

K. D. v. Lydall Thermal/Acoustical, Inc. (February 26, 2007)

**STATE OF VERMONT
DEPARTMENT OF LABOR**

K. D.

Opinion No.04-07WC

v.

By: Rebecca L. Smith
Staff Attorney

Lydall Thermal/Acoustical, Inc.

For: Patricia Moulton Powden
Commissioner

State File No. X-52920

APPEARANCES:

K. D., pro se Claimant

Andrew C. Boxer, Esq. for Defendant Lydall Thermal Acoustical Inc./St. Paul Travelers

Ryan Smith & Carbine for Defendant Greenfield Industries/ACE

McCormick, Fitzpatrick, Kasper & Burchard for Defendant Vermont Tap & Die/CNA

RULING ON DEFENSE MOTION TO DISMISS

According to the First Report of Injury filed in this matter, Claimant began working for Lydall Thermal/Acoustical, Inc. on July 26, 2004.

Claimant alleged that she injured both upper extremities from the repetitive motion involved in her work for Lydall. The injury was described as gradual onset, with September 12, 2005 identified as the date of "accident."

St. Paul Travelers, Lydall's workers' compensation insurance carrier, initially denied this claim on the basis that the Claimant's condition was a recurrence of a previous work-related injury. Two additional insurance carriers from former employers, ACE and CNA, were put on notice of potential liability in this claim.

Claimant had a work-related elbow injury in 1994 while employed by Vermont Tap & Die, which was accepted by insurer CNA and which resulted in the Claimant being placed at medical end result in 1998 with a finding of 19% impairment related to her upper extremities. In 2002, Claimant had injury to both elbows while employed by Greenfield Industries, for which insurer ACE, after initially denying the claim, paid benefits without prejudice. The Claimant was placed at medical end result with no permanent impairment in June 2003.

Following informal proceedings including conference regarding the 2005 claim, Defendant St. Paul Travelers was ordered on December 21, 2005 to pay medical benefits related to the Claimant's upper extremity injuries. Claimant appeared pro se during proceedings in all three of these claims.

On February 21, 2006 this claim was transferred to the formal hearing docket after Defendant St. Paul Travelers submitted additional evidence indicating that the Claimant treated for elbow pain a month prior to her claim at Lydall and described activities occurring in a home business. St. Paul Travelers amended its defense to assert that Claimant's present condition was not related to her work at Lydall and to raise issues of credibility and material omissions regarding the Claimant's reports.

The parties were sent notice on March 6, 2006 of a pre-trial conference with hearing officer Margaret Mangan to be held on April 17, 2006. The Claimant telephoned the Department on March 9, 2006 to report that she wanted to drop the claim and would send a letter to that effect to the Department and the defense attorneys. The Claimant did not send such a letter at that time.

The Claimant did not appear at the pre-trial conference, nor was she available by telephone. Defendant St. Paul Travelers filed a Motion to Dismiss the claim due to the Claimant's failure to appear.

The Claimant later informed Hearing Officer Mangan by telephone that she did not wish to pursue her claim. On May 4, 2006, the Claimant sent to the Department a written statement that she could afford neither an attorney nor to take days off from work to attend to the administration of her claim.

On May 9, 2006 Hearing Officer Mangan wrote to the Claimant asking that the Claimant respond in writing if Claimant agreed that the insurer could stop paying medical benefits. The Department received no response to this letter.

On January 17, 2007 Defendant St. Paul Travelers renewed its Motion to Dismiss this claim.

Therefore, for her failure to prosecute this claim, pursuant to V.R.C.P. 41 (b) (2), the workers' compensation claim of K. D. is hereby DISMISSED. Lydall Thermal Acoustical Inc./St Paul Travelers is hereby relieved of the Interim Order of December 21, 2005.

Dated at Montpelier, Vermont this 26th day of February 2007.

Patricia Moulton Powden
Commissioner