

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

Penny Rood)	File No. D-14135
)	
v.)	By: Jill Broderick,
)	Contract Hearing Officer
Brookside Nursing Home)	
)	
)	For: Barbara G. Ripley,
)	Commissioner
)	
)	Opinion No. 15-93WC

Heard in Montpelier, Vermont on June 14, 1993
Record Closed: July 7, 1993

APPEARANCES

Attorney for Claimant - Richard Davis, Jr., Esq.
Attorney for Defendant - Michael DiRusso, Esq.

ISSUES

1. Has the Claimant reached an end medical result with respect to her back injury? If so, when did she reach such a result?
2. Is the medical treatment the Claimant received for such injury reasonable?

THE CLAIMANT SEEKS

1. Temporary total benefits from January 22, 1991, to the present and continuing;
2. Continuing medical treatment;
3. Payment of outstanding medical bills; and
4. Attorney fees and costs.

STIPULATIONS

The parties have entered into the following stipulations:

1. The Claimant was employed by the Defendant, Brookside Nursing Home, on May 19, 1990 and continuing through February 18, 1991.

2. The Defendant is an employer within the meaning of the Workers' Compensation Act.

3. The Travelers is the workers' compensation insurance carrier for the Defendant.

4. The Claimant was out of work from November 28, 1990 until January 16, 1991. She then returned to work until February 18, 1991.

5. The Claimant received temporary total benefits from November 28, 1990 to January 22, 1991.

6. The Claimant's average weekly wage for the twelve weeks preceding the accident was \$217.03, resulting in a weekly compensation rate of \$187.00, plus \$10.00 for her one dependent.

7. On January 22, 1991, the Defendant terminated temporary total payments based on a letter of Dr. Noordsij and the Claimant's return-to-work.

8. The charges for the medical treatment the Claimant received are reasonable; however, the Defendant does not stipulate that the treatment received was reasonable.

9. The Claimant was released to return to work without restrictions on January 15, 1991, by her treating physician, Dr. Noordsij.

10. After the Claimant's third incident of back pain she was again released without restriction on January 22, 1991 by Dr. Noordsij.

11. On February 14, 1991, the Claimant's treating physician, Dr. Noordsij, released the Claimant to return to work stating, "Penny may return to work with the restriction that she lift only what she feels she can, Penny is the only one that can determine this."

EXHIBITS

Claimant's Exhibit 1	Medical records of Dr. Peterson
Claimant's Exhibit 2	Dr. Carr's deposition transcript
Claimant's Exhibit 3	Outstanding medical bills
Claimant's Exhibit 4	Statement of attorney's fees
Claimant's Exhibit 5	Dr. Peterson's deposition transcript
Defendant's Exhibit 1	Medical records
Defendant's Exhibit 2	Transcript of Dr. Weineke's deposition
Defendant's Exhibit 3	Employment Application

FINDINGS

Based on the evidence and testimony presented at the hearing, I find:

1. The exhibits listed above are admitted into evidence.
2. The stipulations set forth above are true.
3. The Claimant worked for the Defendant as a certified nurse's assistant beginning on November 6, 1989.
4. On May 19, 1990, she strained her back lifting a patient from a bed to a chair. She was diagnosed as having a back sprain and treated with Motrin and moist heat.
5. The Claimant remained out of work for three days and then returned to her regular duties with no further symptoms of back sprain.
6. The only back pain the Claimant experienced between May and November of 1990 was a brief incident in July for back pain in connection with a pelvic and urinary tract infection.
7. On or about November 20, 1990, the Claimant again experienced back pain upon lifting a patient while at work, but continued working and completed her shift.
8. On November 21, 1990, the Claimant was treated at the emergency

room at Central Vermont Hospital. The records indicate that she complained of a headache, nausea, and left buttock and leg pain.

9. On November 24, 1990, the Claimant was treated at the emergency room at Dartmouth Hitchcock Hospital, where she was diagnosed as having left leg sciatica.

10. The Claimant saw Dr. Noordsij, an orthopedist, on November 28, 1990, who diagnosed acute low back strain and recommended that she remain out of work.

11. The Claimant again saw Dr. Noordsij on December 7, 1990; he gave her a note to remain out of work and began a decadron taper. On December 17, 1990, Dr. Noordsij gave the Claimant a note that she could return to work on January 15, 1991 with no restrictions regarding lifting.

12. The Claimant returned to work on January 16, 1991, and that day she experienced another incident of back pain lifting a patient.

13. Dr. Noordsij saw the Claimant on January 22, 1991 and stated that "there is no reason medically for her to remain out of work." He again gave her a note stating that she could return to work with no restrictions.

14. On February 14, 1991, at her request Dr. Noordsij gave the Claimant a note stating that she should "lift only what she feels she can." The Claimant performed some light duty work for the Defendant, including feeding patients for a few days.

15. On February 19, 1991, because there was no more light duty work available, the Defendant sent the Claimant home. The Defendant indicated that the Claimant would be contacted if light duty work became available.

16. The Claimant's records indicate at least twelve emergency room or outpatient visits between February 19, 1991 and August 18, 1990; however, the only mention of back pain is in a March 17, 1991 note from the Cottage Hospital in which Dr. Gail Ford stated "Penny is a long standing patient of the Osteopathic Clinic. She is here for (osteopathic manipulative therapy). She has her usual headache and backache."

17. The Claimant's medical records indicate a history of back pain prior to May, 1990. Specifically, the Claimant was treated for "recurrent back pain" in 1978; "persistent back pain" in 1983; lumbosacral back pain in 1985; "one month of back pain" in 1986; lumbar spine tenderness in 1988; back pain in 1989; and back

spasms on May 14, 1990, five days before her first lifting incident at work.

18. At the hearing the Claimant distinguished the back pain prior to May, 1990 from her pain since that time, stating that unlike the current pain, the earlier pain did not involve pain which radiated down her legs. However, the medical records indicate that the Claimant reported such radiating pain in 1985, 1988, and 1989.

19. The medical records also indicate that the Claimant was treated by Dr. Gail Ford for back pain caused by a "short leg syndrome" prior to the first lifting incident in May, 1990.

20. Dr. John Peterson, a general practitioner, performed an independent medical examination of the Claimant on June 4, 1991. He stated that the Claimant did not have a chronic back condition that pre-existed May 19, 1990. He believed that her back pain was due to the lifting incidents at work; however, he did not believe the Claimant had any permanent impairment as a result of such incidents.

21. Dr. Peterson recommended vocational rehabilitation and a functional capacity evaluation, which was performed on October 4, 1991.

22. Dr. Peterson and Dr. Noordsij each concluded that the Claimant's 1990 X-rays and MRI were essentially normal.

23. Dr. Rex Carr, a physician in physical medicine and rehabilitation, first saw the Claimant on January 21, 1993, and ordered X-rays and an MRI. He concluded that the results of those tests were normal and diagnosed the Claimant as having "perpetuated myofascial pain."

24. Dr. Carr opined that the Claimant's back pain is due to the lifting incidents at work. Dr. Carr stated that prior to May, 1990, the Claimant had had periods of short-lived back pain and back pain associated with a urologic problem, but he believed these were different from her current back condition.

25. Dr. Kuhrt Weineke, an orthopedic surgeon, opined that the Claimant has a chronic back pain complaint that preexists the three lifting incidents in 1990 and 1991. He believes that the incidents aggravated the Claimant's back problems, but her condition returned to its pre-May, 1990 status resolved by January 22, 1991 without any permanent impairment.

26. The Claimant testified at the hearing that her migraine headaches have become more frequent since the lifting incident on

May 19, 1990. However, the medical records indicate that the headaches were no less frequent as far back as 1987.

27. Dr. John Milhorat has treated that Claimant for her headaches since 1987. He does not believe the Claimant's back condition affects her headaches.

28. Dr. Carr declined to give an opinion whether the Claimant's migraine headaches had become more frequent since the lifting incidents.

29. Dr. Weineke opined that neither the Claimant's migraine headaches nor her "sleep disorder" were aggravated by lifting incidents.

CONCLUSIONS

Based on the foregoing findings of fact, I conclude the following:

1. In workers' compensation cases, the claimant has the burden of establishing all facts essential to the rights asserted. *King v. Snide*, 144 Vt. 395 (1984). The claimant must establish by sufficient, (competent evidence the character and extent of the injury and disability as well as the causal connection between the injury and the employment. *Rothfarb v. Camp Awanee, Inc.*, 115 Vt. 172 (1949).

2. Dr. Weineke found that the Claimant reached an end medical result on or before January 22, 1991, the date on which temporary total payments were discontinued. Nothing in Dr. Noordsij's records contradicts this conclusion, since he released the Claimant for work on January 15, 1991. In addition, Dr. Peterson believed the Claimant had reached an end medical result prior to June 4, 1991, since he opined that as of that date the Claimant had no permanent impairment. The medical records indicate that the Claimant's complaints of back pain pre-existed the first lifting incident on May 19, 1990. Therefore, I conclude that the lifting incidents aggravated the Claimant's pre-existing back problems, but resolved by January 22, 1991, with no permanent partial impairment.

3. The Claimant seeks payment of bills for medical treatment between March 17, 1991 and May 5, 1993. The Defendant is not responsible for the costs of treatment for the Claimant's migraine headaches or sleep disorder, since the record indicates that they are not related to the work injury. Neither is the Defendant responsible for payment of the X-rays and MRI performed in 1993, since those tests were conducted in 1990. Finally, the Claimant

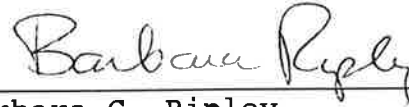
has not shown that the remainder of the treatment she incurred was related to her work injury.

4. The Claimant may be entitled to vocational rehabilitation services; however, these were not an issue before the hearing officer.

ORDER

Therefore, based on the foregoing CONCLUSIONS and FINDINGS the Claimant is not entitled to additional benefits.

DATED at Montpelier, Vermont this 16th day of September, 1993.



Barbara G. Ripley
Commissioner