

Robert Gadwah v. Ethan Allen

(November 28, 2011)

**STATE OF VERMONT
DEPARTMENT OF LABOR**

Robert Gadwah

Opinion No. 33R-11WC

v.

By: Phyllis Phillips, Esq.
Hearing Officer

Ethan Allen

For: Anne M. Noonan
Commissioner

State File No. P-09814

RULING ON DEFENDANT'S MOTION FOR RECONSIDERATION

Defendant seeks reconsideration of the Commissioner's October 20, 2011 Opinion and Order. It asserts that the evidence adduced at hearing was insufficient to support the Commissioner's ruling. I disagree.

Having weighed and considered the evidence produced by both parties, I am convinced that that aspect of Claimant's 2009 surgery in which his L4-5 fusion was revised and corrected would not have been performed but for his 1999 injury. In reaching this conclusion, I accept as credible the testimony of both Claimant and his wife as to the ongoing nature of his symptoms from 1999 forward. I also accept Dr. Forrest's expert medical opinion, which established the necessary causal relationship between that aspect of the surgery and the 1999 injury to the required degree of medical certainty, as more credible than Dr. Levy's opinion.

I also am convinced that Claimant's work at Weir Tree Farms did not contribute in any way to the need for surgical revision of the failed fusion at L4-5. In reaching this conclusion, I again accept Dr. Forrest's expert medical opinion as more credible than Dr. Levy's.

Last, contrary to Defendant's assertion, my ruling did not go so far as to apportion the costs of the 2009 surgery between those attributable to the L4-5 revision and those attributable to the L2-3 disc herniation. The narrow issue decided was simply whether Claimant's compensable 1999 injury caused the need for surgical revision of his failed L4-5 fusion. As discussed above, I am convinced by the credible evidence that it did.

A motion to reconsider should not be granted solely to relitigate an issue already decided. *Shrader v. CSX Transportation, Inc.*, 70 F.3d 255, 257 (2d Cir. 1995). “The standard for granting such a motion is strict, and reconsideration will generally be denied unless the moving party can point to controlling decisions or data that the court overlooked – matters, in other words, that might reasonably be expected to alter the conclusion reached by the court.” *Id.*

Defendant fails to meet this standard here. Its motion consists of a lengthy recitation of the same evidence it emphasized in its proposed findings of fact, spun in exactly the same way to arrive at the same legal conclusions it previously argued. Under these circumstances, for Defendant to assert that judicial economy would be served by granting it the opportunity to relitigate a case that it fairly tried, and fairly lost, is misguided and self-serving.

Defendant’s Motion for Reconsideration is **DENIED**.

DATED at Montpelier, Vermont this 28th day of November 2011.

Anne M. Noonan
Commissioner