

**STATE OF VERMONT
DEPARTMENT OF LABOR**

William Webber

Opinion No. 07F-24WC

v.

By: Beth A. DeBernardi
Administrative Law Judge

Justworks Employment Group, LLC

For: Michael A. Harrington
Commissioner

State File No. RR-53726

RULING ON CLAIMANT'S PETITION FOR ATTORNEY FEES

APPEARANCES:

Carey C. Rose, Esq., for Claimant
Glenn S. Morgan, Esq., for Defendant

On April 19, 2024, Claimant's counsel filed a petition seeking an award of attorney fees for successfully obtaining an interim order. Defendant filed a response on May 14, 2024.

BACKGROUND:

Based on documents in the Department's file and the background provided by the parties in their instant filings, I find the following facts for purposes of this ruling only:

Claimant alleges that he sustained a lifting injury arising out of and in the course of his employment with Defendant on September 17, 2021. Defendant accepted the injury as compensable.

Follow-up medical testing raised a concern that Claimant might have a cancerous tumor, but the October 25, 2021 pathology report identified the mass as a hematoma – not cancer. *Claimant's Exhibit 2*. Further, the November 22, 2021 pathology addendum confirmed no evidence of malignancy. *Id.*

Defendant filed a Notice of Discontinuance on November 24, 2021. On November 30, it notified Claimant by letter that it was terminating his workers' compensation benefits on the grounds that his "likely" cancerous condition was not related to his employment. *Claimant's Exhibit 3*. The record before me does not reflect when, or whether, Defendant received the pathology reports evidencing that Claimant did not have cancer.

In June 2023, Claimant hired Attorney Rose to pursue additional workers' compensation benefits. Claimant relied on the opinion of his treating provider that his condition was work-related. Defendant obtained a medical records review from Dr. Backus and relied on his opinion that Claimant's condition was not work-related.

On March 22, 2024, the Department’s specialist issued an interim order awarding Claimant indemnity and medical benefits. She then referred the parties’ dispute to the formal hearing docket.

The Administrative Law Judge held a pretrial conference on May 7, 2024 and set the parties’ dispute for formal hearing on November 18, 2024.

Having successfully obtained an interim order at the informal level, Claimant’s counsel filed a petition for attorney fees on April 19, 2024.

DISCUSSION:

The Vermont Workers’ Compensation Act provides that a claimant is eligible for consideration of an attorney fee award when he or she “prevails.” 21 V.S.A. § 678(b)(2).

Until a dispute is finally resolved within the Department, however, it is premature to find that a claimant has “prevailed.” See *Mallow v. Bullrock Solar, LLC*, Opinion No. 11-22WC (May 12, 2022) (To be eligible for a cost award under § 678, “a claimant must have ‘prevailed’ at either the formal or informal level. If a claimant prevails at the informal level but the dispute is subsequently referred to the formal level, then the dispute is not yet resolved, and consideration of an award of costs or attorney fees would be premature.”); see also *Leffler v. The Oryza Group, LLC*, Opinion No. 12-20WC (July 8, 2020), at 4 (dispute must be resolved before an award of attorney fees may be made).

Although Claimant here successfully obtained an interim order, the parties’ dispute has been transferred to the formal hearing docket, where it is still pending. Accordingly, I conclude that Claimant has not yet prevailed on his claim, as contemplated by 21 V.S.A. § 678(b)(2).

Based on the foregoing, Claimant’s counsel’s attorney fee petition is premature. Should Claimant ultimately prevail before the Department at the formal level, his attorney may submit a fee petition for consideration at that time, as provided in 21 V.S.A. § 678(e).

ORDER:

Claimant’s petition for an award of attorney fees is hereby **DISMISSED WITHOUT PREJUDICE**.

DATED at Montpelier, Vermont this 21 day of May 2024.

Michael A. Harrington
Commissioner