

VERMONT DEPARTMENT OF LABOR & INDUSTRY

Ashlee Fischer ) State File No. C-16184  
                  ) )  
                  ) v. ) By: Mark L. Stephen  
                  ) ) Contract Hearing Officer  
Karme Choling ) )  
                  ) ) For: Barbara G. Ripley  
                  ) ) Commissioner  
                  ) )  
                  ) ) Opinion No. 28-93WC

Hearing held on September 9, 1993  
Record closed on October 5, 1993

**APPEARANCES**

Scott M. Skinner, Esq. of Montpelier for the Claimant  
Glen L. Yates, Jr., Esq. of Burlington for the Defendant

**ISSUES**

1. Whether the Claimant's average weekly wage was properly calculated for purposes of determining her temporary total disability compensation rate (which would likewise relate under pertinent statutory sections to the rate of entitlement, if any, for temporary partial, permanent partial or permanent total disability compensation)?
2. Whether, even if there had been an erroneous wage calculation, the parties are barred by the terms of the fully reviewed and approved Form 21 (Agreement for Temporary Total Disability Compensation) from seeking alteration thereof?
3. Whether, if there had been an erroneous wage calculation and the subsequent alteration of which is found permissible, the Claimant is nonetheless barred by the doctrine of laches from recovering any increase in compensation which would otherwise be due?

**THE CLAIM**

1. Temporary Total Disability Compensation (TTD) under 21 VSA Sec. 642 for the period 8 January 1990 to the present and ongoing based upon the increased average weekly wage amount of \$382.14 per week, which would yield an initial TTD rate of \$254.89 per week.
2. Attorneys fees and costs under 21 VSA Sec. 678(a) in the amount of 20% of the recovery or \$3000, whichever is less, for fees and \$442.52 for costs.

## FINDINGS

1. Stipulations 1-12 (above) are true and accurate.
2. The Defendant herein is a Buddhist retreat, which is made up, in part, of resident disciples who live at the retreat, where they meditate and take part in specified jobs, for example as a cook or gardener, each of which the Claimant performed. Each member also takes part in the daily rota of the community, which are basic tasks which must be performed within any community and are not part of assigned jobs. At various times, there have been between 30 and 60 residents living, working and meditating collectively at Karne Choling. Additionally, there are other members who live out in the community, but come to the Defendant's retreat to meditate and take part in other activities of the religious community. The Defendant is also a part of a much larger, international fellowship of disciples of certain Buddhist leaders.
3. The Claimant herein became a resident staff member and disciple at Karne Choling in 1988. She also testified that she discovered Buddhism in her late teens and had her first direct involvement with the Defendant in 1984. Buddhist practice has been and is central to her life, and though she no longer lives at Karne Choling, she still considers herself a part of the community.
4. It is clear that neither the Claimant nor most other members have economic motives for becoming members of the Defendant. The pay received in cash is nominal--just over \$20 per week, irrespective of one's assigned job duties or the hours performing rota and other tasks. Even in the best of times, and 1989 certainly wasn't that, the hours of labor are long and often menial. Meals, while adequate, were rarely gourmet and typically served cafeteria style. While the Claimant had a private room, with shared bath, at the time of her injury, she had previously had from 2 to 10 roommates. She had neither phone nor television.
5. The Defendant completed a Form 25 (Wage Statement) in March 1990 showing an average weekly wage of just under \$150 per week. The Form 25 showed two weeks in which the Claimant received a wage other than \$20.54. The Form 25 also omitted a personal needs allowance at the Karne Choling commissary, which averaged, according to undisputed testimony \$7.50 per week. In light of the testimony at trial, the former is plain error as the Claimant, as with all other members, was entitled to receive the same amount, \$20.54 per week, irrespective of her hours or the duties performed. This is true even if she was on a Dathun or meditative retreat,

clean room and adequate board would feel he or she was getting a good deal, it is simply not reasonable to evaluate the arrangement based upon an outside world value of any of its component parts.

9. Aside from the substantive flaws in the Claimant's arguments, the flat reality is that the contract had been presented, approved and executed. In the absence of fraud, mutual mistake and, under Sec. 668, change in the conditions, the contract became final then. As noted above, there was mutual mistake as to the cash wage, which should have been \$20.54 per week. Likewise, an allowance which averaged \$7.50 per week was omitted.

#### CONCLUSIONS OF LAW

1. The Workers Compensation Act is to provide, not only for the employees, a remedy which is both expeditious and independent of proof of fault, but also for employers, a liability which is limited and determinate. Morrisseau v. Legac, 123 VT.70 (1962) Workers' compensation is an action in contract. Hartman v. Ouellette Plumbing & Heating, 146 VT. 443 (1985).
2. A Form 21 (Agreement for Temporary Total Disability Compensation) is a contractual document. See Rule 17 of the *Processes and Procedure for Claims under the Vermont Workers' Compensation and Occupational Disease Acts*. Also, Nadeau v. Atlas Van Lines, Com'rs. Op. 12-93WC (September 16, 1993). Craig v. Alpine Vanity, Com'rs. Op. 8-93WC (July 15, 1993). The parties are deemed to have accepted the terms of their agreement. Craig, (supra). Indeed, even though it be mistaken, a party is bound by its agreement. See HLJ Management Group, Inc. v. Kim, 804 P. 2d 250 (1990).
3. In this case, there are two mutual mistakes, which are material to the setting of the average weekly wage, which can and should be corrected. The Claimant was paid \$20.54 per week and received an on-average \$7.50 per week personal needs allowance at the commissary. Neither of these figures was correctly contained on the Form 21, nor was either disputed. Thus, correction of these mutual mistakes is warranted.
4. Aside from the mistakes addressed above, the parties have entered a fully binding contract which was finalized when approved by the Department. By so doing, they have waived any right to contest the material portions thereof, at least absent a showing of fraud (see 21 VSA Sec. 669) or change in the conditions (see 21 VSA Sec. 668). No fraud argument is put forward here. Claimant does, however, argue that there has been a change in the conditions. She asserts that she did not recover as quickly as she had previously anticipated

ongoing. In addition, costs in the amount of \$442.52 and attorneys' fees in the amount of 20% of the TTD awarded is likewise ORDERED.

On other issues in this claim, the Claimant has failed to carry her burden and they are DENIED.

DATED at Montpelier, Vermont, this 4<sup>th</sup> day of January, 1994.

  
\_\_\_\_\_  
Barbara G. Ripley  
Commissioner