

S. H. v. Kingdom Healthcare Management (March 19, 2008)

**STATE OF VERMONT
DEPARTMENT OF LABOR**

S. H.

Opinion No. 11-08WC

v.

By: Jane Gomez-Dimotsis
Hearing Officer

Kingdom Healthcare Management

For: Patricia Moulton Powden
Commissioner

State File No. X-52939

OPINION AND ORDER

Motion for Dismissal and to Vacate Interim Order dated January 31, 2008
Record closed on February 21, 2008

ISSUE:

Should Claimant's Case be dismissed pursuant to V.R.C.P. 41(b) (2) and the Interim Order vacated?

FINDINGS OF FACT:

The Defendant filed a Motion to Dismiss for failure to prosecute and to renew the Defendant's request to vacate the Interim Order. The Defendant filed this motion due to Claimant's failure to respond to correspondence or phone calls from the Department of Labor and the Defendant. Finally, Claimant failed to appear at the pre-trial hearing scheduled in December, 2007. A certified letter was sent by the Department informing the Claimant that she had failed to appear by phone for the pre-trial conference and that she must contact the Department within 30 days with an accurate telephone number. This certified letter was sent to the Claimant's home in Lyndonville, Vermont, which was the only address provided by the Claimant.

The Claimant had filed a claim for worker's compensation due to an alleged back injury which occurred at The Pines facility for which Claimant was employed. Significant questions existed as to how the original back injury began as the Claimant initially denied any prior back problems until medical records were produced indicating she had received treatment for prior back problems.

Claimant was *pro se*. As noted above, Claimant did not appear by telephone for her pre-trial conference for which she had received notice by first class mail. The day of the hearing, Jane Dimotsis, Hearing Officer, tried to contact Claimant by phone. However, Claimant's phone had been disconnected and was no longer in service. It was after this that the certified mail was sent to the Claimant. No response to the certified mailing was received by the Department.

Therefore, Defendant moves that the Interim Order issued for payments of benefits for a fixed period of time be vacated. The original Order for benefits was issued solely due to the failure of the Defendant to respond to a claim more than 21 days after notice of the injury.

On November 18, Dr. Haas indicated in his notes that the Claimant had returned to her full time work schedule, had achieved her previous pre-injury baseline and was at medical end result with no permanent impairment.

Defense Counsel filed a Motion for Dismissal and a Motion to Vacate the Interim Order on January 31, 2008 that was sent to Claimant at her Lyndonville, Vermont address. Again, there has been no response. There has also been no response to the Department's certified letter informing the Claimant that she had to respond with a working phone number within 30 days or her case would be dismissed.

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. 22-02WC. (Case dismissed without prejudice for failure to appear several times 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. Claimant did not respond within the thirty day period requested. Should the Claimant ever choose to pursue her claim within the statutory limits, the passage of time and history of non-cooperation will undoubtedly increase her burden.

Since the Claimant has not responded to certified mail or by telephone regarding the appeal of the Interim Order, the order for interim benefits is vacated without prejudice.

ORDER:

Defendant's Motion to Dismiss is granted. The Motion to Vacate the Interim Order is granted. Both Motions are resolved without prejudice to the Claimant.

DATED at Montpelier, Vermont this 19th day of March 2008.

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.