

J. B. v. Steven Betit

(September 26, 2008)

**STATE OF VERMONT  
DEPARTMENT OF LABOR**

J. B.

Opinion No. 32V-08WC

v.

By: Phyllis G. Phillips, Esq.  
Hearing Officer

Steven Betit

For: Patricia Moulton Powden  
Commissioner

State File No. Y-51024

**RULING ON DEFENDANT'S MOTION TO VACATE**

Defendant moves to vacate the Commissioner's Amended Order, in which Claimant was awarded benefits in a lump sum with the appropriate social security offset language required by 21 V.S.A. §652(c). Defendant contends that it was not served properly with Claimant's Motion to Amend, that the issue was not tried at the formal hearing and that no evidence was presented upon which to base the amended Order.

In response to Defendant's motion, Claimant has submitted his attorney's affidavit documenting that the Motion to Amend was in fact properly served on Defendant. Claimant also notes that he included a request for payment in a lump sum in his original proposed findings, and referred to the social security offset issue as the basis for concluding that a lump sum payment was in his and his family's best interests.

According to 21 V.S.A. §652(b), upon application of the employee the commissioner may authorize payment of permanency benefits in a lump sum if she finds it to be in the best interest of the employee or the employee's dependents to do so. Notably, the statute does not give the employer any voice in this matter.

I find that it was proper to accept Claimant's proposed findings as to the basis for his lump sum request. I further find that Claimant's Motion to Amend was properly served on Defendant. Defendant's Motion to Vacate is **DENIED**.

**DATED** at Montpelier, Vermont this 26<sup>th</sup> day of September 2008.

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Patricia Moulton Powden  
Commissioner