STATE OF VERMONT
DEPARTMENT OF LABOR

Alice Abraham	Opinion No. 16-18WC
v.	By: Beth A. DeBernardi, Esq. Administrative Law Judge
Mountain Communities Supporting Education, Inc.	For: Lindsay H. Kurrle Commissioner
	State File No. KK-61047

RULING ON CROSS MOTIONS FOR SUMMARY JUDGMENT

APPEARANCES:

Kevin Rogers, Esq., for Claimant
Jennifer K. Moore, Esq. and J. Justin Sluka, Esq., for Defendant

ISSUES PRESENTED:

1. Is Defendant entitled to judgment in its favor as a matter of law on the question whether Claimant sustained a compensable work-related injury on January 31, 2018?

2. Alternatively, is Claimant entitled to judgment in her favor as a matter of law on the question whether she sustained a compensable work-related injury on January 31, 2018?

EXHIBITS:

Claimantôs Statement of Undisputed Facts filed September 27, 2018
Claimant's Affidavit executed on September 21, 2018

Claimantôs Exhibit 1:	Production schedule for public service announcements
Claimantôs Exhibit 2:	Script for medication-related public service announcement
Claimantôs Exhibit 3:	Transcript of Claimantôs July 24, 2018 deposition (excerpts)

Defendantôs Statement of Undisputed Facts filed September 24, 2018
Defendantôs Statement of Additional Facts filed October 24, 2018

Defendantôs Exhibit A:	Transcript of Claimantôs July 24, 2018 deposition (excerpts)
Defendantôs Exhibit B:	Claimantôs April 30, 2018 letter to the Department
Defendantôs Exhibit C:	Claimantôs February 10, 2018 written statement
Defendantôs Exhibit D:	Photograph of Claimantôs staircase
Defendantôs Exhibit E:	Medical records

FINDINGS OF FACT:

The following facts are undisputed:[1]

1. At all times relevant to these proceedings, Claimant was an employee and Defendant was her employer as those terms are defined in the Vermont Workersô Compensation Act. *Defendant's Statement of Undisputed Facts ¶ 1; Claimant's Statement of Undisputed Facts ¶ 1; Claimant's deposition at 6-7.*

2. Claimant works for Defendant as a project assistant. Her primary duties include creating public service announcement (PSA) videos. *Claimant's Statement of Undisputed Facts ¶ 4; Claimant's deposition at 5.*

3. Claimant works 32 hours per week, usually Monday through Thursday. Her winter work hours are from 10:00 a.m. to 6:00 p.m. except for about four days per month when her work obligations require extended hours or when Defendant has a work-related evening or weekend event. *Defendant's Statement of Undisputed Facts ¶ 1; Claimant's Statement of Undisputed Facts ¶ 3; Claimant's deposition at 6-8; Defendant's Exhibit B.*

4. Claimant works primarily at Defendantôs Londonderry office. However, she works from her Jamaica, Vermont, home on designated snow days or when working from home is tied to a preapproved assignment or event. *Defendant's Statement of Undisputed Facts ¶ 2; Claimant's Statement of Undisputed Facts ¶ 2; Claimant's deposition at 7-9; Defendant's Exhibit B.*

5. On January 31, 2018, as part of her job duties, Claimant worked on a PSA video promoting the safe handling and storage of prescription medications. *Claimant's Statement of Undisputed Facts ¶ 5; Claimant's deposition at 5-6, 13.* This project included a production schedule (*Claimant's Exhibit 1*), a written script (*Claimant's Exhibit 2*) and various props to demonstrate safe handling methods. *Claimant's deposition at 10-12.* As specified on the production schedule, the video shoot required props including medication bottles and sample storage boxes. *Claimant's Exhibit 1.* Included in the script was a piece of dialogue for an actor called ñLauraò to recite: ñOptions vary from using ordinary fire boxes to special Med Lock boxes.ò The stage direction accompanying this dialogue specified: ñLift óheavyô box.ò *Claimant's Exhibit 2.* The video shoot also made use of several volunteers and some volunteered props. *Claimant's Statement of Undisputed Facts ¶ 7.*

[1] Defendant filed its motion and statement of undisputed facts on September 24, 2018. Claimant filed no response, and accordingly, Defendantôs statement is taken as true for the purpose of its motion. Claimant filed a cross motion and statement of undisputed facts on September 27, 2018, to which Defendant filed a response on October 25, 2018. The statements in Claimantôs filing that Defendant did not dispute are taken as true for the purpose of her motion. Defendantôs October 25, 2018 response also included an additional statement of facts, to which Claimant has not responded. Those facts are also taken as true. Finally, on November 21, 2018, Claimant filed a reply to Defendantôs opposition to her motion that did not include any additional facts.

6. Claimant has a 40-pound fireproof safe in her home that she uses to store personal documents. *Defendant's Statement of Undisputed Facts ¶ 8*. It is about the size of a shoebox (10 x 13 inches) and is key-operated. *Defendant's Statement of Undisputed Facts ¶¶ 6-7; Claimant's affidavit ¶ 1; Claimant's deposition at 12, 15*. She keeps the safe in a second-story bedroom closet, in the room that her wife uses as a home office. The second story of Claimantôs home is 15 steps up from the first-floor landing. *Defendant's Statement of Undisputed Facts ¶¶ 9-10; Claimant's deposition at 15-18; Defendant's Exhibit D.*

7. The January 31, 2018 production schedule for the PSA video included filming scenes at a Bellows Falls senior center and the fire station. *Claimant's Exhibit 1*. That morning, Claimant worked from her Jamaica home for several hours, as it was not time-efficient to travel to Defendantôs Londonderry office before the video shoot in Bellows Falls. *Claimant's deposition at 9-10.*

8. Prior to leaving home for the video shoot, Claimant removed the safe from the second story home office and carried it down 15 steps to the first-floor landing. She then carried the safe out to her car and transported it to the Bellows Falls senior center. She also brought pill bottles to use as props. *Defendant's Statement of Undisputed Facts ¶ 11; Claimant's Statement of Undisputed Facts ¶¶ 7- 8; Claimant's deposition at 12-13, 19.* Another video shoot participant brought a Med Lock box to use as a prop to demonstrate another safe storage option. *Claimant's Statement of Undisputed Facts ¶ 7; Claimant's deposition at 12.*

9. Claimant arrived at the senior center at 12:15 p.m. *Defendant's Statement of Undisputed Facts ¶¶ 3, 6.* She removed the safe from her car and carried it inside, along with the pill bottles. *Defendant's Statement of Undisputed Facts ¶¶ 6, 12.* None of Claimantôs co-workers were present at the senior center video shoot. *Defendant's Statement of Undisputed Facts ¶ 13; Claimant's deposition at 9-10*.

10. After the first scene was filmed, Claimant carried the safe back to her car and went to the fire station where the next scene would be filmed. *Defendant's Statement of Undisputed Facts ¶ 12; Claimant's deposition at 19.* The fire station video shoot did not require the safe, and Claimant left it in her car. *Claimant's deposition at 20.*

11. After the video shoot, Claimant went to Defendantôs Londonderry office, where she worked from 2:00 p.m. until her scheduled work day ended at 6:00 p.m. *Defendant's Statement of Undisputed Facts ¶¶ 3-4, 14; Claimant's deposition at 20; Defendant's Exhibit B.*

12. Claimant then drove from Londonderry to the Jamaica public library for a non-work-related committee meeting beginning at 6:30 p.m. and lasting about an hour. Then she drove the short distance home. *Defendant's Statement of Undisputed Facts ¶ 15; Claimant's deposition at 21.*

13. When she arrived home, Claimant carried the safe through a side door leading directly into the kitchen and set it on the kitchen table. *Defendant's Statement of Undisputed Facts ¶ 17; Claimant's Statement of Undisputed Facts ¶ 8; Claimant's deposition at 21-22.* She fixed leftovers for dinner and watched television with her wife until 10:00 p.m. *Defendant's Statement of Undisputed Facts ¶¶ 15-16; Claimant's deposition at 21*. Tired from her long day, she decided to head to bed at 10:00 p.m., somewhat earlier than usual. *Defendant's Statement of Undisputed Facts ¶ 16; Claimant's deposition at 44.*

14. Before heading upstairs to bed, Claimant went into the kitchen to retrieve the safe and carry it back upstairs to its customary location in the second-floor home office. *Defendant's Statement of Undisputed Facts ¶ 17; Claimant's Statement of Undisputed Facts ¶ 8; Claimant's deposition at 21*. Until then, she had not been upstairs since the morning. *Claimant's deposition at 23*. She carried the safe upstairs by hugging it to her chest with her right arm and using her left hand on the staircase railing. *Defendant's Statement of Undisputed Facts ¶ 18; Claimant's Statement of Undisputed Facts ¶ 8; Claimant's deposition at 25-26*.

15. When Claimant reached the upstairs landing, or one step down, she fell backwards down the flight of stairs. *Defendant's Statement of Undisputed Facts ¶¶ 5, 19; Claimant's deposition at 25-26; Defendant's Exhibit C*. She alleges injuries to her head, neck, back, ribs and shoulder in the fall. *Claimant's Statement of Undisputed Facts ¶ 10; Claimant's affidavit ¶ 3; Claimant's deposition at 28.*

16. Defendant did not have any control over Claimantôs decision to carry a heavy safe upstairs at 10:00 p.m., when she was tired after a long day. *Defendant's Statement of Undisputed Facts ¶ 20.*

17. Claimant does not recall what caused her to fall down the stairs on January 31, 2018. *Defendant's Statement of Additional Facts ¶ 13; Defendant's Exhibit E at 001, 004, 022, 052, 061, 067, 083 and 119.* Her medical records document that she has ñno clear recall of what happened but denies [loss of consciousness].ò They further document that she described ñseveral episodes of vertigo several weeks ago.ò *Defendant's Statement of Additional Facts ¶ 14; Defendant's Exhibit E at 052-055.*

18. Claimantôs February 1, 2018 medical record documents a history of giant cell arteritis, polymyalgia rheumatica and a history of falls. *Defendant's Statement of Additional Facts ¶ 15; Defendant's Exhibit E at 082-083.* Polymyalgia rheumatica causes hip pain. Claimantôs hip pain resolved after she finished a course of Prednisone around Thanksgiving, but she was still scheduled to follow up with her rheumatologist on February 3, 2018, three days after the accident. *Defendant's Statement of Additional Facts ¶ 16.*[2]

[2] Defendant cited Claimantôs deposition at 50-52 as supporting these allegations, but neither party submitted those pages into the record, and I could not find support for these allegations elsewhere in the record. Nevertheless, Claimant did not dispute these allegations, so they are admitted for purposes of this motion.

The following facts are disputed:

19. Claimant contends that her employer determined that using her personal safe would be appropriate for the PSA video and that it agreed to have her bring the safe to the video shoot. *Claimant's Statement of Undisputed Facts ¶ 6; Claimant's affidavit ¶¶ 1-2.* Defendant contends that these allegations are inadmissible hearsay and that, in any event, they are immaterial. I agree that they are immaterial and therefore exclude them from consideration. *See* Conclusion of Law Nos. 9, 11 *infra.*

20. Claimant also contends that she was "off-balance due to the weight of the Safe and fell backwards down 15 stairs." *Claimant's Statement of Undisputed Facts ¶ 9; Claimant's deposition at 25.* Defendant disputes this, contending that she was unsure whether the safe's weight resulted in her loss of balance. Claimant testified that it was "probably" the weight of the safe that started her backwards fall, but she admitted that she was "speculating" and did not remember. *Defendant's Statement of Additional Facts ¶ 9; Claimant's deposition at 25.* Defendant also contends that Claimant's testimony conflicts with multiple medical reports, including:

    a. January 31, 2018: "She remembers falling but does not remember what led to her fall." *Defendant's Exhibit E at 001*.

    b. January 31, 2018: "She cannot remember the exact things that led to her fall, but she does remember the fall." *Defendant's Exhibit E at 004*.

    c. February 1, 2018: "[Claimant] remembers carrying a heavy fire box up theto [sic] the top of her stairs and then does not remember how she fell down." *Defendant's Exhibit E at 022.*

    d. February 1, 2018: "No clear recall of what happened but denies [loss of consciousness]." *Defendant's Exhibit E at 052.*

    e. February 1, 2018: "[Claimant] reports that she was carrying a heavy wood box up the basement stairs. At the top of the stairs, she does not recall what happened, but next thing she knows found herself falling backwards down 14 stairs." *Defendant's Exhibit E at 061*.

    f. February 1, 2018: "[Claimant] was carrying a safe up the stairs lost her balance and fell backwards with the weigh[t] on top of her body. *Defendant's Exhibit E at 067.*

    g. February 1, 2018: "History of falls." *Defendant's Exhibit E at 083.*

    h. February 1, 2018: "[Claimant] fell down 15 stairs, doesn't recall event." *Defendant's Exhibit E at 119*.

CONCLUSIONS OF LAW:

1. To prevail on a summary judgment motion, the moving party must show that there exist no genuine issues of material fact, such that it is entitled to judgment in its favor as a matter of law. *Samplid Enterprises, Inc. v. First Vermont Bank*, 165 Vt. 22, 25 (1996). In ruling on such a motion, the non-moving party is entitled to the benefit of all reasonable doubts and inferences. *State v. Delaney*, 157 Vt. 247, 252 (1991); *Toys, Inc. v. F.M. Burlington Co*., 155 Vt. 44, 48 (1990). Summary judgment is appropriate only when the facts in question are clear, undisputed or unrefuted. *State v. Heritage Realty of Vermont*, 137 Vt. 425, 428 (1979). It is unwarranted where the evidence is subject to conflicting interpretations, regardless of the comparative plausibility of the facts offered by either party or the likelihood that one party of the other might prevail at trial. *Provost v. Fletcher Allen Health Care, Inc.*, 2005 VT 115, ¶15.

2. Where the parties have filed cross motions for summary judgment, each party is entitled to the benefit of all reasonable doubts and inferences when the opposing partyôs motion is being judged. *Toys, Inc., supra* at 48.

Requirements for Compensability of a Workers' Compensation Claim

3. Claimant contends that she sustained a compensable injury as a matter of law when she fell down the stairs while returning her safe to its customary location after using it in a work-related video shoot earlier in the day.

4. Defendant first asserts that it is entitled to summary judgment in its favor on the grounds that Claimantôs injury did not occur in the course of her employment as a matter of law. Second, if her injury *did* occur in the course of employment, Defendant seeks to defeat Claimantôs summary judgment motion on the grounds that the material facts relevant to whether her injury arose out of her employment are in dispute.

5. An injury is compensable only if it both ñarises out ofò and occurs ñin the course ofò employment. 21 V.S.A. § 618; *Miller v. IBM Corp.,* 161 Vt. 213, 214 (1993). An injury occurs in the course of employment ñwhen it occurs within the period of time when the employee was on duty at a place where the employee may reasonably be expected to be while fulfilling the duties of [the] employment contract.ò *Miller, supra* at 215, quoting *Marsigli Estate v. Granite City Auto Sales, Inc*., 124 Vt. 95, 98 (1964). An injury arises out of employment ñif it would not have occurred *but for* the fact that the conditions and obligations of the employment placed the claimant in the position where claimant was injured.ò *Cyr v. McDermott's, Inc*., 2010 VT 19, ¶ 10; *Shaw v. Dutton Berry Farm*, 160 Vt. 594, 599 (1993), quoting 1 A. Larson, *Workmen's Compensation Law* § 6.50 (1990) (emphasis in original).

6. Thus, compensability is a two-pronged test, requiring both (1) a causal connection (the ñarising out ofò component), and (2) a time, place and activity link (the ñin the course ofò component) between the claimantôs work and the accident giving rise to the injuries. *Cyr, supra* at ¶ 9; *Miller, supra* at 214.

Determining Compensability – The "In the Course of" Component

7. Claimant contends that her injuries occurred in the course of her employment as a matter of law because her transport and use of her personal safe for a work-related video shoot was for her employer's benefit.

8. Defendant seeks summary judgment in its favor on the grounds that Claimant's injuries did not occur in the course of her employment as a matter of law because she was injured at home, four hours after her work day ended. Therefore, her injury did not occur within the period of time when she was on duty at a place where she was reasonably expected to be while fulfilling the duties of her employment contract.

9. A key component of what constitutes an employee's work-related "duty" is whether the activity benefits the employer. If it does, then it fits within the parameters of the term, even if the employer did not specifically direct the employee to undertake the activity. *Lopez v. The Howard Center*, Opinion No. 12-14WC (August 7, 2014), citing *Kenney v. Rockingham Sch. Dist.*, 123 Vt. 344 (1963).

10. In *Kenney*, the claimant, a home economics teacher, enrolled as a student in an evening sewing class taught at her school. Her motivation for doing so was both to improve her teaching ability and to become better acquainted with the mothers of some of her students, who also had enrolled in the class. While exiting the building after class one night, she fell on some icy steps and injured herself. The court held that the claimant had been engaged in an activity that, though voluntary, had been undertaken in good faith in order to advance her employer's interest. As such, it fit within the scope of her work-related "duties." *Wallbridge v. Hunger Mountain Co-op*, Opinion No. 12-10WC (March 24, 2010), citing *Kenney, supra* at 347. Thus, an act outside an employee's regular duties, undertaken in good faith to advance the employer's interest, is within the scope of employment. *Kenney, supra* at 348.

11. One of Claimant's primary job duties was the production of PSA videos. On her injury date, she worked on a PSA promoting the safe storage of prescription medications. She owned a safe that was appropriate for the message to be conveyed, and she brought it to the video shoot, along with some medication bottles, to use as props. Whether Defendant endorsed the safe as an appropriate prop, or whether she relied upon her own judgment to make that determination, does not matter. In either event the safe was a useful prop for the video shoot, and she brought it from home in good faith to advance her employer's interests.

12. It is true that Claimant might have procured a safe in another manner, by purchasing or renting one, or asking someone else to bring one. However, none of these options negates the fact that by doing what she did, when and where she did it, she was fulfilling a work-related duty, one that she undertook in good faith to benefit her employer. *Kenney, supra* at 348. Thus, her act of transporting the safe to and from the video shoot was a duty of her employment. She was therefore fulfilling a work-related duty when she carried the safe back upstairs to its customary location.

13. Defendant relies on *Moreton v. State of Vermont, Dep't of Children and Families,* Opinion No. 17-14WC (December 24, 2014) to support its contention that Claimant's injury did not occur in the course of her employment. The *Moreton* claimant normally commuted from her home in Shelburne, Vermont to her office in Essex, Vermont. However, in November 2013, her employer notified its employees that they were required to attend a multiday training session in Stowe, beginning each day at 9 a.m. and ending at 3:30 p.m. The employer further advised that it would pay the employees during training from 8:00 a.m. until 4:30 p.m. daily. Claimant and several coworkers arranged to meet at the South Burlington Starbucks at 7:30 a.m. each day so they could carpool to Stowe. When the claimant entered Starbucks the following workday to meet up with her coworkers, she fell on the ice and sustained an injury. The Commissioner in *Moreton* considered whether her claim met the time, place and activity aspects of the "in the course of" component of compensability.

(a) Time

14. The *Moreton* Commissioner found that the claimant's injury 30 minutes before she went on the clock was not so far removed from work as to sever the link between the injury and the employment. She cited *Montanaro v. Guild Metal Products, Inc*., 275 A.2d 634 (R.I. 1971) for the proposition that the critical factors here are the duration of the pre-work interval and whether the employee's purpose at the time of injury was reasonably incident to her employment. *Moreton, Conclusion of Law No. 10.*

15. Citing the 30-minute time interval in *Moreton*, Defendant contends that the four-hour interval between the end of Claimant's workday and her time of injury was sufficient to sever the causal link between injury and employment. Defendant also cites an arbitration decision from Illinois, *Carter v. Star Transport*, 2009 WL 3269687 (Ill. Workers' Compensation Comm'n) to support its contention that the time connection is not met here. In the Illinois decision, the claimant gave his employer two weeks' notice. A week later, while relocating his personal property from the workplace to his home, he hurt his back at home while unloading his refrigerator from his truck. The arbitrator found that his injury did not occur in the course of his employment, but the case is readily distinguishable by the fact that the claimant's actions in *Carter* were not for his employer's benefit, but solely for his own. He was thus not on "duty" at the time of his injury.

16. Claimant here sustained her injuries at 10:00 p.m., four hours after her regular workday ended. Applying the analysis set forth in *Moreton*, I conclude that this interval was not so lengthy as to sever the causal link to her employment. She was injured the same day that she used her safe in a work-related video shoot, as she was returning the safe to its customary location. Her trip upstairs to stow the safe at day's end was her first trip up the stairs since retrieving the safe that morning. Thus, in fulfilling her work-related duty of carrying the safe for her employer's benefit, Claimant restored the safe to its customary location at her first reasonable opportunity. I conclude that the "time" element of the "in the course of" employment prong of compensability has been met.

(b) Place

17. The second requirement for establishing that an injury occurred ñin the course ofò employment is that the injury be shown to have occurred at a place where the employee may reasonably be expected to be while fulfilling the duties of the employment contract. *Marsigli Estate v. Granite City Auto Sales, Inc*., 124 Vt. 95, 98 (1964). The question here is whether, on the day of her injury, the scope of Claimantôs employment encompassed her presence on her home staircase.

18. Generally speaking, an employee is not within the scope of employment when he or she is injured at home. However, in this instance, Claimant was performing a specific, work-related duty, outside the scope of her regular duties, for her employerôs benefit. See *Kenney v. Rockingham Sch. Dist.*, 123 Vt. 344, 348 (1963). Using the safe for the work-related video shoot necessarily included procuring the safe from her home and returning it afterwards. In this way, her situation was similar to that of the claimant in *Lopez v. The Howard Center*, Opinion No. 12-14WC (August 7, 2014), who was injured at home while retrieving a book for her employerôs benefit.

19. I therefore conclude that Claimant was in a place she could reasonably be expected to be while she fulfilled her work-related duty of returning her safe to its customary location. Thus the ñplaceò element of the ñin the course ofò employment prong of compensability has been met.

(c) Activity

20. The final requirement for establishing that an injury occurred ñin the course ofò employment is that it be shown to have occurred while the employee was engaged in an ñactivity whose purpose is related to the employment.ò *Cyr v. McDermott's, Inc.,* 2010 VT 19, at ¶ 13, citing 1 A. Larson & L. Larson, *Larson's Workers' Compensation Law* § 12.01, at 12-1 (2009). Generally speaking, an activity that benefits the employer is considered to have an employment-related purpose. *Kenney, supra* at 348. I have already found that Claimantôs use of her safe for a work-related video shoot was an activity that benefitted her employer. Conclusion of Law No. 12 *supra*. Defendant contends that returning the safe to its rightful place after using it in the video shoot was of no benefit to the employer. However, this narrow view overlooks the fact that in order to use the safe, Claimant had to bring it from home for the video shoot and return it after the shoot was over. As such, the act of returning the safe to its customary location was a necessary part of the overall activity.

21. Finally, Defendant contends that if Claimantôs injury is compensable, then other home injuries would be compensable, too. For example, it posits an employee falling at home while returning his work gloves to his shed or being injured in his laundry room while washing his personal knee pads. However, these examples are distinguishable as the routine maintenance of personal items that employees use at work every day, rather than a specific activity outside the employeeôs regular duties undertaken for the employerôs benefit. *Kenney, supra*, at 348. Similarly, Defendant contends that Claimantôs fall on the stairs while carrying the safe was the same as if she had fallen carrying a heavy laundry basket up the stairs on her way to bed. I disagree. Claimant here was performing a specific task outside of her regular duties that she undertook in good faith to advance her employerôs interest. Carrying a laundry basket upstairs has no such attributes. Therefore the purpose of her activity was sufficiently related to her job duties as to have occurred in the course of her employment.

22. Having considered the undisputed facts relevant to time, place and activity, I conclude as a matter of law that Claimantôs January 31, 2018 injury was sufficiently linked to her employment to have occurred in the course of it.

Determining Compensability – The "Arising Out of" Component

23. Claimant contends that, not only did her injuries occur in the course of her employment as a matter of law, but they also arose out of her employment as a matter of law. Defendant contends that, even if her injuries did occur in the course of her employment, her summary judgment motion must be denied because she cannot establish by undisputed material facts that she was injured by an accident ñarising out ofò her employment. *Defendant's Opposition to Claimant's Cross Motion for Summary Judgment, at 3-4*. The ñarising out ofò component of compensability is the causal connection between the injury and the employment. *See* Conclusion of Law No. 6 *supra.*

24. Ordinarily, if an injury occurs in the course of employment, it also arises out of it, ñunless the circumstances are so attenuated from the condition of employment that the cause of the injury cannot reasonably be related to the employment.ò *Shaw v. Dutton Berry Farm*, 160 Vt. 594, 598 (1993).

25. Claimant contends that the weight of the 40-pound safe caused her to fall. Defendant disputes her contention, relying on multiple contemporaneous statements in the medical records that she does not remember what caused her to fall. *See* Finding of Fact No. 20(a)-(h) *supra*. Defendant further cites Claimantôs history of vertigo[3] and polymyalgia rheumatica, both of which she experienced not long before her fall, implying that either of these idiopathic conditions might have caused her to fall. *See* Finding of Fact Nos. 17-18 *supra*; *see generally Defendant's Exhibit E.*

26. Taking the evidence in the light most favorable to Defendant as the non-moving party, and giving it the benefit of all reasonable doubts and inferences, there are genuine issues of material fact as to the cause of Claimantôs fall and the role, if any, that her idiopathic conditions might have played. These facts are material because an unexplained fall is generally compensable, but an idiopathic fall is generally not.[4] *See Meunier v. The Lodge at Shelburne Bay Real Estate, LLC*, Opinion No. 11-16WC (July 27, 2016), at Conclusion of Law No. 8.

27. In order to prevail on a motion for summary judgment, the moving party must show that there exist no genuine issues of material fact, such that it is entitled to a judgment in its favor as a matter of law. *Samplid Enterprises, Inc., supra*, at 25. Under V.R.Civ.P. 56(c), summary judgment is mandated where, *after an adequate time for discovery*, a party fails to make a sufficient showing to establish all the essential elements of its case. *Doe v. Doe*, 172 Vt. 533, 534 (2001); *Poplaski v. Lamphere*, 152 Vt. 251, 254-55 (1989) (emphasis added). Claimant here filed her summary judgment motion before the Department established a discovery schedule or deadlines, and it appears that additional time for discovery as to the cause of her fall is required.

Summary

28. Defendant moved for summary judgment on the grounds that Claimantôs injuries did not occur in the course of her employment as a matter of law. I conclude from the undisputed material facts that her injuries did occur in the course of her employment. Therefore, Defendant is not entitled to summary judgment in its favor.

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[3] The records document ñseveralò episodes of vertigo ñseveralò weeks prior to her fall. *Defendant's Exhibit E at 052, 055*. In light of this history, on February 1, 2018, her physician ordered a ñsyncopal workupò with ñecho, carotid duplex and telemetry.ò *Id. at 055*. The workup results were noted as ñsyncope workup completed ï echo unremarkable, not orthostatic.ò *Id. at 093, 120.* The records do not reflect whether any additional workup was undertaken.

[4] There are circumstances under which an idiopathic fall might cause a compensable injury. For example, in *Carlson v. Experian Information Solutions*, Opinion No. 23-08WC (June 5, 2008), the claimant suffered an idiopathic fall at work, first striking her head on an unwinder machine and then striking the floor. The Commissioner found that the injuries caused by striking the unwinder machine were compensable as having arisen out of her employment, but the injuries caused by striking the floor were not.

29. Claimant moved for summary judgment on the grounds that her injuries both arose out of and occurred in the course of her employment as a matter of law. Defendant has raised a genuine issue of material fact as to whether her injuries arose out of her employment. Therefore, Claimant is not entitled to summary judgment, either.

ORDER:

Claimantôs Motion for Summary Judgment is hereby **DENIED.** Defendantôs Motion for Summary Judgment is hereby **DENIED**.

DATED at Montpelier, Vermont this 19th day of December 2018.

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Lindsay H. Kurrle
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.