

IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

1994 MTWCC 25

WCC No. 9210-6609

BRUCE BARNES

Petitioner

vs.

STATE COMPENSATION INSURANCE FUND

Respondent/Insurer for

BLUE RANGE MINING COMPANY

Employer.

ORDER AMENDING FINDINGS OF FACT AND CONCLUSIONS OF LAW

Petitioner and respondent have filed motions for reconsideration or modification of this Court's Findings of Fact and Conclusions of Law and Proposed Judgment of Hearing Examiner, Robert J. Campbell and Order Adopting Findings of Fact and Conclusions of Law of Hearing Examiner and Entering Judgment, entered on January 26, 1994.

Petitioner requests amendments of Finding of Fact Nos. 16 and 17, which state that the State Fund has paid or agreed to pay certain medical bills. Respondent, in its cross-motion and reply brief, also indicates this is a misstatement by the hearing examiner. These findings read:

16. Following his evaluation of claimant, Dr. Milanovich performed a substantial amount of dental work which was paid by respondent as medical benefits. Dr. Milanovich referred claimant to a Butte oral surgeon, Dr. Paul G. Sims for an evaluation and possible surgery.

17. The State Fund sent claimant for an evaluation by Dr. James L. Booth on January 27, 1992. After reading the report, the parties agreed that the State Fund would pay for orthodontic work to be done by Dr. Philip Milanovich and the physical therapy related to claimant's sprained capsular ligaments.

A complete review of the file fails to reveal any evidence which supports the finding that Dr. Milanovich's medical bills were paid or that the State Fund had agreed to pay for orthodontic work by Dr. Milanovich. Therefore, Finding of Fact No. 16 is amended to read:

16. Following his evaluation of claimant, Dr. Milanovich performed a substantial amount of dental work. Dr. Milanovich referred claimant to a Butte oral surgeon, Dr. Paul G. Sims, for an evaluation and possible surgery.

Finding of Fact No. 17 is amended to read:

17. The State Fund sent claimant for an evaluation by Dr. James L. Booth on January 27, 1992. By letter dated February 18, 1992, the State Fund agreed to pay Dr. Mueske for the repairs of teeth 4 and 29 and the physical therapy already performed by Thomas Meagher, R.P.T.

Mr. Campbell's Conclusions of Law and the Judgment must be amended to include the claimant's entitlement to those medical/dental bills which have been incurred as a result of his injury. Therefore, Conclusion of Law No. 2 and the Judgment are amended to read:

2. Claimant has presented credible evidence relating his present jaw symptoms to his August 14, 1989 industrial injury. Claimant is entitled to payment of those medical/dental bills which have been incurred as a result of his industrial injury, including those due and owing to Dr. Milanovich and Dr. Sims. If claimant consents to the recommended surgery, such medical bills are payable by the respondent.

The petitioner has failed to show good cause for amending this Court's judgment denying attorney fees and the request to reconsider is hereby denied.

The Court has considered respondent's cross-motion to reconsider and is unable to find good cause for amending the findings of fact or conclusions of law and judgment as requested by respondent.

IT IS HEREBY ORDERED that the Findings of Fact and Conclusions of Law of Hearing Examiner Campbell and the Judgment of this Court are amended as set forth in this Order.

IT IS FURTHER ORDERED that petitioner's request to reconsider amending the Judgment for attorney fees and respondent's cross-motion to reconsider are denied.

DATED in Helena, Montana, this 14th day of March, 1994.

(SEAL)

/s/ Mike McCarter

JUDGE

c: Mr. John C. Doubek
Mr. Oliver H. Goe