

**STATE OF VERMONT
DEPARTMENT OF LABOR**

L. P.)	Opinion No. 07S-06WC
)	
)	By: Margaret A. Mangan
v.)	Hearing Officer
)	
Greer's House Of Dry Cleaning)	For: Patricia A. McDonald
)	Commissioner
)	
)	State File No. U-11519

RULING ON DEFENSE MOTION FOR STAY/MOTION FOR CLARIFICATION

After Claimant prevailed on her right shoulder, arm and wrist claim, the Defendant moved for a stay of the order that it adjust the claim pending its appeal to superior court. Claimant, through attorney Heidi Groff, opposes the motion.

Pursuant to 21 V.S.A. § 675(b), there is no automatic stay of a Commissioner's order on appeal, unless specifically granted. The request for a stay may be granted, denied or modified. *See Austin v. Vermont Dowell & Square Co.*, Opinion No. 05S-97WC (1997) (citing *Newell v. Moffatt*, Opinion No. 2A-88 (1988)).

I. Motion for Stay

To prevail on its request in the instant matter, defendant must demonstrate all four of these criteria: “(1) a strong likelihood of success on the merits; (2) irreparable injury if the stay is not granted; (3) a stay will not substantially harm the other party; and (4) the stay will serve the best interests of the public.” *Gilbert v. Gilbert*, 163 Vt. 549, 560 (1995) citing *In re Insurance Services Offices, Inc.*, 148 Vt. 634, 635 (1987) (mem); *In re Allied Power & Light Co.*, 132 Vt. 554 (1974). The granting of a stay should be the exception, not the rule. *Bodwell v. Webster Corporation*, Opinion No. 62S-96WC (1996).

First, Claimant prevailed at formal hearing because of the overwhelming expert medical evidence in her favor. The primary care physician, the employer-recommended physician at Occupational Health and Rehabilitation, Inc., and the treating surgeon all opined the Claimant’s injury to be the result of the work related fall at Greer’s House of Dry Cleaning on January 22, 2004. The expert medical evidence provided by the defense

opined that Claimant's injury was not work related partly based on a lack of testimony to this fact by Claimant's primary care provider. A later review of the missing document from the primary care provider, which stated claimant's injury was work related and a subsequent medical exam did not change his opinion that Claimant's injury was the result of her preexisting condition combined with other medical problems. Based on the existing evidence and the lack of new evidence on this matter, it is unlikely that a trier of fact will view the expert medical evidence differently. Consequently, Defendant has failed to meet the first criterion by demonstrating a strong likelihood of success on the merits. *See Carter v. Portland Glass*, Opinion No. 8RS-98WC (April 3, 1998 & February 6, 1998).

Second, the Department does not equate payment by an insurer with irreparable harm. *See Fredricksen v. Georgia-Pacific Corp.*, Opinion No. 28S 97WC (1997). Moreover, the Defendant has failed to demonstrate a strong likelihood of success on the merits. Consequently, Defendant has failed to demonstrate irreparable harm due to a strong likelihood of success on appeal.

Third, the Claimant is presently unable to work and has little means of support. Her medical benefits and temporary total disability have been suspended for over two years, any further delay will undoubtedly, substantially harm the Claimant. The Defendant's assertion that Claimant is able to rely on family members to pay medical bills and provide support is entirely inappropriate and unpersuasive. Therefore, Defendant has failed to demonstrate that a stay of the order would not substantially harm Claimant.

Finally, consistent with the Department's goal of speedy, inexpensive resolution of claims, the best interest of the public would not be served by the issuance of a stay in this case.

II. Motion for Clarification

Clarification of the order is founded in the objective evidence provided at the formal hearing by Dr. Mercia at Occupational Health and Rehabilitation and Dr. Fenton, Osteopathic Physician Board Certified in Physical Medicine. Dr. Mercia opined Claimant's TFCC tear and exacerbation of a pre-existing carpal tunnel syndrome as work related. Dr. Fenton opined that Claimant had a tear of the TFCC and that she had a C5-6 double crush syndrome, which aggravated her pre-existing carpal tunnel syndrome. He concluded this injury to be the result of Claimant's January 22, 2004 fall at Greer's House of Dry Cleaning.

To clarify the original order, the Defendant is liable for all medical benefits and temporary total disability benefits stemming from the upper right extremity injury that occurred on January 22, 2004. The Defendant is also liable for statutory interest from the date each benefit was due, costs of \$2,150.63, and attorney fees of 20% of the total award, or \$9,000, whichever is less. Finally, Defendant is not liable for medical benefits stemming from Claimant's other medical problems, including left-sided carpal tunnel syndrome, as the Claimant did not assert a claim for any of these conditions.

THEREFORE,

Defendant's Motion for Stay is DENIED.

The Motion for Clarification is GRANTED.

Dated at Montpelier, Vermont this ____ day of February, 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.