

**STATE OF VERMONT
DEPARTMENT OF LABOR**

Geraldine Spaulding-Singley

Opinion No. 14-11WC

v.

By: Jane Woodruff, Esq.
Hearing Officer

G.S. Precision

For: Anne M. Noonan
Commissioner

State File No. S-01330

RULING ON CLAIMANT'S MOTION FOR SUMMARY JUDGMENT

APPEARANCES:

Charles Powell, Esq., for Claimant
Craig Matanle, Esq., for Defendant

ISSUE:

Is Claimant entitled as a matter of law to temporary total disability benefits from May 14, 2009 forward?

FINDINGS OF FACT:

For the purposes of this motion the following facts are not disputed:

1. At all times relevant to these proceedings, Claimant was an employee and Defendant was her employer as those terms are defined in Vermont Workers' Compensation Act.
2. In July 2001 Claimant injured her left wrist during the course of her employment for Defendant.
3. From 2001 through May 2009 Claimant experienced chronic pain as a result of this injury. During this time she underwent five surgeries on her left wrist.
4. Claimant was admitted to Parkview Hospital on May 14, 2009 following an apparent suicide attempt. Claimant remained hospitalized there until May 26, 2009.
5. Dr. Lambertson treated Claimant during this hospitalization. Dr. Lambertson did not opine as to whether Claimant was totally disabled from work in May 2009.
6. At Defendant's request, on March 19, 2010 Claimant underwent a medical evaluation with Dr. Rustagi, a psychiatrist. Dr. Rustagi opined that Claimant suffered from a major depressive disorder causally related to her July 2001 work injury.

7. Dr. Rustagi also opined that Claimant's hospitalization at Parkview Hospital in May 2009 was related to her major depressive disorder. However, he did not render an opinion as to whether Claimant was totally disabled from working from that time forward.
8. In December 2010 Claimant began treating with Dr. Kim, a psychologist, for her depressive disorder. At the request of Claimant's attorney, in January 2011 Dr. Kim opined that Claimant had been totally disabled from working at least as of her May 2009 hospitalization, and that she remains unable to work currently.
9. Dr. Kim acknowledged that she did not have all of Claimant's mental health records since the date of the initial 2001 injury and that her opinion was based at least in part on Claimant's self-report.

DISCUSSION:

1. Summary judgment is appropriate when there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. *Samplid Enterprises, Inc. v. First Vermont Bank*, 165 Vt. 22, 25 (1996). The nonmoving party is entitled to all reasonable doubts and inferences. *State v. Delaney*, 157 Vt. 247, 242 (1991); *Toys, Inc. v. F.M. Burlington Co.*, 155 Vt. 44 (1990). Summary judgment is appropriate only when the facts in question are clear, undisputed or unrefuted. *State v. Realty of Vermont*, 137 Vt. 425 (1979).
2. The issue presented in this case is whether a genuine issue of material fact exists as to whether Claimant has been totally disabled from working since her May 14, 2009 hospitalization. Claimant argues that because Dr. Kim's opinion on this issue is unrefuted, as a matter of law she is entitled to summary judgment.
3. Defendant argues in response that even standing on its own Dr. Kim's opinion cannot support summary judgment in Claimant's favor. It asserts that by attempting to determine Claimant's disability status in May 2009, when she did not even begin treating Claimant until December 2010, Dr. Kim has engaged in impermissible speculation. Defendant argues that it would be equally speculative to ask Dr. Rustagi, its own medical expert, to render an opinion on the issue.
4. I do not necessarily agree that a medical expert is precluded from ever making a retroactive determination of an injured worker's disability status. I do agree, however, that such determinations should be closely scrutinized, particularly with respect to the facts underlying the expert's determination. Here, where Dr. Kim's opinion was based at least in part on Claimant's self-report, it is important for me to be able to judge Claimant's credibility. Dr. Kim's credibility needs to be thoroughly evaluated as well. These credibility issues are not appropriately determined on a motion for summary judgment. *Pierce v. Riggs*, 149 Vt. 136, 139-40 (1987).

5. As for Claimant's assertion that because Dr. Kim's opinion is unrefuted, I am compelled to accept it, this is not true. Even an undisputed expert opinion can be rejected if the fact finder determines that it is not credible. *Marshall v. State of Vermont*, Opinion No. 01R-11WC (March 28, 2011), and cases cited therein.

ORDER:

Claimant's Motion for Summary Judgment is hereby **DENIED**.

DATED at Montpelier, Vermont this 6th day of June 2011.

Anne M. Noonan
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.