Franjo Baric v. Velan Valve Corporation (August 5, 2010)

STATE OF VERMONT
DEPARTMENT OF LABOR

Franjo Baric	Opinion No. 21S-10WC
	By: Sal Spinosa
v.	Hearing Officer
Velan Valve Corporation	For: Valerie Rickert
	Acting Commissioner
	State File No. Y-58658

RULING ON DEFENDANT'S MOTION FOR STAY

On Cross Motions for Partial Summary Judgment, Claimant prevailed. He argued successfully that the Agreement for Temporary Total Disability Compensation (Form 21) executed by both parties and approved by the Department failed to include his wages from concurrent employment. The Commissioner deemed this to be a mutual mistake of fact and consequently invalidated the average weekly wage as stated on the approved Form 21.

Pursuant to 21 V.S.A. §675(b), Defendant moves to stay the Commissioner's June 23, 2010 Order on the grounds that it has met the requirements for granting a stay as established by the Vermont Supreme Court in *In re Insurance Services Office, Inc.,* 148 Vt. 634, 635 (1987).

According to 21 V.S.A. §675(b), "[a]ny award or order of the commissioner shall be of full effect from issuance unless stayed by the commissioner, any appeal notwithstanding…" 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 the 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., supra.

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. Most notably, in arguing that it is likely to succeed on the merits Defendant recites the same arguments it proposed in the original cross motions. Those arguments are no more convincing today than they were when first offered.

Both parties agree that Claimant had concurrent employment at the time the Form 21 was signed and that his concurrent wages should have been included in the average weekly wage calculation. Both parties therefore agree, at least impliedly, that because his concurrent

employment wages were omitted Claimant was denied benefits to which he was entitled. This is the error at the core of the Form 21 and one that both parties relied upon and endorsed.

As it did originally, Defendant blames Claimant for not divulging his concurrent employment in a more timely fashion. It proposes to sanction him by urging adherence to an agreement fashioned around incorrect information. While Rule 17.0000 strongly upholds the finality of compensation agreements, it does not support adherence to an agreement where, as here, a mutual mistake occupies the heart of the agreement.

Having failed to satisfy even the first prong of the *Insurance Services* test, it is not necessary to consider the remaining factors. Defendant's motion for Stay is **DENIED.**

Finally, I must reject Claimant's characterization of Defendant's appeal as an interlocutory one. The ruling from which Defendant now appeals was a final determination as to how Claimant's weekly benefit amount should have been calculated. This issue exists totally separate and apart from the issues still pending before me and is not determinative of them in any way. As such, Defendant's direct appeal is properly taken. 21 V.S.A. §672; 3 V.S.A. §815(a).

DATED at Montpelier, Vermont this 5th day of August 2010.

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Valerie Rickert
Acting Commissioner