

**STATE OF VERMONT
DEPARTMENT OF LABOR**

Trevor Foley

Opinion No.16S-13WC

v.

By: Jane Woodruff, Esq.
Hearing Officer

Smugglers' Notch Management

For: Anne M. Noonan
Commissioner

State File No. EE-51048

RULING ON DEFENDANT'S MOTION FOR STAY

Defendant moves to stay the Commissioner's June 3, 2013 Order pursuant to 21 V.S.A. §675.

To prevail on a request for a stay, the moving party must demonstrate *all* of the following:

1. That it is likely to succeed on the merits;
2. That it will suffer irreparable injury if a stay is not granted;
3. That issuing a stay will not substantially harm the other party; and
4. That the best interests of the public will be served by issuing a stay.

In re Insurance Services Office, Inc., 148 Vt. 634, 635 (1987).

As contemplated by the legislature, the granting of a stay must be the exception, not the rule. *Bodwell v. Webster Corp.*, Opinion No. 62S-96WC (December 10, 1996). Applying this stringent standard, I find that Defendant has failed to establish its right to a stay.

As to the first criterion, Defendant argues that Claimant's entire case rested on his own testimony, which in its estimation was not credible. However, the Commissioner specifically found otherwise, and on those grounds concluded that Claimant had met his burden of proof. There is no reason to believe that a trial judge or jury will conclude otherwise.

As to the second criterion, Defendant asserts that it will be irreparably harmed by having to pay disability and medical benefits if a stay is not granted and Claimant later is determined not to have sustained his burden of proving that his injuries arose out of and in the course of his employment. Again, the Commissioner specifically rejected this argument in her Opinion and Order. Beyond that, the Commissioner consistently has refused to accept this as an adequate basis for establishing irreparable harm. *See, e.g., J.D. v. Employer R*, Opinion No. 22S-07WC (September 12, 2007); *Liscinsky v. Temporary Payroll Incentives, Inc.*, Opinion No. 09R-01WC (June 26, 2001); *Fredriksen v. Georgia-Pacific Corp.*, Opinion No. 28S-97WC (December 4, 1997). There is nothing to compel me to decide otherwise.

As to the third criterion, Defendant asserts that granting a stay will not harm Claimant because he is currently working and his medical expenses have been paid. Claimant is not able to work full-time. In fact, he testified that he is only able to work one hour per week. Therefore, he will be significantly harmed if a stay is granted.

As to the last criterion, Defendant asserts that to require it to pay benefits in a claim it believes was wrongly decided will both unjustly enrich Claimant and contribute to the rising cost of workers' compensation insurance that Vermont employers must bear. To avoid that result, it argues, the public interest will be served if it is relieved of responsibility to pay pending appeal. Presumably every losing party feels similarly. Defendant serves only its own interests in making this argument, not the public interest.

As noted above, the decision to grant a stay must be the exception, not the rule. *Bodwell, supra*. Defendant has failed to carry its burden in the current claim. I find no basis for issuing a stay pending appeal.

Defendant's Motion for Stay is **DENIED**. Claimant is awarded attorney fees totaling \$580.00 for his review of and response to the motion, which Defendant is hereby **ORDERED** to pay.

DATED at Montpelier, Vermont this 9th day of August 2013.

Anne M. Noonan
Commissioner