

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

Timothy Snyder)	State File No. H-05090
)	
v.)	By: Margaret A. Mangan
)	Hearing Officer
Eagle Publishing)	
(Bennington Banner))	For: Steve Janson
)	Commissioner
)	
)	Opinion No. 11-99WC

Hearing held in Rutland, Vermont on December 4, 1998
Record closed on December 18, 1998

APPEARANCES:

Sam W. Mason, Esq., for the Claimant
Andrew C. Boxer, Esq., for the Employer

ISSUE:

Did claimant's 1995 injury arise out of and in the course of his employment?

EXHIBITS:

Joint Exhibit I:	Calendar for 1995
Claimant's Exhibit 1:	Medical Records
Claimant's Exhibit 2:	Letter of 11/19/98 to Mr. Kellum (for identification only)
Defendant's Exhibit A:	Medical Records

FINDINGS OF FACT:

1. On September 23, 1993 the Bennington Banner employed claimant as a driver. His responsibilities included loading newspapers into his car, then delivering them to various locations in the area.
2. The bundles of papers that claimant loaded into his car were strapped together with heavy plastic strapping. Two straps, crossed at the top, were wrapped around the length and width of the papers. Claimant loaded the papers by grabbing the tops of the straps with his hand and carrying them to his car. To protect the papers from the rain, plastic bags were placed over them. But those thin plastic bags were not designed to support the weight of the bundle.
3. On September 2, 1994 claimant sustained a back injury at work. The next day, he

reported the incident to his supervisor, then went to the emergency room at the Southwestern Medical Center for treatment. A week later, he saw Dr. Robbins who gave him an out of work note and prescribed physical therapy. Claimant received medical and indemnity benefits for that injury which kept him out of work for three months, after which he returned to work, without restrictions, as a driver-delivery man. No claim was made for permanent partial disability benefits for that injury. Claimant testified that he continued with his work with no real problems and that his back bothered him only occasionally.

4. In March 1995 claimant became ill from drinking contaminated water and lost some time from work. On May 23 he sought treatment at the Southwestern Vermont Medical Center emergency room for generalized abdominal pain. In the notes for that visit, no mention is made of any back pain. The next day he returned to the emergency room for an extension of the out of work note for his abdominal complaints. Again, no mention was made in the May 24 notes that he had any complaints of back pain.
5. Claimant testified as follows: On May 29, 1995 he felt a popping in his back and a sharp pain as he leaned forward while lifting a large bag of papers. He reported the incident to his supervisor who then asked a co-worker, Anthony Rock, to help him load his station wagon. The next day, a relative helped him load and deliver papers. Although he had pain, he continued to work because he was worried that he would be fired if he missed more work. On May 31, before he was to begin work, claimant was called into his supervisor's office and fired. Claimant has not worked since then.
6. Claimant testified further that the pain he experienced was similar to what he had experienced in 1994 and that he was laid up in bed for several days as a result of the May 29 injury. His testimony stands in sharp contrast to a record showing that he worked on May 30 and did not see a doctor for a back problem until August.
7. No one corroborated claimant's testimony that he reported a work-related injury on May 29. Furthermore, the employer had no record that any such report was ever made at or around the time of the claimed injury.
8. Claimant explained that after he was fired, he telephoned the attorney who represented him in a previous workers' compensation claim. The attorney, he said, instructed him to call the doctor who had treated him before. Claimant did not see that doctor until August 8, 1995, a delay that he attributes to the difficulty scheduling an appointment with a busy doctor. Claimant testified further that as long as he did not do much, he was not in any great pain.
9. On June 2, 1995 claimant saw Dr. Robert Hemm with a chief complaint of abdominal distress. The doctor took a complete history and examined claimant. Over the next two months, claimant returned to Dr. Hemm three more times. The doctor did not record a complaint of back pain at any of those visits.
10. Because of the contaminated water in his house, claimant and his wife took the laundry for the entire family, two adults and three children, elsewhere to be laundered. On

August 6 claimant lifted one bag with the entire household laundry, weighing 20 to 25 pounds, when he felt a pop and burning sensation in his back. Claimant testified that the laundry bag weighed far less than what he had lifted at work.

11. On August 8, 1995 claimant saw Dr. Daniel Robbins, an orthopedist, with a complaint of a problem with his low back. In his note for the visit Dr. Robbins wrote that, “he picked up 3/4ths of a bag of laundry, felt a pop in his back and some tightness into the anterior lateral thigh.”
12. Dr. Robbins treated claimant with medications and a referral to physical therapy. In a therapist note for September 5, 1995 is the statement that claimant fell off his bike causing increased pain.
13. In a report dated January 5, 1996 Dr. Harris Snoparsky opined that claimant’s back problems dated back to his 1994 injury. His note reads in pertinent part, “In my opinion based upon my impression, based on the above history . . . this recent injury is a recurrence. I concur with Dr. Robbins who said . . . that this recent injury . . . is related to his original injury.” Dr. Snoparsky had treated claimant back in 1994 when he presented with severe back pain with sudden onset.
14. On September 7, 1996, after talking with claimant, Dr. Robbins corrected his earlier note as follows: “The patient states, from reading the notes, that my description was partially inaccurate regarding the use of laundry type bags. It was not lifting laundry but laundry-type bags with Banner papers in them while at work when he first felt the pop in his back in May 1995. He was trying to get those bags and take them to the Hoosick Falls Post Office. Subsequent lifting of laundry has also given him discomfort.”
15. In a report dated September 13, 1996 Dr. Snoparsky commented that claimant “seems unable to do any kind of extensive work where his low back is involved for any period of time and his low back tends to have spasms.”
16. Dr. Robbins ordered an MRI of claimant’s lumbar spine, done on February 10, 1998 in Troy. The MRI showed a disc extrusion that impinged on a nerve at the L5-S1 level and small protrusions at L3-4 and L4-5.

CONCLUSIONS OF LAW:

1. In workers’ compensation cases, it is the burden of the claimant to establish all facts essential to rights asserted. *Goodwin v. Fairbanks, Morse and Co.*, 123 Vt. 161 (1962). Sufficient competent evidence must be submitted verifying 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); *Rothfarb v. Camp Awanee, Inc.*, 116 Vt. 172 (1950).
2. Where the causal connection between an accident and an injury is obscure and a layperson would have no well grounded opinion as to causation, expert medical testimony is necessary. *Lapan v. Berno's Inc.*, 137 Vt. 393 (1979). 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 hypotheses. *Burton v. Martin Lumber Co.*, 112 Vt. 17 (1941).

3. Claimant argues that his back problems must be related to the May 1995 incident when he was lifting newspapers, an event that he contends is a recurrence of his 1994 work-related injury. Relying on Dr. Robbins's corrected note, he urges the Department to find that only a compensable, work-related incident can explain his current problems.
4. Two crucial factors undercut claimant's theory of the case. First, no contemporaneous medical records exist to substantiate his claim of a work-related injury on May 29, 1995. Even assuming that getting an appointment with Dr. Robbins took three months, claimant was familiar with the use of emergency rooms where he had treated in the past. Had he been in as much back discomfort as he now claims, he probably would have sought medical treatment before August. Furthermore, it defies logic to suggest that he was in as much pain as he had back in 1994 and never mentioned it to the doctor who was treating him for abdominal complaints in June 1995. Second, Dr. Robbins's first note about claimant's back pain after lifting a laundry bag is far more credible than his later corrected note that the lifting occurred at work with laundry-like bags. The office visit which the doctor's first note reflects occurred within days of his lifting a laundry bag. The packages of newspapers claimant delivered did not resemble laundry bags. And claimant's testimony on this subject was less than credible.
5. Accordingly, claimant has failed to meet his burden of proving that he suffered an independent work-related injury in May 1995 or that he suffered a recurrence of his 1994 injury in May 1995.

ORDER:

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

Dated at Montpelier, Vermont, on this 8th day of March 1999.

Steve Janson
Commissioner