STATE OF VERMONT
DEPARTMENT OF LABOR AND INDUSTRY

	)	State File Number: J-08408
Betty Owen	)	
	)	By: Amy Reichard
	)	Staff Attorney
v.	)	
	)	For: Steve Janson
	)	Commissioner
Bombardier Corporation	)	
	)	Opinion No. 01R-99WC

RULING ON CLAIMANT'S MOTION TO RECONSIDER

Claimant, through her attorney, Thomas C. Nuovo, Esquire, filed a Motion for Reconsideration, requesting the Commissioner to reexamine his January 4, 1999 Order which granted defendant's Motion for Summary Judgment. In reply, defendant, through its attorney, Marion Ferguson, Esquire, submitted a Motion in Opposition to Claimant's Motion to Reconsider. Subsequently, claimant advanced a response to defendant's opposing motion. In countering claimant's supplement, defendant then forwarded correspondence to this department reiterating its position on the issue.

The central issue resolved by the prior decision issued in this case was whether claimant sustained a mental injury due to unusual stress in the workplace. In evaluating the compensability of such a claim, a claimant must demonstrate that the workplace stresses he/she encountered were significant and objectively real, as well as extraordinary or unusual, or significantly greater than the daily stresses encountered by all employees. *Bedini v. Frost*, 165 Vt. 167 (1996); *Gordon Little v. IBM*, Opinion No. 13-97WC (June 30, 1997); *Filion v. Springfield Electroplating*, Opinion No. 29-96WC (May 16, 1996). In the instant matter, although the Department concluded that the stresses claimant experienced in the workplace were significant and objectively real, it was further determined that the evidence failed to demonstrate the occurrence of unusual or extraordinary stresses. Presently, claimant moves the Department to reconsider this previous ruling.

Claimant attempts to support and justify her motion with two points of contention. Initially, she asserts that the evidence clearly established episodes of compensable stresses. Claimant also maintains that the Department, in reaching its ultimate conclusion, incorrectly considered a claimant's own negligence. Claimant's first contention is clearly without merit since the evidence has already been completely and extensively evaluated by the prior ruling. However, upon reconsideration, her second assertion, although not a correct interpretation of the Department's position, does in fact require an amendment to the phrasing of the decision, which, in the end, will not alter or change the final determination.

Claimant's initial argument, that the increase in her work load, the issuance of a written warning, and the October 20th meeting all rise to the level of unusual or extraordinary stresses,

must be rejected. Claimant simply repeats and reiterates her previous arguments which have already been thoroughly and comprehensively assessed and rejected by this Department. A close scrutiny of the challenged opinion clearly demonstrates proper consideration of all submitted evidence and, therefore, this contention must fail.

Proceeding with her second argument, the claimant challenges a statement contained within Conclusion of Law ¶ 13, which provides that "claimant's assertion that the October 20th meeting was an unusually stressful environment must be rejected because claimant herself created the situation by requesting the confrontation . . . ." Claimant, in moving for reconsideration, insists that this statement violates the no-fault principle of the workers' compensation system. Since this statement may lead a reader to interpret an assignment of fault as a result of a deficient explanation and analysis, it is appropriate to amend the decision.

As such, the challenged statement is amended to read as follows:

> Similarly, claimant's assertion that the October 20th meeting was an unusually stressful environment must be rejected. Even assuming that the confrontation with Sunee Roberts, Gordon Murray and Mike Ralph was an unusual event in and of itself, the record is devoid of evidence to support claimant's position that any stress she experienced as a result of that confrontation was greater than stress levels of similarly situated employees. *See Bedini, supra*; *Larson's Workers' Compensation Law*, § 42.25(f) at 7-1004.

As illustrated by the preceding amendment, upon reconsideration, claimant still failed to meet her burden for an unusual or extraordinary workplace stress claim. Therefore, the ultimate conclusion of the prior decision has neither been altered nor modified in any manner. Accordingly, the decision to grant defendant's Motion for Summary Judgment is preserved.

Dated at Montpelier, Vermont, on this 17th day of February 1999.

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Steve Janson
Commissioner