

IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

1994 MTWCC 99

WCC No. 9408-7125

JACK W. BATEMAN

Petitioner

vs.

LUMBERMENS MUTUAL CASUALTY

Respondent/Insurer for

BUTTREY FOOD & DRUG

Employer.

ORDER DENYING MOTION TO DISMISS EMERGENCY PETITION

This action was commenced on August 15, 1994, by the filing of an emergency petition. On September 15, 1994, the respondent moved to dismiss, contending that there is no emergency because claimant is currently receiving permanent partial benefits, whereas he is seeking temporary total disability benefits. The motion also asserts that one of the issues in the case -- whether claimant's cervical condition is related to his industrial accident -- has never been mediated.

The case was never set for trial. In the meantime there have been further developments, including the completion of mediation regarding the cervical condition.

The lack of an emergency is not a ground for dismissing a petition. If there is no emergency then the matter can be set for the next regular venue.

The failure to mediate the cervical issue is now **moot**. Dismissal of the petition because the case had not been mediated when filed would only create unnecessary work for the parties and the Court.

The Motion to Dismiss Emergency Petition is therefore **denied**. The matter is set for trial during the January 9, 1995, Great Falls term of Court. Pretrial deadlines will be fixed by a separate scheduling order.

Dated in Helena, Montana, this 3rd day of November, 1994.

(SEAL)

/s/ MIKE McCARTER

JUDGE

c: Mr. Tom L. Lewis
Mr. Steven S. Carey