

Cox v. Staffing Network (April 20, 1995)

VERMONT DEPARTMENT OF LABOR AND INDUSTRY

MARLON COX) STATE FILE NO. C-22579 & A-22285
)
) By: David Blythe
) Hearing Officer
STAFFING NETWORK)
) For: Mary S. Hooper
) Commissioner
)
) Opinion No. 9-95WC

ORDER FOR DISMISSAL

This matter came on for final hearing on Monday, January 16, 1995. The parties had previously received two written notices specifying the time, date and location of the hearing (the second notice was a revised notice changing only the time of the day of the hearing).

At the time and date set for the final hearing, the Employer was represented by Attorneys Keith Kasper and Thomas Simon, who appeared and were prepared to go forward. The Claimant failed to appear and had not given previous notice of an inability to be present for the final hearing. The hearing officer contacted the Claimant by telephone at that time, and the Claimant advised that he had forgotten about the hearing. He conceded that was the only reason he did not appear.

On January 18, 1995, the Defendant filed a Motion to Dismiss on the basis of the Claimant's unexcused failure to appear for the final hearing.

On January 25, 1995, the Hearing Officer wrote to the Claimant and instructed him that any response to the Defendant's Motion to Dismiss must be filed by Wednesday, February 9, 1995. No response was received from the Claimant, and the Claimant did not seek any extension of time within which to file a response.

MEMORANDUM OF LAW

Rule 7 of the Processes and Procedure for Claims Under the Vermont Workers' Compensation and Occupational Diseases Acts (February 7, 1994) states as follows in pertinent part:

- (c) Continuances will be granted by the Commissioner or hearing officer only for extraordinary circumstances . . .*

(emphasis supplied).

Dismissal with prejudice of a claimant's workers compensation claim is warranted when a claimant, without cause, fails to appear at a scheduled proceeding. In this present case, Claimant has failed, without cause, to appear at a scheduled final hearing for which Claimant had received notice. In addition, Claimant failed to respond to the Defendant's Motion to Dismiss, despite having received notice of his right to do so and having been advised of the deadline by which that response was to have been filed. In this instance, the Defendant is entitled to a dismissal with prejudice of the Claimant's claim. Mullen v. Moran's Deli Mart, Opinion No. 41-94WC, August 4, 1994.

ORDER

Based upon the foregoing, and pursuant to Rule 7(c) and V.R.C.P. 41(b)(2), Defendant's Motion to Dismiss is GRANTED, and Claimant's claim for workers' compensation benefits under the above-captioned file numbers is DISMISSED WITH PREJUDICE.

Dated at Montpelier, Vermont this ____ day of April, 1995.

Mary S. Hooper, Commissioner