

*Allen v. Visiting Nurse Association*

*(July 8, 2004)*

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

*Timothee Allen*

*Opinion No. 26-04WC*

*v.*

*By: Margaret A. Mangan  
Hearing Officer*

*Visiting Nurse Association*

*For: Michael S. Bertrand  
Commissioner*

*State File No. T-53217*

*Hearing held in Montpelier on April 8, 2004*

*Record closed on April 26, 2004*

**APPEARANCES:**

*Timothee Allen, pro se, for the Claimant  
Jason R. Ferreira, Esq., for the Defendant*

**ISSUE:**

*Did Timothee Allen suffer a compensable work-related injury on March 7, 2003, resulting in a right wrist scaphoid fracture?*

**EXHIBITS:**

*Joint Exhibit: Medical Records  
Defendant's Exhibit 1: VNA LNA Observational Checklists  
Defendant's Exhibit 2: Curriculum Vitae of Dr. Verne Backus*

**FINDINGS OF FACT:**

- 1. On March 7, 2003, Claimant Timothee Allen was an employee and the Visiting Nurse Association (VNA) his employer within the meaning of the Vermont Workers' Compensation Act (Act).*
- 2. At all times relevant to this proceeding, Liberty Mutual provided workers' compensation insurance for the VNA.*

*3. At all times relevant to this proceeding, claimant worked as a licensed nursing assistant (LNA), providing care in clients' homes.*

4. *On Friday, March 7, 2003, claimant slipped on a client's cement walkway, fell forward and landed with both hands stretched forward. He thought the wrist achiness that followed was from tendonitis and wore a splint that he had worn for previous bouts of tendonitis. He got in his car and drove to the home of the next client, approximately 15-20 miles away, then visited three more clients that day. At those visits, he assisted with bathing, grooming, dressing and undressing, shaving, brushing teeth, preparing food, transferring clients from bed to chair and helping them with range of motion exercises.*
5. *On the Saturday and Sunday after the fall, claimant worked full shifts, assisting clients with bathing, dressing, transferring, walking and wound care. He made two visits on each of the weekend days.*
6. *On March 10, 2003 claimant began a pre-planned vacation, which he spent at home.*
7. *On March 13, 2003, claimant saw Dr. Robert Luebber for a scheduled physical examination. Although the focus of the visit was on other health concerns, claimant told Dr. Luebber that he was having trouble with his wrist. He did not reference a specific event from work or home activities. Dr. Luebber diagnosed tendonitis of the wrist and referred claimant to "orthopedics given his recurrent wrist problems."*
8. *On examination at Associates in Orthopedic Surgery on March 18, 2003, it was noted that claimant had discomfort in both wrists, but no swelling, redness, bruising or deformity in either wrist.*
9. *An x-ray a few days later revealed a right wrist scaphoid fracture.*
10. *Claimant then reported the fall on March 7, 2003 to his employer.*
11. *Dr. Verne Backus, board certified in Occupational and Environmental Medicine, reviewed the medical records in this case and offered an opinion in support of the defense. He opined that the right wrist fracture was unrelated to the fall at*

12. *While Dr. Backus found it highly unlikely that one with an acute wrist fracture would continue to work, he conceded that such a fracture typically follows a fall on an outstretched hand.*
13. *Records from the Associates in Orthopedic Surgery clearly characterize the scaphoid fracture as work-related based on the claimant's description and known mechanism of such a fracture on an outstretched hand.*
14. *Claimant was aware of the VNA procedures for reporting work place injuries and had used them in the past.*

#### **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. *In this, as in other unwitnessed accidents with delayed reporting, this Department weighs several considerations in deciding whether a claim is compensable. First is whether there are medical records contemporaneous with the claimed injury and/or a credible history of continuing complaints. Second, does the claimant lack knowledge of the workers' compensation reporting process? Third, is the work performed consistent with the claimant's complaints? Fourth, is there persuasive medical evidence supporting causation?*
4. *In this case, there is a credible history, although no contemporaneous medical records. Although this claimant was familiar with the reporting system, he did not report the fall to his employer or to his primary care physician the following week.*

5. *The fall described, onto an outstretched hand, is a classic presentation of a scaphoid fracture, a fact with which the defense expert, Dr. Backus, agrees. However, Dr. Backus opined that the injury is not related on the basis that it would be unlikely for one not to have had pain, swelling and weakness after such an injury and that such a fracture would be inconsistent with the ability to work. Claimant has not produced medical evidence to prove otherwise.*
  
6. *On the record as a whole, even if I accept that claimant fell at work on March 7, 2003, I cannot conclude that the fall caused the scaphoid fracture.*

**ORDER:**

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

*Dated at Montpelier, Vermont this 8<sup>th</sup> day of July 2004.*

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*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.*