

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

)	State File No. P-20585
)	
Melanie Griffiths)	By: Margaret A. Mangan
)	Hearing Officer
v.)	
)	For: R. Tasha Wallis
Workers' Risk Services/ Burlington Center for Antiques)	Commissioner
)	Opinion No. 25-01WC

Hearing Held in Montpelier on February 16, 2001
Record Closed on March 12, 2001

APPEARANCES:

Ron Fox, Esq. for the claimant
Phyllis Severance, Esq. and Jeffrey W. Spencer, Esq. for the insurer/employer

ISSUES:

1. Is the claimant's current back condition the result of an injury, which arose out of and in the course of her employment with Burlington Center for Antiques on May 26, 2000?
2. If so, to what benefits is the claimant entitled?

EXHIBITS:

Plaintiff's Exhibit 1:	Medical Record
Plaintiff's Exhibit 2:	Transcript of deposition of Laura Ehrhart
Defendant's Exhibit A:	Fax sent by claimant to employer
Defendant's Exhibit B:	Handwritten note dated August 27, 2000 signed by Carol Landerl

CLAIMANT SEEKS:

1. Temporary total disability compensation pursuant to 21 V.S.A. § 642
2. Temporary partial disability compensation pursuant to 21 V.S.A. § 646
3. Permanent partial disability compensation pursuant to 21 V.S.A. § 648
4. Medical and hospital benefits pursuant to 21 V.S.A. § 640; and
5. Attorney fees and costs pursuant to 21 V.S.A. § 678 (a).

FINDINGS OF FACT:

1. The exhibits are admitted into evidence.
2. The claimant began working for the Burlington Center for Antiques (“Center”) on April 10, 2000. She was an employee and the Center her employer as those terms are defined in the Vermont Workers’ Compensation Act and Rules at all times relevant to this action. Claimant had worked in retail for about 15 years at various stores before working for this employer.
3. In May of 2000 claimant’s average weekly wage was \$284.75.
4. Laura Ehrhart owns the Burlington Center for Antiques where she rents space to antique dealers. Her manager Diane Vincent runs the day to day operations. It was Ms. Vincent who interviewed the claimant and offered her a job.
5. The Center is located in a two story building with about 10,000 square feet of retail space, which has a mix of antiques including glass and furniture. Work there involves moving heavy objects.
6. At the end of May, claimant and Ms. Vincent worked together to reorganize the store and make room to allow more than one person to stand behind the sales counter. Although the store opened at 10:00, the staff began working at 9:30. During that week, however, claimant arrived at work at 9:15 and marked her time card accordingly.
7. On Friday, May 26, 2000, claimant and Ms. Vincent moved a showcase that proved particularly difficult to manipulate. For instance, they had to lift it, then slide a piece of wood under it to make pushing it easier.
8. Neither party called Ms. Vincent to testify.
9. Soon after the women moved the showcase, Carol Landerl, an antiques dealer who sells at the Center, came into the store and spoke with the claimant who gave no signs that she had been injured.
10. Later that day, claimant helped another dealer take a large piece of furniture from a truck and carry it into the store. Before the store closed, Ms. Ehrhart stopped in. She and the claimant discussed the store reorganization, but the claimant mentioned nothing about an injury.
11. When the claimant arrived at work the following Monday, she received a check from Ms. Ehrhart with a note complementing her on how nice the store looked.
12. On May 29th the claimant sent a fax to Ms. Ehrhart asking whether she could receive

13. Claimant continued to work until June 2, 2000 when Ms. Ehrhart asked to speak with her privately and fired her. Claimant then left the store, but said nothing about an injury.
14. During the week after she was fired, claimant spoke with Carol Landerl about a garage sale Ms. Landerl was planning for June 10, 2000. Claimant expressed an interest in placing some of her items in the sale.
15. Claimant's husband and her daughter took a table to the Landerl house in a truck. On Friday, June 9, 2000 claimant and her daughter, Heather, made the trip with the claimant's van to deliver furniture and other items for the sale. Ms. Landerl observed the claimant and her daughter unload the van. Later, claimant carried some boxes up from the Landerl basement. For the rest of that day, claimant and Landerl worked to arrange items and generally set up for the garage sale.
16. Sometime the next week, the claimant telephoned the Aesculapius Medical Center with a complaint of back pain. On June 22, 2000, Carol Green, an adult nurse practitioner, saw her. At that visit, the claimant reported that she had injured her back moving showcases at work. She received a prescription for medication to treat her back spasms and was told to begin physical therapy.
17. On June 29, 2000 the claimant filed a Form 5, Employee's Notice of Injury and Claim for Compensation requesting lost time benefits from June 2, 2000.
18. The claimant testified that she was in too much pain to take a vacation that summer. However, physical therapy records indicate that claimant did not attend during the two weeks she had planned for vacation. And the note from the July 20th therapy visit documents the claimant's statement that she "got into water on vacation and felt good."
19. The claimant presented evidence of her contingency agreement with her attorney, evidence of hours worked on this case and costs totaling \$536.70.

CONCLUSIONS OF LAW:

1. In a worker's compensation claim, it is the burden of the claimant to establish all facts essential to support her claim. *Goodwin v. Fairbanks, Morse, and Co.*, 123 Vt. 161 (1963). 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. The Book Press*, 144 Vt. 367 (1984)
2. There must be created in the mind of the trier of fact something more than a

3. The claimant contends that she injured her back while moving the showcases at work on May 26, 2000, but said nothing to anyone because she thought the pain would go away. She denies that she injured herself while setting up for the garage sale. And she emphasizes that the medical records clearly state that she injured herself while moving the showcases.
4. Several factors combine to cast considerable doubt on the claimant's contention that she injured her back at work on the 26th. Ms. Landerl was in the store, but noticed no signs that the claimant was uncomfortable. Claimant said nothing to her employer when Ms. Ehrhart stopped at the store on the 26th and nothing to her in the fax in which she addressed other job issues. Claimant worked the rest of the day on the 26th performing her usual tasks with no outward sign of any discomfort. She worked the next week, losing no time because of an injury.
5. Claimant did not seek medical care for almost a month and only after she had been fired and did heavy work in preparation for a garage sale. Her statement to the health care providers that the pain was caused by moving showcases is not one that can be accepted as fact in light of the countervailing evidence. If anything, it suggests anger for having been fired. On this record, it would be impermissible speculation to conclude that the claimant suffered an injury in the course of her employment on May 26th, 2000. See, *Burton*, 112 Vt. at 22.

ORDER:

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

Dated at Montpelier, Vermont this 13th day of August 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.