J. D. v. Employer R. (September 12, 2007)

STATE OF VERMONT
DEPARTMENT OF LABOR

J. D. Opinion No. 22S-07WC

v. By: George K. Belcher
Hearing Officer

Employer R For: Patricia Moutlon Powden
Commissioner

State File No. X-00111

APPEARANCES:

Christopher McVeigh, Esq., for the Claimant
William B. Skiff, II, Esq., for the Defendant

RULING ON DEFENDANT'S MOTION FOR STAY

Defendant moves the Department to grant a stay pursuant to 21 V. S. A. Section 675 concerning the Department's decision dated August 2, 2007. The Claimant opposes the requested stay.

The Defendant seeks a stay arguing that the four criteria set forth in *In re Insurance Services Offices, Inc*., 148 Vt. 634, 635 (1987) are met. Those criteria are (1) that the Defendant has a strong likelihood of success on appeal; (2) that there will be irreparable injury to the Defendant if the stay is not granted; (3) that a stay will not substantially harm the other party; and (4) that the stay will serve the best interests of the public. Id. The Defendant argues that the Defendant is a small, family run business without significant financial resources. Because the Defendant is uninsured, the Defendant argues that denial of the stay would have a devastating effect upon the Defendant and possibly cause the Defendant to seek "protection under Chapter 13 bankruptcy." (See Defendant's memorandum in support of stay.)

The Commissioner has ruled that the granting of a stay should be the exception, not the rule. *Bodwell v. Webster Corporation*, Opinion No. 62S-96 WC (Dec. 10, 1996). A simple factual dispute is not a sufficient basis upon which to grant a stay. Id. The Defendant argues that the case is one of credibility between experts. The Defendant understandably believes that its non-treating experts are more credible than the treating medical experts, but this belief does not create a strong likelihood of success.

Likewise, the defendant argues that it would suffer irreparable injury if it were forced to pay disability and medical benefits, which might not be due if the appeal is successful. In the past the Department has not equated the payment to irreparable harm. *Durand v. Okemo Mountain*, Opinion No. 41S-98WC (September 1, 1998); *Fredericksen v. Georgia Pacific Corp.,* Opinion No. 62S-96WC (1996). Defendant argues that any payment it may make would not be subject to recoupment if it were successful on appeal. This assertion is factually questionable since the Defendant is also arguing that the Claimant is now receiving health insurance benefits and Social Security Disability benefits.

Finally, the Defendant argues that the public interest requires that "neither party be unfairly burdened while a final adjudication is pending." The consequences of payment by the Defendant are particularly dire in this case because the Defendant failed to maintain its Workers' Compensation insurance. (See Finding 11 of decision of August 2, 2007.) It would seem "unfair", however, to allow this fact (which was purely within the control of the Defendant) to require the Claimant to continue to wait for her benefits.

ORDER:

The Motion for Stay is DENIED.

Dated at Montpelier, Vermont this 12th day of September 2007.

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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. Sec. 670, 672.