

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

Michele Reed	)	Opinion No. 08-05WC
	)	
	)	By: Margaret A. Mangan
v	)	Hearing Officer
	)	
Peter Leblanc d/b/a	)	For: Laura Kilmer Collins
Nature by Design	)	Commissioner
	)	
	)	State File No. T-18967

Pretrial conference on November 1, 2004  
Submitted on written record.  
Record closed on December 21, 2004

**APPEARANCES:**

E. William Leckerling, Esq., for the Claimant  
Jennifer K. Moore, Esq., for the Defendant

**FACTS**

This matter was referred to the hearing docket on the sole issue of attorney fees for work performed at the informal level in the department.

Claimant worked for eight days, from October 21, 2002 to November 2, 2002, as a wreath maker for Nature by Design, a company owned and operated by Peter LeBlanc, when she complained that her wrists were bothering her. At that time she did not mention to her employer that she attributed the pain to work. Claimant did not work for defendant after November 2<sup>nd</sup>.

Claimant sought medical care for her wrists in March 2003. The employer filed a first report of injury in April 2003 for an aggravation of carpal tunnel syndrome.

Mr. Leckerling entered an appearance on claimant’s behalf. On June 9, 2003 Patricia Greene from the Travelers wrote to claimant’s counsel after reviewing the medical records. Her letter included the statement, “I do not feel Ms. Reed has met her burden of proof in this case,” and concluded with the admonition that he request a hearing if he disagreed with that decision.

On June 13, 2003 claimant, through counsel, filed an application for a hearing.

On July 7, 2003, a workers' compensation specialist held an informal conference with Attorney Leckerling for claimant and Adjuster Patricia Greene for the Travelers. At that conference, Mr. Leckerling agreed to obtain a supplemental opinion from claimant's treating physician regarding causation. No interim order followed that conference.

Dr. Johansson performed a carrier-requested examination of the claimant in August 2003, followed by a report establishing causation despite the brief period of employment. Travelers then advised the department and the claimant that it was accepting this claim.

Since the IME, the insurance carrier has paid for medical benefits and executed a Form 21 agreement for temporary total disability compensation. Claimant has been placed at medical end result with no impairment. The carrier denied claimant's request for attorney fees.

Attorney Leckerling's claim for fees is based on an invoice detailing 7.3 hours of legal work on her behalf.

### **CONCLUSIONS**

The sole issue for decision is whether the fees requested are recoverable under Workers' Compensation Rule 10.1300.

In those claims without a formal hearing, WC Rules provide for a discretionary award of attorney fees under the following conditions: 1) the employer or insurer carrier is responsible for undue delay in adjusting the claim, or that the claim was denied without reasonable basis, or that the employer or insurance carrier engaged in misconduct or neglect, and 2) that legal representation to resolve the issues was necessary, and, 3) the representation provided was reasonable, and, 4) that neither the claimant nor the claimant's attorney has been responsible for any unreasonable delay in resolving the issues. *Id.*

With such a brief period of time on the job, the employer cannot be faulted for not realizing that claimant's condition was work-related. It accepted this claim as soon as it had medical evidence supporting it. Therefore, I can find no undue delay or denial without a reasonable basis. No misconduct or neglect has been alleged. Therefore, the first mandatory condition for an award of fees has not been met.

Accordingly, the claim for attorney fees is hereby DENIED.

**ORDER:**

Dated at Montpelier, Vermont this \_\_\_\_ day of January, 2005.

---

Laura Kilmer Collins  
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.