

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

Theresa Morin	)	State File No. D-12456
	)	
	)	By: Margaret A. Mangan
v.	)	Hearing Officer
	)	
Essex Optical, Inc.	)	For: Michael S. Bertrand
	)	Commissioner
	)	
	)	Opinion No. 41-03WC

**RULING ON CLAIMANT’S MOTION FOR SUMMARY JUDGMENT**

Christopher J. McVeigh, Esq., who represents the Claimant, moves for summary judgment on the issue of entitlement to cost of living adjustments that exceed her average weekly wage. John W. Valente, Esq., attorney for the Defendant, opposes the motion.

A hearing held in this case in 2001 resulted in an award of permanent total disability to Theresa Morin. Opinion No. 41-01 WC (2001). On a de novo appeal to the Chittenden County Superior Court, a jury returned a verdict in favor of the Claimant and the court entered judgment accordingly. Since that time, Claimant has demanded, and Defendant has refused, to increase her compensation rate pursuant to WC Rule 16.1000 and do so annually pursuant to 21 V.S.A. § 650(d). Defendant’s objection is based on this Department’s longstanding policy not to apply cost of living increases once weekly workers’ compensation payments exceed the Claimant’s average weekly wage. The rationale behind that policy is to assure that one does not receive worker’s compensation benefits that are greater than the wage that Claimant received while working.

This Department made clear in *Patch v. H.P.Cummings Construction*, et. al. Opinion No. 49A-02WC (2003) conclusion ¶ 36 that, “it is the Department's well-established statutory and regulatory interpretation of the Act to limit all benefits---temporary and permanent---to the average weekly wage.” Today, I adhere to that conclusion.

Therefore, the Claimant's motion for summary judgment is DENIED.

Dated at Montpelier, Vermont this 22<sup>nd</sup> day of September 2003.

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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.