

Hobbs v. SOV, Dept of Economic Development (July 8, 2004)

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

Bernard Hobbs

Opinion No. 25-04WC

v.

*By: Margaret A. Mangan
Hearing Officer*

*State of Vermont, Department
of Economic Development*

*For: Michael S. Bertrand
Commissioner*

State File No. S-06460

*Hearing held in Montpelier on April 2, 2004
Record Closed on April 27, 2004*

APPEARANCES:

*William B. Skiff, II, Esq., for the Claimant
Keith J. Kasper, Esq., for the Defendant*

ISSUE:

Did claimant suffer a personal injury to his spine by accident arising out of and in the course of his employment with defendant?

EXHIBITS:

Joint 1: Medical Records

Claimant's 1: Letter dated January 2, 2002 from claims manager

CLAIM:

- 1. Payment of medical bills pursuant to WC Rule 40.*
- 2. Permanent partial disability benefits in an amount to be determined.*
- 3. Attorney fees and costs.*

STIPULATION OF THE PARTIES:

1. *Claimant was an employee of Defendant within the meaning of the Vermont Workers' Compensation Act (Act) during the months of September and October of 2001.*
2. *Defendant was Claimant's employer within the meaning of the Act during the months of September and October of 2001.*
3. *On October 2, 2001, Claimant's average weekly wage was \$379.79, resulting in an initial compensation rate of the minimum rate of \$263.00.*
4. *On October 2, 2001, claimant had no dependents within the meaning of the Act.*

FINDINGS OF FACT:

1. *The stipulated facts are accepted as true. Exhibits are admitted into evidence and judicial notice is taken of all Department form.*
2. *Claimant worked maintaining the site and trails at Mt. Independence.*
3. *Because of limited facilities at the site, claimant sometimes took work home where he had electricity, lumber and power tools. If a picnic table had to be repaired, for example, a worker might take the part needing repair home and reassemble it when he took it back to the park. Workers used personal equipment and had wide discretion performing their work because of limited equipment at the site. Despite that wide discretion, however, taking a picnic table home was not something claimant's supervisor or site administrator ever knew about.*
4. *In late September or early October of 2001, claimant caught his leg while clearing brush at the Mt. Independence site.*
5. *On October 2, 2001, claimant was seen in the emergency department for back pain that had begun one week earlier when "he slipped going down his from stairs at home, landing on his low back, and sliding down several stairs." The brush-clearing incident worsened the pain and prompted him to seek medical*

6. *Claimant reported injuring his leg in the brush-clearing incident to his supervisor in early October. On October 16, 2001, Elsa Gilbertson, Regional Site Administrator, completed a Report of Accident for a leg or foot injury after learning about it from another employee and talking directly with the claimant. At the time, claimant said nothing about having taken a picnic table home. In fact, it was a year before Ms. Gilbertson heard that claimant was claiming he had taken a picnic table home.*
7. *A First Report of Injury filed in this Department identifies a right leg injury.*
8. *Claimant underwent a course of treatment for low back pain that included ice, ibuprofen, Vicodin, and epidural injections.*
9. *Claimant's primary care physician, Dr. Cope, identified the cause of the claimant's back pain as the fall down the stairs at home.*
10. *Claimant's testimony that he took a picnic table home and was repairing it when he fell down the stairs is uncorroborated and unsupported by those knowledgeable of work at the site.*
11. *The medical records fail to support claimant's testimony that he had no back problems before falling on the stairs.*

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, 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. *As in other cases where a claimed work related injury was not witnessed, this Department considers the following questions in evaluating compensability: 1) Are there medical records*

4. *In this case, there are medical records contemporaneous with the claimed injury. Those records, however, identify a fall at home as the initial cause. There is nothing to suggest that the claimant had knowledge of the reporting system. However, the work performed is not consistent with claimant's version that he took a picnic table home. And Dr. Cope opined that a fall on the stairs at home was the causative mechanism. On balance, therefore, the credible evidence fails to support this claim.*

ORDER:

Therefore, based on the foregoing findings of fact and conclusions of law, this claim is DENIED.

Dated at Montpelier, Vermont this 8th day of July 2004.

*Michael S. Bertrand
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 court or questions of law to the Vermont Supreme Court. 21 V.S.A. §§ 670, 672.