

STATE OF VERMONT
DEPARTMENT OF LABOR AND INDUSTRY

CHRISTINE TAYLOR)	File No. D-16082
)	
v.)	By: Geoff Crawford, Esq.
)	Contract Hearing Officer
)	
MARRIOTT RESIDENCE INN)	For: Barbara G. Ripley
)	Commissioner
)	
)	Opinion No. 14-93WC

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. This case came on for formal hearing at the offices of the Department of Labor and Industry on July 29, 1993. The claimant was present and was represented by attorney Richard Bothfeld. The employer was represented by attorney Harold Eaton. The hearing officer was attorney Geoffrey Crawford.

2. The record consists of the following:

- a. Medical records submitted by both parties comprising the totality of Ms. Taylor's relevant medical records;
- b. Additional exhibits submitted by the claimant consisting of the following:
 - 1. Statement by Virginia Vermette dated 1/12/92;
 - 2. Letter from the claimant dated 8/29/90;
 - 3. Letter from Nancy Darcy dated 8/31/90;
 - 4. Letter from Ronnie Sandler dated 7/12/93.
 - 5. Letter from Paij Wadley-Bailey dated 7/5/93;
 - 6. Summary of medical bills with attached billing information;
 - 7. Contingency fee agreement between the claimant and her attorney.
- c. Additional exhibits submitted by the employer consisting of the following:
 - a. University Orthopaedic office note dated 5/23/88;
 - b. Note dated 12/10/90 from Roland Hazard, M.D.
 - c. Various medical records;

- d. Records received from Vermont Department of Training and U.S. Social Security Administration.

All exhibits were accepted into evidence and considered by the hearing officer.

3. The following witnesses testified:

For the claimant: Christine Taylor.

For the employer: Nancy Darcy, Robert Ruel.

FINDINGS OF FACT

4. On September 13, 1989, claimant was employed as a housekeeper and custodian at the Marriott Residence Inn (hereinafter the "Inn") in Williston, Vermont.
5. While engaged in her duties, claimant slipped and fell to the ground on an exterior walkway at the Inn. Claimant reported this incident to her supervisor on the day it occurred.
6. Claimant did not report any significant injury to her employer at the time of the incident.
7. Claimant continued to work at the Marriott Residence Inn without significant interruption until March 1990 when she missed a week due to back pain. She returned to her employment after a week of rest.
8. Claimant resigned from her work at the Marriott Residence Inn in May 1990 because of frustration over her job requirements and her desire for a pay raise.
9. Following the termination of her employment in June 1990, claimant's back pain worsened when she was pulling boards off of the floor of her home.
10. The claimant has not been employed since May 1990.
11. The claimant has received medical care from a variety of medical doctors including Johanna Ruess, M.D., Kenneth Ciongoli, M.D., Edward Leib, M.D., and Roland Hazard, M.D. She has also been seen by Peter Upton, M.D. for an independent medical examination.

12. The claimant's medical history includes a head injury suffered in a motor vehicle accident in 1966 and carpal tunnel surgery in 1987. These conditions are not related to the present claim of disabling back pain.

13. The first time the claimant sought medical treatment after the incident on September 13, 1989 was on December 30, 1989 when she was seen at the Fanny Allen Hospital emergency room for pain in her left thigh which she described as occurring while she was "squatting and getting up and down." The notes for this visit contain no indication of back pain.

14. The first time the claimant complained of back pain to a physician after September 13, 1989, was on January 11, 1990 when she was seen again at the Fanny Allen ER. She complained of intermittent right flank pain and pain in her rib cage area in the rear. She attributed this pain to a fall at work in August 1989. (This fall is understood to be the incident on September 13, 1989). The ER visit in January 1990 was the first time that the claimant advised a physician that she had been hurt on the job in a fall.

15. The claimant returned to the Fanny Allen ER on March 26, 1990 for a sharp pain in her right flank which occurred while she was bending over to pick something up. The ER physician diagnosed a back strain.

16. On March 9, 1990, Johanna Ruess, M.D. saw the claimant. Dr. Ruess noted complaints of leg pain without any problems in her joints or back. Dr. Ruess was not able to reach a definitive diagnosis. She concluded that the claimant was "somewhat overloaded with her present work load and that effects the muscles in her lower extremities." She referred the claimant to swimming for exercise.

17. On April 24, 1990, Dr. Ruess saw the claimant again. This time the claimant seemed better. There was still no complaint of back pain.

18. Dr. Ruess saw the claimant again on July 2, 1991, and on January 8, 1993. In her report dated July 2, 1991, Dr. Ruess reported that the claimant fell in September 1989 and "immediately had pain in her arms shooting from her hands up to her shoulders and also felt pain on the right side in her lower back. She was specifically concerned about the pain in her arms because she had had carpal tunnel releases in July of 1987." Dr. Ruess indicated that the claimant continued to work and went to the Fanny Allen

ER about a month after the incident. Dr. Ruess found that the claimant's activities were severely restricted by her pain and that the pain was causally related to her injury at work in September 1989.

19. On July 31, 1990, the claimant saw Edward Leib, M.D. for bilateral arm pain which he described as possible tendinitis. On September 25, 1990, the claimant returned and described pain in her arms (more on the right) and in her right flank. She described the incident when she fell at work a year previously and wondered if this was the cause of her discomfort. Dr. Leib saw the claimant again on February 26, 1992, and took a history of severe disabling pain. He found no physical evidence of a treatable problem and referred the claimant to a behavioral medicine program.

20. On November 7, 1990, the claimant was examined at the Spine Institute of New England. She was found to be mildly depressed and to have severe lifting limitations consistent only with sedentary work.

21. On a follow up exam on November 28, 1990, Roland Hazard, M.D. found no specific anatomic explanation for her pain pattern. He recommended admission to the SPINE intensive program in order to provide physical rehabilitation with behavioral support.

22. The claimant also saw Dr. Ciongoli on January 2, 1991, March 22, 1991, and again a year later on January 23, 1992. Dr. Ciongoli was unable to find anything wrong with the claimant from a neuromuscular perspective beyond some evidence of mild degenerative changes in her spine. He found no evidence of permanent partial disability. The findings of degenerative changes were supported by an MRI exam on 1/20/91 which described "minimal spondylitic changes" without disc herniation or other neurologic impingement.

23. The claimant previously complained of chronic shoulder, neck and back pain of a disabling nature in May and August 1988 prior to her employment by Marriott Residence Inn. She expressed these complaints to James Mogan, M.D. who provided treatment for her carpal tunnel syndrome.

24. Peter Upton, M.D. saw the claimant on February 15, 1993 after having previously reviewed her medical records. Dr. Upton concluded that the claimant suffers from pain and fatigue. He attributed these problems to depression.

CONCLUSIONS OF LAW

25. The claimant bears the burden of proving that an on-the-job injury resulted in an injury which is compensable under the Vermont workers' compensation statute.

26. In this case, the claimant has proved that she fell while at work on September 13, 1989, and that her employer was notified of the incident. The claimant has not proved that any of her subsequent complaints of disabling pain are causally related to the incident on September 13, 1989.

27. The claimant did not seek medical treatment for the incident on September 13, 1989 for approximately four months. After her emergency room visit of December 30, 1989, (when she complained of left thigh pain due to squatting), she sought medical attention on a sporadic basis for approximately six months.

28. The claimant's medical treatment did not begin in earnest until the summer of 1990 (almost a year after the fall at work).

29. There is no credible medical explanation for the range of symptoms and pains which the claimant has suffered since the summer of 1990. There is no credible explanation of any physiological source for the claimant's complaints. There is no credible evidence that the claimant's back pain and other difficulties are related to any physical injury sustained on September 13, 1989.

30. The only medical evidence submitted by the claimant supporting her claim that her condition was caused by a fall at work are the report letters from Johanna Ruess, M.D. dated July 2, 1991 and January 8, 1993. Dr. Ruess's opinion is by necessity based on the medical history she received from the claimant. This history which is set out in detail in the report letter dated July 2, 1991 is of an injury in September 1989 which resulted in immediate pain in her arms "shooting from her hands up to her shoulders" as well on the right side of her lower back. The claimant advised Dr. Ruess that she sought medical attention for these problems about a month after the incident.

31. The medical history submitted to Dr. Ruess by the claimant is inconsistent with the medical records documenting the claimant's complaints during the fall and winter of 1989 and 1990. The first visit to the Fanny Allen emergency room on December 30, 1989, was for left thigh pain with no indication of back or arm pain. The second visit on January 11, 1990, was for right flank

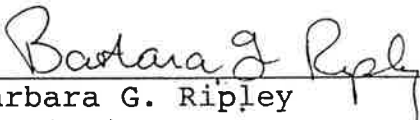
pain and pain in the rib cage area (mid-back). In addition, the claimant has a documented history of prior complaints of neck and back pain dating from a University Orthopaedics visit on May 23, 1988.

32. Dr. Ruess's opinion is found to lack credibility in this particular case because it is based on an inaccurate medical history supplied by the claimant.

ORDER

Since the claimant has not met her burden of proof in this case, her claim for workers' compensation is **DENIED**.

DATED at Montpelier, Vermont this 10th day of October, 1993.



Barbara G. Ripley
Commissioner