

R. V. v. Magtown Ventures LLC/The Hartford

(July 29, 2008)

**STATE OF VERMONT
DEPARTMENT OF LABOR**

R. V.

Opinion No. 33-08WC

v.

By: Jane Gomez-Dimotsis
Hearing Officer

Magtown Ventures, LLC.
The Hartford

For: Patricia Moulton Powden
Commissioner

State File No. W-07853

OPINION AND ORDER

ATTORNEYS:

Christopher McVeigh, Esq. for the Claimant
Eric Johnson, Esq for Magtown Ventures/The Hartford

ISSUES:

Motion for Stay filed by Defendant
Motion for Attorneys' Fees filed by Claimant's Attorney
Motion for Clarification regarding the controlling date for application of Guides for PPD, and whether the Department acted within its discretion and jurisdiction applying the AMA Guides to the instant case.

DECISION

A decision, however brief, was issued in this case granting summary judgment to the Claimant based on the fact that the Department, in its discretion and under its jurisdiction, found that the AMA Guides for the Evaluation of Permanent Impairment, 6th Edition were never in effect and this remains true. This is based on a finding that the corrected edition of a 6th Edition is yet to be approved by the AMA. (See attached e-mail from Brigham and Associates)

The Motion to Stay is DENIED. The Defendant has failed to prevail on demonstrating that there is a strong likelihood of success on the merits of the case, that it will suffer irreparable harm if the decision is not stayed, that the Claimant will not be irreparably harmed and that a stay is in the best interest of the public. The Claimant has argued many of these points effectively and this hearing officer agrees that not all of the factors can be met.

The appropriate time for using a particular Edition of the AMA Guides is controlled by statutes, decisions by the Vermont Supreme Court, Decisions issued by the Department of Labor, Department Rules and the interpretation of all of them. In the instant case, we find both the date of injury and the date of medical end result fall within the period where the Fifth Edition of the

AMA Guides was in effect. Thus, it is not even necessary to argue or decide this point of law. The determination of partial permanency must be under the Fifth Edition of the AMA Guides.

The Department has jurisdiction to determine which AMA Guideline is in effect. 21 V.S.A. §§ 603,606,709 provide for the Commissioner's discretion to make decisions interpreting law when applied to workers' compensation cases. The AMA Guides, 6th edition, has not yet been approved fully by the A.M.A., although some states do use it. Both the Department of Labor and Vermont's legislature have chosen not to use this edition.

Since the Claimant has prevailed, attorneys' fees are awarded in the amount of 8.6 hours of attorney hours paid at the rate of \$90.00 per hour.

ORDER:

Defendant's Motion to Stay Denied.

Claimant's Request for Clarification is found moot.

Claimant's Award for Attorney's Fees is granted as stated above.

DATED at Montpelier, Vermont this 29th day of July 2008.

Patricia Moulton Powden
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.