

**STATE OF VERMONT  
DEPARTMENT OF LABOR**

Ryan Wetherby

Opinion No. 02-16WC

v.

By: Phyllis Phillips, Esq.  
Administrative Law Judge

Donald P. Blake, Jr.

For: Anne M. Noonan  
Commissioner

State File No. EE-65426

**RULING ON CLAIMANT'S MOTION FOR FINAL JUDGMENT**

This claim came before the Commissioner on Defendant's Motion for Partial Summary Judgment. The sole issue in dispute was whether Defendant's calculation of Claimant's average weekly wage and compensation rate in accordance with Workers' Compensation Rule 15.4240 violated the parameters of 21 V.S.A. §650(a).

By Order dated January 25, 2016, the Commissioner concluded as a matter of law that Rule 15.4240 was consistent with the statute, rationally based and validly promulgated, and therefore that it was appropriate for Defendant to have calculated Claimant's average weekly wage in accordance with its terms. On those grounds, the Commissioner granted Defendant's Motion for Partial Summary Judgment. *Wetherby v. Donald P. Blake, Jr.*, Opinion No. 02-16WC (January 25, 2016).

Claimant's underlying workers' compensation claim remains open. There are currently no claim disputes pending in which the Commissioner is actively involved, nor any anticipated that might trigger additional scrutiny of the specific legal issues already determined by the Commissioner's January 25, 2016 Order. Final resolution of these issues will determine whether Claimant is appropriately compensated for past and/or future periods of indemnity causally related to his June 24, 2013 compensable work injury. With that consideration in mind, I conclude that there is no just reason for delaying entry of final judgment. *See* V.R.C.P. 54(b). To the contrary, there is every reason to expedite it.

**ORDER:**

Claimant's Motion for Final Judgment is hereby **GRANTED**. Consistent with the Commissioner's January 25, 2016 Ruling on Defendant's Motion for Partial Summary Judgment, and in accordance with V.R.C.P. 54(b), final judgment in Defendant's favor on the question whether Claimant's average weekly wage has been appropriately calculated in accordance with Workers' Compensation Rule 15.4240 and 21 V.S.A. §650(a) is hereby **ENTERED**.

**DATED** at Montpelier, Vermont this \_\_\_\_ day of \_\_\_\_\_, 2016.

\_\_\_\_\_  
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.