K. G. v. Alpine Glen Farm (June 3, 2009)

STATE OF VERMONT
DEPARTMENT OF LABOR

K. G.	Opinion No. 17-09WC
v.	By: Jane Gomez-Dimotsis Hearing Officer
Alpine Glen Farm	For: Patricia Moulton Powden Commissioner
	State File No. X-03632

RULING ON CROSS MOTIONS FOR SUMMARY JUDGMENT

APPEARANCES:

Chris McVeigh, Esq. for Claimant
John Valente, Esq. for Defendant

ISSUE:

As a consequence of Claimant's compensable injury, does Vermont's Workers' Compensation statute or rules obligate Defendant as a matter of law to pay for the cost of storing and/or moving Claimant's belongings?

FINDINGS OF FACT:

Considering the evidence in the light most favorable to the non-moving party, *see Toys, Inc. v. F.M. Burlington Co.*, 155 Vt. 44 (1990), I find the following facts:

1. Judicial notice is taken of all forms and correspondence contained in the Department's files relating to this claim.

2. Claimant moved to Shelburne, Vermont in 2004 to work for Defendant. Her employment consisted of teaching horseback riding and acting as barn manager. On January 2, 2006 Claimant was injured during the scope and course of her employment when she suffered a head injury while engaged in her work with horses.

3. Claimant suffered a traumatic brain injury as well as other injuries from her accident. Defendant terminated her employment in April 2006 because she could no longer perform her job responsibilities.

4. Claimant's employment benefits included housing for herself, her belongings and her daughter. Following her injury and the subsequent loss of her housing, Claimant chose to relocate by air to California, where her mother resided. Her daughter drove their car to

California. Claimant stored her belongings in a rented storage facility in Chittenden County, where they have remained since.

CONCLUSIONS OF LAW:

1. Under V.R.C.P. 56(c), summary judgment shall be awarded to the moving party if it can demonstrate that there is no genuine issue of material fact and it is entitled to judgment as a matter of law. In evaluating the propriety of a summary judgment motion, the non-moving party is entitled to all reasonable doubts and inferences. *Murray v. White*, 155 Vt. 621 (1991).

2. Claimant seeks reimbursement for her storage expenses and for the cost of packing and moving her belongings from Vermont to California where she now resides, because she is no longer able to perform the act of packing them herself and cannot afford to pay the moving expenses. The estimated moving costs are between $5,000.00 and $7,000.00. The cost of storage for the past few years is not known.

3. Claimant claims entitlement to these expenses under the following theories: (1) that storage and moving expenses are compensable under 21 V.S.A. §640 and Workers' Compensation Rules 12.21000 through 12.2300, which govern both reimbursement for medical services and supplies and allow for payment of transportation and housing expenses under certain circumstances as well; and (2) that the liberal construction of the Workers' Compensation Act stretches to allow these expenses to be compensated due to its humanitarian purposes.

4. 21 V.S.A. §640 provides as follows:

> An employer subject to the provisions of this chapter shall furnish to an injured employee reasonable surgical, medical and nursing services and supplies, including prescription drugs and durable medical equipment. The employer shall provide assistive devices and modification to vehicles and residences reasonably necessary to permit an injured worker who is determined to have or expected to suffer a permanent disability, such as an ambulatory disability as defined in section 271 of this title . . . that substantially and permanently prevents or limits the worker's ability to continue to live at home or perform basic life functions.

5. The Vermont Supreme Court has held that the Workers' Compensation Act is remedial in nature and therefore should be liberally construed to accomplish the humane purpose for which it was passed. *Herbert v. Layman*, 125 Vt. 481 (1966); *Workers' Compensation Rule 1.1100.* A liberal construction does not mean an unreasonable or unwarranted construction, however. *Id.* Thus, however humane a particular outcome might be, the plain language of the statute cannot be broadened to include a benefit that the legislature did not intend. *See, e.g., Brunet v. Brunet*, Opinion No. 09-07WC (February 23, 2007) and cases cited therein (personal errand activities not reimbursable as "nursing services").

6. There is no reasonable interpretation to be given the plain language of §640 that would encompass the storage and/or relocation expenses Claimant seeks. Even if the statutory reference to "medical and nursing services" could be interpreted to include them, furthermore, there is no evidence that they have been determined to be medically necessary. They may be desirous or helpful, but that is not the standard. *W.P. v. Madonna Corp.*, Opinion No. 18-06WC (June 5, 2006).

7. Claimant argues that other states have construed their medical benefits statutes liberally to allow coverage for relocation expenses. The cases cited in support of her position, however, are inapposite. In both *Hoffart v. Fleming Company*, 634 N.W.2d 37 (Neb. Ct. App. 2001), and *Levenson's Case*, 194 N.E.2d 103 (Mass. 1963), credible medical evidence established that the claimants' injuries necessitated relocation from a colder climate to a warmer one. No such evidence exists here. Here, Claimant's decision to move to California was prompted by her personal desire to relocate closer to her mother, not by any medically determined necessity that she do so.

8. In fact, permanent relocation expenses generally are disfavored as a benefit, and even temporary seasonal relocations typically are covered only if they are found to be medically necessary. *See* 5 *Larson's Workers' Compensation Law* §94.03[2][c] and cases cited therein.

9. Claimant argues that Workers' Compensation Rules 12.2000 through 12.2300, which allow for mileage, meal and/or accommodation reimbursement when an injured worker is required to travel for treatment, should be interpreted to include the storage and relocation expenses she seeks. Again, there simply is no basis in either the statute or the rules to permit such an interpretation. Claimant did not travel to California for treatment, and the expenses for which she seeks reimbursement are not for mileage, meals or accommodations.

10. Having determined that as a matter of law the costs Claimant seeks are not reimbursable, there is no need to reach Defendant's alternative argument that genuine issues of material fact preclude summary judgment in Claimant's favor.

ORDER:

Based on the foregoing findings of act and conclusions of law, Claimant's Motion for Summary Judgment is hereby **DENIED**. Defendant's Motion for Summary Judgment is hereby **GRANTED**. Claimant's claim for benefits is dismissed.

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

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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. §§670, 672.