

Franjo Baric v. Velan Valve Corporation

(October 1, 2010)

**STATE OF VERMONT
DEPARTMENT OF LABOR**

Franjo Baric

Opinion No. 21R-10WC

v.

By: Sal Spinoso
Hearing Officer

Velan Valve Corp.

For: Valerie Rickert
Acting Commissioner

State File No. Y-58658

RULING ON DEFENDANT'S MOTION FOR RECONSIDERATION

Defendant moves for reconsideration of the Commissioner's August 5, 2010 denial of its motion to stay her previous ruling granting partial summary judgment to Claimant.

In granting partial summary judgment to Claimant, the Commissioner assumed that the question whether he was concurrently employed at the time of his work-related injury was not genuinely disputed. With that in mind, the Commissioner concluded that the parties' failure to include Claimant's wages from concurrent employment in their average weekly wage calculation constituted a mutual mistake of fact. Therefore, the Commissioner held that the previously approved Agreement for Temporary Total Disability Compensation (Form 21) was not binding. She ordered Defendant to recalculate Claimant's average weekly wage, taking the concurrent earnings into account, and to make whatever retroactive payments were necessary.

In reality, as is clear from a closer examination of its prior pleadings, Defendant has never admitted the truth of Claimant's contention that he was concurrently employed. To the contrary, that fact has been, and is now, genuinely disputed. As that fact formed the basis for the Commissioner's previous ruling, conceivably it was inappropriate to have disposed of it on summary judgment. Rather, fairness requires that both parties be afforded a more complete opportunity to present evidence on the issue.

Defendant's Motion for Reconsideration is **GRANTED**. The Commissioner's previous ruling granting summary judgment in Claimant's favor is hereby stayed. The issue whether Claimant was concurrently employed at the time of his work injury shall be adjudicated at formal hearing.

DATED at Montpelier, Vermont this 1st day of October 2010.

Valerie Rickert
Acting Commissioner