

**STATE OF VERMONT  
DEPARTMENT OF LABOR**

Estate of Walter Wells, Jr.

Opinion No. 13-19WC

v.

By: Beth A. DeBernardi, Esq.  
Administrative Law Judge

S.L. Garand

For: Lindsay H. Kurrle  
Commissioner

State File No. KK-00832

**RULING ON DEFENDANT’S MOTION FOR SUMMARY JUDGMENT**

On July 1, 2019, Defendant emailed a two-and-a-half page letter to the Department described as a “Motion for Summary Judgment/Dismissal” in the above matter. After setting forth a half page of allegations concerning Claimant’s health and his employment in the granite industry, supported by no affidavits or references to the record, Defendant asserts that Claimant’s widow’s claim for benefits falls under the now repealed Occupational Disease Act and is barred by the statute of limitations applicable to that Act. Copies of three Vermont cases are attached.

On July 11, 2019, Claimant noted Defendant’s failure to include a statement of material facts, as required by V.R.C.P. 56, and asked that the Department not consider the motion.

Summary judgment is proper when “there is no genuine issue of material fact and the moving party is entitled to a judgment as a matter of law, after giving the benefit of all reasonable doubts and inferences to the opposing party.” *State v. Delaney*, 157 Vt. 247, 252 (1991). To prevail on a motion for summary judgment, the facts must be “clear, undisputed or unrefuted.” *State v. Heritage Realty of Vermont*, 137 Vt. 425, 428 (1979); *A.M. v. Laraway Youth and Family Services*, Opinion No. 43-08WC (October 30, 2008). A party asserting that a fact cannot be or is genuinely disputed must support the assertion by:

(A) Filing a separate and concise statement of undisputed material facts or a separate and concise statement of disputed facts, consisting of numbered paragraphs with specific citations to particular parts of materials in the record, including depositions, documents, electronically stored information, affidavits, stipulations (including those made for purposes of the motion only), admissions, interrogatory answers, or other materials; or

(B) Showing that the materials cited do not establish the absence or presence of a genuine dispute, or that an adverse party cannot produce admissible evidence to support the fact.

V.R.C.P. 56(c)(1).

A tribunal ruling on a motion for summary judgment “need consider only the materials cited in the required statements of fact, but it may consider other materials in the record.” *V.R.C.P. 56(c)(3)*.

Although the workers’ compensation statute provides that procedures be as summary and simple as reasonably may be, the Vermont Rules of Civil Procedure apply insofar as they do not defeat the informal nature of the proceedings. *See 21 V.S.A. §§ 602, 604; Workers’ Compensation Rule 17.1100*. Even construing *V.R.C.P. 56* through the most informal possible lens, the required statements of fact and accompanying evidentiary citations are so central to the purpose and workings of summary judgment that their absence renders a motion for such relief fatally defective. Without the required statements of fact, there is nothing to which the opposing party can meaningfully respond. Further, without citations to evidentiary materials, there is nothing the Department is required to review. *See V.R.C.P. 56(c)(3)*.

Defendant’s July 1, 2019 letter does not comply with the basic requirements of *V.R.C.P. 56*. As such, it does not merit a response from Claimant, does not present any evidence for the Department to review, and is not otherwise a sufficient summary judgment motion.

**ORDER:**

Defendant’s Motion for Summary Judgment is hereby **DISMISSED WITHOUT PREJUDICE** to Defendant’s right to refile a motion that complies with *V.R.C.P 56*.

DATED at Montpelier, Vermont this 15<sup>th</sup> day of July 2019.

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Lindsay H. Kurrle  
Commissioner