

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

Francis Kinney

Opinion No. 54-04WC

v.

*By: Margaret A. Mangan
Hearing Officer*

Mount Anthony Union School

*For: Michael S. Bertrand
Commissioner*

State File No. U-51584

APPEARANCES:

*J. Christopher Callahan, Esq., for the Claimant
John W. Valente, Esq., for the Defendant*

RULING ON CLAIMANT'S MOTION FOR SUMMARY JUDGMENT

Claimant, a school board member, seeks worker's compensation benefits for an injury he incurred while performing school board duties. After the school denied the claim, this action followed.

The underlying facts are not in dispute:

- 1. Claimant is a 52-year-old self-employed auto body technician and an elected member of the Mount Anthony Union High School (MAUHS) Board. MAUHS pays him \$1,200 annually.*
- 2. As a building committee chair, claimant attended construction meetings at a building site for a new middle school. At one such meeting on January 21, 2004, he injured his shoulder.*
- 3. As a result of the injury, claimant was disabled from work, including his auto body technician work, and incurred medical expenses.*

The employer denied the claim for benefits based on 21 V.S.A. § 601(12)(O)(i), which states that "public employment" shall not include "public officials who are elected by popular vote except those hereinbefore mentioned." (emphasis added).

The Vermont Rules of Civil Procedure apply to contested workers compensation proceedings, if they do not interfere with the informal nature of the hearing. WC Rule 7.100; see also Dodge v. Precision Construction Products, Inc. 2003 VT 11 ¶ 5. Therefore, this motion for summary judgment is properly before the Department and either party is entitled to judgment as a matter of law if there is no genuine issue of material fact. V.R.C.P. 56 (c)(3). In making this determination, the opposing party is given the benefit of all reasonable doubts and inferences. Toys, Inc. v. F.M. Burlington Co., 155 Vt. 44, (1990).

An employer is obligated to pay workers' compensation benefits to "a worker [who] receives a personal injury by accident arising out of and in the course of employment..." 21 V.S.A. § 618 (a)(1). "'Worker' and 'employee' means an individual who has entered into the employment of, or works under contract of service or apprenticeship with, an employer...." § 601(14). "Public employment" is covered under the Act in § 601(12) and includes "all officers and employees of all state agencies, departments, divisions, boards, commissions and institutions, and the Vermont historical society," (12)(A), "employees of towns, town school districts, incorporated school districts, incorporated villages and fire districts," (12)(E); as well as volunteer police officers and firefighters and sheriffs, among others. The list is specific. However, It does not include school board members. Nor does it include the governor.

Claimant argues that his school board work falls under the rubric of "public employment." Further, he argues that although he was elected and elected officials are excluded from coverage, a statutory exception applies. As quoted above, elected officials, although public employees, are specifically excluded from workers' compensation coverage unless an exception applies. § 601 (12)(O)(1). The governor is clearly included under an exception and claimant argues that as a "paid" employee, he should be as well. Specifically, he locates the exception in 21 V.S.A. § 601(12)(E), where "public employment" specifically includes "town school districts."

The central issue for decision, therefore, is whether claimant and MAUHS had an employee-employer relationship under the Workers' Compensation Act (Act). A school board member, employed full time in his independent occupation, performs duties and has a relationship with the school district that his qualitatively different from any of the "pubic employment" positions listed in § 601(12).

Even if it were assumed that claimant entered into an employment relationship with MAUHS because he received an annual stipend, this claim would not be compensable because claimant was an elected official. The elected official exception is particularly applicable to a school board member, who essentially volunteers his time, though he receives a small stipend. Such a role differs markedly from the "elected officials" who serve the state full time and are excepted from the exclusion and, therefore, covered under the Act. If the exception provision were interpreted in the way claimant urges, it would engulf the rule that elected officials are excluded from the Act, making § 601 (12)(O)(1) meaningless and overriding legislative intent.

Therefore, because claimant was not an employee entitled to benefits under the Act, his claim for summary judgment on this issue is DENIED.

Dated at Montpelier, Vermont this 3rd day of December 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.