

**STATE OF VERMONT
DEPARTMENT OF LABOR AND INDUSTRY**

Sharon Stephens Quinlan)	Opinion No. 10-04WC
)	
v.)	By: Margaret A. Mangan Hearing Officer
)	
Concentra Managed Care and Windham Group)	For: Michael S. Bertrand Commissioner
)	
)	State File No. P-13089; S-04712

APPEARANCES:

Frank E. Talbot, Esq., for the Claimant
Glenn S. Morgan, Esq., and Marion T. Ferguson, Esq., for Defendant Concentra
Stephen D. Ellis, Esq., for the Defendant Windham Group

**RULING ON DEFENDANT WINDHAM GROUP’S MOTION FOR
RECONSIDERATION OF DENIAL OF STAY**

Defendant Windham Group asks this Department to reconsider and reverse its denial of a stay in this matter or, alternatively, to certify an additional question to the Vermont Supreme Court for the pending appeal. In this motion, Windham focuses on the single criterion articulated in the denial of a stay, that Windham would not suffer irreparable harm because any payment made could be offset against a permanency award should the Court reverse the partial award granted. Should no permanency ever be awarded, Windham argues, the basis for the denial of a stay evaporates.

Under the Workers’ Compensation Act, any award or order of the Commissioner shall be of full effect from issuance unless stayed by the Commissioner, any appeal notwithstanding. 21 V.S.A. § 675. To prevail on its request in the instant matter, Defendant must demonstrate all of the following: (1) it is likely to succeed on the merits; (2) it would suffer irreparable harm if the stay were not granted; (3) a stay would not substantially harm the other party; and (4) the best interests of the public would be served by the issuance of the stay. *In re Insurance Services Offices, Inc.*, 148 Vt. 634, 635 (1987). The Commissioner has the discretionary power to grant, deny or modify a request for a stay. 21 V.S.A. § 675(b); *Austin v. Vermont Dowell & Square Co.*, Opinion No. 05S-97WC (May 29, 1997) (citing *Newell v. Moffatt*, Opinion No. 2A-88 (Sept. 20, 1988)). The granting of a stay should be the exception, not the rule. *Bodwell v. Webster Corporation*, Opinion No. 62S-96WC (Dec. 10, 1996).

Even if the claimant never receives a permanency award, the partial award granted under the decision in this matter will not substantially harm Windham. Further, the best interests of the public are served by preventing further delay of payment in this protracted litigation. Accordingly, the denial of a stay was a proper exercise of the discretion granted to the Commissioner.

ORDER:

Therefore, the motion to reconsider the denial of a stay is DENIED.

Dated at Montpelier, Vermont this 12th day of February 2004.

Michael S. Bertrand
Commissioner

Appeal:

Within 30 days after copies of this opinion have been mailed, either party may appeal questions of fact or mixed questions of law and fact to a superior court or questions of law to the Vermont Supreme Court. 21 V.S.A. §§ 670, 672.