

**STATE OF VERMONT
DEPARTMENT OF LABOR AND INDUSTRY**

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|-----------------|---|------------------------|
| Frederick Lapan |) | State File No. H-21524 |
| |) | |
| |) | By: Amy Reichard |
| |) | Staff Attorney |
| v. |) | |
| |) | For: Steve Janson |
| |) | Commissioner |
| Pepin Granite |) | |
| |) | Opinion No. 14R-99WC |

RULING ON DEFENDANT’S MOTION TO RECONSIDER

Defendant Pepin Granite, by and through its attorney, Christopher J. McVeigh, moves for reconsideration of the Commissioner’s March 15, 1999 Order in this case, which granted the claimant’s and the Department of Corrections’ Motions to Quash defendant’s subpoena. Neither the claimant, nor the Department of Corrections have filed a response to the instant motion.

The primary issue presented for reconsideration by the defendant is the Commissioner’s conclusion that the Department has the exclusive authority to issue subpoenas in the worker compensation setting.¹ Although defendant raises numerous arguments to support its position that a private attorney possesses an independent power to directly issue a subpoena, the March opinion of the Commissioner has already scrutinized the pertinent legislative history and reached its discretionary determination.

Although this Department is a state agency within the meaning of the Vermont Administrative Procedure Act, when handling contested workers’ compensation matters, it is expressly exempted from the hearing provisions of the APA, including the independent subpoena power of an attorney. *See* 3 V.S.A. §809(h) and §816(a)(3). In addition, within the Workers’

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The challenged order in this case also concluded that the subject subpoena was overbroad and all encompassing and, therefore, the Department, on an alternative ground, granted the Motions to Quash. Presently, the defendant does not contest that portion of the decision. Rather, in its Motion to Reconsider, defendant only disputes the opinion as it pertains to a private attorney’s independent power to directly issue subpoenas in the workers’ compensation setting.

Compensation Act itself, the legislature limited its grant of subpoena power to the Commissioner. *See* 21 V.S.A. §603. As such, it is clear that the legislature intended for the Department to possess the sole authority to issue subpoenas in workers' compensation matters. Finally, the Commissioner of the Department was granted, by the legislature, the discretion to devise the rules utilized in the workers' compensation system. *See* 21 V.S.A. §602; *see also* 21 V.S.A. §606 (directing that questions arising under the Act shall be determined by the Commissioner). When specifically addressing subpoena issuance, the Commissioner declined to grant such independent power to private attorneys. Accordingly, acting within the proper scope of its discretion, the Department determined that it alone possesses the authority to issue subpoenas in the workers' compensation system.

Therefore, defendant Pepin Granite's Motion to Reconsider is DENIED.

DATED at Montpelier, Vermont, this 14th day of April 1999.

Steve Janson
Commissioner