

Meril Badger v. BWP Distributors, Inc. and Maynard's Auto Supply, Inc. (June 2, 2011)

**STATE OF VERMONT
DEPARTMENT OF LABOR**

Meril Badger

Opinion No. 05S-11WC

v.

By: Phyllis G. Phillips, Esq.
Hearing Officer

BWP Distributors, Inc.
And Maynard's Auto Supply, Inc.

For: Anne M. Noonan
Commissioner

State File No. AA-62692

RULING ON DEFENDANT'S MOTION FOR STAY

Pursuant to 21 V.S.A. §675, Defendant moves to stay the Commissioner's March 25, 2011 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, an award or order issued after a formal hearing "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 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 recites the same evidence upon which it relied at formal hearing. It argues that Claimant's evidence was not credible, yet the Commissioner specifically found that it was. There is no reason to believe that a jury will conclude otherwise.

As to the second criterion, Defendant asserts irreparable financial injury if it is required to pay benefits pending appeal. 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).

As to the third criterion, Defendant asserts that granting a stay will not substantially harm Claimant because he is receiving income from other sources. Though this may be true, it does not necessarily follow that Claimant is therefore able to meet his financial obligations, however.

As to the last criterion, Defendant asserts that granting a stay is in the best interest of the public. The public is best served, however, when workers' compensation claims are resolved expeditiously, as the statute intends. *Morrisseau v. Legac*, 123 Vt. 70, 76 (1962). As a result of these proceedings, Claimant already has suffered more than a year's delay in receiving the benefits to which he now has been deemed entitled. It does not serve the public interest to prolong that delay even further.

Defendant having failed to satisfy the stringent requirements of the *Insurance Services* test, I find no basis for issuing a stay pending appeal.

Defendant's Motion for Stay is **DENIED**.

DATED at Montpelier, Vermont this 2nd day of June 2011.

Anne M. Noonan
Commissioner