical benefits for the treatment of Claimant's left knee pursuant to 21 V.S.A. § 640.

FINDINGS OF FACT:

1. In June 1999 Claimant was an employee and Hammond Electric (Hammond) his employer as those terms are defined in the Workers' Compensation Act.

2. On June 4, 1999 Claimant worked in a crawl space at a Hammond client's home for several hours. While moving in the tight space, he felt a pinch in his knee. Later in the day, he felt tightness in the knee; the next day, it was swollen.

3. Claimant telephoned the Milton Family Practice, followed instructions he received by phone and, when his symptoms did not resolve, saw an intern, Dr. Andrew Guzman, who was working in the office at the time. On examination, Dr. Guzman detected no swelling in the Claimant's left knee when compared with the right.

4. The symptoms in Claimant's left knee resolved. He did not seek further medical treatment until September 2001. In the interim, his knee did not interfere with his work, activities of daily living, recreational activities or travel.

5. In early September 2001 Claimant mowed the grass at his home with a push lawn mower. Shortly afterwards, he experienced swelling that he described as similar to what he felt two years earlier. However, unlike the situation in 1999, this time Claimant's symptoms did not resolve with conservative treatment.

6. Ultimately a meniscal tear was diagnosed. Leading up to that diagnosis was a visit to his family practice where a two-year history of a work-related injury was noted and the suggestion of an exacerbation of degenerative changes made.

7. Meniscal tears typically follow a twisting mechanism.

8. On December 31, 2001 Dr. Robert Johnson surgically repaired the meniscal tear. His surgical findings indicated that the injury was older than a few months. In one of his notes, Dr. Johnson wrote that there was no way to state that the 1999 work-related situation was not the cause of the problem.

9. After Dr. Victor Gennaro, an orthopedic surgeon, reviewed the records for the defense, he concluded that the meniscal tear diagnosed in September 2001 was not related to any work event in 1999. Based on the symptoms Claimant described in 1999 Dr. Gennaro concluded that he had a muscle injury, not a meniscal tear, at that time. Typically a meniscal tear involves persistent swelling and pain, which does not resolve without surgery. In his opinion, it is unlikely that a tear at Claimant's age would have healed on its own. He also testified that degenerative changes in the meniscus occur at Claimant's age.

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 form the facts proved must be the more probable hypothesis. *Burton v. Holden & Martin Lumber Co*., 112 Vt. 17 (1941).

3. While it is true that every natural consequence that flows from a work-related injury is compensable, it is also true that an independent intervening cause breaks the chain of causation and ends the compensability of the injury. 1 Larson's Workers' Compensation Law, ch. 10 at 10-1.

4. Claimant's theory is that he tore his meniscus on the job in 1999 and that the tear was quiescent until 2001 when persistent symptoms prompted the need for surgery. However, even if he had partially torn the meniscus in 1999, something must have occurred in 2001 to have extended that tear and created persistent symptoms. While it is not known precisely what the latter event or events were, it is clear that the chain of causation from the 1999 injury had been broken. Lawn mowing or activities associated with travel could have produced the requisite twisting mechanism to have caused or extended a meniscal tear.

5. Another plausible explanation, the one advanced by Dr. Gennaro, is that Claimant did not tear his meniscus in 1999, but merely strained a muscle. Under that theory, the meniscal tear in 2001 was separate from any work-related injury in 1999.

6. Under either logical theory, however, the two-year gap in time, an active lifestyle and probable degenerative changes combine to undercut Claimant's theory of an unbroken chain of causation. As such, he has failed to sustain his 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 9th 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.