

Robert Ryan v. Dale Martin, Ronald Martin and Martin Brothers Trucking (June 3, 2009)

**STATE OF VERMONT
DEPARTMENT OF LABOR**

Robert Ryan

Opinion No. 13S-09WC

v.

By: Jane Gomez-Dimotsis
Hearing Officer

Dale Martin, Ronald Martin
and Martin Brothers Trucking

For: Patricia Moulton Powden
Commissioner

State File No. X-04332

RULING ON DEFENDANTS' MOTION FOR STAY

Ruling on Claimant's Motion for Summary Judgment issued April 29, 2009

Motion for Stay filed May 27, 2009

Claimant's Opposition to Motion for Stay filed June 1, 2009

Defendants' Response to Claimant's Opposition filed June 1, 2009

APPEARANCES:

Tom Nuovo, Esq. for Claimant

Frank Talbott, Esq. for Defendants

ISSUE:

Should the Commissioner's Ruling on Claimant's Motion for Summary Judgment, in which she found that Defendants were Claimant's employers at the time of his injury, be stayed prior to a final hearing to determine what, if any, benefits are due Claimant?

DISCUSSION:

Claimant prevailed on his Motion for Summary Judgment that Defendants Dale Martin and Martin Brothers Trucking are precluded from raising the defense that they were not Claimant's employers on the date of his injury.

A hearing is scheduled for June 5, 2009 regarding what benefits may be due Claimant from Defendants. Defendants have asked for a stay of this hearing. They have filed an appeal to the Vermont Supreme Court on the legal question of whether the Commissioner's decision finding Defendants were Claimant's employers at the time of the injury was correct under Vermont law.

Claimant disagrees that a stay or an appeal is appropriate and argues that no final award has been made and thus, no stay or appeal is permissible. Claimant states that an “award” may be appealed and or stayed but that an “award” includes the final determination of compensation due the Claimant. *See* 21 V.S.A. §669. In the instant case there was only a decision by the Commissioner that Defendants were Claimant’s employers at the time of the injury, nothing more.

Essentially, Claimant is arguing that because the Commissioner’s decision was limited in scope, such that there has been no hearing on the merits of the claim, an appeal to the Vermont Supreme Court is not yet timely. No decision has been issued regarding what, if any, benefits may be awarded. This type of appeal to the Vermont Supreme Court is not favored and usually requires permission of the original decision-maker in order to proceed. Typically, the Commissioner grants such a request only under special circumstances, understanding that the Supreme Court should not be involved in deciding cases on a piecemeal basis. *Castle v. Sherburne Corp.*, 141 Vt. 157 (1982).

Further, under 21 V.S.A. §675(b), in order to prevail on a request for a stay when there is an “award,” the party requesting the stay must demonstrate four factors: 1) that he is likely to prevail on the merits; 2) that there would be irreparable harm if the stay were not granted; 3) that a stay would not substantially harm the other party; and 4) that the best interests of the public would be served by the stay. *N.K. v. State of Vermont*, Opinion No. 36S-08WC (October 8, 2008).

There will be no irreparable harm or prejudice to Defendants if a stay is not granted. No award of benefits has been made. If a decision is issued that requires Defendants to pay benefits, not only will they have the right to request a stay of that order but the decision will be final and ripe for appeal. Claimant will be prejudiced if a stay is granted in that he already has waited years for a hearing on the merits of his case, during which time Defendants have managed to avoid litigation. It also is noteworthy that none of the parties would be facing this situation had Defendants complied with their statutory obligation to secure and maintain workers’ compensation insurance coverage. In this context, to allow Defendants to delay the process further would not serve the public’s best interests in any way.

As Defendants have failed to satisfy the criteria for granting a stay, and also because there has been no final “award” yet, Defendants’ arguments for a stay are found lacking.

ORDER:

Defendants’ Motion for Stay is **DENIED**.

DATED at Montpelier, Vermont this 3rd of June 2009.

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.