

**STATE OF VERMONT
DEPARTMENT OF LABOR**

Estate of Christopher Scott Weinheimer

Opinion No. 01-23WC

v.

By: Beth A. DeBernardi
Administrative Law Judge

Turtle Fur Company and Stockli USA, Inc.

For: Michael A. Harrington
Commissioner

State File Nos. RR-15 and RR-186

**RULING ON DEFENDANT TURTLE FUR COMPANY'S CROSS MOTIONS
FOR SUMMARY JUDGMENT**

APPEARANCES:

Christopher McVeigh, Esq., for Claimant
Wesley M. Lawrence, Esq., for Defendant Turtle Fur Company
Bonnie J. Badgewick, Esq., for Defendant Stockli USA, Inc.

ISSUES PRESENTED:

1. Does the decedent's exclusion from coverage under the workers' compensation statute for his employment by CS Weinheimer CPA, P.C. also exclude him from coverage under the statute for his employment by Turtle Fur Company as a matter of law?
2. Is Claimant's claim for workers' compensation benefits against Defendant Turtle Fur Company barred as a matter of law for failure to give timely notice of the alleged work-related injury as required by 21 V.S.A. § 656(a)?
3. Is Claimant's claim for workers' compensation benefits against Defendant Turtle Fur Company barred as a matter of law by the three-year statute of limitations set forth in 21 V.S.A. § 660(a)?

EXHIBITS:

Exhibit from Turtle Fur Company's August 26, 2022 Cross Motion against CS Weinheimer CPA, P.C.¹

Turtle Fur's Exhibit A: Secretary of State listing for CS Weinheimer CPA, P.C.

¹ Defendants CS Weinheimer CPA, P.C. and Four Seasons Realty, LLC were dismissed from this case on October 5, 2022. *See Weinheimer v. Turtle Fur Co.*, Opinion Nos. 17-22WC and 18-22WC. This exhibit was included in the exhibit list in *Weinheimer, supra*, Opinion No. 17-22WC.

Exhibits from Four Seasons Realty, LLC’s Summary Judgment Motion and Turtle Fur Company’s August 26, 2022 Cross Motion against Four Seasons Realty, LLC²

Four Seasons’ Exhibit:	Decedent’s medical records (“ <i>Medical Records</i> ”) ³
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
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

Exhibits from Claimant’s October 25, 2022 Response to Turtle Fur’s Cross Motions

Claimant’s Exhibit 1:	Decedent’s 2018 and 2019 federal tax worksheets
Claimant’s Exhibit 2:	Decedent’s approved exclusion application
Claimant’s Exhibit 3:	Claimant’s Notice of Injury and Claim for Compensation (Form 5) and Notice and Application for Hearing (Form 6) filed on July 12, 2021
Claimant’s Exhibit 4:	Psychiatric evaluation report of Nancy Burkey, MD
Claimant’s Exhibit 5:	Turtle Fur’s wage verification form for decedent
Claimant’s Exhibit 6:	Death certificate
Claimant’s Exhibit 7:	Claimant’s responses to Turtle Fur’s interrogatories
Claimant’s Exhibit 8:	Emails between the decedent and Turtle Fur

Exhibits from Turtle Fur Company’s November 14, 2022 Reply to Claimant’s Response

Turtle Fur’s Exhibit A:	Claimant’s January 2012 medical record
Turtle Fur’s Exhibit B:	Claimant’s January 2013 medical record
Turtle Fur’s Exhibit C:	Claimant’s August 2018 medical record
Turtle Fur’s Exhibit D:	Claimant’s September 2019 medical record

PROCEDURAL BACKGROUND:

1. On July 12, 2021, Claimant filed a workers’ compensation claim against Christopher Scott Weinheimer’s (the decedent’s) former employer Turtle Fur Company (“Turtle Fur”), alleging that the decedent “committed suicide due to work related stress.” *Notice of Injury and Claim for Compensation (Form 5)*. Claimant is the decedent’s estate. Turtle Fur asked the Department to place three other employers on notice of

² These exhibits were included in the exhibit list in *Weinheimer, supra*, Opinion No. 18-22WC.

³ Four Seasons Realty, LLC did not number the pages of its medical exhibit, so I have numbered them sequentially.

the claim, and those employers were joined as additional defendants. *See generally Weinheimer v. Turtle Fur Co.*, Opinion Nos. 17-22WC and 18-22WC (October 5, 2022).

2. The Department set a June 1, 2022 deadline for filing dispositive motions. Defendants CS Weinheimer CPA, P.C. (“the P.C.”) and Four Seasons Realty, LLC (“Four Seasons”) both filed timely summary judgment motions. Claimant and Turtle Fur opposed the motions. Turtle Fur’s August 26, 2022 opposition included dispositive cross motions for summary judgment that were arguably untimely. The Department accepted the cross motions, but deferred ruling on them until after the motions filed by the P.C. and Four Seasons were ruled upon.
3. On October 5, 2022, the Department granted summary judgment to the P.C. and Four Seasons, dismissing those parties from the case. *See Weinheimer v. Turtle Fur Co.*, Opinion Nos. 17-22WC and 18-22WC. Although those employers are no longer parties, Turtle Fur’s cross motions are not moot, as Turtle Fur asserted its claims and defenses against Claimant, as well as against the P.C. and Four Seasons.
4. The Department has received the following filings relevant to this ruling: Turtle Fur’s cross motions filed on August 26, 2022; Claimant’s response filed October 25, 2022; Turtle Fur’s reply filed November 14, 2022; Claimant’s sur-reply filed November 23, 2022; and Turtle Fur’s sur-sur reply filed December 5, 2022.

FACTUAL 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:⁴

Undisputed Material Facts Relevant to the Decedent’s Officer Exclusion

5. The decedent was the P.C.’s sole corporate officer. He engaged in his private accounting practice as an employee of the P.C. *Weinheimer v. Turtle Fur Co.*, Opinion No. 17-22WC (“*Op. No. 17-22WC*”), at Background ¶¶ 1-2.
6. In 2016, the Department approved the decedent’s exclusion from workers’ compensation coverage. This exclusion remained in effect at all relevant times, including on the date of the decedent’s death. *Op. No. 17-22WC*, at Background ¶¶ 1, 3-4.
7. The P.C.’s insurer excluded the decedent from coverage under the P.C.’s workers’ compensation insurance policy at all relevant times, as well. *Op. No. 17-22WC*, at Background ¶¶ 1, 5-8.

⁴ These undisputed material facts derive from the Department’s rulings in *Weinheimer v. Turtle Fur Co.*, Opinion Nos. 17-22WC and 18-22WC, and from Turtle Fur’s August 26, 2022 statements of additional undisputed facts.

8. The decedent committed suicide on November 8, 2020. *Op. No. 17-22WC*, at Background ¶ 9. He conducted his private accounting practice as an employee of the P.C. until that date. *Turtle Fur's Statement of Additional Undisputed Material Facts filed August 26, 2022*, ¶ 1.
9. Claimant filed a claim against Turtle Fur for workers' compensation benefits on July 12, 2021. *See Factual Background supra*, ¶ 1.
10. On October 5, 2022, the Department concluded that the decedent was effectively excluded from coverage under the Workers' Compensation Act for his employment with the P.C. *Op. No. 17-22WC*, at Discussion ¶ 16. Accordingly, the Department held that neither the P.C. nor its insurer had any liability to the decedent or his estate for workers' compensation benefits related to his death. *Op. No. 17-22WC*, at Discussion ¶ 22.

Undisputed Material Facts Relevant to the Notice and Statute of Limitations Provisions of the Workers' Compensation Act

11. The decedent began working for Turtle Fur on February 3, 2001. He worked there as chief financial officer until May 26, 2020. *Weinheimer v. Turtle Fur Co.*, Opinion No. 18-22WC ("*Op. No. 18-22WC*"), at Background ¶¶ 1, 4.
12. The decedent also worked for the P.C., Four Seasons, and Stockli USA, Inc. *Op. No. 18-22WC*, at Background ¶¶ 2-3, 5; *Turtle Fur's Statement of Additional Undisputed Material Facts filed August 26, 2022*, ¶¶ 3-5; *Turtle Fur's August 26, 2022 Exhibits B, C and D*.
13. 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." *Op. No. 18-22WC*, at Background ¶ 6.
14. On January 21, 2013, the decedent reported to Dr. Hebert that he had stress recently. 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." *Op. No. 18-22WC*, at Background ¶ 7.
15. On July 27, 2015, the decedent reported to Dr. Hebert that he "remains busy – working several jobs." 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." *Op. No. 18-22WC*, at Background ¶ 8.
16. On December 11, 2015, Dr. Hebert's medical record notes that the decedent had "a normal mood and affect." *Op. No. 18-22WC*, at Background ¶ 9.

17. 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.” *Op. No. 18-22WC*, at Background ¶ 10.
18. 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. *Op. No. 18-22WC*, at Background ¶ 11.
19. 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.” Her report cites Dr. Hebert’s medical records from January and February 2020. *Op. No. 18-22WC*, at Background ¶ 12; *Medical Records*, at 15-16.
20. The decedent died on November 8, 2020. *Op. No. 18-22WC*, at Background ¶ 13. Claimant filed a workers’ compensation claim against Turtle Fur on July 12, 2021. See Factual Background *supra*, ¶ 1.
21. On October 5, 2022, the Department concluded that Turtle Fur had presented insufficient evidence to support a causal relationship between the decedent’s employment with Four Seasons and his suicide. *Op. No. 18-22WC*, at Discussion ¶ 14. Accordingly, the Department dismissed the claim against Four Seasons without ruling on the merits of Four Seasons’ statute of limitations defense. *Op. No. 18-22WC*, at Discussion ¶ 20.

DISCUSSION:

Summary Judgment Standard

1. To prevail on a summary judgment motion, the moving party must show that there are no genuine issues of material fact and that 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). The non-moving party 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). Summary judgment is appropriate only 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. Turtle Fur seeks summary judgment on three grounds. First, it asserts that the decedent’s exclusion from workers’ compensation coverage for his employment with the P.C. also serves as an exclusion from coverage for all other employers, including itself. Second, Turtle Fur asserts that this claim is barred because Claimant failed to give timely notice of the alleged work-related injury, as required by 21 V.S.A. § 656(a). Third, it contends that this claim is barred by the three-year statute of

limitations set forth in 21 V.S.A. § 660(a). Claimant opposes Turtle Fur’s cross motions on all three grounds; Defendant Stockli USA, Inc. has not taken any position on the cross motions.

Effect of Claimant’s Exclusion from Coverage under the Workers’ Compensation Act

3. On October 5, 2022, the Department granted the P.C.’s summary judgment motion, holding that the P.C. effectively excluded the decedent from the protections of the Workers’ Compensation Act and that therefore the P.C. and its insurer are not liable to Claimant for any workers’ compensation benefits. *Weinheimer v. Turtle Fur Co.*, Opinion No. 17-22WC (October 5, 2022), at Discussion ¶ 22.
4. Turtle Fur now contends that, when the P.C. excluded the decedent from workers’ compensation coverage for his work there, it thereby also excluded him from coverage under the Act for his work at any and all other employers. Turtle Fur cites *Koski v. BlackRock Construction, LLC*, Opinion No. 25-15WC (November 16, 2015) and asks the Department to extend *Koski*’s holding to the current facts and circumstances.
5. The claimant in *Koski* was the sole member of Landmark Builders, LLC (“Landmark”), a construction and remodeling business. Landmark excluded the claimant from workers’ compensation coverage under the Act. The defendant in *Koski* was a general contractor. Landmark and the defendant entered into a contract whereby Landmark would provide certain services on defendant’s construction project, including the framing of an addition. The claimant began work on the jobsite and sustained an eye injury. Having excluded himself from coverage under the Workers’ Compensation Act as an employee of Landmark, the claimant brought his workers’ compensation claim against the defendant.
6. The parties in *Koski* agreed that the claimant was a statutory employee under 21 V.S.A. § 601(3), but disagreed as to the scope of the officer exclusion. The defendant contended that, when the claimant’s corporate exclusion was approved, he ceased to be an employee as defined in 21 V.S.A. § 601(14)(H) under any circumstances and was therefore not entitled to any workers’ compensation benefits as the defendant’s statutory employee.
7. Although the Department agreed with the defendant under the specific circumstances present in *Koski*, its holding was premised upon the general contractor/subcontractor relationship. The Commissioner wrote:

[T]he public policy underlying the concept of statutory employment is to protect the employees of irresponsible and uninsured subcontractors by imposing ultimate liability on the principal contractor. 4 Lex K. Larson, *Larson’s Workers’ Compensation* § 70.04 at 70-6 (Matthew Bender Rev. Ed.); *Welch v. Home Two, supra* at 634. The principal contractor wields the power – it can refuse to contract with a subcontractor who has not itself purchased the required workers’ compensation insurance, thereby insuring not only its own

protection but that of the subcontractor's employees as well. *Larson's Workers' Compensation, supra; see, e.g., Lavallee v. Straight, et al.*, Opinion No. 14-14WC (August 27, 2014) (emphasis added).

Koski, supra, at Conclusion of Law No. 20.

8. Applying this policy to the facts of *Koski*, the Commissioner held that the claimant, having excluded himself from coverage for his subcontracting business, was not entitled to workers' compensation benefits as the statutory employee of the general contractor. The Commissioner found that no public policy would be served by allowing the claimant to save money by excluding himself from coverage for his subcontracting business and instead requiring the general contractor to pay benefits for his injury.
9. The framework of the instant claim is entirely different. The decedent here excluded himself from coverage at the P.C. for his own private accounting practice. However, Turtle Fur did not contract with the P.C. for the provision of accounting services. Rather, Turtle Fur hired the decedent himself as its chief financial officer, making him a direct employee of Turtle Fur. Accordingly, the decedent was not a statutory employee like the subcontractor in *Koski*, and the same considerations do not apply. In particular, there is no public policy interest here in protecting the decedent from an irresponsible and uninsured subcontractor. Nor is there a reason to deny coverage for the decedent's injury on the grounds that he tried to take unfair advantage of a general contractor by declining to obtain his own policy for the work he performed for Turtle Fur. There is simply no contractual relationship between the decedent's work as Turtle Fur's chief financial officer and his separate private accounting practice.
10. Further, there is no indication in the record that Turtle Fur notified its carrier that the decedent was an independent contractor who should not be covered under its workers' compensation policy; nor is there any indication in the record that the carrier failed to consider the decedent's employment with Turtle Fur when it fashioned the policy terms and calculated the premium.
11. Finally, as remedial legislation, the Workers' Compensation Act "is interpreted broadly to achieve the goal of affording coverage to as many workers as possible." *Cyr v. McDermott's, Inc.*, 2010 VT 19, ¶ 7. Declining to stretch *Koski* beyond the scope of the general contractor/subcontractor relationship is in keeping with this goal.
12. The decedent's exclusion from coverage under the Workers' Compensation Act for his employment with the P.C. therefore does not exclude him from coverage for his direct employment as Turtle Fur's chief financial officer. Accordingly, Turtle Fur is not entitled to summary judgment on this basis.

Application of the Notice Provision Set Forth in 21 V.S.A. § 656(a)

13. Turtle Fur next asserts that Claimant's claim for workers' compensation benefits is barred as a matter of law because Claimant did not provide notice of the decedent's

alleged work injury within six months of his death, as required by § 656(a) of the Vermont workers' compensation statute.⁵ Section 656(a) states:

§ 656. Notice of injury and claim for compensation

(a) A proceeding under the provisions of this chapter for compensation shall not be maintained unless a notice of the injury has been given to the employer as soon as practicable after the injury occurred, and unless a claim for compensation with respect to an injury has been made within six months after the date of injury; or, in case of death, within six months after death, unless the claimant had made a claim for compensation prior to death.

14. Additional notice provisions are set forth in 21 V.S.A. § 660(a). Section 660(a) states:

§ 660. Sufficiency of Notice of Injury

(a) A notice given under the provisions of this chapter shall not be held invalid or insufficient by reason of any inaccuracy in stating the time, place, nature, or cause of the injury, or otherwise, unless it is shown that the employer was in fact misled to the injury as a result of the inaccuracy. ***Want of or delay in giving notice, or in making a claim, shall not be a bar to proceedings under the provisions of this chapter, if it is shown that the employer, the employer's agent, or representative had knowledge of the accident or that the employer has not been prejudiced by the delay or want of notice*** (emphasis added).

15. Section 660(a) specifically governs the sufficiency of notices given under “this chapter.” “This chapter” refers to Chapter 9 of Title 21, *Employer's Liability and Workers' Compensation*. Accordingly, the notice sufficiency provisions of § 660(a) govern the notices given pursuant to § 656(a), and the two statutory provisions must be read together. *See Vohnoutka v. Ronnie's Cycle Sales of Bennington, Inc.*, Opinion No. 20-16WC (November 7, 2016) (§ 656(a) must be read in conjunction with § 660(a)).

16. Thus, under § 660(a), there are two bases for excusing untimely notice under § 656(a): the employer's knowledge of the accident or a lack of prejudice to the employer. The statute does not require employer knowledge *and* lack of prejudice; it just requires one or the other. *Larrabee v. Citizens' Tel. Co.*, 106 Vt. 44 (1934).

Employer's Knowledge of the Accident

⁵ The decedent died on November 8, 2020, and his estate filed a notice of injury and claim for compensation (Form 5) on July 12, 2021, eight months later. *See Factual Background supra*, ¶ 20.

17. The “knowledge” that § 660(a) requires in order to excuse what would otherwise be an untimely notice under § 656(a) is not of the injury, but rather of the “accident.” 21 V.S.A. § 660(a); *Vohnoutka v. Ronnie’s Cycle Sales of Bennington, Inc.*, Opinion No. 20-16WC (November 7, 2016). In the workers’ compensation context, an “accident” is defined as an “unlooked for mishap or an untoward event which is not expected or designed.” *Campbell v. Heinrich Savelberg, Inc.*, 139 Vt. 31, 35 (1980) (internal citations omitted). In the context of this workers’ compensation claim, the alleged unlooked-for mishap is the decedent’s suicide, which Claimant attributes to work-related stress. *See* Factual Background *supra*, ¶ 1.
18. Turtle Fur contends that its knowledge of the decedent’s suicide, standing alone, does not constitute knowledge of a work-related accident or injury. However, according to Claimant, Turtle Fur’s president, Richard Sontag, had knowledge of the decedent’s work-related stress between January and May of 2020. *Claimant’s October 25, 2022 Response to Turtle Fur’s Cross Motion*, at 8. In particular, Claimant has provided evidence of a conversation between the decedent, his wife, and Mr. Sontag, concerning the decedent’s work-related psychological struggles. *Claimant’s Exhibit 7*. Claimant has also provided emails between the decedent and Mr. Sontag about Claimant’s psychological condition and his employment. *Claimant’s Exhibit 8*.
19. The parties’ conflicting statements concerning Turtle Fur’s knowledge of the decedent’s alleged work-related accident present a genuine issue of material fact. Accordingly, whether Claimant has established the employer’s knowledge of the accident cannot be resolved on summary judgment. *See Samplid Enterprises, Inc. v. First Vermont Bank*, 165 Vt. 22, 25 (1996).

Lack of Prejudice to the Employer

20. In the alternative, failure to provide timely notice under § 656(a) may be excused if the employer has not been prejudiced by the delay or want of notice. 21 V.S.A. § 660(a). In the context of § 660(a), a lack of prejudice is established in two ways: “first, by showing that the employer was not hampered in making its factual investigation and preparing its case, and second, by showing that the claimant’s injury was not aggravated by reason of the employer’s inability to provide early medical diagnosis and treatment.” *M. P. v. MSK Steering Systems America, Inc.*, Opinion No. 14-07WC (May 22, 2007), citing *Lowell v. Rutland Area Visiting Nurse Association*, Opinion No. 42-99WC (October 12, 1999).
21. Claimant’s six-month notice of the decedent’s alleged work-related suicide under § 656(a) was due May 8, 2021. Claimant did not file the notice until July 12, 2021. Turtle Fur alleges that it would be “extraordinarily prejudicial” to allow Claimant’s claim to proceed against Turtle Fur:

against whom no claim was pending at any time during Claimant’s lifetime wherein he could have made a claim himself, undergone an IME or have been deposed; against whom no claim was pending during the several months subsequent to his employment for Turtle Fur while

he remained employed in at least two other similar employment positions; against whom there was no claim for more than six months after his death and celebration of life ceremony where former colleagues from Turtle Fur mourned, paid tribute, and even brought food and support to the surviving family.

Turtle Fur's Cross Motion, at 6.

22. Applying the analytical framework set forth in *MSK Steering Systems* and *Lowell*, I first conclude that Turtle Fur was not significantly hampered in making its investigation by the two-month delay in giving notice. Its assertion of prejudice is based on its inability to depose the decedent or require him to attend an independent medical examination due to his unfortunate death, rather than on the unavailability of other witnesses or documents. However, the decedent's unavailability for deposition or independent medical examination was the case throughout the six-month notice period, not just from May 9, 2021 to July 12, 2021. Accordingly, I conclude that Turtle Fur's investigation was not hampered by the two-month delay. *See, e.g., Blackmer v. Hazard*, Opinion No. 47-05WC (August 18, 2005) (brief delay in giving notice did not prejudice the employer).
23. Second, with the claimed work-related injury being suicide, Turtle Fur's ability to provide early medical diagnosis and treatment is not a relevant consideration. Further, to the extent that the injury may be characterized as work-related stress, the decedent discussed stress with his primary care provider in January 2020 and with a licensed clinical social worker in February 2020. Thereafter, he began psychological counseling. *See Claimant's Exhibit 4; Medical Records, at 7-12*. Thus, it appears that the decedent sought timely diagnosis and treatment of his psychological condition without any direction from Turtle Fur.
24. Turtle Fur cites *Kish v. LMS Construction*, Opinion No. 19-02WC (April 19, 2002) to support its claim of prejudice. In *Kish*, the treating physician testified that the claimant did not undergo adequate medical care for his purported work injury, which could have prolonged or worsened the injury. The record in the instant case reveals no such evidence. Accordingly, while the late notice in *Kish* was prejudicial to the employer, I find that result distinguishable from the instant case.
25. I therefore conclude that there is no evidence supporting any prejudice associated with Claimant's two-month delay in providing notice under § 656(a). Having caused no prejudice, the two-month delay is excused under § 660(a), and this claim is not barred by 21 V.S.A. § 656(a). Accordingly, Turtle Fur is not entitled to summary judgment on this basis.

Statute of Limitations under 21 V.S.A. § 660(a)

26. Turtle Fur does not contend that Claimant missed the three-year statute of limitations for initiating a claim for workers' compensation benefits in its cross motions. It first raises the issue on November 14, 2022, and specifically asserts the statute of

limitations as a third basis for summary judgment for the first time in its sur-sur reply dated December 5, 2022.

27. The deadline for dispositive motions was June 1, 2022. Turtle Fur filed its cross motions for summary judgment on August 26, 2022, and the Department allowed them. However, I view a new basis for summary judgment asserted via sur-sur reply on December 5, 2022 in a different light. Summary judgment motions are permitted in workers' compensation claims provided that they do not defeat the informal nature of the proceedings. *See Workers' Compensation Rule 17.1100*. Permitting the parties to raise new bases for summary judgment in a continuing cycle long after the dispositive motion deadline would defeat the informal nature of the proceedings.
28. In any event, Turtle Fur now asserts that this claim is barred by the three-year statute of limitations set forth in 21 V.S.A. § 660(a). A cause of action for a workers' compensation claim 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).
29. Turtle Fur cites specific medical records mentioning "stress" as far back as 2012. *Turtle Fur's Reply*, at 3; *Turtle Fur's Reply Exhibits A-D*. It contends that Claimant's claim for a stress injury is untimely, as it accrued more than three years prior to the claim filing date of July 12, 2021. Claimant points out that the decedent mentioned being busy, and sometimes stressed, to his primary care provider in the context of his routine annual visits between 2012 and 2019. The decedent mentioned coaching sports, working several jobs, a family wedding, his son's broken arm, and his mother's death as events that made him feel busy or stressed. According to Claimant, the medical records do not indicate significant stress from the decedent's employment with Turtle Fur until January 2020. *See Claimant's Exhibit 4, at 2-3*.
30. Based on the foregoing, the date on which the decedent's psychological condition and its alleged relationship to his employment at Turtle Fur was reasonably discoverable and apparent is a disputed material fact. Accordingly, whether this claim is barred by the three-year statute of limitations set forth in § 660(a) cannot be resolved on summary judgment.

ORDER:

Turtle Fur Company's Cross Motions for Summary Judgment are hereby **DENIED**.

DATED at Montpelier, Vermont, this 19th day of January 2023.

Michael A. Harrington
Commissioner