

E. C. v. Reel Hospitality LLC dba Tuscan Kitchen

(July 9, 2007)

**STATE OF VERMONT
DEPARTMENT OF LABOR**

E. C.

Opinion No. 17-07WC

v.

By: Jane Gomez-Dimotsis
Hearing Officer

Reel Hospitality LLC
d.b.a. Tuscan Kitchen

For: Patricia Moulton Powden
Commissioner

State File No. Y-00400

OPINION AND ORDER

Motion Received on May 3, 2007

Record closed on June 7, 2007

APPEARANCES:

Edward Cook, Pro Se
Corina N. Schaffner-Fegard

ISSUE:

Should Claimant's Case be dismissed Pursuant to V.R.C.P. 41(b) (2)?

FINDINGS OF FACT:

The Defendant filed a Motion to Dismiss for Failure to Prosecute and in the alternative a Motion to Show Cause and Stay of the Hearing Pending a Show Cause Order. The Defendant filed this motion due to Claimant's failure to respond to correspondence or phone calls by both the Department of Labor and the Defendant. Finally, Claimant did fail to appear at the formal hearing scheduled for May 21, 2007.

Claimant filed a claim for worker's compensation due to an alleged back injury which occurred at Tuscan Kitchen in Burlington, Vermont for whom he was employed. Gallagher-Bassett Services, the third party administrator of the claim, filed a Form 2 Denial based on the lack of evidence that the back injury was causally related to his employment. This form was approved by the Department.

Claimant was originally represented by Heidi Groff, Esq. and she participated in an informal conference on his behalf on November 9, 2006. Later, Ms. Groff's Motion to Withdraw was granted by the Department on January 22, 2007. The Claimant was notified by first class mail on January 4, 2007 by the Department of his obligations, rights and responsibilities regarding his claim for worker's compensation benefits. Claimant failed to

respond and the correspondence was not returned. A subsequent phone message from the Department was also not returned.

On January 7, 2007, Claimant did appear by telephone for his pre-trial conference for which he had received notice by first class mail. Claimant informed contract Hearing Officer Phyllis Severance, Esq. that he was unsure at that time whether or not he was going to pursue his claim.

The Department scheduled another status conference for which Claimant was again notified by first-class mail. He was not available by telephone for the conference when called by the Department and a telephone message was left for him by Hearing Officer Jane Dimotsis, Esq. informing him to call the Department. However, he has failed to communicate with the Department since his January 7, 2007 phone conference with Hearing Officer Severance. Defense Counsel filed a Motion for Dismissal on May 2, 2007 that was sent to Claimant at his Winooski, Vermont address. Again, there has been no response and the letter to Claimant was not returned.

The day prior to the hearing, May 20, 2007, Jane Dimotsis, Hearing Officer, tried to contact Claimant by phone. However, Claimant's phone had been disconnected and was no longer in service. Further inquiry to directory assistance determined that no listing existed for Claimant in the area of Chittenden County.

This matter was scheduled for hearing on May 21, 2007. Claimant was notified of this by first class mail. He did not file any final disclosures and did not appear at the hearing. Again, none of the Department's or the Defense's correspondence to Claimant has been returned. He has not communicated to the Department since January of 2007.

CONCLUSIONS OF LAW:

Pursuant to V.R.C.P. 41(b) (2), Involuntary Dismissal, the Claimant's case can be dismissed for failure to prosecute or comply with the rules or order of the Court. *See Amanda Grant v Cobb's Corner*, Opinion No. 22-02W.C. (Case dismissed without prejudice for failure to appear several time at deposition after proper notice given by Department pursuant to V.R.C.P. 41(b) (2) and 41(b) (3).)

In the instant case, the Claimant has failed to respond to any Motions by Defendant and the Department's hearing notices. It has been six months since Claimant was last heard from and he failed to appear for hearing.

Should the Claimant ever choose to pursue his claim within the statutory limits, the passage of time and history of non-cooperation will undoubtedly increase his burden.

ORDER:

Defendant's Motion to Dismiss is Granted. The Dismissal is, however, without prejudice.

DATED at Montpelier, Vermont this 9th day of July 2007.

Patricia Moulton Powden
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.