

IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

1997 MTWCC 71

WCC No. 9709-7821

RANGER INSURANCE COMPANY

Appellant

vs.

VELLEDA BATES

Respondent.

ORDER GRANTING MOTION TO STRIKE CROSS APPEAL

Summary: Insurer appealed from decision of Department of Labor and Industry. Claimant, respondent on the appeal, then filed a cross-appeal. The insurer filed a motion to dismiss the cross-appeal, arguing it was not timely under section 2-4-702, MCA.

Held: A cross-appeal refers to an appeal filed after another party in the case has already appealed. It is, however, simply an appeal that must comply with statutory timeliness requirements. Section 2-4-702, MCA, contains no separate time line for a cross-appeal. Claimant's cross-appeal was not filed within the 30 days allowed by the statute and must be dismissed.

Topics:

Appeals (To Workers' Compensation Court): Timeliness. A cross-appeal refers to an appeal filed after another party in the case has already appealed. It is, however, simply an appeal that must comply with statutory timeliness requirements. Section 2-4-702, MCA, contains no separate time line for a cross-appeal. Claimant's cross-appeal was not filed within the 30 days allowed by the statute and must be dismissed.

This matter is an appeal from a decision of the Department of Labor and Industry. The decision was issued on August 1, 1997. The Court received a notice of appeal from Ranger Insurance Company (Ranger) on September 2, 1997. Thereafter, on December 5, 1997, it received a notice of cross appeal from Velleda Bates (Bates). Ranger moves to strike Bates' cross appeal as untimely.

Section 2-4-702(2), MCA, fixes the time for the filing of a petition for judicial review (appeal) of an agency decision, providing:

2-4-702. Initiating judicial review of contested cases.

(1)(a) A person who has exhausted all administrative remedies available within the agency and who is aggrieved by a final decision in a contested case is entitled to judicial review under this chapter. This section does not limit utilization of or the scope of judicial review available under other means of review, redress, relief, or trial de novo provided by statute.

. . . .

(2) (a) Except as provided in subsection (2)(c), proceedings for review must be instituted by filing a petition in district court within 30 days after service of the final decision of the agency or, if a rehearing is requested, within 30 days after the decision is rendered. *Except as otherwise provided by statute, the petition must be filed in the district court for the county where the petitioner resides or has the petitioner's principal place of business or where the agency maintains its principal office.* Copies of the petition must be promptly served upon the agency and all parties of record.

(b) The petition must include a concise statement of the facts upon which jurisdiction and venue are based, a statement of the manner in which the petitioner is aggrieved, and the ground or grounds specified in 2-4-704(2) upon which the petitioner contends he is entitled to relief. The petition must demand the relief to which the petitioner believes the petitioner is entitled, and the demand for relief may be in the alternative.

(c) If a petition for review is filed pursuant to 33-16-1012(2)(c), the workers' compensation court, rather than the district court, has jurisdiction and the provisions of this part apply to the workers' compensation court in the same manner as the provisions of this part apply to the district court. [Emphasis added.]

On its face, the section applies to judicial review of any contested case matter. § 39-71-702(1)(a), MCA. Subsection (2) governs the court and venue of the review.

As set forth in the subsection (2), the court is generally the district court and the venue is generally in the county in which the petitioner resides or the administrative agency maintains its principal office. There are two exceptions. The first is the exception provided in subsection (2)(c), which is for an appeal of decisions made by the Classification Review Committee, which appeal must be made to the Workers' Compensation Court. The second is where another statute otherwise provides. The second sentence of section 2-4-702(2)(a) provides, "*Except as otherwise provided by statute*, the petition must be filed in the district

court for the county" [Emphasis added] The Workers' Compensation Act specifies the Workers' Compensation Court as the court of review under the Act. §§ 39-71-204(3) and - 2401(3), MCA (1997). This appeal arises under the second exception.

There is no exception to the 30 day limit on petitions for judicial review, wherever filed. Moreover, the 30 day time limit has been incorporated by the Department in its rules governing appeals of contested case matters under the Workers' Compensation Act. ARM 24.29.215(3) provides, "A party seeking judicial review of a final order of the department after a contested case hearing must file a petition with the workers' compensation court within 30 days after notice of the final order."

Ranger's appeal was timely since three days must be allowed for mailing. *MCI Telecommunications Corp. v. Montana Dept. of Public Service Regulation*, 260 Mont. 175, 178, 858 P.2d 364, 366 (1993). Thus, the time for appeal began to run on August 4, 1997. Ranger's appeal was both mailed and received within 30 days thereafter.

A cross appeal is an appeal. The "cross" merely indicates that a prior appeal has already been lodged by the opposing party. The statute provides no additional time for a cross appeal, thus the 30-day limit applies. Since "[a]n appeal filed after the time prescribed by statute is ineffective for any purpose," *id.* at 177, 858 P.2d at 366, the cross appeal must be, and is, **dismissed**.

The Court takes note of Bates' alternative motion to dismiss the appeal because the Department's decision was not **final**. Since both parties have already briefed the merits of Ranger's appeal, I defer ruling on the alternative motion until I have had an opportunity to review the briefs and the record below.

SO ORDERED.

DATED in Helena, Montana, this 30th day of December, 1997.

(SEAL)

/s/ Mike McCarter
JUDGE

c: Mr. Thomas A. Marra

Mr. Andrew J. Utick

Submitted: December 24, 1997