

**STATE OF VERMONT
DEPARTMENT OF LABOR**

David Flood

Opinion No. 09C-16WC

v.

By: Phyllis Phillips, Esq.
Administrative Law Judge

Feed Commodities, Inc.

For: Anne M. Noonan
Commissioner

State File No. GG-00758

RULING ON DEFENDANT'S MOTION TO STRIKE AND FOR CLARIFICATION

By Motion dated July 14, 2016 Defendant moves to strike from the Commissioner's June 28, 2016 Opinion and Order "any implication that Defendant is making or made any allegations of fraud involving Claimant's family members." The Commissioner made two such references – first in her procedural ruling on reconsideration of Defendant's Motion Regarding Claimed Attorney-Client Privilege, *Opinion and Order at p. 3*, and again in explaining the basis for her conclusion that Defendant's version of events was implausible, *Opinion and Order at Conclusion of Law No. 12*.

I acknowledge that Defendant has not pursued specific legal action against Claimant's family members for fraud or misrepresentation, either under 21 V.S.A. §708(a) or otherwise. Nevertheless, it remains a fair interpretation of its defense in this claim that both Claimant and his family members acted in concert to concoct a false account of the circumstances surrounding his January 19, 2015 injury. For that reason, I see no basis for striking either of the statements referenced above.

Defendant's Motion to Strike is hereby **DENIED**.

Defendant also moves for clarification of the Commissioner's Order, specifically the award of interest under 21 V.S.A. §664. That section requires that an award include "the date on which the employer's obligation to pay compensation under this chapter began." Admittedly, the Order in this case did not do so.

Pursuant to 21 V.S.A. §650(e), "Interest shall accrue and be paid on benefits that are found to be compensable during the period of nonpayment." In this case, interest shall accrue beginning on the first day of Claimant's temporary total disability.¹

¹ Assuming that Claimant received full wages for his work on January 19, 2015, I anticipate that this likely will be January 20, 2015, the day following his injury. See 21 V.S.A. §642.

The Commissioner's Order is hereby **AMENDED** as follows:

ORDER:

Based on the foregoing findings of facts and conclusions of law, Defendant is hereby **ORDERED** to pay:

1. All workers' compensation benefits to which Claimant proves his entitlement as causally related to his January 19, 2015 work injury, with interest as provided in 21 V.S.A. §664 beginning on the first day of his temporary total disability; and
2. Costs totaling \$1,650.00, paralegal fees totaling \$125.00 and attorney fees totaling \$28,789.00, in accordance with 21 V.S.A. §678.

DATED at Montpelier, Vermont this _____ day of August 2016.

Phyllis G. Phillips, Esq.
Administrative Law Judge