

**STATE OF VERMONT
DEPARTMENT OF LABOR**

D. H.)	Opinion No. 59-05WC
)	
)	By: Margaret A. Mangan
v.)	Hearing Officer
)	
Jay Peak)	For: Patricia A. McDonald
)	Commissioner
)	
)	State File No. W-04931

Submitted on written record and argument

APPEARANCES:

William B. Skiff, Esq., for the Claimant
Marion T. Ferguson, Esq., for the Defendant

ISSUE:

Must the value of the ski pass which constituted the bulk of claimant's wages be prorated over the entire ski season (November to April) or divided over the twenty-two days during which claimant was expected to be on the mountain performing his duties?

UNDISPUTED FACTS:

1. Claimant was a volunteer ski patroller at Jay Peak where he was given a ski pass and food discounts.
2. The expectation was that claimant would be on the mountain for the entire ski season, using off-duty time to provide a presence on the mountain and to improve his own skiing skills.
3. The parties agree that the ski pass, valued at approximately \$550.14 constitutes countable wages.
4. Claimant was expected to work as a ski patroller for a minimum of 22 days, 3 days per month, or 25 days if the monthly commitment was not met. He was to be available for the season.
5. The ski season usually ran from November to April.
6. Claimant was injured in the course of his employment on January 3, 2005 after completing 16 of the required 22 days of work. Surgery and disability followed.

CONCLUSIONS OF LAW:

1. Claimant argues not only that value of the ski pass must be included in the calculation of wages, but also that the calculation should be based on the value of the ski pass divided by the 22 days he was required to work. He contends that the value of the ski pass vests after 22 days, after which he continues to receive the value of that pass even if he does no more work.
2. Defendant concedes that the ski pass must be considered in the calculation, but argues that claimant is seeking a windfall not consistent with workers' compensation law. That is because under claimant's theory of this case, his pass would be averaged over 22 days, for an average weekly wage of \$159.71 compared with the \$27.50 if the value of the pass were divided by the 20 weeks of the season.
3. The parties agree that under *Gaboric v. Stratton Mountain*, Opinion No. 12-04WC (2004), the value of the ski pass must be included in the calculation of average weekly wage. The correct computation under *Gaboric* involves averaging the value of the pass over the duration of the ski season. Such an approach reflects the agreement claimant had with his employer, with benefits as well as obligations spread over the entire season.

ORDER:

Accordingly, the value of the ski pass is to be divided over the entire ski season.

Dated at Montpelier, Vermont this 20th day of September 2005.

Patricia A. McDonald
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.