

Chadwick v. A & T Transmission (May 17, 1995)

STATE OF VERMONT
DEPARTMENT OF LABOR AND INDUSTRIES

Lawrence Chadwick) File #: G-20653
)
) By: Barbara H. Alsop
) Hearing Officer
)
) For: Mary S. Hooper
A & T Transmission) Commissioner
)
) Opinion #: 25-95WC

*Hearing held at Montpelier, Vermont on April 25 and 26, 1995.
Record closed on May 11, 1995.*

APPEARANCES

*Robert M. Fairbanks, Esq., for the Claimant
David J. Blythe, Esq., and Sarah L. Field, Esq., for the Employer*

ISSUE

Whether the claimant suffered a compensable injury on January 14, 1994, while in the employment of A & T Transmission.

THE CLAIM

The only element of the claim to be resolved in this proceeding is the issue of compensability.

EXHIBITS

1. Claimant's Exhibit A. *Progress Report, 4/6/94, Central Vermont Hospital*
2. Claimant's Exhibit B. *Emergency Report, 4/8/94, Central Vermont Hospital, Dr. Rigger*
3. Claimant's Exhibit C. *Prescription, 4/19/94, Dr. Peterson*
4. Claimant's Exhibit D. *Notes, Dr. Peterson, 4/19/94--5/18/94*
5. Claimant's Exhibit E. *Physical therapy reports, 4/19/94--7/27/94 (14 pages)*
6. Claimant's Exhibit F. *Dr. Monsey, 9/28/94--3/20/95*
7. Claimant's Exhibit G. *Dr. Hazard, 9/2/94--9/23/94*
8. Claimant's Exhibit H. *Radiology report, 9/16/94*
9. Claimant's Exhibit I. *Radiology report, 7/8/93*
10. Claimant's Exhibit J. *Notes of Attorney Scott Skinner*
11. Claimant's Exhibit K. *Letter from Robert Clark*
12. Claimant's Exhibit L. *Affidavit of Robert Clark*

13. Claimant's Exhibit M. Statement of Dan Hanson
14. Defendant's Exhibit 1. Claimant's deposition
15. Defendant's Exhibit 2. Radiology report, 7/20/94
16. Defendant's Exhibit 3. Notes, Dr. Cove, 2/22/92--7/26/93 (3 pages)
17. Defendant's Exhibit 4. Patient history questionnaire, Dr. Cove, 7/6/93
18. Defendant's Exhibit 5. Notes, Dr. Peterson (5 pages)
19. Defendant's Exhibit 6. Letter from Cigna to Attorney Scott Skinner, along with cover letter from Mr. Skinner

WITNESSES

For the claimant: Attorney Scott Skinner
Robert Clark
Christopher Hedges
Lawrence Chadwick

For the employer: Robert Clark
Dan Hanson
Wendy Churchill

STIPULATIONS

At hearing, the parties stipulated orally to the following:

1. The claimant, Lawrence Chadwick, was employed by A&T Transmission from January 14, 1994 until April 1, 1994.
2. All exhibits introduced at hearing are admissible.

FINDINGS OF FACT

1. The stipulations entered into are true, and all exhibits are admitted into evidence.
2. Mr. Chadwick had a previous injury under the Workers' Compensation Act in 1992 while he was employed by the Mt. Mansfield Company as a lift operator. He injured his mid-back while loading skiers onto a lift. He sought medical treatment immediately within 24 hours for that injury. He was compensated for his medical bills, and his then employer accommodated his injury by giving him a more sedentary job.
3. In the summer of 1993, when Mr. Chadwick began to have recurring symptoms from his Mt. Mansfield injury after he had resumed working for A&T Transmission, he hired Attorney Scott Skinner to assist him in obtaining physical therapy for his back from Cigna, the insurer for Mt. Mansfield.
4. Attorney Skinner was unsuccessful in his attempts to reopen the Mt. Mansfield matter, although he had not given up all hope in this regard. On January 17, 1994, Mr. Skinner received a telephone call from Mr. Chadwick, who reported that he had reinjured his back the prior Friday at A&T Transmission.

Both men were operating on the assumption that the damage, if any, done in the new incident was a recurrence of the Mt. Mansfield injury. Mr. Chadwick did not seek any medical attention for his new injury.

5. *What actually happened on the prior Friday, January 14, 1994, is a matter of substantial dispute in this case. The claimant testified that he and two co-workers attempted to place a transmission into a vehicle manually, without assistance from the jack designed specifically for that purpose. One of the two co-workers denied that any incident such as described by the claimant occurred. The other co-worker did not testify. By testimony, it is safe to state that the transmission, if one existed, weighed at a minimum 75 pounds, and perhaps as much as 150 pounds, and was of an awkward shape, making maneuvering of it difficult. The claimant stated that, as he lifted it over his head, he felt a pulling and sharp pain in his back. He left the other two to finish the work and attempted to walk off the pain. It is not necessary for purposes of this decision to determine the exact mechanics of the January injury.*

6. *Mr. Chadwick states that he informed the owner of A&T Transmission Robert Clark on the following Monday of his incident, and that Mr. Clark advised him to take the rest of the day off. Mr. Clark has no recollection of such a conversation. Mr. Chadwick did not seek any medical attention at that time for his injury, and was not treated by any physician until April 6, 1994.*

7. *The two sides dispute the occurrences of the period from January 14, 1994, until April 1, 1994. There is no question that the claimant during this time was regularly complaining of pain in his back, and that he was also regularly attributing it to his injury at Mt. Mansfield. There is also evidence that he may have engaged in activities inconsistent with his complaints of pain, including snowmobiling, fishing and hunting. Although there is much dispute about the claimant's alleged accidents while engaging in these activities, I find that these incidents are irrelevant to the decision in this matter.*

8. *There was an incident at the bar known as Shooters in Barre that has an impact on this case. All agree that the evening started at the claimant's home, where he and Wendy Churchill consumed the better part of a pint of whiskey. Thereafter, they went with two others to a bar called Country Cuzzins in East Montpelier. Then they went to Shooters. As they were leaving Shooters, the claimant slipped down the stairs, and it is his injury at that time that is relevant here.*

9. *The incident took place on March 26, 1994. The occasion for the evening's festivities was to celebrate the successful completion of a lawsuit involving the claimant's girlfriend. The claimant has a history of alcohol misuse, and was on parole at the time of this incident for a conviction for driving while intoxicated. According to Ms. Churchill, he was not supposed to be in a bar or it would be a violation of his terms of parole, information she learned that night as she attempted to get medical attention for the claimant.*

10. *The claimant has minimal recall of that night. In fact, his only clear memory is of the nature of the fall. He claims he slipped down the last few steps, and hit his head either on the door at the foot of the stairs, or on the coat rack. He did not fall to the ground until after he hit his head. Beyond the whiskey at his home before the festivities began, he has no recollection of what he drank that evening. This testimony is frankly incredible.*

11. Ms. Churchill was immediately behind the claimant in the walk down the stairs. She averred that the claimant slipped on the third step from the bottom, and fell into the coat rack where he hit his back. Further, he was knocked unconscious by the fall and was out for about three minutes. His head was resting against the bottom step, and his back against the coat rack. Ms. Churchill wanted to call the ambulance, but was deterred by the comments regarding parole. The next Monday, she saw the claimant at work, where he stated that he recalled falling down the stairs, and that his back was sore and black and blue. It was her opinion that the claimant was inebriated that night.

12. Two of the other men at A&T Transmission testified that the claimant showed them black and blue sores on his back in the area just above his belt after the incident at Shooters. Both Mr. Clark and Mr. Hanson stated that the claimant volunteered this information as well as the story of the fall. Logically, this could only have occurred in the last week of the claimant's employment at A&T Transmission.

13. The following Friday, April 1, 1994, the claimant left work at A&T Transmission without any notice, and did not return to work again. He later claimed that he had left work because of increased pain in his back from the January injury, and that he had spoken with Mr. Clark before he left. He stated that Mr. Clark had suggested that he take a few weeks off.

14. Mr. Clark's recollection of the conversation is somewhat different. He attributes to the claimant, with some variations, the statement that "Just between me and you and the fence post, I hurt my back on the snow machine this winter." He claims that this was a spontaneous utterance, apropos of nothing at the time. This testimony is blatantly self-serving and is not credible. Mr. Clark's motivation may well arise from his lack of insurance for this incident.

15. I find that the claimant had an injury to his back at work on January 14, 1994. I am unable to find whether or not that injury led to his need for medical care on or about April 6, 1994. I find that the more probable hypothesis is that the claimant hurt his back in the fall at Shooters, that he worked for one week and determined that the pain was intolerable, and that he sought medical treatment at that time for his most recent injury.

16. The claimant had one other fall that should be taken into consideration. On June 13, 1994, he fell from the roof of his trailer, where he had climbed to adjust his antenna. He reported this fall to his physical therapist, saying that he had fractured his ribs, and would not be able to return to therapy for some time. He in fact returned on July 5, 1994. There are no records admitted into evidence that reference any treatment for this fall, although it appears that Dr. Hazard was aware of it when he examined Mr. Chadwick at the Spine Institute. The claimant denies any additional pain in his back from this fall. I give this testimony no weight, as self-serving.

17. The first diagnostic test that shows any damage to the claimant's spine was the MRI of September 16, 1994. By that time, the claimant had received at least three traumas to his spine since the first of the year. There is no medical report that acknowledges all three traumas, nor is there consequently a report that determines which of the three is the probable cause of the claimant's symptoms or condition.

RULINGS OF LAW

1. *In workers' compensation cases, the claimant has the burden of establishing all facts essential to the rights asserted. Goodwin v. Fairbanks, Morse Co., 123 Vt. 161 (1963). The claimant must establish by sufficient credible evidence the character and extent of the injury as well as the causal connection between the injury and the employment. Egbert v. The 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. *Where the causal connection between an accident and an injury is obscure, and a lay-person would have no well grounded opinion as to causation, expert medical testimony is necessary. Lapan v. Berno's Inc., 137 Vt. 393 (1979). In this case, there is no medical evidence to support the claimant's contention that the injuries he sustained were as a result of the lifting incident at work on January 14, 1994. All of the medical records report the history as given by Mr. Chadwick without making any independent correlation with the findings. It is not enough for the claimant to show that his injuries are consistent with the incident; he must also show that there is a causal connection. This the claimant has failed to do.*

4. *The employer made a motion for dismissal or directed verdict at the close of the claimant's direct case. The basis for the motion was the failure of the claimant to present any evidence that asserted that the damage treated by doctors from April 6, 1994, until the present was causally related to a reasonable degree of medical certainty to Mr. Chadwick's injury at work on January 14, 1994. It is important to note that in none of the medical records is there an indication that Mr. Chadwick ever reported the fall at Shooters or the fall from his roof to any of his doctors. Therefore, even if the doctors had made the connection between the January injury and the subsequent treatment, their connections could have been seriously undermined by the failure to report the more serious fall at Shooters or the subsequent fall from the roof. Under these circumstances, the employer's motion should have been allowed. Even without the motion, the claimant cannot prevail on the facts in this case.*

ORDER

Based on the foregoing findings and conclusions, claimant's claims for workers' compensation disability and medical benefits, vocational rehabilitation benefits and attorney's fees and costs are DENIED.

DATED at Montpelier, Vermont, this ____ day of May, 1995.

Mary S. Hooper
Commissioner