

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

Dennis Almodovar)	Opinion No.24-05WC
)	
v.)	By: Timothy J. Ryan, Esq.
)	Staff Attorney
)	
Munson Earth Moving and J.B. Stone)	For: Laura Kilmer Collins
)	Commissioner
)	
)	State File Nos. S-06295 and S-21344
)	

APPEARANCES:

Charles L. Powell, Esq., for the Claimant
 John W. Valente, Esq., for the Defendant, Zurich Insurance/ Munson Earth Moving Company
 Keith J. Kasper, Esq., for the Defendant, Acadia Insurance/ J.B. Stone Company

ISSUES:

1. Should this Department grant Acadia’s request for an order, which is being treated as a request for relief under Workers’ Compensation Rules 8.6211 and/or 8.7110?
2. Has Zurich presented grounds for relief from the Arbitrator’s order?

EXHIBITS:

Pursuant to Workers’ Compensation Rule 7.1800, the Department takes notice of its file in this matter.

ISSUE FOR ARBITRATION:

The issue presented to the arbitrator was whether the claimant’s bilateral upper extremity injury was causally related to a chemical burn he received while employed by Munson Earth Moving Company in August 2001 or to overuse resulting from his employment by J.B. Stone Company in October 2001 and thereafter.

PROCEDURAL HISTORY:

1. Phyllis Severance, Esq., Arbitrator, issued her decision on July 15, 2004, ordering that Munson Earth Moving Company and it’s carrier (Zurich) bore the liability for workers’

compensation benefits, including a provision that it reimburse J.B. Stone/its carrier (Acadia) \$40,927.28.

2. Munson/Zurich filed with this Department a notice of appeal of the arbitrator's decision to the Superior Court of Rutland County and J.B. Stone/ Acadia filed a motion to dismiss the appeal with this Department. The Department, deferring to the jurisdiction of superior court, forwarded to it the motion to dismiss.
3. On February 25, 2005, Judge Cohen at the Rutland Superior Court (*Dennis Almodovar v. Munson Earth Moving v. J B Stone*, Docket No. 652-11-04Rdcv) dismissed the appeal for lack of subject matter jurisdiction by concluding, "the 'award' from which appeal is contemplated is one made by the Commissioner. 21 V.S.A. § 671 limits this court's jurisdiction 'to review of questions of fact or questions of fact and law certified to it by the commissioner'" Ruling on Motion to Dismiss Appeal, *Dennis Almodovar v. Munson Earth Moving v. J B Stone*, Docket No. 652-11-04 Rdcv, February 25, 2005, Pages 2-3, citations omitted.
4. Judge Cohen's order requires a Department order before an appeal can be taken to a superior court under 21 V.S.A. § 671.
5. On March 25, 2005, Acadia's counsel filed a proposed order for review and execution by the Commissioner that asked the Commissioner to order, adopt and accept the arbitrator's decision. On April 4, 2005, Zurich filed a letter in response to the request for an order, raising a concern under Rule 8.4113, which provides, "The arbitrator shall base the decision on the facts established at the arbitration hearing, including stipulation of the parties and on the law as properly applied to those facts."
6. Zurich has made no showing of corruption, fraud, partiality or miscalculation of figures in the Arbitrator's decision.

CONCLUSIONS OF LAW:

1. The dispute centers on the effect of engaging in arbitration under Workers' Compensation Rule 8. Rule 8 was promulgated pursuant to the authority of 21 V.S.A. § 662(e), wherein it is written, "the commissioner may order that the dispute be resolved through arbitration rather than the formal hearing process...." The Department has construed this statute to apply to arbitrations that are ordered and those that are voluntarily entered into by the parties. See Workers' Compensation Rule 8.000 ("Insurance disputes arising under 21 V.S.A. §662 (c) or (d) may be arbitrated either by order of the commissioner or by mutual agreement of the parties.") Consequently, whether the arbitration was voluntarily entered into or ordered, this Department's Rule 8.0000 and its subsections establish the procedure and effect of the arbitration process.
2. The governing statute and the Department's rules are in accord on the finality of arbitration decisions. Title 21 V.S.A. § 662(e)(2)(B) states that the arbitrator shall "[i]ssue a written decision which shall be final." Rule 8.6110 similarly states that "[t]he arbitrator shall issue a written decision which shall be final." Furthermore, "[t]he arbitration decision may only be vacated by either a showing of corruption, fraud or partiality." Rule 8.6211. Also, an arbitration award may only be modified if there is a miscalculation of figures or mistake describing any person, thing or property referred to in the award." Rule 8.7110. The Department treats an arbitration award as final (see 21

V.S.A. § 662(e)(2)(B)) and Department rules provide for direct collection of an arbitrator's award without imposing a requirement for review/approval or order by the Department. See Rule 8.8110.

3. Arbitrator Severance's decision went into "full effect" thirty days after it was issued. No further order of this Department was or is necessary or required by statute or this Department's rules to make it final. Simply put, the Department's arbitration rules are intentionally designed so that an arbitrator's decision is not amenable to appeal pursuant to 21 V.S.A. § 671 except on the limited grounds described in its rules. See Rule 8.6211
4. Applying the above interpretation of this Department's rules and governing statutes, it is clear that neither Acadia nor Zurich has established any sort of grounds for relief under Rule 8.6211 and/or Rule 8.7110 because there is no suggestion of corruption, fraud, partiality or miscalculation of figures. Furthermore, Zurich's raising of a Rule 8.4113 issue, presumably based on its disagreement with facts found, is not a cognizable defense to or grounds for modification of an arbitrator's decision.

THEREFORE:

1. Zurich has not presented grounds justifying relief of the Arbitrator's order;
2. No further order of this Department shall be necessary for Acadia to enforce the Arbitration order dated July 15, 2004.

Dated at Montpelier, Vermont this 18th day of April 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.