

M. Y. v. Concepts ETI, Inc.

(May 1, 2006)

**STATE OF VERMONT
DEPARTMENT OF LABOR**

M. Y.

Opinion No. 22-06WC

v.

By: Margaret A. Mangan
Hearing Officer

Concepts ETI, Inc.

For: Patricia A. McDonald
Commissioner

State File No. W-50871

RULING ON UNOPPOSED DEFENSE MOTION FOR SUMMARY JUDGMENT

The defense, by and through its attorney, Eric Johnson, moves for judgment as a matter of law on the issue of causation in this worker's compensation case. See Concepts ETI, Inc.'s Motion for Summary Judgment, filed March 13, 2006. Claimant, who participated in earlier conferences pro se, has not filed a response to the motion.

This Claimant alleges that she suffered ultrasensitivity to sound (hyperacusis) as a result of noise in her work place. A First Report of Injury was filed after she made that claim in July of 2004. The file contains a letter from her with that allegation, pages from her deposition transcript and medical records. A diagnosis of hyperacusis has been confirmed. All hearing tests are negative. It is clear that Claimant has been informed of the need to prove causation. Although Claimant wrote to her physician specifically asking that he write a letter confirming a causal link between work related noise and hyperacusis, no opinion to that effect has ever been submitted.

Summary judgment is appropriate when the moving party, in this case the employer, demonstrates that there are no genuine issues of material fact and it is entitled to judgment as a matter of law. V.R.C.P. 56(c); *Kelly v. Town of Barnard*, 155 Vt. 296, 299, 583 A.2d 614, 616 (1990).

For Claimant to prevail in her worker's compensation claim, she must establish by sufficient credible evidence the character and extent of the injury and the causal connection between the injury and the employment. *Egbert v. Book Press*, 144 Vt. 367 (1984). Where, as here, the claimant's injury is obscure and the layperson could have no well-grounded opinion as to causation, expert testimony is the sole means of laying a foundation for an award. *Lapan v. Berno's, Inc.*, 137 Vt. 393 (1979).

Mere allegations cannot defeat a motion for summary judgment. Claimant has produced no evidence supporting her claim that work place noise caused her hyperacusis.

Therefore, the defense motion for Summary Judgment is GRANTED.

Note that the conference scheduled for June 26, 2006 is canceled because this order dismisses the claim.

Dated at Montpelier, Vermont this 1st day of May 2006.

Patricia A. McDonald
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.