

IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

1996 MTWCC 36

WCC No. 9512-7463

RON BEAULIEU

Petitioner

vs.

UNINSURED EMPLOYERS' FUND and HUMAN DYNAMICS, INCORPORATED

Respondent/Insurer for

EUREKA PELLET MILLS, INCORPORATED

Employer.

SUMMARY JUDGMENT

Summary: Respondent moved for summary judgment, supported by affidavit, alleging that all benefit issues have been resolved. Claimant failed to respond to the motion.

Held: Where the affidavit shows that all benefit issues have been resolved, and that the insurer acted reasonably, and where claimant failed to respond to the motion, the motion for summary judgment is granted.

Topics:

Summary Judgment: Motion for Summary Judgment. Where the affidavit shows that all benefit issues have been resolved, and that the insurer acted reasonably, and where claimant's failure to respond to the motion indicates his acquiescence, the motion for summary judgment is granted.

Respondent in this matter filed a first motion for summary judgment on April 4, 1996. Respondent argued that all benefits issues had been resolved. It further contended, both as a matter of law and a matter of fact, that petitioner was not entitled to attorney fees or a penalty.

On April 25, 1996, this Court entered an order denying motion for summary judgment finding that "amounts due for the medical costs mentioned in the petition have *not* been resolved" since the respondent "has not agreed to pay those amounts in full and intends to offset . . . overpayments." (*Id.* at 1; italics in original.) I further noted, "Respondent cannot

refuse full payment of the medical expenses mentioned in the petition and at the same time seek to dismiss the petition." (*Id.*)

Respondent has now filed respondent's second motion for summary judgment. That second motion, supported by a further affidavit, is premised on respondent's full payment of the medical bills in question. The time for petitioner to file an answer brief has expired and no brief has been received. The petitioner's failure to respond may be, and is, considered by the Court as an admission that the motion is meritorious. ARM 24.5.316(4).

A review of the affidavits shows that all benefits issues have in fact been resolved. The affidavits further establish un rebutted facts showing that the insurer has not acted unreasonably; thus, petitioner is not entitled to attorney fees or a penalty. Moreover, respondent's acquiescence to the claims alleged in the petition preclude an award of attorney fees or a penalty as a matter of law. *Mintyala v. State Compensation Ins. Fund*, WCC No. 9502-7244 (June 19, 1995).

Respondent is therefore entitled to summary judgment.

JUDGMENT

1. All benefit issues raised by the petitioner have been resolved by the respondent's payment of the requested benefits and are therefore moot.
2. Petitioner is not entitled to attorney fees, a penalty or costs since all benefits issues were resolved prior to trial and the unrefuted facts set forth in respondent's affidavits show that respondent did not act unreasonably.
3. The petitioner is not entitled to judgment against the respondent and her petition is **dismissed with prejudice.**
4. This judgment is certified as final for purposes of appeal.

Dated in Helena, Montana, this 21st day of May, 1996.

(SEAL)

/s/ Mike McCarter

JUDGE

c: Ms. Laurie Wallace
Mr. Daniel B. McGregor
Mr. Andrew J. Utick
Submitted: May 1, 1996