

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

)	State File No. P-20799
)	
Nancy Conrad)	By: Margaret A. Mangan
)	Hearing Officer
v.)	
)	For: R. Tasha Wallis
Central Vermont Hospital)	Commissioner
)	
)	Opinion No. 28-01WC

Hearing Held in Montpelier on March 29, 2001
Record Closed on April 24, 2001

APPEARANCES:

Steven P. Robinson, Esq. for the claimant
Eric A. Johnson, Esq. for the employer

ISSUES:

1. Did Claimant's repetitive strain injury (RSI) arise out of her employment at Central Vermont Hospital?
2. If Claimant fails to establish her claim, can the carrier seek reimbursement of benefits paid under an Interim Order issued by the Department?

EXHIBITS:

Joint Exhibit I:	Medical Records
Joint Exhibit II:	Work Schedule for the first week of February 2000
Joint Exhibit III:	Affidavit of Laurie Newton
Joint Exhibit IV:	Excerpts (pages 40-45) of the claimant's deposition
Claimant's Exhibit 1:	Scheduling Packet
Defendant's Exhibit A:	Transcript of deposition of Marilyn Hart M.D.
Defendant's Exhibit B:	Transcript of deposition of John Peterson D.O.
Defendant's Exhibit C:	First Report of Injury, July 22, 1988
Defendant's Exhibit D:	First Report of Injury, April 10, 1986
Defendant's Exhibit E:	Checklist from CVH Orientation

STIPULATION:

1. At all times relevant to this proceeding, claimant Nancy Conrad was an employee of Central Vermont Hospital, within the meaning of the Vermont Workers' Compensation Act ("Act").
2. At all times relevant to this proceeding, defendant Central Vermont Hospital ("CVH") was claimant's employer, within the meaning of the Act.
3. At all times relevant to this proceeding, Liberty Mutual Insurance Company was defendant's workers' compensation carrier.
4. Claimant is suffering from an injury, which caused her to miss work from March 14, 2000 until April 3, 2000, as well as from April 27, 2000 until September 5, 2000.
5. In lieu of expert testimony the parties have agreed to the admission of claimant's medical records and the sworn deposition transcripts of Dr. John Peterson and Dr. Marilyn Hart.
6. The parties agree to leave open the issue of claimant's present status with respect to her work ability/disability.
7. The parties further stipulate to the admission of the work schedule for the first week of February 2000, pages 40-45 of the claimant's deposition and the carrier's [Laurie Newton's] affidavit.

FINDINGS OF FACT:

1. Stipulations one through four are accepted as true and the exhibits are admitted into evidence. Official notice is taken of all department forms.
2. Since 1984 the claimant has been employed by CVH as a radiology technician. Beginning in 1994 she developed a specialty in mammography. Claimant is certified to perform mammograms. For years before the injury at issue here, she did general x-ray work as well as mammography.
3. Mammography work is strenuous. And the technician performing it must perform a certain number of tests within a finite period of time.
4. The requirements of claimant's job fall into two categories: general x-ray and mammography. General x-ray work involves activities that vary from one patient to the next. The work allows for frequent breaks.
5. There is no downtime with mammography. The stress level is higher than with general x-rays. And the work requires the same movements for each patient, with pushing, pulling and lifting.
6. Claimant had familiarity with the procedure for reporting a work-related injury from two previous claims she made, although neither resulted in lost time from work.

7. In the months preceding the onset of pain, claimant was scheduled for more time in mammography. The amount of time she was working in mammography was increasing over what had become a fairly regular one-week in three rotation.
8. Before the onset of her neck pain, the claimant jogged or walked several days a week. She also engaged in normal housework, gardening, light weight lifting and stretching.
9. Claimant suffers from pain in her neck, a condition that has not been given a diagnosis. That pain began during or around President's Weekend in 2000, a weekend she did considerable housecleaning in preparation for guests.
10. In the days following the holiday, claimant worked four double shifts in mammography. In the three weeks afterwards, she worked in mammography 10 of the 14 working days.
11. Claimant has sought medical care from Dr. John Peterson, Dr. Marilyn Hart and Dr. Jamie Asnis. Dr Jonathan Fenton performed an evaluation for the insurer. Doctors Peterson and Hart testified by deposition in this case. The opinions of Doctors Fenton and Asnis were admitted through their written records.
12. On March 7, 2000 claimant saw Dr. Hart for what she described as increased neck pain and muscle spasm. Dr. Hart prescribed physical therapy.
13. To a physical therapist at a March 13, 2000 evaluation, the claimant complained of severe headaches associated with neck pain, which was "worst in A.M." At that point the claimant had stopped lifting weights and jogging.
14. Claimant was out of work from March 14, 2000 to April 3, 2000. Medical records indicate that her condition improved during that time, although she "overdid" things while gardening.
15. On March 17, 2000 claimant told Dr. Hart that her neck was still bad and she was unable to do her job at x-ray. She and Dr. Hart completed a disability form on which they both indicated that this was not a work-related injury. Dr. Hart concluded that the claimant was suffering from "chronic neck pain [of] no etiology."
16. A note dated March 21, 2000 from the office of John Peterson, D.O. reflects the claimant's complaint of a stiff neck for a month and migraine type headaches, worse at night.
17. On April 19, 2000 Dr. Peterson noted that "mammograms [were] still a problem."
18. On April 20, 2000 Dr. Hart filled out a Managed Care Referral Form on which she indicated that claimant's condition was not work related. There is no indication that this and other managed care forms were available for the department's consideration at the time the Interim Order was issued.
19. In late April 2000 the claimant reported this workers' compensation claim. On April 25, the employer filed a First Report of Injury identifying March 7, 2000 as the date of the accident, which was described as "bilateral strain of shoulders and neck due to repetitive job duties."

20. CVH installed a foot switch in mammography to lessen the stress on the claimant's neck and shoulders. However, claimant's condition did not improve.
21. On April 26, 2000, the claimant stopped working, on the advice of Dr. Peterson, who noted that the previous Monday and Tuesday were hard days at work.
22. On May 24, 2000 Dr. Hart wrote to Liberty Mutual stating that claimant's "neck spasms, headaches and shoulder pain... resulted from a repetitive injury from her work as a mammography technician."
23. Claimant returned to work on September 6, 2000.
24. At her deposition, Dr. Hart opined that a specialist would be better prepared to offer an opinion as to the cause of a repetitive motion injury than she would.
25. On November 15, 2000 Jamie T. Asnis, M.D., a neurologist, wrote a letter to the director of the Department of Imaging at CVH, on behalf of the claimant. Dr. Asnis related her impression that the claimant had a repetitive muscular strain injury "due in large part to performance of mammography as a radiology technician." Dr. Asnis supported the recommendation that claimant perform no more than 5.5 hours per week of mammography with the concern that if "her hours performing mammography are extended, the injury may result in worsening of her condition and ultimately lowered productivity and more lost work."
26. On January 4, 2001 claimant went out on disability for an unrelated medical condition.
27. At his deposition, Dr. Peterson explained that the onset of the claimant's symptoms was insidious and that it developed slowly over time, with the claimant herself becoming more aware of it as time progressed. He agreed that it is possible that house cleaning, lifting weights and gardening could lead to the symptoms claimant had. It is also possible that mammography work could lead to those symptoms. But he could not state with a reasonable degree of medical certainty that mammography work caused the claimant's symptoms.
28. After performing an examination, Jonathan Fenton, O.D. confirmed an injury, but could not make a "clear link between work" and the claimant's neck pain.
29. Based on the history presented to her, Dr. Jamie Asnis expressed her suspicion that claimant's "problem is multifactorial and relates largely due to repetitive strain injury from performance of mammography resulting in cervical strain." Among Dr. Asnis's recommendations was the suggestion that the claimant might benefit from an increase and a change in her tricyclic medications, from amitriptyline to imipramine or nortriptyline.
30. Dr. Asnis saw the claimant once. There is no indication in the materials submitted that she reviewed other medical records or was aware of other opinions. Her opinions were not challenged by cross-examination.

Procedural History

31. A First Report of Injury in this case was filed on April 25, 2000. After receiving an extension to answer, Liberty denied this claim on May 24, 2000. The basis for the denial was "no medical evidence of causal work relationship." Appended to the denial are medical records from Mountain View Medical and Dr. Peterson. In those records are Dr. Peterson's notes that mammograms were a problem and that she had two hard days at work. On July 17, 2000 this department issued an interim order on the basis that the carrier produced insufficient evidence to support a denial. Later, on August 14, 2000 this department approved the Form 27 Notice to Intent to Discontinue Benefits, which was supported by a report from Dr. Fenton.
32. Travelers paid \$17, 258.00 pursuant to the interim order.

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 (1963). The claimant must establish by sufficient credible evidence 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).
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 layperson would have no well-grounded opinion as to causation, expert medical testimony is necessary. *Lapan v. Berno's Inc.*, 137 Vt. 393 (1979).
4. Claimant in this case alleges that she developed a painful neck injury while doing mammography work, a gradual onset injury she contends is compensable under *Campbell v. Savelberg*, 139 Vt. 131 (1980).
5. Claimant argues that she did not realize that the pain was work-related until it had persisted for some time, which is why the work connection did not appear in medical records before April 19, 2000.
6. Claimant supports her theory that this is a work-related injury with medical records indicating that every doctor, including the defense expert, restricted the claimant's time on mammography even though they did not restrict any of her other activities. However, the medical records clearly indicate that she had restricted those other activities on her own. She also points out that modification of the mammography equipment did not solve the problem. Yet, one would expect some improvement in her condition from such a modification had mammography work been the cause.

7. The expert support for the claimant's position is from Dr. Asnis whose opinions were unchallenged by cross-examination. From the language in which her opinion is couched, that she "suspected" a causal link, I cannot conclude that such a link is more probable than not. This is particularly true when her opinion is compared to that of all other physicians, some of whom treated her for some time, but were unable to determine that work was the cause of her problem.
8. Claimant has failed to meet her burden of proof. The weight of the evidence in this case supports the defense position that the cause of the claimant's pain is unknown. That all activities, including work, could have caused the claimant's condition is not proof that work was the more probable cause.

Overpayment

9. The defendant argues that because the claimant has failed to meet her burden of proof, she has been unjustly enriched by \$17,258.00, an amount paid under an Interim Order. Accordingly, the insurer asks this Department to order the claimant to reimburse the carrier for that amount.
10. At the time of the Interim Order, Dr. Hart had expressed unequivocally in a letter to Liberty Mutual that the claimant's symptoms were work-related. In addition, records from Dr. Peterson's office drew the causal connection. It was later as the claimant's condition progressed and physicians rethought their conclusions that both Dr. Hart and Dr. Peterson stepped back from their original theories. Such a change can be expected in a situation with a difficult diagnosis. It is not basis to nullify the interim order and order repayment.

ORDER:

THEREFORE, based on the Foregoing Findings of Fact and Conclusions of Law:

1. The claimant's claim for benefits is DENIED.
2. The defendant's claim for reimbursement is DENIED.

Dated at Montpelier, Vermont this 14th day of September 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.