

**STATE OF VERMONT
DEPARTMENT OF LABOR**

Arnold Griggs

Opinion No. 30R-10WC

v.

By: Phyllis Phillips, Esq.
Hearing Officer

New Generation Communication

For: Valerie Rickert
Acting Commissioner

State File No. P-15250

RULING ON CLAIMANT'S MOTION FOR RECONSIDERATION

Claimant moves for reconsideration of various aspects of the Commissioner's October 1, 2010 Opinion and Order in the above claim. Specifically, Claimant asserts that the Commissioner violated his due process rights by recalculating his compensation rate when neither party had raised this as an issue for hearing. Claimant also asserts that the Commissioner erred in not awarding penalties and interest.

Determination of Claimant's Compensation Rate

As to the first issue, 21 V.S.A. §606 mandates that "[q]uestions arising under the provisions of this chapter, if not settled by agreement of the parties interested therein with the approval of the commissioner, shall be determined . . . by the commissioner." Calculating a claimant's average weekly wage and compensation rate is a necessary component of determining the benefits to which he or she is entitled. The commissioner has not just the right but the obligation to determine whether the calculations are correct.

It is true that in calculating Claimant's compensation rate in the current claim, the Commissioner interpreted the statute in a manner that differed from the way her designees may have applied it in the past. It is understandable that neither party would have anticipated that she would do so, and therefore neither would have seen fit to introduce evidence on the issue.

I conclude that it is appropriate under the particular circumstances of this claim to remand the matter to the hearing officer so that the parties can submit further evidence relevant to the determination of the appropriate compensation rate at which the benefits Claimant has been awarded should be paid. Claimant's Motion for Reconsideration is **GRANTED** to the extent necessary to accomplish this result.

Determination as to Penalties and Interest

Claimant's request that the Commissioner reconsider her decision not to award penalties or interest embodies essentially the same arguments presented in his proposed findings of fact and conclusions of law.

I remain convinced that Claimant himself contributed to Defendant's delayed payment of the benefits due him in at least two respects. First, he failed to provide documentation establishing that the expenses of recovery relative to his first third-party settlement were "reasonable" under 21 V.S.A. §624(f). Second, he failed to provide documentation establishing when Defendant's workers' compensation "holiday" was finally exhausted. Without that documentation, Defendant could not calculate either the precise amount it owed or the date when it began owing it. Both are required to justify an award of penalties and interest.

ORDER:

Claimant's Motion for Reconsideration is **GRANTED** to the extent necessary to present evidence as to the compensation rate at which the benefits awarded him should be paid. The claim is remanded to the hearing officer for that purpose. Claimant's Motion is in all other respects **DENIED**.

DATED at Montpelier, Vermont this 15th day of November 2010.

Valerie Rickert
Acting Commissioner