Parker v. Lamoille Cty. Mental Health (Oct. 18, 1996)

STATE OF VERMONT
DEPARTMENT OF LABOR AND INDUSTRY

Jana M. Parker	*)*	*File #: F-7068*
	)	*By: Barbara H. Alsop*
v.	*)*	*Hearing Officer*
	)	*For: Mary S. Hooper*
Lamoille County Mental Health	*)*	*Commissioner*
	)	*Opinion #: 9A-94WC*

Amended Order

PROCEDURAL HISTORY

The parties submitted the dispute in question to the Commissioner by way of Motion to Dismiss, on stipulated facts. A decision, Opinion No. 9-94WC, was rendered adverse to the claimant by the Commissioner on April 18, 1994. The claimant appealed from that decision to the Superior Court of Orleans County. The Commissioner, in transmitting the appeal to the Superior Court, indicated a belief that this matter was properly appealed to the Supreme Court, as the matter had been decided on stipulated facts and was resolved solely on the legal issue. The defendant in Superior Court filed a Motion to Dismiss based on similar reasoning. The claimant then asserted that there remained material issues of fact to be determined, whereupon the Superior Court remanded the case to the Department of Labor and Industry for further proceedings. A number of pretrial conferences were scheduled and the claimant repeatedly requested continuances. The defendant then requested a ruling on its Motion to Dismiss. The claimant was ordered to disclose the allegedly material facts still in dispute. The claimant indicated that she contested the finding in Paragraph No. 23 of the Conclusions of Law in Opinion No. 9-94WC:

> *Vermont is a rural state in which most transport is by auto. Many employees must drive a considerable distance in order to get to work, and given the paucity of public transportation it is likely that claimant would frequently have to drive to and from work even if her employer did not require her to*

have a vehicle available. A requirement that an employee have a car available for hire by her employer does not make the employer liable under 21 V.S.A. §601 et seq. for injuries suffered by the employee in her car when she is off duty and traveling to or from work on public highways.

The claimant alleges that the decision was based on the material fact that the claimant would frequently have to drive to and from work, even if her employer did not require her to have a vehicle available. The defendant objects that the facts objected to were not material to the decision or in the alternative are facts of which the Commissioner could properly take judicial notice.

DISCUSSION

I need not reach the defendant's argument that the alleged material facts are facts of which I can take judicial notice because I do not find that the facts objected to are necessary for the conclusion reached, that is, that a requirement that an employee have her car available for hire by her employer does not make the employer liable for injuries suffered by the employee in her car when she is off-duty and traveling to or from work on public highways. To the extent that the language objected to was mere dicta and not required in the ultimate determination of the issue before me, it is appropriate to amend the opinion and remove the allegedly offending language.
A formal hearing is not required.

ORDER

THEREFORE, Opinion No. 9-94WC is amended by striking from Conclusion of Law #23 the language "Vermont is a rural state in which most transport is by auto. Many employees must drive a considerable distance in order to get to work, and given the paucity of public transportation it is likely that claimant would frequently have to drive to and from work even if her employer did not require her to have a vehicle available" and leaving only the language "A requirement that an employee have a car available for hire by her employer does not make the employer liable under 21 V.S.A. §601 et seq. for injuries suffered by the employee in her car when she is off duty and

traveling to or from work on public highways."

SO ORDERED.

DATED at Montpelier, Vermont, this _18th_ day of October, 1996.

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Mary S. Hooper
Commissioner