STATE OF VERMONT
DEPARTMENT OF LABOR AND INDUSTRY

Mark Bollhardt	)	Opinion No. 10-05WC
	)	
	)	
v.	)	By: Margaret A. Mangan
	)	Hearing Officer
	)	
Mace Security International, Inc.	)	For: Laura Kilmer Collins
	)	Commissioner
	)	
	)	State File No. K-24388

RULING ON THE DEFENSE MOTION FOR STAY

Defendant moves for a stay of the order that it pay the claimant permanent total disability benefits, medical benefits and attorney fees and costs, See Op. No. 51-04WC, (Dec.17. 2004) for an injury incurred on June 10, 1997. Pending is defendant's appeal to superior court for a trial de novo pursuant to 21 V.S.A. § 670.

An appeal of a workers' compensation opinion must be filed "[w]ithin thirty days after copies of an award have been sent. 21 V.S.A.§ 670. Furthermore, "[a]ny request for a stay shall be filed with the commissioner at the time of filing a notice of appeal…." 21 V.S.A. § 675(b). In this case, the opinion was sent (mailed) on December 17, 2004 and notice of timely appeal filed on January 18, 2005. However, the motion for a stay was not filed until January 20, 2005, beyond 30 days, although a copy of the notice was faxed on January 17, 2005, within 30 days. Although the better practice would have been to mail the motion for a stay, I do not find the facsimile to be a fatal flaw to timeliness.

Under the Workers' Compensation Act, "[a]ny award or order of the Commissioner shall be of full effect from issuance unless stayed by the Commissioner, any appeal notwithstanding." To prevail on its request in the instant matter, defendant must demonstrate all of the following: "(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). The granting of a stay should be the exception, not the rule. *Bodwell v.Webster Corporation*, Opinion No. 62S-96WC (1996).

First, given the strength of the evidence from claimant's treating neurologist and claimant's unsuccessful attempts at securing even volunteer work, it is unlikely that a jury will find differently than the commissioner. Second, defendant will not suffer irreparable harm with the benefits ordered: weekly benefits that have accrued to date, interest, arrearages, medical benefits, fees and costs. These amount to approximately two years of benefits for the claimant and benefits which have accrued, not sums that would irreparably harm the defendant. Fourth, defendant has failed to prove that a stay would not substantially harm the claimant. The social security benefits claimant has received have not been enough to keep the bill collectors at bay. And he is in need of ongoing medical care, which carries a cost. Finally, a stay will not serve the best interests of the public. Like the claimant in *Pease v. Ames*, Op. No. 52S-04WC (2004), Mr. Bollhardt needed representation to prevail in this hotly contested case. "If law firms representing claimants can not be paid in a timely way, when they do prevail, they are less likely to provide representation in the future." Id. A grant of a stay would go against the public interest.

Therefore, the motion for a stay is hereby DENIED.

Dated at Montpelier, Vermont this 25th day of January 2005.

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Laura Kilmer Collins
Commissioner