

**STATE OF VERMONT
DEPARTMENT OF LABOR**

Estate of Christopher Scott Weinheimer

Opinion No. 18-22WC

v.

By: Beth A. DeBernardi
Administrative Law Judge

Turtle Fur Company; CS Weinheimer CPA, P.C.;
Stockli USA, Inc.; and Four Seasons Realty, LLC
(n/k/a Four Seasons Sotheby's International Realty)

For: Michael A. Harrington
Commissioner

State File Nos. RR-15, RR-185,
RR-186 and RR-195

**RULING ON DEFENDANT FOUR SEASONS REALTY, LLC'S
MOTION FOR SUMMARY JUDGMENT**

APPEARANCES:

Christopher McVeigh, Esq., for Claimant
Wesley M. Lawrence, Esq., for Defendant Turtle Fur Company
Eric G. Falkenham, Esq., for Defendant CS Weinheimer CPA, P.C.
Erin J. Gilmore, Esq., for Defendant Four Seasons Realty, LLC
Bonnie J. Badgewick, Esq., for Defendant Stockli USA, Inc.

ISSUES PRESENTED:

1. Is Defendant Four Seasons Realty, LLC entitled to judgment as a matter of law as to whether the decedent suffered a compensable work-related injury arising out of and in the course of his employment for Four Seasons Realty, LLC?
2. If not, is the workers' compensation claim against Defendant Four Seasons Realty, LLC time-barred under 21 V.S.A. § 660(a)?

EXHIBITS:

Four Seasons' Exhibit:	Decedent's medical records (" <i>Medical Records</i> ") ¹
Four Seasons' Exhibit:	Affidavit of Four Seasons' Executive Vice President of Operations Thomas Heney
Turtle Fur's Exhibit A:	Wage verification form
Turtle Fur's Exhibit B:	Secretary of State listing for CS Weinheimer CPA, P.C.
Turtle Fur's Exhibit C:	Stockli USA, Inc.'s responses to Turtle Fur's discovery
Turtle Fur's Exhibit D:	Affidavit of Four Seasons' Executive Vice President of Operations Thomas Heney
Turtle Fur's Exhibit E:	January 23, 2012 record of the decedent's visit with Dr. Hebert

¹ Four Seasons Realty, LLC did not number the pages of its medical exhibit, so I have numbered them sequentially.

Turtle Fur's Exhibit F: January 21, 2013 record of the decedent's visit with Dr. Hebert
Turtle Fur's Exhibit G: July 27, 2015 record of the decedent's visit with Dr. Hebert
Turtle Fur's Exhibit H: Death certificate
Turtle Fur's Exhibit I: Direct referral of workers' compensation claim to formal docket

BACKGROUND:

Considering the evidence in the light most favorable to the non-moving parties, *State v. Delaney*, 157 Vt. 247, 252 (1991), and taking judicial notice of all relevant forms in the Department's file, there is no genuine issue as to the following material facts:

The Decedent's Employment

1. The decedent Christopher Scott Weinheimer began working for Turtle Fur Company ("Turtle Fur") on February 3, 2001. *Defendant Turtle Fur's Statement of Undisputed Material Facts ("Turtle Fur's Statement")*, ¶ 1; *Turtle Fur's Exhibit A*.
2. The decedent also worked for Defendant Four Seasons Realty, LLC ("Four Seasons") as an accountant. *Defendant Four Seasons' Statement of Undisputed Material Facts ("Four Seasons' Statement")*, ¶ 1; *Affidavit of Four Seasons' Executive Vice President of Operations Thomas Heney ("Heney Affidavit")*, ¶¶ 3-4.
3. The decedent's last day of work for Four Seasons was September 14, 2015. *Four Seasons' Statement*, ¶ 2; *Heney Affidavit*, ¶ 5; *Turtle Fur's Statement*, ¶ 5; *Turtle Fur's Exhibit D*. The decedent's last pay date at Four Seasons was September 21, 2015. *Four Seasons' Statement*, ¶ 3; *Heney Affidavit*, ¶ 6.
4. The decedent worked as a Chief Financial Officer at Turtle Fur until May 26, 2020. *Turtle Fur's Statement*, ¶ 2; *Turtle Fur's Exhibit A*.
5. The decedent also worked for Stockli USA, Inc. and was self-employed at his own accounting firm, CS Weinheimer CPA, P.C. *Turtle Fur's Statement*, ¶¶ 3-4; *Turtle Fur's Exhibits B and C*.

The Decedent's Medical History

6. On January 23, 2012, the decedent visited his primary care provider, internal medicine physician Christopher Hebert, MD. The medical record notes: "Stress - He does have a lot going on with his work as well as his four children and coaching sports. His son just broke his arm playing hockey yesterday." *Turtle Fur's Statement*, ¶ 6; *Turtle Fur's Exhibit E*.
7. On January 21, 2013, the decedent reported to Dr. Hebert that he had stress recently. *Turtle Fur's Statement*, ¶ 7; *Turtle Fur's Exhibit F*. The medical record notes: "He overall has been feeling well. He tries to exercise but he is busy with work and his kids sporting events." In the next paragraph, the record notes that he "has had a lot of

stress recently. His mother just died last night. She has been sick for a few months, and was in the hospital for the last three weeks.” *Turtle Fur’s Exhibit F*.

8. On July 27, 2015, the decedent reported to Dr. Hebert that he “remains busy – working several jobs.” *Turtle Fur’s Statement*, ¶ 8; *Turtle Fur’s Exhibit G*. The medical record notes: “He is a CFO for Turtle Fur, he does some private accounting, and he also works doing accounting for a real estate company.” *Id.*
9. On December 11, 2015, Dr. Hebert’s medical record notes that the decedent had “a normal mood and affect.” *Four Seasons’ Statement*, ¶ 4; *Medical Records*, at 2.
10. The September 23, 2019 record of the decedent’s visit with Dr. Hebert notes that he “has some stress and anxiety recently – he is busy at work.” His depression screen was “negative.” *Four Seasons’ Statement*, ¶ 5; *Medical Records*, at 4.
11. Louise Miglionico, Ph.D., the decedent’s treating clinical psychologist, wrote in her note of June 10, 2020 that he “has no history of depression.” She further wrote that “his depression started last fall” and that he lost his job at Turtle Fur. *Four Seasons’ Statement*, ¶ 6; *Medical Records*, at 7-8. Dr. Miglionico’s note does not mention the decedent’s medical history as documented in the medical records that Turtle Fur has identified as its Exhibits E, F and G. *Defendant Turtle Fur’s Response to Four Seasons’ Statement (“Turtle Fur’s Response”)*, ¶ 6.
12. Psychiatrist Nancy Burkey, MD, wrote in her undated forensic psychiatric evaluation report that the decedent “began to show signs of his mental health struggles by January of 2020.” *Four Seasons’ Statement*, ¶ 7; *Medical Records*, at 15-16. However, Dr. Burkey never met or treated the decedent, which may affect the persuasiveness of her opinion. *Turtle Fur’s Response*, ¶ 7.
13. The decedent died by suicide on November 8, 2020. *Four Seasons’ Statement*, ¶ 8; *Medical Records*, at 13; *Turtle Fur’s Statement*, ¶ 9; *Turtle Fur’s Exhibit H*.

Procedural Background

14. Claimant (the decedent’s estate) filed a Notice of Injury and Claim for Compensation (Form 5) against Defendant Turtle Fur on July 12, 2021. *Turtle Fur’s Statement*, ¶ 10; *Turtle Fur’s Exhibit I*.
15. Claimant has never alleged that the decedent sustained an injury arising out of and in the course of his employment with any other employer, nor has it filed a claim against any other employer. *Claimant’s Opposition to Four Seasons’ Summary Judgment Motion (“Claimant’s Opposition”)*, at 2.
16. In November 2021, Turtle Fur requested that the Department place three additional former employers on notice of potential liability for workers’ compensation benefits for the decedent’s fatal injury: CS Weinheimer CPA, P.C., Stockli USA, Inc., and Four Seasons Realty, LLC. These employers became additional defendants at Turtle

Fur's behest, not at Claimant's behest, and specifically against Claimant's wishes. *Claimant's Opposition*, at 2.

DISCUSSION:

Summary Judgment Standard

1. Summary judgment is appropriate when there is no genuine issue of material fact and the moving party is entitled to judgment in its favor as a matter of law. *Samplid Enterprises, Inc. v. First Vermont Bank*, 165 Vt. 22, 25 (1996). Summary judgment is appropriate when the facts in question are clear, undisputed or unrefuted. *State v. Heritage Realty of Vermont*, 137 Vt. 425, 428 (1979). It is unwarranted where the evidence is subject to conflicting interpretations, regardless of the comparative plausibility of the facts offered by either party or the likelihood that one party or the other might prevail at trial. *Provost v. Fletcher Allen Health Care, Inc.*, 2005 VT 115, ¶ 15.
2. The party opposing summary judgment is entitled to the benefit of all reasonable doubts and inferences. *State v. Delaney*, 157 Vt. 247, 252 (1991); *Toys, Inc. v. F.M. Burlington Co.*, 155 Vt. 44, 48 (1990). In determining whether there is a genuine issue as to any material fact, the Department must accept as true “the allegations made in opposition to the motion for summary judgment, so long as they are supported by affidavits or other evidentiary material.” *Gauthier v. Keurig Green Mountain, Inc.*, 2015 VT 108, ¶ 14. However, “when a party fails, after adequate discovery, to make a showing sufficient to establish an element essential to her case and on which she has the burden of proof, summary judgment is required.” *Estate of George v. Vermont League of Cities and Towns*, 2010 VT 1, ¶ 13, quoting *Edson v. Barre Supervisory Union #61*, 2007 VT 62, ¶ 8.
3. Four Seasons seeks summary judgment on two grounds. First, it asserts that a sufficient showing has not been made to establish a *prima facie* case that the decedent suffered a compensable injury at Four Seasons. Second, it asserts that any claim against Four Seasons for workers' compensation benefits is time-barred by the statute of limitations.
4. Turtle Fur asserts that there is a genuine issue of material fact concerning the existence of a causal relationship between the decedent's suicide and his employment at Four Seasons. It also asserts that Four Seasons' statute of limitations analysis is flawed. Finally, Turtle Fur contends that it has not been afforded an adequate time for discovery.²
5. The other Defendants have not filed any opposition to Four Seasons' motion.

² Turtle Fur's August 26, 2022 response to Four Seasons' motion included its own Motion for Summary Judgment based on 21 V.S.A. § 656. This ruling does not address Turtle Fur's motion. That motion will be the subject of a separate ruling after the other parties have had an opportunity to respond.

Adequate Time for Discovery

6. V.R.C.P. 56(b) provides that a party may move for summary judgment within 30 days after the close of discovery unless a different time is set by stipulation or court order. Defendant Turtle Fur contends that it has not had adequate time for discovery prior to responding to Four Seasons' motion. In support of its contention, Turtle Fur cites the Vermont Supreme Court case of *Al Baraka Bancorp (Chicago), Inc. v. Hilweh*, 163 Vt. 148, 156 (1994) (summary judgment premature if the opposing party has not had adequate time for discovery).
7. In *Bushey v. Allstate Ins. Co.*, 164 Vt. 399, 405 (1995), the Vermont Supreme Court expanded upon the rationale for permitting an adequate time for discovery in the summary judgment context as follows:

Rule 56 does not require that summary judgment motion decisions await completion of discovery, and to so require would defeat the purpose of the rule. *See Pizza Management, Inc. v. Pizza Hut, Inc.*, 737 F.Supp. 1154, 1169 (D.Kan.1990) (requiring that summary judgment await completion of discovery frustrates its usefulness as tool to weed out claims that do not merit trial). The court need only permit an adequate time for discovery. *Poplaski v. Lamphere*, 152 Vt. 251, 254, 565 A.2d 1326, 1329 (1989).
8. Turtle Fur contends that it did not have adequate time for discovery because it had only 30 days from receipt of Claimant's July 27, 2022 discovery responses in which to file its response to Four Seasons' summary judgment motion.
9. As background, Claimant asserted its claim against Turtle Fur in July 2021, and the other employers were put on notice of the claim in November 2021. Four Seasons filed its summary judgment motion on June 1, 2022, and the Department granted Turtle Fur an extension of time to file its response to the motion until 30 days after Claimant provided its signed discovery responses. Claimant provided those responses on July 27, 2022. Accordingly, Turtle Fur had until August 26, 2022 in which to file its response to the motion. Further, it has not identified any areas of discovery relevant to Four Seasons' motion that it needs more time to pursue. For these reasons, I conclude that Turtle Fur had adequate time for discovery prior to filing a response to this motion.

Insufficient Evidence Supporting a Claim Against Four Seasons

10. Turtle Fur is the party asserting a claim against Four Seasons for the decedent's fatal injury. Claimant has asserted no such claim. Accordingly, Turtle Fur has the burden to prove that the decedent's fatal injury arose out of and occurred in the course of his employment with Four Seasons. 21 V.S.A. § 618(a)(1); *see King v. Snide*, 144 Vt. 395, 399 (1984). Turtle Fur must establish by sufficient credible evidence the character and extent of the decedent's injuries, *see, e.g., Burton v. Holden & Martin Lumber Co.*, 112 Vt. 17 (1941), as well as the causal connection between the injuries

and the decedent's employment with Four Seasons. *Egbert v. The Book Press*, 144 Vt. 367 (1984).

11. After an adequate time for discovery, Turtle Fur has identified the following medical records as evidence of a causal relationship between the decedent's employment for Four Seasons and his fatal injury:
 - Dr. Hebert's 1/23/12 medical record: "Stress – He does have a lot going on with his work as well as his four children and coaching sports. His son just broke his arm playing hockey yesterday." *Turtle Fur's Exhibit E*.
 - Dr. Hebert's 1/21/13 medical record noting that the decedent was "busy" with work. *Turtle Fur's Exhibit F*. This record does not expressly attribute any stress to the decedent's work.
 - Dr. Hebert's 7/27/15 medical record: "He remains busy – working several jobs. He is a CFO for Turtle Fur, he does some private accounting, and he also works doing accounting for a real estate company." *Turtle Fur's Exhibit G*. This record does not attribute any stress to the decedent's work, either.
12. The decedent's employment with Four Seasons ended in September 2015. Four Seasons identified the following medical records as relevant to whether the decedent sustained a stress-related work injury while in its employ:
 - Dr. Hebert's 12/11/15 medical record reflecting that the decedent had a "normal mood and affect." *Medical Records*, at 2.
 - Dr. Hebert's 9/23/19 medical record noting that the decedent had some stress and anxiety "recently." *Medical Records*, at 4.
 - Dr. Miglionico's 6/10/20 medical record stating that the decedent had no history of depression and that his depression began in the fall of 2019. This record expressly addresses his employment with Turtle Fur and does not mention Four Seasons. *Medical Records*, at 7-8.
13. Four Seasons asserts that it is entitled to summary judgment on the grounds that Turtle Fur has failed to produce evidence sufficient to raise genuine issues of material fact as to the compensability of the claim against it. The only evidence supporting a work-related stress claim related to the decedent's employment with Four Seasons is the 2012 medical record stating: "Stress – He does have a lot going on with his work." *Turtle Fur's Exhibit E*. That record does not mention Four Seasons, although Four Seasons was one of the decedent's employers in 2012.
14. Considering the evidence in the light most favorable to Turtle Fur, I conclude that it has presented insufficient evidence relating the decedent's employment with Four Seasons to his eventual suicide to establish a genuine issue of material fact as to whether the decedent's fatal injury was causally related to his Four Seasons

employment. For this reason, Four Seasons is entitled to summary judgment in its favor.

Statute of Limitations

15. The statute of limitations for Vermont workers' compensation claims is three years from the date of injury. 21 V.S.A. § 660(a). The decedent's last day of work for Four Seasons was September 14, 2015, and he received his last paycheck on September 21, 2015. Accordingly, Four Seasons contends that the three-year statute of limitations ran on any claim for workers' compensation benefits no later than September 22, 2018. *Four Seasons' Motion for Summary Judgment*, at 3.
16. Although the statute of limitations for Vermont workers' compensation claims is three years from the date of injury, the cause of action does not accrue, or begin to run, until the moment when both the injury and its relationship to employment become reasonably discoverable and apparent. *Hartman v. Ouellette Plumbing & Heating Corp.*, 146 Vt. 443, 446 (1985); *Dunroe v. Monro Muffler Brake, Inc.*, Opinion 17-15WC (July 23, 2015).
17. Many work-related injuries are immediately apparent, but others are not. In particular, a claimant exposed to workplace stress or trauma may develop an injury over a significant period of time, including after the employment has ended. *See, e.g., McGee v. Fair Haven Volunteer Rescue*, Opinion No. 04-20WC (February 21, 2020) (in determining the date of a psychological injury, the date of the traumatic experience is not controlling); *Bergeron v. City of Burlington*, Opinion No. 14-18WC (October 15, 2018) (claimant may develop a psychological injury sometime after the actual experience of stressful events).
18. Accordingly, any claim for workers' compensation benefits against Four Seasons for a stress-related or psychological injury does not depend on his last date of employment but rather must be asserted within three years of when the decedent's injury and its relationship to his employment were reasonably discoverable and apparent.
19. In this case, however, the evidence cannot establish a workers' compensation claim against Four Seasons for the decedent's psychological injury. Without evidence of a claim, there is no claim accrual date to which the statute of limitations would apply.
20. I therefore conclude that Four Seasons' motion setting forth the statute of limitations as a basis for summary judgment is moot.

Claimant's Opposition to the Motion

21. Claimant opposes this summary judgment motion on the grounds that it was not the party who asserted a claim against Four Seasons. As set forth in Claimant's opposition, it does not want the "taint" or "stench" of having asserted a claim against Four Seasons to be attributed to it. *Claimant's Opposition*, at 2. In the alternative, if the motion is granted, Claimant requests that the Department state that Turtle Fur

initiated the claim against Four Seasons and that Claimant did not initiate a claim against Four Seasons or any other Defendant.

22. The purpose of summary judgment is to avoid a useless trial. *See, e.g., Sykas v. Kearns*, 135 Vt. 610, 612 (1978), citing 6 J. Moore, *Federal Practice P 56.15*, at 56-391 (2d edition 1976). Thus, summary judgment is appropriate when there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. *Samplid Enterprises, Inc. v. First Vermont Bank*, 165 Vt. 22, 25 (1996).
23. In this case, there is no genuine issue of material fact concerning whether the decedent's fatal injury was causally related to his employment for Four Seasons, and Four Seasons is entitled to judgment as a matter of law. Granting this motion fulfills the purpose of conserving judicial resources and avoiding an unnecessary hearing regardless of which party named Four Seasons as a defendant.
24. As Claimant has requested, the fact that Turtle Fur is the party who asserted a claim against Four Seasons is stated in this ruling. *See* Background Nos. 14-16 *supra*.

ORDER:

Based on the foregoing background and discussion, Defendant Four Seasons Realty, LLC's Motion for Summary Judgment is hereby **GRANTED**. The workers' compensation claim asserted against Four Seasons Realty, LLC is **DISMISSED**.

DATED at Montpelier, Vermont, this 5th day of October 2022.

Michael A. Harrington
Commissioner