

**STATE OF VERMONT
DEPARTMENT OF LABOR**

Robert Gadwah

Opinion No. 33S-11WC

v.

By: Phyllis G. Phillips, Esq.
Hearing Officer

Ethan Allen

For: Anne M. Noonan
Commissioner

State File No. P-09814

RULING ON DEFENDANT'S MOTION FOR STAY

Defendant moves to stay the Commissioner's October 20, 2011 Order pursuant to 21 V.S.A. §675.

To prevail on a request for a stay, the moving party must demonstrate *all* of the following:

1. That it is likely to succeed on the merits;
2. That it will suffer irreparable injury if a stay is not granted;
3. That issuing a stay will not substantially harm the other party; and
4. That the best interests of the public will be served by issuing a stay.

In re Insurance Services Office, Inc., 148 Vt. 634, 635 (1987).

As contemplated by the legislature, the granting of a stay must be the exception, not the rule. *Bodwell v. Webster Corp.*, Opinion No. 62S-96WC (December 10, 1996). Applying this stringent standard, I find that Defendant has failed to establish its right to a stay.

As to the first criterion, Defendant recites the same evidence upon which it relied both at formal hearing and in its recently denied Motion for Reconsideration. It argues that Claimant's evidence was not credible, but the Commissioner specifically found that it was. There is no reason to believe that a trial judge or jury will conclude otherwise.

As to the second criterion, Defendant asserts that because the Commissioner's Order created uncertainty as to what benefits are due, both parties will suffer irreparable injury if a stay is not granted. Yet this was not the issue litigated at formal hearing. The narrow issue presented was simply whether Claimant's compensable 1999 injury caused the need for surgical revision of his failed L4-5 fusion. The Commissioner determined that it did. As a result, Claimant now has earned the right to establish to what workers' compensation benefits, if any, he is entitled as a consequence. If I were to delay this next stage of the parties' litigation from proceeding by granting a stay of the current Order, this would prolong the uncertainty of which Defendant complains, not alleviate it.

As to the third criterion, Defendant asserts that granting a stay will benefit Claimant rather than harm him, because it will allow him to avoid the increased costs associated with proving what benefits Defendant might owe. This argument only makes sense if Defendant prevails on appeal. Otherwise, Claimant is substantially harmed by further delay.

As to the last criterion, Defendant asserts only that the public interest is served by staying enforcement of an “erroneous decision.” Presumably every losing party feels similarly. Defendant serves only its own interests in making this argument, not the public interest.

As noted above, the decision to grant a stay must be the exception, not the rule. *Bodwell, supra*. Defendant has failed to present even a single credible argument in support of its Motion. I find no basis for issuing a stay pending appeal.

Defendant’s Motion for Stay is **DENIED**. Claimant is awarded attorney fees totaling \$246.50 for his review of and response to the motion, which Defendant is hereby **ORDERED** to pay.

DATED at Montpelier, Vermont this 20th day of December 2011.

Anne M. Noonan
Commissioner