

**STATE OF VERMONT
DEPARTMENT OF LABOR**

Michael Hathaway

Opinion No. 04F-14WC

v.

By: Phyllis Phillips, Esq.
Hearing Officer

S.T. Griswold & Company

For: Anne M. Noonan
Commissioner

State File No. S-22188

RULING ON CLAIMANT'S MOTION FOR FINAL JUDGMENT

Claimant requests that the Commissioner enter final judgment in accordance with her March 17, 2014 ruling on Defendant's Motion for Summary Judgment, so that he may take an appeal of the issues decided therein to the Vermont Supreme Court, pursuant to 21 V.S.A. §672.

Procedural Background

In her prior ruling, Opinion No. 04-14WC, the Commissioner determined as a matter of law that Defendant was not obligated either to provide vocational rehabilitation services to Claimant as a consequence of his compensable low back injury or to reimburse him for wages he lost while attending medical appointments necessitated by that injury. Summary judgment was therefore granted in Defendant's favor on those issues. The Commissioner also granted summary judgment as to the third issue Defendant had presented – whether Claimant's erectile dysfunction was causally related to his compensable work injury. However, the ruling left open the possibility that Claimant might still be entitled to workers' compensation benefits as a consequence of deficits in sexual function that could be referable to his injury-related low back pain. As to this aspect of his claim, summary judgment in Defendant's favor was denied, therefore.

Pointing to the possibility that Claimant might yet be awarded additional benefits, Defendant has objected to Claimant's request for final judgment on the grounds that the Commissioner's ruling did not finally resolve all aspects of his workers' compensation claim against it. Therefore, it argues, any appeal at this point would be interlocutory in nature, and not justified under the circumstances.

Discussion

Claimant cites to V.R.C.P. 54(b) in support of his request. That rule authorizes a court to “direct the entry of a final judgment as to one or more but fewer than all of the claims or parties only upon an express determination that there is no just reason for delay and upon an express direction for the entry of judgment.”

I agree with Defendant that the more appropriate authority for evaluating Claimant's request derives from Vermont's Administrative Procedures Act, 3 V.S.A. §§800 *et seq.* That statute specifically exempts workers' compensation proceedings from the requirements relating to how administrative hearings are conducted, 3 V.S.A. §816(a)(3).¹ However, workers' compensation proceedings are *not* exempted from the APA's provisions as to the judicial review of contested cases, 3 V.S.A. §815. That section reads as follows:

§815. Judicial review of contested cases

- (a) A person who has exhausted all administrative remedies available within the agency and who is aggrieved by a final decision in any contested case may appeal that decision to the supreme court, unless some other court is expressly provided by law. However, a preliminary, procedural or intermediate agency action or ruling is immediately appealable under those rules if review of the final decision would not provide an adequate remedy, and the filing of the appeal does not itself stay enforcement of the agency decision. The agency may grant, or the reviewing court may order, a stay upon appropriate terms.

The gist of Defendant's argument is that because summary judgment resolved Claimant's entitlement to some, but not all, of the workers' compensation benefits he claims are owed as a consequence of his work injury, the Commissioner's ruling was not a "final determination," and therefore not yet subject to appeal.

Careful reading of the Workers' Compensation Act's appeal provisions requires a different interpretation. The appeal permitted, to either the superior court under 21 V.S.A. §670 or to the supreme court under §672, is of the Commissioner's "award" in cases where "the compensation is not fixed by agreement." 21 V.S.A. §§663(a) and 664; *see also*, §668 (modification of awards) and 671 (findings for new award). As typically occurs, the statute thus envisions that as a result of a single compensable injury a claimant may become entitled to a variety of benefits. Some of these may be "fixed by agreement," while others may require a hearing and "award" in order to resolve. But nowhere does the statute require that *all* benefits must be either fixed by agreement or awarded before an appeal can be taken.

Indeed, given the stages through which an injured worker often progresses following a work-related injury – from temporary total disability through medical treatment and vocational rehabilitation, and then return to work and permanency – to impose such a limit on appeals would be both impractical and unjust. In the time it might take for a claimant's entitlement to permanency benefits to ripen, a disputed vocational rehabilitation plan might become stale, or a medical treatment window might close. Such a result would undermine both the "humane purpose" for which the workers' compensation statute was created, *Herbert v. Layman*, 125 Vt. 481, 485 (1966), and the "speedy and inexpensive" dispute resolution procedure that Workers' Compensation Rule 7.1000 envisions.

¹ In lieu of the process and procedure required under the APA, workers' compensation proceedings are generally governed by the Rules of Civil Procedure and Rules of Evidence, but "only insofar as they do not defeat the informal nature of the [formal] hearing." Workers' Compensation Rule 7.1000.

In this case, two of the issues resolved in Defendant's favor on summary judgment exist entirely independently. Other than their relation back to his original compensable injury, Claimant's claims for vocational rehabilitation benefits and wage reimbursement do not share either a legal or a factual basis. The Commissioner's summary judgment ruling finally disposed of both claims, such that no further administrative remedies are available to him in this forum. It is appropriate to enter final judgment on these issues, so that Claimant can avail himself of the appeal rights granted him by statute in a timely fashion.

Claimant's right to appeal the third issue addressed by the Commissioner's summary judgment ruling – whether he is entitled to workers' compensation benefits causally related to his erectile dysfunction – stands on a different footing. The nature and extent of any benefits awarded on account of his reported deficits in sexual function, whether due to erectile dysfunction *per se* or alternatively, to his injury-related low back pain, remains to be seen. The Commissioner denied summary judgment as to the latter theory of recovery, and thus, viewed in terms of a potential award of benefits, summary judgment has not yet finally disposed of the issue. As Claimant has not exhausted his administrative remedies, it would be inappropriate to enter final judgment.

ORDER:

1. The Commissioner having previously granted summary judgment in Defendant's favor, final judgment against Claimant is hereby entered as to his claim for vocational rehabilitation benefits causally related to his June 14, 2002 compensable work injury, and such claim is hereby **DISMISSED**.
2. The Commissioner having previously granted summary judgment in Defendant's favor, final judgment against Claimant is hereby entered as to his claim for wage reimbursement under 21 V.S.A. §640(c), and such claim is hereby **DISMISSED**.

DATED at Montpelier, Vermont this 11th day of June 2014.

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.