

Daniel Farley v. Valley Floors, Inc.

(July 15, 2009)

**STATE OF VERMONT
DEPARTMENT OF LABOR**

Daniel Farley

Opinion No. 18R-09WC

v.

By: Phyllis Phillips
Hearing Officer

Valley Floors, Inc.

For: Patricia Moulton Powden
Commissioner

State File No. Y-02506

RULING ON DEFENDANT'S MOTION FOR RECONSIDERATION

Defendant moves for reconsideration of the Commissioner's June 8, 2009 order denying its motion for summary judgment. In that ruling, the Commissioner determined that Defendant had failed to establish as a matter of law that Claimant had suffered a non-work-related aggravation of his condition. In fact, in the face of three expert medical opinions to the contrary, Defendant had produced no expert testimony at all in support of this contention.

In the context of the current motion, Defendant now proffers the expert opinion of Dr. Forbes, whose conclusion, not surprisingly, is at odds with the three expert opinions Claimant previously produced. Based on a review of Claimant's medical records, Dr. Forbes believes that Claimant did indeed suffer a non-work-related aggravation. With that as support, Defendant renews its request for summary judgment.

Defendant seems not to understand the standard for establishing a right to judgment as a matter of law. The fact that it now has produced an expert medical opinion contrary to those proffered by Claimant serves only to highlight the fact that genuine issues of material fact exist. Viewing the evidence in the light most favorable to Claimant, however, as is required in this context, summary judgment is still inappropriate. *State v. Delaney*, 157 Vt. 247, 252 (1991).

Defendant's Motion for Reconsideration is hereby **DENIED**.

DATED at Montpelier, Vermont this 15th day of July 2009.

Patricia Moulton Powden
Commissioner