C. H. v. Schwan's Food　　　　　　　　(September 21, 2006)

STATE OF VERMONT
DEPARTMENT OF LABOR

C. H.　　　　　　　　　　　　　　Opinion No. 40-06WC

　　　　　　　　　　　　　　　　By:　　Margaret A. Mangan
　　　v.　　　　　　　　　　　　　　　Hearing Officer

Schwan's Food　　　　　　　　　　For:　　Patricia Moulton Powden
　　　　　　　　　　　　　　　　　　　Commissioner

　　　　　　　　　　　　　　　　State File No. U-09573

APPEARANCES:

Cindy Hakey, pro se, for the Claimant
John W. Valente, Esq., for the Defendant

RULING ON DEFENSE MOTION TO DISMISS

According to a First Report of Injury, Claimant began working for Schwans Bakery on August 5, 2003. The First Report of Injury was filed on January 2, 2004.

Claimant alleges that she injured her back, wrist and upper arm while unloading a truck for Schwans on October 7, 2003.

At a telephone status conference with defense counsel and the hearing officer on December 20, 2004, Claimant alleged that she was permanently and totally disabled as a result of her work related injury.

A formal hearing on this claim was scheduled for June 1, 2005.

Claimant was deposed by defense counsel and evaluated by Dr. Michael Kenosh for the defense.

Claimant was scheduled to be evaluated by defense psychologist, but failed to show for the appointment.

Claimant left phone messages with the Department that she could not attend the hearing because of health concerns.

The status conference and hearing were scheduled for September 2005. Claimant was unable to participate in either.

Defense counsel filed a Motion to Dismiss this action on November 9, 2005.

The hearing officer sent Claimant a letter by certified mail on December 15, 2005 stating that a motion to dismiss her claim had been filed and instructing her to submit any opposition to that motion by January 6, 2006.

No receipt for the certified letter has been received.

Claimant has not responded to the motion to dismiss.

Therefore, for her failure to cooperate in the discovery of this action and to otherwise prosecute this claim, V.R.C.P. 41 (b)(2), the workers' compensation claim of Cindy Hakey is hereby DISMISSED.

Dated at Montpelier, Vermont this 21st day of September 2006.

_____
Patricia Moulton Powden
Commissioner