Shauna LaBelle v. Mylan Technologies (February 8, 2010)

STATE OF VERMONT
DEPARTMENT OF LABOR

Shauna LaBelle

v.

Mylan Technologies

Opinion No. 05-10WC

By: Sal Spinosa, Esq.
Hearing Officer

For: Patricia Moulton Powden
Commissioner

State File No. AA-02370

RULING ON CROSS MOTIONS FOR SUMMARY JUDGMENT[1]

ATTORNEYS:

Beth Robinson, Esq., for Claimant
Kelly Smith, Esq., for Defendant

ISSUE PRESENTED:

Is there a genuine issue of material fact concerning whether Claimant suffered a compensable work-related injury?

FINDINGS OF FACT:

Considering the facts in the light most favorable to the non-moving party, *see, e.g., State v. Delaney*, 157 Vt. 247, 252 (1991), I find the following:

1. Claimant worked in Defendant's packaging department. Her job involved different activities at more than one work station. She walked from station to station in order to perform these job requirements.

2. On January 6, 2009 Claimant was working her usual job when she felt a sudden pain in her right lower side and lower back. No one present witnessed the moment of injury. After a short recuperative period Claimant finished her shift and went home.

3. Claimant saw Defendant's medical providers for her injury, where she received treatment and periodic work restrictions. Claimant described the physical movements that triggered the onset of her symptoms as an act of turning on one foot to step with the other. Defendant's video shows Claimant performing such movements, and others, at one of her work stations. The same video shows the obvious onset of Claimant's symptoms while she is walking, ostensibly from one work station to another. Claimant also told two

[1] Although Claimant initially brought this motion Defendant responded in like manner seeking summary judgment in its favor. This will be treated as cross motions for summary judgment.

different medical providers on two different dates respectively that her symptoms occurred while walking.

4. On April 24, 2009 Claimant saw Dr. Barnum, an orthopedist. Claimant told Dr. Barnum that she was lifting, turning and stepping when her symptoms came on suddenly. Based on this specific description of the mechanics of Claimant's injury, Dr. Barnum concluded that her symptoms probably were related to her work activities. Dr. Barnum believed that Claimant had exacerbated a prior injury she suffered in 2006 as a result of a motor vehicle accident.[2]

5. Claimant also saw Robert Hemond, a physician's assistant at the Spine Institute of New England. Mr. Hemond noted possible disc abnormalities at L4-5. Mr. Hemond was aware of Claimant's 2006 auto accident injuries but opined that those injuries were unrelated to Claimant's current symptoms.

6. According to Paul Oszurek, who works in Defendant's safety department, Claimant told him that she had been having recurrent hip issues related to her prior car accident. Both the content and date of this conversation are uncertain.

DISCUSSION:

1. 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 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 (1990). Summary judgment is appropriate only when the facts in question are clear, undisputed or unrefuted. *State v. Realty of Vermont*, 137 Vt. 425 (1979).

2. In support of her position Claimant argues that her account of the injury event is credible. She also relies on Defendant's video, which she argues demonstrates irrefutably that her injury occurred at work, and Dr. Barnum's opinion that her injury was work-related.

3. Defendant, on the other hand, asserts that Claimant's account of how her injury occurred is inconsistent and therefore not credible. It argues that there is a legal difference between an injury that occurs while simultaneously lifting, turning and stepping at a work station, as Dr. Barnum assumed, and one that occurs while merely walking across the floor from one work station to another, as Claimant described at other times and as it alleges its video shows. In Defendant's view, while the former description may give rise to a compensable claim, the latter one reflects an idiopathic injury which may not be compensable under Vermont law.

[2] Claimant fractured her pelvis, hip and ribs in that accident. Her treatment had concluded by late 2006.

4. To establish a compensable claim under Vermont's workers' compensation law, a claimant must show both that the accident giving rise to his or her injury occurred "in the course of the employment" and that it "arose out of the employment." *Miller v. IBM*, 161 Vt. 213, 214 (1993); *Carlson v. Experian Information Solutions*, Op. No. 23-08WC (June 5, 2008); *Boucher v. Peerless Insurance Co*. Op. No. 16-08WC (April 16, 2008); 21 V.S.A. §618.

5. An injury occurs in the course of employment "when it occurs within the period of time when the employee was on duty at a place where the employee was reasonably expected to be while fulfilling the duties of [the] employment contract." *Miller, supra* at 215, *quoting Marsigli Estate v. Granite City Auto Sales, Inc.*, 124 Vt. 95, 98 (1964).

6. An injury arises out of the employment "if it would not have occurred *but for* the fact that the conditions and obligations of the employment placed claimant in the position where [claimant] was injured." *Shaw v. Dutton Berry Farm*, 160 Vt. 594, 599 (1993), *quoting* 1 Larson, *Workers' Compensation Law* §6.50 (1990) (emphasis in original). This so-called "positional risk" analysis lays responsibility on an employer when an employee's injury would not have occurred "but for" the employment and the worker's position at work. *Id.*

7. There is no dispute in the current claim as to the "in the course of" requirement. Claimant's injury occurred while she was at Defendant's work place, performing the job duties she was hired to do at the time she was supposed to be doing them.

8. The dispute here concerns the "arising out of" component, and it is driven by this question: Was Claimant's injury caused by her work or, alternatively, was it the consequence of a medical condition that was purely personal to her, that is, an idiopathic condition? The answer to that question depends on the credibility of the evidence offered by each party in support of its position.

9. Dr. Barnum's medical opinion is as reliable as the factual premise upon which it is based. In stating that Claimant's work contributed to her injury, Dr. Barnum relied on Claimant's description of her work activity at the very onset of her symptoms, specifically, that she was at that moment lifting, turning and stepping simultaneously at one of her work stations. However, this description of the injury event is countered by a co-worker, other medical reports and Defendant's video.

10. Mr. Oszurek's assertion that Claimant had complained about recurring back pain prior to the instant work injury points to a non-work-related cause for her current symptoms. Claimant strongly denies Mr. Oszurek's claim. She questions both the content of his discussion with her and its timing.

11. When Claimant herself apparently stated to two separate medical providers that she was walking when her symptoms first appeared, rather than lifting, turning and stepping, she created a conflict in the medical reports of her account. These conflicts are not *de minimis*, as Claimant argues. Taken together, they raise questions of material fact relative to both causation and compensability.

12. Defendant's video of Claimant at work is particularly revealing. Claimant does indeed lift, turn and step in close sequence at one of her work stations. Her sudden onset of pain, however, is not apparent at this work station. Rather, she first displays pain while walking toward a different work station. This is not how Claimant described her injury to Dr. Barnum. Claimant may have undermined the value of Dr. Barnum's causation opinion when she provided him with an account that may not be entirely accurate. Credible evidence concerning the circumstances that led to Claimant's injury is essential to Dr. Barnum's opinion and may bear directly on whether her injury is compensable under Vermont law.

13. Had the evidence been uncontroverted that Claimant was injured while lifting, turning and stepping at her work station, her motion for summary judgment might merit stronger consideration. The fact that it might have occurred while merely walking, however, casts both legal and factual doubt on her claim. While Dr. Barnum did find Claimant's work to be the cause of her injury, he did so based on a factual account at odds with other evidence in the case. If presented with other facts, Dr. Barnum might be compelled to change his opinion.

14. For the purpose of these motions it is not my function to make findings of fact. *Fritzeen v. Trudell Consulting Eng'rs, Inc.*, 170 Vt. 632 (2000). I do find, however, that genuine issues of material fact remain in this case. Where that is so, summary judgment may not serve as a substitute for a determination on the merits. *Id.; Human Rights Commission v. Benevolent & Protective Order of Elks*, 2003 VT 104, (2003).

ORDER:

For the foregoing reasons, both Claimant's and Defendant's Motions for Summary Judgment are **DENIED.**

DATED at Montpelier, Vermont this 8th day of February, 2010.

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Patricia Moulton Powden
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.