Riley v. Belden Cable (April 26, 2005)

STATE OF VERMONT
DEPARTMENT OF LABOR AND INDUSTRY

Michael Riley	)	Opinion No. 28-05WC
	)	
	)	By: Margaret A. Mangan
v.	)	Hearing Officer
	)	
Belden Cable	)	For: Laura Kilmer Collins
	)	Commissioner
	)	
	)	State File No. U-10224

RULING ON DEFENSE MOTION FOR SUMMARY JUDGMENT

Craig A. Jarvis, Esq., for the Claimant
Thomas M. Higgins, Esq., for the Defendant

On the theory that claimant exceeded physical limitations imposed by his physicians, the defense urges this department to rule as a matter of law that claimant be denied worker's compensation benefits for a back injury. Claimant opposes that motion.

Both parties rely on medical records and depositions in support of their respective positions.

The undisputed facts are as follows: Claimant first injured his back in an incident unrelated to work on June 16, 2003, an injury diagnosed as a herniated disc that necessitated medical treatment and physical therapy. Because his work at Belden Cable involved heavy lifting and bending, claimant's physician excused him from work while he treated. With no light duty work available, Belden would not accept claimant's return to work until he produced a medical statement releasing him to return to work full duty. Claimant wanted to return to work. On October 13, 2003, Dr. Angier provided claimant with a return to work without restriction note. At that visit, the doctor orally recommended to claimant that he not lift over 25 pounds and avoid prolonged or frequent bending, a recommendation that appears in the note for that visit, but not on the return to work form. Dr. Angier explained that he was advising claimant to use common sense, to get help if needed with heavy objects. He did not see it as a conflict with the "return to work without restrictions" note. Claimant continued to treat for back pain after he returned to work. On December 15, 2003, claimant re-injured his back while lifting a spool of wire at work, the injury that is the basis for this claim. When he was asked at the hospital if he had received treatment or prescription medication in the past 60 days, he wrote "not sure how long it has been, had herniated disk in back a while ago."

Defendant argues that the injury of December 15, 2003 did not arise out of claimant's employment because he was engaged in strictly forbidden behavior at work when he was injured.

Summary judgment is appropriate when the moving party has demonstrated that there are no genuine issues of material fact and it is entitled to judgment as a matter of law. V.R.C.P. 56(c)(3). In determining whether a material fact exists, the party opposing the motion is entitled to all reasonable doubts and inferences. If supported with affidavits or other evidentiary material, allegations made in opposition to the motion for summary judgment are accepted as true. *White v. Quechee Lakes Landowners' Ass'n*, 170 Vt. 25, 28 (1999).

To be compensable, an injury must arise out of and in the course of employment. 21 V.S.A. § 618(1). Even when an injury occurs at work, defendant correctly argues, it may not be compensable, as when a worker was injured when a coworker struck back after he fired a staple gun. *Clodgo v. Rentavision,* 166 Vt. 548 (1997). Defendant argues that in this case, benefits must be denied as a matter of law because claimant was acting outside of the medical release when he lifted the spool of wire.

While there may be some room to interpret the nature of the release Dr. Angier gave claimant on October 13, 2003, it is the claimant's interpretation that controls this motion. Dr. Angier gave claimant a medical release to return to work without restrictions. Claimant was working within that release when he was injured. At most, defendant challenges claimant's interpretation of the release. It has not proven that he is entitled to judgment as a matter or law.

Accordingly, the defense motion for summary judgment is DENIED.

Dated at Montpelier, Vermont this 26th day of April 2005.

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Laura Kilmer Collins
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.