

**STATE OF VERMONT  
DEPARTMENT OF LABOR**

David Flood

Opinion No. 09S-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 FOR STAY**

Defendant moves to stay the Commissioner's June 28, 2016 Order pursuant to 21 V.S.A. §675.

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 argues that "the evidence is such that a jury could reasonably conclude that Claimant's injury did not arise out of and in the course of his employment." Indeed it might, but that possibility alone is insufficient to establish Defendant's likelihood of success on the merits, particularly given that one neutral fact-finder – the Commissioner – has already concluded otherwise.

As to the second criterion, Defendant asserts that it will be irreparably harmed by having to pay workers' compensation benefits now, because these monies will be difficult to recoup should it prevail on 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 harm Claimant because if he prevails on appeal, he will be awarded interest on any unpaid benefits. This argument ignores the substantial delay that accompanies any court proceeding. Claimant needs

to house and feed his family today, and to do so he needs access to the benefits the Commissioner has determined Defendant should have paid him at the time he was injured, almost three years ago. To say he will not be harmed by months, if not years, of further delay is absurd.

As to the last criterion, Defendant asserts that a stay will serve the best interests of the public, by avoiding both an “unjustified windfall” to Claimant and the additional litigation to recoup it once Defendant prevails on appeal. Again, this argument rests entirely on Defendant’s assertion that it is likely to succeed on appeal. The contrary view, which I find more likely, is that a jury will find that Claimant suffered a compensable work injury, on account of which Defendant owes workers’ compensation benefits accordingly. The “windfall” he will now receive is neither “unjustified” nor even a “windfall” at all, and Defendant will have no basis for recouping it.

As noted above, the decision to grant a stay must be the exception, not the rule, *Bodwell, supra*. I conclude in this case that Defendant has failed to establish its right to a stay in accordance with the stringent requirements for doing so.

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

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

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Phyllis G. Phillips, Esq.  
Administrative Law Judge