STATE OF VERMONT
DEPARTMENT OF LABOR

William Daniels	Opinion No. 01-18WC
v.	By: Beth A. DeBernardi, Esq. Administrative Law Judge
Ronald Corliss d/b/a C & C Services	For: Lindsay H. Kurrle Commissioner
	State File No. JJ-00707

RULING ON DEFENDANT'S MOTION FOR SUMMARY JUDGMENT

APPEARANCES:

Claimant, *pro se*
Keith J. Kasper, Esq., for Defendant

ISSUE PRESENTED:

Is Claimant's claim for workers' compensation benefits time-barred as a matter of law by the statute of limitations and/or the doctrine of laches?

EXHIBITS:[1]

Claimant's Exhibit 1:	Copley Hospital medical records, June 25, 1995
Claimant's Exhibit 2:	Headache Clinic record, November 9, 2016 (first page)
Claimant's Exhibit 3:	UVM Medical Center "After Visit Summary," January 9, 2017
Claimant's Exhibit 4:	Herman Fiess unsworn statement, July 19, 2017
Defendant's Exhibit A:	Limited liability company registration for C & C Services LLC, filed on May 28, 2009
Defendant's Exhibit B:	Copley Hospital medical records, June 25, 1995
Defendant's Exhibit C:	UVM Medical Center Headache Clinic referral, July 5, 2016
Defendant's Exhibit D:	UVM Medical Center "After Visit Summary," January 9, 2017

[1] Claimant failed to file a separate and concise statement of disputed facts in response to Defendant's Motion for Summary Judgment, as required by V.R.C.P. 56(c)(1)(A), and his memorandum in opposition
was somewhat non-responsive to the issues presented. Given both his *pro se* status and the relatively informal nature of these proceedings, *Workers' Compensation Rule 17.1100,* in ruling on Defendant's motion I have considered various documents, identified herein as Department exhibits, that were previously filed with the Department, as permitted by V.R.C.P. 56(c)(3).

Department's Exhibit I:	UVM Medical Center Pain Clinic record, July 5, 2016
Department's Exhibit II:	Lamoille Valley Community Health Services medical record, October 27, 2016
Department's Exhibit III:	Headache Clinic medical record, November 9, 2016 (4 pages)
Department's Exhibit IV:	Headache Clinic medical record, February 27, 2017

FINDINGS OF FACT:

Considering the evidence in the light most favorable to Claimant as the non-moving party, *State v. Delaney*, 157 Vt. 247, 252 (1991), and taking judicial notice of all relevant forms and records contained in the Department's claim file, I find the following facts:

1. From 1983 until May 28, 2009, Defendant conducted business as a sole proprietor under the name C & C Services. On May 28, 2009, he converted his sole proprietorship into a Vermont limited liability company, C & C Services LLC. *Defendant's Statement of Undisputed Material Facts ¶¶ 1-2*; *Defendant's Affidavit ¶¶ 1, 4-5; Defendant's Exhibit A.*

2. Claimant alleges that he suffers from migraine headaches causally related to an injury he sustained while in Defendant's employ on June 25, 1995. Defendant maintains that he never hired Claimant (or anyone else) as an employee, but that issue is not the subject of this summary judgment motion. *Defendant's Statement of Undisputed Material Facts ¶¶ 1, 3; Defendant's Affidavit ¶¶ 5, 7.*

The Claim

3. Claimant and Defendant were acquainted with each other in 1995,[2] and Claimant would occasionally ask Defendant if he had any projects that he could work on. On these occasions, Defendant would reply that he did not. *Defendant's Affidavit ¶¶ 8-9.*

4. On June 25, 1995, Defendant was constructing a lean-to structure for horses on his ex-wife's property in Morrisville as a personal favor to her. Claimant asked if he could work on the project too, and Defendant agreed. Claimant sustained an injury when a piece of wood fell from the lean-to structure and hit him on the back of the head. *Defendant's Statement of Undisputed Material Facts ¶¶ 3-4; Defendant's Affidavit ¶¶ 10-12.*

5. Defendant drove Claimant to Copley Hospital in Morrisville, Vermont, where he received stiches for a five-centimeter scalp laceration. An x-ray ruled out any skull fracture. He was discharged from the hospital the same day. *Defendant's Statement of Undisputed Material Facts ¶¶ 5-6*; *Defendant's Affidavit ¶ 13; Claimant's Exhibit 1; Defendant's Exhibit B.*

[2] The record does not reflect the nature of their relationship, other than Claimant's uncontested statement that they are not related as family.

6. Claimant telephoned Defendant the next day and informed him that he would not be able to work for two weeks. *Defendant's Statement of Undisputed Material Facts ¶ 7; Defendant's Affidavit ¶ 14.* Claimant did not perform any further work on the lean-to, and Defendant did not see or hear from him again for twenty-two years. *Defendant's Statement of Undisputed Material Facts ¶¶ 8-9; Defendant's Affidavit ¶ 15.*

7. On July 5, 2016, Claimant had an evaluation at the UVM Medical Center Pain Clinic for thoracic pain and chronic obstructive pulmonary disease. The physician assistant noted:

> He also has sharp pain in his head from a traumatic head injury 20 years ago. He suffers from pain that begins at the top of his head and spreads backwards to the occiput. This pain occurs spontaneously. He uses marijuana to resolve this pain.

Department's Exhibit I, at 2. The Pain Clinic referred Claimant to the UVM Medical Center Headache Clinic to follow up on his headaches. *Defendant's Exhibit C.*

8. On October 27, 2016, Claimant went to Lamoille Valley Community Health Services because he was having trouble breathing. The physician assistant noted: "Migraines also bad, since head injury as a teen." Department's *Exhibit II*, at 1.

9. On November 9, 2016, Claimant returned to the Headache Clinic, seeking approval for medical marijuana to treat his chronic headaches. The physician noted:

> As a child in elementary school he was healthy, without headaches. This was similarly true through high school. At 22 [years old] he sustained a head injury in which a wood beam fell and hit him in the back of the head. *He doesn't recall exactly how long after this head trauma headaches became an issue for him but he approximates about a year.*

Department's Exhibit III, at 1 (emphasis added).

10. On January 9, 2017, the UVM Medical Center Neurology Department included "chronic migraine" in Claimant's active problem list. *Claimant's Exhibit 3; Defendant's Exhibit D.*

11. On February 27, 2017, the Headache Clinic completed Claimant's cannabis registry paperwork. *Department's Exhibit IV.*

12. Attached to Claimant's Notice of Injury and Claim for Compensation is a letter written by his wife. *See* Finding of Fact No. 14 *infra*. Referring to his

headaches, she wrote: "Please take this seriously and understand how life-long this has been since 1995 on the day of this accident."

13. In March 2017 Claimant called Defendant's home and informed him about his current health status and its alleged connection back to his June 25, 1995 injury. *Defendant's Statement of Undisputed Material Facts ¶ 9; Defendant's Affidavit ¶ 15.* Due to the passage of time, Defendant does not have a detailed recollection of either the incident or the circumstances surrounding it, nor does he have any business records dating back to that year. *Defendant's Affidavit ¶¶ 3, 18.*

Procedural History

14. On March 27, 2017, Claimant filed a Notice of Injury and Claim for Compensation (Form 5) in which he sought workers' compensation benefits for chronic headaches allegedly causally related to the June 25, 1995 injury. He attached three medical records to his filing. *Defendant's Exhibits B, C and D; Claimant's Exhibits 1 and 3.*

15. On July 19, 2017, Defendant filed a Motion for Summary Judgment. On August 28, 2017, the Department held a pretrial telephone conference. The administrative law judge explained the summary judgment process to Claimant and advised him that he would have 30 days to file a response. The administrative law judge also explained the process to his wife.

16. On September 15, 2017, Claimant filed his response to the motion, including a letter prepared by his wife and several exhibits.[3] *Claimant's Exhibits 1, 2 and 4.* He asserted that he did not have headaches before the June 25, 1995 incident and that he has had them since.

CONCLUSIONS OF LAW:

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 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). Summary judgment 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 or the other

[3] One of the exhibits (*Claimant's Exhibit 4*) was a letter from one Herman Fiess, who wrote that Claimant's son was involved in a mishap that damaged the White-Fiess Funeral Home's lawn and that Claimant repaired the damage at his own expense in a timely and professional manner. No explanation was given as to the possible relevance of this information to the pending claim.

might prevail at trial. *Provost v. Fletcher Allen Health Care, Inc.*, 2005 VT 115, ¶ 15.

2. Defendant here seeks summary judgment on the grounds that Claimant's claim is time-barred by either the statute of limitations or the doctrine of laches.

Statute of Limitations

3. Claimant alleges that a work-related injury occurred on June 25, 1995. However, he did not file his claim for workers' compensation benefits until March 27, 2017, almost 22 years later. Defendant contends that the statute of limitations bars the claim as untimely.

4. The purpose of a statute of limitations is to prevent "fraudulent or stale claims from being brought when the evidence to support the claim may be lost or unavailable." *Miller v. Cersosimo Lumber Co*., Opinion No. 55-96WC (October 5, 1996), citing *Law's Administrator v. Culver*, 121 Vt. 285, 287 (1959). To determine whether a statute of limitations bars Claimant's claim, it is necessary to determine which statute of limitations applies to the claim.

Accrual Date

5. The statute of limitations that applies to a particular cause of action is the one in effect when the cause of action accrues. *Carter v. Fred's Plumbing & Heating, Inc*., 174 Vt. 572 (2002), citing *Cavanaugh v. Abbott Labs*., 145 Vt. 516, 521 (1985). For workers' compensation claims, a cause of action accrues, or begins to run, from the moment when both the injury and its relationship to employment become reasonably discoverable and apparent. *Hartman v. Ouellette Plumbing & Heating Corp.*, 146 Vt. 443, 446 (1985); *Dunroe v. Monro Muffler Brake, Inc*., Opinion 17-15WC (July 23, 2015).

6. Claimant's cause of action here is based on the June 25, 1995 accident, during which a falling board hit him in the head. He alleges that the accident resulted in a scalp laceration and migraine headaches. The scalp laceration was immediately apparent. *See Claimant's Exhibit 1*.

7. Determining when Claimant's headaches and their relationship to his 1995 injury became reasonably discoverable and apparent is somewhat less obvious. Lamoille Valley Community Health Services recorded that his headaches had been bad since his head injury as a teen. Finding of Fact No. 8 *supra*. Claimant's wife reported that they had been a life-long problem since the 1995 accident. Finding of Fact No. 12 *supra.* Finally, Claimant reported to the UVM Medical Center Headache Clinic that his headaches began within approximately one year of the June 25, 1995 accident. Finding of Fact No. 9 *supra.* Taking the facts in the light most favorable to Claimant, I find that his headache condition, including its relationship to the accident, was reasonably discoverable and apparent by approximately June 25, 1996.

Statute of Limitations for Workers' Compensation Claims

8. Prior to July 1, 1994, the Vermont Workers' Compensation Act did not specify the statute of limitations applicable to compensation claims. Accordingly, the statute of limitations for bringing a workers' compensation claim at that time was the six-year statute applicable to all contract actions. 12 V.S.A. §511; *Hartman v. Ouellette Plumbing & Heating Corp*., 146 Vt. 443, 445 (1985).

9. Effective July 1, 1994, the Vermont legislature amended the workers' compensation statute. The amended statute provided in part: "Proceedings to initiate a claim for benefits pursuant to this chapter may not be commenced after six years from the date of injury." 21 V.S.A. §660. The amended statute further provided: "The date of injury shall be the point in time when the injury and its relationship to the employment is reasonably discoverable and apparent." 21 V.S.A. §656. Thus, the amended statute codified the six-year statute of limitations for workers' compensation benefits.

10. The legislature amended 21 V.S.A. §660 again, effective May 26, 2004, to change the statute of limitations for initiating a claim for a work-related injury from six years to three years from the date of injury.

Application of the Statute of Limitations to Claimant's Claim

11. Claimant alleges that he suffers from chronic headaches causally related to the June 25, 1995 accident. His headaches became reasonably discoverable and apparent by approximately June 25, 1996. Conclusion of Law No. 7 *supra*. Applying the six-year statute of limitations that was in effect in 1996, I conclude that Claimant had until June 25, 2002 within which to initiate a proceeding for workers' compensation benefits relating to his injuries.

12. Claimant did not initiate the current proceeding for workers' compensation benefits until March 27, 2017, however. I therefore conclude as a matter of law that his claim for workers' compensation benefits is time-barred by the six-year statute of limitations.

Doctrine of Laches

13. Defendant contends that if Claimant's claim were not barred by the statute of limitations, it would certainly be precluded under the doctrine of laches.

14. Laches is an equitable remedy that bars a claim where the claimant fails to "assert a right for an unreasonable and unexplained period of time when the delay has been prejudicial to the adverse party, rendering it inequitable to enforce the right." *In re Town Highway No. 20 of the Town of Georgia*, 2003 VT 76 ¶16, citing *Stamato v. Quazzo*, 139 Vt. 155, 157 (1980). Thus, for the doctrine of laches to apply, there must be both delay and prejudice to the adverse party.

15. Laches is an affirmative defense, and the burden of proof is on the party who relies upon it. *Stone v. Blake*, 118 Vt. 424, 428 (1955). Accordingly, for Defendant to establish laches in this matter, he must prove that Claimant failed to bring his claim for an unreasonable and unexplained time period and that the delay has been prejudicial.

16. Claimant here waited almost 22 years to bring his claim for workers' compensation benefits stemming from a June 25, 1995 accident. His delay is both manifestly unreasonable and unexplained by any evidence in the record.

17. Defendant contends that the delay has been prejudicial to his defense. He no longer has a clear memory of the June 1995 accident or its surrounding circumstances, nor does he still have his business records from that time. Finding of Fact No. 13 *supra*; *Defendant's Affidavit*, ¶¶ *3*, *18*. Moreover, due to the passage of time, he cannot effectively investigate the circumstances underlying Claimant's allegations; even obtaining the contemporaneous medical records would be burdensome or impossible. *Defendant's Memorandum of Law in Support of its Motion for Summary Judgment*, at 7.

18. The prejudice Defendant describes is typical when an adverse party sits on his or her rights for an unreasonable time. For example, in *Bienvenue v. Sandra Kuc d/b/a Vermonsters Daycare Center*, Opinion No. 23-15WC (October 15, 2015), the claimant alleged a 2011 work-related injury. She filed her claim in a timely manner, but withdrew it before the hearing. In 2015, she sought to file her claim again. Citing *U.S. v. Kubrick*, 444 U.S. 111, 117 (1979), the Commissioner wrote:

> 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.

Id.; see also, Reis v. Ben & Jerry's Homemade, Inc., Opinion No. 10-17WC (June 13, 2017).

19. Here, Defendant's Statement of Undisputed Material Facts and his Affidavit have established prejudice to his ability to defend himself in this claim. Accordingly, I conclude as a matter of law that Claimant's claim is barred by the doctrine of laches.

ORDER:

Defendant's Motion for Summary Judgment is hereby **GRANTED**. Claimant's claim for workers' compensation benefits referable to injuries he allegedly suffered in the course and scope of his alleged employment for Defendant on or about June 25, 1995 is hereby **DISMISSED WITH PREJUDICE**.

DATED at Montpelier, Vermont, this ___ day of January 2018.

_____
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.