

**STATE OF VERMONT
DEPARTMENT OF LABOR**

Estate of Stephen Paul Carr, by
and through the Widow and
Administratrix, Bonnie Carr

Opinion No. 08R-11WC

By: Phyllis Phillips, Esq.
Hearing Officer

v.

Verizon New England, Inc.

For: Anne M. Noonan
Commissioner

State File No. Y-53261

RULING ON CLAIMANT'S MOTION FOR RECONSIDERATION

Claimant moves for reconsideration of the Commissioner's ruling granting summary judgment in Defendant's favor and denying summary judgment in Claimant's favor.

Claimant alleges that a factual issue exists as to whether he was or was not engaged in a business-related task at the time of his injury on Thursday morning, June 29, 2006. As support for this allegation, he points to the sworn testimony of Bonnie Carr, his wife. Mrs. Carr testified that Claimant telephoned her on Wednesday evening and advised that he "had to go into work for a little while in the morning" to photocopy and/or fax some documents. Claimant asserts that in ruling on Defendant's summary judgment motion, this testimony must be accepted as true, that it establishes a business purpose for his presence in the area on Thursday morning and that therefore Defendant's motion must fail.

I accept as true Mrs. Carr's assertion that Claimant advised her during a telephone conversation on Wednesday evening that he would be working Thursday morning. I do not accept as true that this is in fact what Claimant did.

As stated in my prior ruling, the undisputed evidence establishes that Claimant was neither going to nor coming from the Hinesburg Road facility at the time of his injury. *Estate of Carr v. Verizon New England, Inc.*, Opinion No. 08-11WC (April 29, 2011) at Discussion ¶10. Even accepting Mrs. Carr's testimony as to Claimant's intent to "go into work for a little while," furthermore, there is nothing at all to link him to the Lincoln Street Central Office, and it would be pure speculation to place him there as opposed to any number of other photocopy or fax locations.

I conclude that Mrs. Carr's testimony fails to establish a genuine issue of material fact sufficient to overcome summary judgment in Defendant's favor.

As to his own summary judgment motion, Claimant asserts that regardless of whatever personal deviation he may have embarked upon previously, at the time of his injury he was traveling along a reasonable route home from his work assignment. As a matter of law, therefore, he claims that his injury must be deemed to have occurred in the course of his employment.

Claimant has submitted new evidence in support of his motion for reconsideration, namely, mileage records showing a total of 45 additional miles on Claimant's motorcycle from the time he dropped it off for servicing on Wednesday morning to the time of his accident on Thursday morning. Subtracting from this total the 5-mile distance from the repair shop to the accident scene, Claimant asserts from this evidence that the geographical extent of his personal deviation could not have exceeded 20 miles in any direction.

As this evidence was submitted late, I am not compelled to consider it. *Wentworth v. Fletcher Allen Health Care*, 171 Vt. 614, 616-17 (2000). Even were I to do so, it still does not merit reconsideration of my previous ruling denying summary judgment in Claimant's favor. The fact remains, without knowing where Claimant's deviation took him from Wednesday evening until Thursday morning, there is no way to know how extensive it was or when it was concluded.

Had Claimant stayed the night in Burlington, for example, his direct route home likely would have been to access Interstate 89 South at the Williston Road interchange. For him instead to travel via Route 117 – to enjoy an early morning pleasure ride on his motorcycle, say – would amount to a considerable deviation. And what if rather than accessing the Interstate at the Richmond interchange Claimant intended instead to continue his deviation north – say, to have breakfast in Williston – prior to proceeding south towards home? In that event, despite his proximity to a reasonable route home his deviation still would not have been concluded.

The point is, beyond mere speculation there is no way to know where Claimant was coming from, where he was going or what his intentions were. Not until he actually regained his route home would it be safe to say that his deviation had ended.

I conclude that summary judgment in Claimant's favor was appropriately denied.

Claimant's Motion for Reconsideration is hereby **DENIED**.

DATED at Montpelier, Vermont this 11th day of July 2011.

Anne M. Noonan
Commissioner