

Fredericksen v. Georgia-Pacific Corp. (Dec. 4, 1997)

STATE OF VERMONT
DEPARTMENT OF LABOR AND INDUSTRY

Arthur T. Fredriksen) State File No. J-6839
)
) By: Margaret A. Mangan
v.) Hearing Officer
)
Georgia-Pacific Corporation) For: Steve Janson
) Commissioner
)
) Opinion No. 28S 97WC

RULING DENYING DEFENDANT'S MOTION FOR A STAY

Defendant, through Attorneys Stephen D. Ellis and Andrew C. Boxer, asks the Commissioner to stay his October 17, 1997 order that defendant pay claimant additional temporary total disability, 4% permanency and medical bills. Claimant, through Attorney Richard H. Munzing, opposes that motion.

Workers' compensation awards in Vermont "shall be in full effect from issuance unless stayed by the commissioner, any appeal notwithstanding." 21 V.S.A. § 675 (b). A stay will be granted only under exceptional circumstances. To justify a stay, defendant must meet the following four-prong test: 1) it is likely to succeed on the merits; 2) it would suffer irreparable harm if the stay were not granted; 3) a stay would not substantially harm the other party; and 4) the best interests of the public would be served by the issuance of the stay. In re Insurance Services Offices, Inc., 148 Vt. 634, 635 (1987).

Defendant's argument that it is likely to succeed on the merits on appeal is based on its hope that a jury will hear the evidence differently than the hearing officer did. More specifically, it suggests that the very mention of drug use would lead to a defendant's verdict. Additionally, defendant notes an apparent inconsistency between finding number 46 and the conclusion that claimant is entitled to an additional 4% of permanency. However, it must be noted that the hearing officer accepted Dr. Chard's careful impairment rating, based on the AMA Guides, over his later statement about range of motion. Furthermore, "a simple factual dispute is not a sufficient basis on which to grant a stay." Bodwell v. Webster Corp., Op. No. 62[S]-96WC (December 10, 1996). Next, defendant argues that it would suffer irreparable harm if a stay were not granted because it would be unable to recoup benefits paid if the Superior Court finds the claim to be non-compensable. This Department has never found payment by an insurer to be irreparable harm. If it were, every order in favor of claimant would subject to a stay. Third, defendant argues that a stay would not substantially harm the claimant because he is back to work. However, given periods of time this claimant lost wages, the medical bills that have accumulated and the delay in issuing a decision in this case, defendant cannot meet its burden of proving that claimant would not be substantially harmed. Finally, the best interests of the public would not be served by the issuance of a stay in this case. Quite the contrary is true. This Department's goal of a speedy, inexpensive resolution of claims using a hearing followed by thoughtful deliberation

would be severely undermined by granting a stay in this complicated case.

Therefore, defendant's Motion for Stay is DENIED.

Dated at Montpelier, Vermont, this 4th day of December, 1997.

Steve Janson
Commissioner