

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

Wayne Pecor	)	State File No. L-08041
	)	
	)	By: Margaret A. Mangan
	)	Hearing Officer
v.	)	
	)	For: Steve Janson
	)	Commissioner
Pepin Granite Company	)	
and CNA Insurance Company	)	Opinion No. 16A-99WC

**RULING ON CLAIMANT’S MOTION FOR AMENDED FINDINGS OF FACT**

Claimant, through his attorney Kimberly B. Cheney, moves for an amendment of finding of fact number sixteen of the Commissioner's Opinion No. 16-99WC. Defendant, through its attorney Christopher J. McVeigh, opposes the motion.

Claimant believes that Finding of Fact number 16 does not correctly reflect the evidence surrounding the testimony of Dr. Eric White and that it is inconsistent with the Doctor's written report of September 8, 1998. The finding states that:

Dr. White testified if, in fact, the claimant suffered a work related injury on October 13, 1997, that such an incident may have exacerbated temporarily the symptoms from the degenerative disc disease. Such an incident would not, however, worsen the underlying condition itself.

The claimant characterizes Dr. White's testimony at hearing as stating:

That degenerative disc disease, while not caused by work in the industry, could be exacerbated by heavy lifting in the granite industry, and that Mr. Pecor's symptoms could be aggravated by his occupation.

Dr. White's written report of September 8, 1998 further explains that:

I cannot state with medical certainty whether Mr. Pecor's back complaints that have been documented as ongoing in the 1990's represent an actual aggravation of his pre-existing condition rather than the expected course of events and symptomology from any person with a long standing, chronic lumbar back condition.

The Commissioner's Finding of Fact number 16 is not inconsistent with the evidence addressed by the claimant. As stated in *Kruse v. Town of Westford*, the finder of fact is under "no obligation to accept, interpret, or apply evidence in accordance with the views of either party." 145 Vt. 368, 374 (State Board of Appraisers as trier of fact). The trier of fact must consider all the evidence in the case tending to corroborate or contradict the testimony presented;

however, an appeal of facts found is warranted only if it can be shown that the Commissioner made a manifest error of fact. See *Renfro v. City of Emporia*, 732 F. Supp. 1116 (D. Kan.) aff'd, F.2d 1529 (10<sup>th</sup> Cir. 1991).

Finding of Fact number 16 is not based upon a manifest error of fact, but is grounded sufficiently in the Doctor's own testimony and reports that have been addressed by the claimant. The finding, the written report, and the statement of Dr. White's testimony are inclusively consistent and all express the same basic position. The claimant may believe that the three are somehow inconsistent due to their conditional nature, but as stated in *Kruse*, the trier of fact is under no obligation to accept that belief and need only apply the evidence as it exists. Ultimately, the claimant falls far short of showing that the Commissioner has made a manifest error of fact under Findings of Fact number 16 when nothing more than a hint of a possible contradiction is indicated.

Accordingly, the claimant's motion for amended Findings of Fact is DENIED.

Dated at Montpelier, Vermont, on this 23rd day of June 1999.

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Steve Janson  
Commissioner