

**STATE OF VERMONT  
DEPARTMENT OF LABOR**

Lesley Bienvenue

Opinion No. 23-15WC

v.

By: Phyllis Phillips, Esq.  
Administrative Law Judge

Sandra Kuc d/b/a  
Vermonsters Daycare Center

For: Anne M. Noonan  
Commissioner

State File No. CC-2661

**RULING ON DEFENDANT'S MOTION FOR SUMMARY JUDGMENT**

**APPEARANCES:**

Lesley Bienvenue, *pro se*  
Jennifer Moore, Esq., for Defendant

**ISSUE PRESENTED:**

Is Claimant's workers' compensation claim time-barred under 21 V.S.A. §660(a)?

**EXHIBITS:**

Defendant's Exhibit A:	Employer First Report of Injury (Form 1)
Defendant's Exhibit B:	Denial of Workers' Compensation Benefits (Form 2)
Defendant's Exhibit C:	Letter from Anne Coutermarsh, November 18, 2011
Defendant's Exhibit D:	Letter from Tracy Downing, February 9, 2012
Defendant's Exhibit E:	Letter from Claimant, February 15, 2012
Defendant's Exhibit F:	Letter from Anne Coutermarsh, March 11, 2015

**FINDINGS OF FACT:**

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

1. At all times relevant to these proceedings, Claimant was an employee and Defendant was her employer as those terms are defined in Vermont's Workers' Compensation Act.
2. Judicial notice is taken of all relevant forms contained in the Department's file relative to this claim.

3. On or about May 5, 2011 Claimant filed an Employer First Report of Injury (Form 1) with the Department, in which she alleged that on March 21, 2011 she had injured her lower back and left knee when a co-worker fell into her and knocked her to the ground.<sup>1</sup> *Defendant's Exhibit A.*
4. On or about June 10, 2011 Defendant filed a Denial of Workers' Compensation Benefits (Form 2), *Defendant's Exhibit B*, in which it asserted that there was no causal relationship between Claimant's injuries and her employment. In support of its position, Defendant submitted email correspondence from Sandra Kuc, its executive director, and Stacy Sturtevant, its assistant director, both of whom challenged Claimant's version of events. Specifically, Ms. Kuc and Ms. Sturtevant denied that Claimant had ever informed them either of the incident or of the injuries she alleged, nor had she ever appeared disabled to the extent she now claimed.
5. Claimant appealed Defendant's denial on or about June 20, 2011. On September 14, 2011 the parties participated in an informal conference with the Department's specialist. By this time, Defendant had produced additional statements from two of Claimant's co-employees, both of whom denied having witnessed the incident she had alleged despite having worked with her on the day in question. Based on this evidence, as well as her review of the contemporaneous medical records, on November 18, 2011 the Department's workers' compensation specialist determined that Defendant's denial was reasonably supported and therefore upheld it. *Defendant's Exhibit C.*
6. By Notice and Application for Hearing (Form 6) dated December 7, 2011, Claimant challenged the specialist's determination and requested a formal hearing.
7. By letter dated February 9, 2012 the formal hearing docket administrator notified the parties that Claimant's claim had been referred to the formal hearing docket, and that a telephone pretrial conference had been scheduled for March 12, 2012. *Defendant's Exhibit D.*
8. On February 15, 2012 Claimant addressed the following letter to the Department, *Defendant's Exhibit E:*

I have chosen to withdraw my request for a hearing. I am not able to handle the stress associated with this case. I unfortunately, I chose to wait and see if I would heal on my own before reporting the incident to my Doctor and can't undo that fact.
9. Upon receipt of Claimant's letter, the specialist notified the parties that the previously scheduled pretrial conference had been cancelled.

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<sup>1</sup> Claimant appears to have completed the First Report of Injury herself; it is in her handwriting, and neither Defendant nor its representative signed it.

10. Defendant filed additional denials with the Department on February 21, 2013 and May 1, 2013, pertaining to medical bills it had received from various providers for treatment rendered to Claimant between January and March 2013. Claimant did not immediately appeal either denial.
11. By correspondence dated February 27, 2015 (received by the Department on March 4, 2015), Claimant sought to renew her appeal of Defendant's claim denial. By letter dated March 11, 2015 the Department's specialist determined that the evidence did not support her claim, and therefore declined to issue an interim order for benefits. *Defendant's Exhibit F*.
12. At Claimant's request thereafter, the specialist referred the matter back to the formal hearing docket. Defendant's motion for summary judgment followed. Claimant has not filed any response.

#### **DISCUSSION:**

1. Summary judgment is proper when "there is no genuine issue of material fact and the moving party is entitled to a judgment as a matter of law, after giving the benefit of all reasonable doubts and inferences to the opposing party." *State v. Delaney*, 157 Vt. 247, 252 (1991). To prevail on a motion for summary judgment, the facts must be "clear, undisputed or unrefuted." *State v. Heritage Realty of Vermont*, 137 Vt. 425 (1979); *A.M. v. Laraway Youth and Family Services*, Opinion No. 43-08WC (October 30, 2008).
2. Defendant here asserts that because Claimant previously withdrew her request for a hearing on its denial of her claim for workers' compensation benefits, the applicable statute of limitations now precludes her from reviving it. As the material facts are undisputed, summary judgment is an appropriate vehicle for resolving this issue. *Samplid Enterprises, Inc. v. First Vermont Bank*, 165 Vt. 22, 25 (1996).
3. The statute of limitations for initiating a claim for workers' compensation benefits is three years from the date of injury. 21 V.S.A. §660(a). Having alleged an injury date of March 21, 2011, Claimant here first initiated her claim on or about May 5, 2011, which was well within the limitations period. Thereafter, however, in February 2012 she withdrew her appeal of Defendant's claim denial, and did not seek to revive it until February 2015. The legal question posed by these actions is whether the statute of limitations was tolled in the meantime, such that her current appeal remains timely, or whether it has since expired, such that her appeal is now time-barred.
4. So long as they do not defeat the informal nature of the dispute resolution process, the Vermont Rules of Civil Procedure apply generally to workers' compensation

- proceedings. *Workers' Compensation Rule 7.1000*.<sup>2</sup> Vermont Rule of Civil Procedure 41(a) governs voluntary dismissals. It allows for a plaintiff to dismiss an action without a court order at any time before the adverse party files an answer, V.R.C.P. 41(a)(1), and thereafter with the court's approval, V.R.C.P. 41(a)(2).
5. I consider the actions taken in February 2012, when in response to Claimant's notice that she had chosen to "withdraw" her request for a hearing the Department's specialist cancelled the previously scheduled pretrial conference, to be the equivalent of a voluntary dismissal of her appeal under V.R.C.P. 41(a)(2). *See Agency of Natural Resources v. Lyndonville Savings Bank & Trust Co.*, 174 Vt. 498 (2002) (equating "withdrawal" of action with voluntary dismissal in context of V.R.C.P. 11 "safe harbor" provisions).
  6. For statute of limitations purposes, the legal effect of Claimant having voluntarily dismissed her appeal without pursuing a determination on the merits of Defendant's claim denial is the same as if she had never filed a claim for benefits at all. *Grant v. Cobbs Corner, Inc.*, Opinion No. 22A-02WC (July 25, 2002), citing *Demars v. Robinson King Floors, Inc.*, 256 N.W.2d 501, 505 (Minn. 1977). Were the rule otherwise, a claimant might voluntarily dismiss and then renew his or her claim "in perpetuity." *Grant, supra*.
  7. The time limits imposed by a statute of limitations "represent a balance, affording the opportunity to plaintiffs to develop and present a claim while protecting the legitimate interests of defendants in timely assertion of that claim." *U.S. v. Kubrick*, 444 U.S. 111, 117 (1979), cited with approval in *Investment Properties, Inc. v. Lyttle*, 169 Vt. 487, 492 (1999). For both the parties and the fact-finder, "the search for truth may be seriously impaired by the loss of evidence, whether by death or disappearance of witnesses, fading memories, disappearance of documents, or otherwise." *Id.* These concerns are especially relevant in cases where, as here, the most basic facts underlying a claimant's claim for workers' compensation benefits, including where and when the alleged injury occurred, who witnessed it and what if any disability resulted, have been hotly contested from the beginning.
  8. I conclude as a matter of law that the statute of limitations was not tolled when Claimant voluntarily withdrew her appeal of Defendant's claim denial in February 2012. That being the case, she had three years from the date of her alleged March 21, 2011 injury, or until March 21, 2014, within which to reassert her claim for worker's compensation benefits. As she failed to do so, her claim is now time-barred.

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<sup>2</sup> Effective August 1, 2015 Workers' Compensation Rule 7.1000 has been re-codified as Rule 17.1100.

**ORDER:**

Defendant's Motion for Summary Judgment is hereby **GRANTED**. Claimant's claim for workers' compensation benefits arising out of her alleged March 11, 2011 work-related injury is hereby **DISMISSED WITH PREJUDICE**.

**DATED** at Montpelier, Vermont this \_\_\_\_\_ day of \_\_\_\_\_, 2015.

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Anne M. Noonan  
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.