

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

)	State File No. G-5645
)	
Rodger Pearson)	By: Margaret A. Mangan
)	Hearing Officer
v.)	
)	For: R. Tasha Wallis
Grimes, Inc.)	Commissioner
)	
)	Opinion No. 04-01WC

Hearing Held in Montpelier on September 1, 2000.
Record Closed on October 17, 2000.

APPEARANCES:

William P Neylon, Esq. For the claimant.
John W. Valente, Esq. For the defendant.

ISSUES:

Is the claimant's current back condition the result of a recurrence of his 1993 work related injury?

THE CLAIMANT SEEKS:

1. Medical Benefits.
2. Interest from the date at which the employer's obligation to pay compensation began.
3. Attorney's Fees and Costs.
4. Temporary Total Disability Benefits.
5. Permanent Partial Disability Benefits.

EXHIBITS ADMITTED:

Joint Exhibit I:	Medical Records.
Joint Exhibit II:	Transcript of the Deposition of Joseph Vargas, M.D. volume I.
Joint Exhibit III:	Transcript of the Deposition of Joseph Vargas, M.D. volume II.
Joint Exhibit IV:	Transcript of the Deposition of James Campbell, M.D.

STIPULATION:

1. The claimant was an employee and the defendant his employer as those terms are defined in the Workers' Compensation Act and Rules.
2. The hearing officer may take judicial notice of all official Department forms filed in this action.

FINDINGS OF FACT:

1. The claimant was born on November 16, 1959. On September 13, 1993, he worked for Grimes, Inc. in Morrisville, Vermont, a business engaged in landscaping and excavation.
2. While washing and waxing one of the employer's vehicles on September 13, 1993 the claimant was wiping the roof of the cab of a pickup truck when he slipped and fell. He testified that in the process, he hit the running board of the vehicle that broke off because of rust. He explained that he then fell to the cement floor landing on his back.
3. Almost immediately, the claimant's right knee began to swell and became quite painful. He was driven to the emergency room at Copley Hospital in Morrisville where Dr. Leonard Jennings saw him. According to the emergency room note, the claimant said that he struck his knee on the running board of the pickup. He complained of kneecap pain, which was the focus of the visit. The diagnosis was "knee trauma-contusion." An x-ray of the knee showed no fracture; a MRI of the knee demonstrated a small joint effusion. There is no mention in the emergency on record of any complaint of back symptoms.
4. After Dr. Jennings saw the claimant on several occasions, he performed arthroscopic surgery on his knee on October 11, 1993. However, the claimant's knee pain persisted. On December 13, 1993 Dr. Jennings operated on the claimant's knee again, this time to excise scar tissue from the original surgery.
5. At his December 29, 1993 office visit, Dr. Jennings noted that the claimant was improving slowly, although he still had a "fair bit of swelling and induration around the incision." His note reflected the pathology report that showed nerve fibers "consistent with a neuroma."
6. On January 20, 1994, at the request of CIGNA, the employer's workers' compensation insurance carrier, Dr. John Johansson evaluated the claimant. Dr. Johansson's examination revealed cool toes on the claimant's right foot compared with the left, although he had good pulses. He diagnosed post-operative surgical neuroma possibly causing reflex sympathetic disorder, locally in and around the knee with some vascular effect in the toes.
7. Because his symptoms persisted, the claimant was next referred to Dr. Douglas Campbell who saw him on March 10, 1994. Dr. Campbell then surgically removed a synovial cyst from the claimant's right knee on April 19, 1994.

8. On June 1, 1994 Dr. Campbell determined that the claimant had no “current evidence for reflex sympathetic dystrophy (RSD).”
9. On July 6, 1994 Dr. Campbell again suspected RSD or a small neuroma based on claimant’s complaints of tenderness in the quadriceps and numbness in the foot, although he did not have tenderness in the knee.
10. When Dr. Campbell saw the claimant again, on September 7, 1994, the claimant reported that he had more pain with physical therapy. Ultrasound and electrical stimulation had not helped him. The doctor noted some atrophy of the quadriceps muscle and the claimant reported a “buzzing” sensation with palpation of the knee.
11. The claimant continued to follow up with Dr. Campbell in 1994 and 1995. In July 1996 Dr. Campbell gave the claimant a permanent partial disability rating of 18% of the lower extremity.
12. The next time Dr. Campbell saw the claimant was on December 28, 1998. The claimant reported right calf weakness, and pain that “shoots to the region of the right hip.” With certain activities, the claimant reported that his right foot became numb. Dr. Campbell’s examination revealed atrophy throughout the entirety of the right calf when compared to the right, production of the pain in the right buttock with palpation and a positive straight leg test.
13. At that time, Dr. Campbell reviewed an X-ray taken by Dr. Langone, a chiropractor whom the claimant had seen in the fall of 1998. The claimant had a normal appearing X-ray with the exception of some sclerosis noted about the facet joints at L 4-5. Dr. Campbell suspected a herniated disc at L5-S1 and ordered a CT scan from L3 to S1 of the claimant’s back.
14. As a result of Dr. Campbell’s evaluation that the claimant’s back was involved, he referred the claimant to Dr. Joseph Vargas in Rutland who first saw the claimant on February 16, 1999. In a questionnaire the claimant completed at the time of that visit, he wrote that the onset of his lower back, right hip, leg and knee symptoms was gradual over the previous four months.
15. Dr. Vargas diagnosed the claimant with a large disc herniation at L5-S1 on the right with radiculopathy. He noted at the first visit that the claimant had foot drop, meaning that he was unable to lift his foot, resulting in a “slap gait.” On March 9, 1999 Dr. Vargas performed a laminectomy and discectomy at L5-S1 on the right.
16. After the claimant was able to return to work in 1995 he first started working on his own running a business dealing in knick-knacks and antiques. He did this for approximately two years. Later he worked at a mail sorting facility in Rutland, for a dry cleaning operation and for Billings Motor in Rutland as a mechanic.
17. The claimant testified that his hours of work were reduced in the fall of 1998 and ultimately he stopped working completely in December 1998 and has not returned to work since.

Causation

18. Dr. Vargas opined to a reasonable degree of medical certainty that the disc herniation was part of the original injury in 1993 but just did not become obvious until 1999.
19. In Dr. Vargas's opinion, the early diagnosis of reflex sympathetic disorder, which would very rarely follow arthroscopy, was not correct when it was made in 1993 and 1994. He based his opinion on his belief that the claimant had been complaining of numbness and tingling "right along" since the 1993 injury, although it was not obvious to the physicians who were treating him. He thought that the spinal injury was occult for years, worsened and then became obvious when the foot drop developed.
20. Dr. Johansson opined that the work injury of 1993 was not the cause of the claimant's back symptoms in 1998, particularly since there is no indication of any injury to the back in 1993. He believes that the problems the claimant had up to 1996 were anatomically related to the knee, not the back. In his opinion, it was the claimant's subsequent work that led to back problems.

CONCLUSIONS 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 (1962). He 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). 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).
2. Dr. Vargas presented a thoughtful theory of causation linking the claimant's back symptoms to his injury in 1993. However, several factors when considered together render that opinion one merely that of speculation and therefore insufficient to support an award in favor of the claimant.
3. First, the records created contemporaneously with the injury make no mention of a back injury. Although his symptoms persisted, they were quite localized to the knee area. Second, although his physicians diagnosed a neuroma and reflex sympathetic dystrophy for which neurologic symptoms are expected, there is nothing specific in their notes to suggest that the claimant had symptoms consistent with an L5-S1 disc herniation at the time he injured his knee. The third and crucial factor is that more than two years passed from July 1996 to the fall of 1998 when the claimant did not see a physician. During that time, he did work that could have stressed his back. Fourth, when he saw Dr. Vargas, the claimant himself described a recent onset of back symptoms suggesting that more recent events led to the back symptoms.

4. Because the claimant has proven only a possible connection between the 1993 injury and his back problems, he cannot prevail.

ORDER

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

Dated at Montpelier, Vermont this 31st day of January 2001.

R. Tasha Wallis
Commissioner

Appeal:

Within 30 days after copies of this opinion have been mailed, either party may appeal questions of fact or mixed questions of law and fact to a superior (county) court or questions of law to the Vermont Supreme Court. 21 V.S.A. §§ 670, 672.