

W. R. v. General Electric

(May 18, 2006)

**STATE OF VERMONT
DEPARTMENT OF LABOR**

W. R.

Opinion No. 23-06WC

v.

By: Margaret A. Mangan
Hearing Officer

General Electric

For: Patricia A. McDonald
Commissioner

State File No. T-18287

Pretrial conference held March 7, 2005

Hearing Held in Montpelier on November 1, 2005 and December 28, 2005

Records Closed February 16, 2006

APPEARANCES:

Theodore F. Robare, Esq., for the Claimant

John W. Valente, Esq., for the Defendant

ISSUE:

Whether the Claimant's right shoulder and right neck medical conditions are causally related to her work activities at General Electric.

EXHIBITS:

Medical Records

FINDINGS OF FACT:

1. At all times relevant to this complaint the Claimant was an employee and General Electric her employer within the meaning of the Workers' Compensation Act.
2. On May 2, 2003 Claimant injured her left shoulder in the course of her employment and was treated at the emergency department three days later. The carrier accepted the claim for a left shoulder strain and paid the Claimant temporary total disability and medical benefits.
3. The medical treatment that Claimant received after the left shoulder injury included chiropractic treatment with Dr. Diekel.
4. Claimant was out of work from May 2, 2003 until May 27, 2003 when she returned with a light duty capacity.

5. Dr. Cooley, a chiropractor and physical therapist, first saw Claimant on September 17, 2004 when she reported to him a history of pain in her neck and both shoulders.
6. Based on the history received from the Claimant and his treatment of her Dr. Cooley opined that Claimant's bilateral shoulder/neck problems are causally related to her work related injury.
7. Dr. Kenosh, an occupational medicine specialist, has been to the General Electric plant to evaluate Claimant's workspace. He opined within a reasonable degree of medical certainty that Claimant's right shoulder problems are not causally related to her work at General Electric.
8. Dr. Kenosh's opinion is based on the lack of symptoms on the right side in 2003, the confusion about an actual diagnosis, the lack of evidence of nerve compromise and the absence of medical research that would support a causal link between Claimant's work activities and the symptoms she now has.
9. Claimant's symptomatology has eluded a firm diagnosis.

CONCLUSIONS OF LAW:

1. The Claimant has the burden of establishing all facts essential to the rights asserted in this workers' compensation case. *Goodwin v. Fairbanks*, 123 Vt. 161 (1962). He must establish by sufficient credible evidence the character and the 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. The law requires something more than a possibility, suspicion or surmise that the incidents complained of were the cause of the injury in the inference from the facts proved must be the more probable hypothesis. *Burton v. Holden and Martin Lumber Co.*, 112 Vt 17 (1941)
3. Although the Claimant has convinced herself and Dr. Cooley that she has had right-sided shoulder symptoms since the accepted injury in 2003, the medical records do not support those assertions. In fact, those records fail to show any right-sided symptoms for almost a year and a half after her left sided injury. Such a time lag when coupled with work duties that cannot be correlated with her symptoms creates no more than a possibility that work caused her right-sided symptoms. She has not persuaded me with the requisite degree of probability that work was the cause as required by *Burton*.

ORDER:

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

Dated at Montpelier, Vermont this 18th day of May 2006.

Patricia A. McDonald
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.