

Dawson v. Price Shopper (Apr. 29, 1996)

STATE OF VERMONT
DEPARTMENT OF LABOR AND INDUSTRY

Frank Dawson) *File #: 84-4243*
) *By: Barbara H. Alsop*
v.) *Hearing Officer*
) *For: Mary S. Hooper*
Price Chopper) *Commissioner*
)
) *Opinion #: 20-96WC*

APPEARANCES

Frank Dawson, pro se
Frank E. Talbott, Esq. for the defendant

- 1. A pretrial conference was held on January 24, 1996, on three separate Forms 6, Notice and Application for Hearing, dated March 15 and 21, 1995, in which the claimant variously asserted claims for benefits for his left rib and right leg, as well as a claim for a Nautilus program. At the conference, the claimant also made an oral request for the payment for various medical bills, including a CAT scan and consultations at the University of Massachusetts Medical Center.*
- 2. At the pretrial conference, the claimant was ordered to produce and file all medical documentation and other evidence upon which he intended to rely at hearing on or before February 14, 1996. The claimant was also advised that he would not be allowed to introduce into evidence any document not produced by that date.*
- 3. At some time prior to February 14, 1996, the claimant notified the hearing officer by telephone that he did not intend to proceed with his requests for hearing.*
- 4. On February 15, 1996, the defendant filed a Motion to Dismiss, based on the claimant's failure to produce any evidence upon which he intended to rely at hearing, citing to Vermont Rules of Civil Procedure, Rule 41(b).*
- 5. On February 26, 1996, the claimant was notified of his right to respond*

to this motion on or before March 18, 1996. The claimant has not responded in any way.

DISCUSSION

- 1. According to the Workers' Compensation and Occupational Disease Rules,
"The purpose of the formal hearing is to determine the rights of the parties by a speedy and inexpensive procedure. The Vermont Rules of Civil Procedure
and the Rules of Evidence as applied in Superior Court shall, in general, apply to all hearings conducted under 21 V.S.A. §663, except as provided in these Rules, and only insofar as they do not defeat the informal nature of the hearing." Rule 7(a).*
- 2. The claimant is not unfamiliar with the hearing process. He has on three prior occasions brought claims arising out of this same injury to the hearing process, once while assisted by an attorney, and twice pro se. See, e.g., Opinions No. 2-86WC, 1-92WC and 18-93WC.*
- 3. V.R.C.P. 41(b) allows for dismissal of a claim upon the motion of the defendant if the claimant fails to prosecute or comply with the rules or any order of, in this case, the commissioner. Such a motion has been made, and the claimant has been afforded the opportunity to respond. This he has not done. Nor has he complied with the order of disclosure made at the pretrial conference. The defendant cannot reasonably be expected to prepare its defense when it has no notice of the actual claims made by the claimant.*
- 4. Where, as here, the claimant has been afforded every opportunity to pursue his claims and has declined to do so without any justification at some expense to the defendant, it is appropriate to dismiss the claims with prejudice.*

ORDER

THEREFORE, based on the foregoing, Frank Dawson's claims pursuant to three Forms 6, dated March 15 and 21, 1995, and his oral claim for reimbursement for medical expenses are dismissed with prejudice.

DATED at Montpelier, Vermont, this 29th day of April 1996.

Mary S. Hooper
Commissioner