

Kraby v. Vermont Telephone Co.

(January 31, 2004)

STATE OF VERMONT
DEPARTMENT OF LABOR AND INDUSTRY

Paul Kraby

Opinion No. 06S-04WC

v.

By: Margaret A. Mangan
Hearing Officer

Vermont Telephone Co.

For: Michael S. Bertrand
Commissioner

State File No. H-22277

RULING ON DEFENSE MOTION FOR A STAY

Defendant-employer, by and through its attorney, Andrew C. Boxer, who appealed this department's order to the Vermont Supreme Court, moves for a stay of the ruling that Mr. Kraby's claim for permanency benefits is viable and not barred by the statute of limitations. Claimant, by and through his attorney, James J. Dunn, opposes the motion.

Pursuant to 21 V.S.A. § 675(b), there is no automatic stay of a Commissioner's order on appeal, unless specifically granted. The request for a stay may be granted, denied or modified. Id.; Austin v. Vermont Dowell & Square Co., Opinion No. 05S-97WC (May 29, 1997) (citing Newell v. Moffatt, Opinion No. 2A-88 (Sept. 20, 1988)).

To prevail on its request in the instant matter, Defendant must demonstrate: "(1) a strong likelihood of success on the merits; (2) irreparable injury if the stay is not granted; (3) a stay will not substantially harm the other party; and (4) the stay will serve the best interests of the public." Gilbert v. Gilbert, 163 Vt. 549, 560 (1995) citing In re Insurance Services Offices, Inc., 148 Vt. 634, 635 (1987) (mem); In re Allied Power & Light Co., 132 Vt. 554 (1974). Bodwell v. Webster Corporation, Opinion No. 62S-96WC (1996).

Although granting a stay is the exception, the criteria cannot be interpreted in such a way as to make it a legal impossibility. As this department implied in Dubuque v. Grand Union Company, Op. No. 34S-02WC (2002), the most important of the four criteria in the workers' compensation context is the third, whether the claimant

would suffer irreparable harm if the stay were granted. In this case, defendant has persuasively argued that with the underlying award of attorney fees and the yet to be determined permanent partial disability benefits, a further delay to this claimant will not substantially harm the claimant. And, should he prevail, he will be entitled to interest pursuant to 21 V.S.A. § 664.

Defendant has also met the remaining three criteria. Whether defendant is likely to prevail on appeal is dependent on the Supreme Court's interpretation of its decision in Longe v. Boise Cascade Corp., 171 Vt. 214 (2000) and its applicability to this case. Given the length of time from the date of claimant's original injury and his claim for permanent benefits, defendant has an increased likelihood of prevailing on appeal. With a claim that may exceed reserves for a closed case and small chance that it would recoup payments were the judgment reversed, defendant has shown irreparable harm. And, finally, the best interests of the public are served by balancing the interests at stake.

ORDER:

Accordingly, the defense motion for a stay is GRANTED.

Dated at Montpelier, Vermont this 31st day of January 2004.

*Michael S. Bertrand
Commissioner*

Appeal:

Within 30 days after copies of this opinion have been mailed, either party may appeal questions of fact or mixed questions of law and fact to a superior court or questions of law to the Vermont Supreme Court. 21 V.S.A. §§ 670, 672.