

STATE OF VERMONT
DEPARTMENT OF LABOR AND INDUSTRY

Mitsuko Jedlicka)	B-4523
)	
)	By: Jill Broderick
)	Temporary Hearing Officer
v.)	
)	For: Dana J. Cole-Levesque
)	Commissioner
Stratton Mountain)	
School)	Opinion No. 14-91 WC

Heard in Montpelier, Vermont on March 7, 1991
Record Closed: April 1, 1991

APPEARANCES

Attorneys for the claimant - Judy G. Barone, and James P. Carroll.
Attorney for the defendant - John P. Riley.

THE CLAIMANT SEEKS

1. Temporary total disability compensation from July 14, 1988 to September 1, 1989.
2. Permanent partial disability compensation.
3. Medical and hospital benefits.
4. Vocational rehabilitation benefits.
5. Attorney's fees.

ISSUES

1. Did claimant's injuries arise out of and in the course of her employment?
2. If so, what is the extent of claimant's work related disability?

EXHIBITS

Claimant's Exhibit 1	First Report of Injury
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Claimant's Exhibit 2	Notice and Applications for Hearing
Claimant's Exhibit 3	Additional Wage Statement
Claimant's Exhibit 4	Defendant's letter of 2/28/91 regarding wages.
Claimant's Exhibit 5	Permanent impairment rating letter of Dr. Bucksbaum dated 10/16/89
Claimant's Exhibit 6	Blue Cross/Blue Shield payment statements
Claimant's Exhibit 7	Medical Bills in the total amount of \$77,975.45
Claimant's Exhibit 8	Letter from Blue Cross/Blue Shield dated 2/27/91 regarding lien in the amount of \$67,143.53
Claimant's Exhibit 9	Statement of Attorney's Fees
Claimant's Exhibit 10	Statement of Attorney's Expenses
Claimant's Exhibit 11	Map of the State of Vermont
Claimant's Exhibit 12	Map of Danby, Vermont and surrounding area
Claimant's Exhibit 13	Deposition of Eric Spafford 2/28/91
Claimant's Exhibit 14	Deposition of Allison Reynolds 2/28/91
Claimant's Exhibit 15	Deposition of David Keller, M.D., 2/28/91
Claimant's Exhibit 16	Deposition of Henry Payson, M.D. 2/28/91
Claimant's Exhibit 17	Police Reports
Claimant's Exhibit 18	Letters of Sumner Erbe dated August 16, 1988 and February 6, 1989
Claimant's Exhibit 19	Vocational Rehabilitation summary and statement in the amount of \$1,235.74
Defendant's Exhibit 1	Wage Statement
Defendant's Exhibit 2	773 pages of medical records

Defendant's Exhibit 3	Medical records regarding thumb injury
Defendant's Exhibit 4	Recorded statement of claimant 9/1/88
Defendant's Exhibit 5	Insurance Complaint Form
Defendant's Exhibit 6	Letter from The St. Paul dated 9/20/88
Defendant's Exhibit 7	Agreement between Lisa Eckhardt and the defendant dated 7/22/88
Defendant's Exhibit 8	Affidavit of claimant dated 2/28/89
Defendant's Exhibit 9	Letter from claimant's attorney dated 2/13/91 regarding discovery requests

STIPULATIONS

The parties have agreed to the following stipulations:

1. On July 14, 1988, the claimant, Mitsuko Jedlicka, was employed by the defendant, Stratton Mountain School.
2. The defendant was an employer within the meaning of the Workers' Compensation Act on July 14, 1988.
3. The St. Paul was the workers' compensation carrier for the defendant on July 14, 1988.
4. Claimant has received no payments for temporary total compensation or medical bills.

FINDINGS

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

1. The exhibits listed above are admitted into evidence.
2. Claimant was employed as a housemother and dormitory supervisor by defendant beginning in 1978; she had broad general responsibilities, including overseeing the students, caring for the school facilities, and arranging for students from Japan to attend the school.
3. Claimant was a diligent and conscientious employee who exercised initiative and went out of her way to see that the school ran smoothly. Claimant's work hours were flexible, particularly during the summer months. It was not uncommon for

her to work from early morning into the evening.

4. Claimant had authority to make decisions within the scope of her duties without obtaining permission for the headmaster for each such decision.

5. During the summer of 1988 defendant provided lodging and meals for the officials at the Volvo tennis tournament.

6. Claimant's responsibilities during that summer included preparing the dormitory and dining room for the tournament guests.

7. Claimant often used her own car to run errands as part of her job for defendant, including the purchase of supplies.

8. It was not uncommon for her to donate items from her home to the school for the school's use, such as furniture and kitchen equipment.

9. Claimant regularly travelled in her car to and from her home in Danby, where students sometimes stayed with her or where she obtained supplies for the benefit of the school.

10. The morning of July 13, 1988 the claimant spoke with Eric Spafford, who did repairs and maintenance for the school, about preparations for the tournament guests.

11. Claimant told Mr. Spafford that she would pick up some pieces of wood from the construction of her house in Danby so that Mr. Spafford could make "No Parking" signs, and that she would also pick up some paint which she had stored in Danby, which they could use to "touch up" some of the dormitory rooms.

12. On July 14, 1988, claimant traveled on Route 7 from the school to Rutland to purchase some supplies for the school, such as tablecloths and shower curtains.

13. On her way back to the school, claimant travelled off Route 7 on a parallel route in the direction of the school approximately six miles to her house in Danby, which was under construction. She picked up wood for the signs and may have spoken with her builder.

14. Claimant then drove a couple of miles to her apartment in Danby to pick up the paint and some house plants to place in the areas of the school to be used by the tournament guests. She may have fixed herself a sandwich and used the bathroom.

15. After stopping to get the supplies the claimant continued on her route back to the school and was involved in an automobile accident, in which a drunk driver swerved into the opposite lane and hit claimant's vehicle head on.

16. As a proximate result of the accident, claimant suffered very, very severe injuries: laceration of the right eyelid, laceration of the left elbow with a transection of the ulnar nerve at the elbow plus a fracture of the olecranon, fracture of

the left first metacarpal, fracture/dislocation of the left hip with a contusion of the left sciatic nerve, right tibiofibular fracture, loose dental cap and a laceration into the right knee joint, rib fracture and cardiac contusion possibly also with a ventricular defect of her heart.

17. She was taken to the Rutland Regional Medical Center where she remained until September 9, 1988, undergoing multiple operations. She was then transferred to a nursing home, where she stayed for five months.

18. Claimant made a number of inconsistent statements in her deposition of March 31, 1989, her affidavit of February 28, 1989, and the recorded telephone interview with Allison Reynolds of the St. Paul Insurance Company on September 1, 1988, regarding the details of her actions immediately prior to the accident.

19. Specifically, there is some conflicting evidence on the following issues: (1) whether claimant stopped at her apartment or just at her house; (2) exactly how long claimant spent at each stop; and (3) whether she spoke with Sumner Erbe, the headmaster, on the day of the accident about her plans to travel to Rutland.

20. Claimant was born in Japan, and her primary language is Japanese. As she states in her affidavit, she is "sometimes unfamiliar with particular English language distinctions." Claimant's use of English is frequently unorthodox and unintentionally inaccurate.

21. Due to the severe trauma of the accident claimant also had some memory loss with respect to events on the day of the accident. Dr. Keller indicated that claimant may have some cognitive impairment due to a brain injury at the time of the accident, but that was not able to be clearly determined.

22. Claimant's testimony at the hearing was consistent and credible. It was extremely difficult for her to discuss the events surrounding the accident, but she did so clearly.

23. To the extent claimant has made prior statements inconsistent with the foregoing findings, they are either immaterial or outweighed by her testimony at the hearing.

24. Claimant was unable to work from the date of the accident, July 14, 1988, through September 1, 1989 due to her injuries.

25. Claimant's salary for 12 weeks prior to the accident was \$4,667.28 plus a Stratton Mountain Ski Resort pass valued at \$650.00.

26. As result of her injuries, claimant was unable to do the work which she had done for defendant prior to the accident. The residual effect of these injuries, and particularly her inability to drive a vehicle, made it difficult for her to obtain suitable alternative employment. Thus, the claimant sought and received vocational rehabilitation services from the

State of Vermont Division of Vocational Rehabilitation.

27. As a result of such services, claimant's driver's license was reinstated, she began driving herself to work, and she became more vocationally independent.

28. The cost to the State of Vermont for the rehabilitation services was \$1,235.74.

29. Mark Jay Bucksbaum, M.D., found claimant to have a 70% permanent impairment of her left upper extremity and a 15% impairment of her left lower extremity. Dr. David J. Keller, claimant's surgeon, believes this impairment rating is reasonable.

30. Dr. Henry Payson, a psychiatrist, testified that claimant suffers from reactive depression and post-traumatic pain as a result of the accident. He stated that at times claimant not only has not been able to function in her job, but has not even been able to pursue normal interest in everyday life.

31. Dr. Payson testified that claimant is a "lot better" but has not reached a medical end result with respect to her mental injuries.

32. Claimant continues to suffer pain from her physical injuries. Physicians at Massachusetts General have recommended that she undergo surgery to alleviate some of the pain. On the advice of her physicians in Rutland, however, claimant has postponed such surgery and is trying pain medication for six months.

33. Blue Cross/Blue Shield is entitled to a lien on any award in this case in the amount of \$67,143.53, as itemized by Claimant's Exhibits 6 and 8.

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).

2. 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., 116 Vt. 172 (1949).

3. The extent of the claimant's temporary and permanent disability with respect to her physical injury are established by the uncontroverted testimony of Drs. Keller and Bucksbaum. This case shall remain open for the purpose of determining any permanent disability in connection with psychological injuries.

4. The only remaining dispute is whether claimant's trip to

her house and apartment in Danby, and, concomitantly, the accident, occurred in the course of her employment. Defendant maintains that claimant's trip to her home and apartment was a deviation from her business trip, taking her outside the scope of her employment at the time of her accident. It is not clear from the evidence whether the claimant, in fact, even conducted any personal business at her home or her apartment on the day of the accident. She may have spoken to her builder at her house and may have made herself a sandwich at the apartment. Assuming, arguendo, that she did both of these, her trip to her home and apartment was still clearly within the course of her employment. The "dual purpose" rule provides that "injury during a trip which serves both a business and personal purpose is within the course of employment if the trip involves the performance of a service for the employer which would have caused the trip to be taken by someone even if it has not coincided with the personal journey." 1 Larson, Workmen's Compensation Law §16.00. The test for the dual purpose rule was stated by Judge Cardozo as follows: "If the work of the employee creates the necessity of travel, he is in the course of his employment, though he is serving at the same time some purpose of his own." Marks Dependents v. Gray, 251 N.Y. 90 (1920). The claimant's job created the necessity of obtaining wood for the "No Parking" signs, the houseplants and the paint in preparation for hosting the Volvo tournament guests. At the very least, this business motive was a concurrent cause if not the sole cause of the claimant's trip to her house and apartment. The trip satisfies the dual purpose rule. The accident, therefore, occurred within the course of the claimant's employment. See also, Holmquist v. Mental Health Services of Southeastern Vt., 139 Vt. 1 (1980).

5. The claimant has prevailed on her claim and is not responsible for any delay in this matter. She is entitled to and award of attorneys fees in the amount of 20% of the award not to exceed \$3,000.00 Morrisseau v. Legac, 123 Vt. 70 (1962); Workers' Compensation Rule 11.

6. The vocational rehabilitation services were reasonable and necessary.

7. Blue Cross/Blue Shield has paid some of the claimant's medical and hospital bills and is entitled to reimbursement.

ORDER

Therefore, based on the foregoing CONCLUSIONS and FINDINGS St. Paul Insurance Company or in the event of its default Stratton Mountain School is hereby ORDERED to:

1. Pay the claimant temporary total disability for the period from July 14, 1988 to September 1, 1989;


2. Pay the claimant 182.75 weeks of permanent partial disability compensation;

3. Pay the claimant's medical and hospital benefits accrued up to the hearing date and reimburse Blue Cross/Blue Shield for

payments it has made on the claimant's behalf;

4. Continue to pay the claimant's reasonable and necessary medical expenses causally related to her July 14, 1988 injury including but not limited to treatment of her mental and/or emotional injuries; as well as any additional periods of temporary total or partial disability related to the injury;
5. Reimburse the State of Vermont for the costs of vocational rehabilitation services in the amount of \$1,235.74;
6. Pay the claimant her costs;
7. Pay attorneys fees in the amount of \$3,000.00.
8. The claimant has not reached an end medical result with respect to her mental injuries. Therefore, this case shall remain open to allow for a determination of any permanent disability with respect to such injuries.

DATED at Montpelier, Vermont this 16th day of June, 1991.



Dana J. Cole-Levesque
Commissioner