IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

2002 MTWCC 2A

WCC No. 2001-0424

LAUNE BAUER

Petitioner

vs.

C.N.A COMMERCIAL INSURANCE

Respondent/Insurer for

ANDERSON STEEL

Employer.

APPEALED 3/8/02 DISMISSED BY STIPULATION OF THE PARTIES 6/4/02

ORDER DENYING MOTION FOR RECONSIDERATION

Summary: Petitioner moves for reconsideration of a summary judgment. The respondent urges that the motion is untimely and without merit.

Held: The motion is timely, however, it presents new evidence which should have been presented prior to the summary judgment or which cannot be considered because it goes to issues beyond the scope of those raised in the pleadings.

Topics:

Procedure: Computation of time. Where an order of the Court is served by mail, 3 days are added to the 20 day period allowed for the filing of a motion for reconsideration. ARM 24.5.337 and 24.5.303.

Procedure: Post-Trial Proceedings: Motion for Reconsideration. Where an order of the Court is served by mail, 3 days are added to the 20 day period allowed for the filing of a motion for reconsideration. ARM 24.5.337 and 24.5.303.

Constitutions, Statutes, Regulations and Rules: Workers' Compensation Court Rules: ARM 24.5.337. Where an order of the Court is served by mail, 3 days are added to the 20 day period allowed for the filing of a motion for reconsideration. ARM 24.5.337 and 24.5.303.

Constitutions, Statutes, Regulations and Rules: Workers' Compensation Court Rules: ARM 24.5.303. Where an order of the Court is served by mail, 3 days are added to the 20 day period allowed for the filing of a motion for reconsideration. ARM 24.5.337 and 24.5.303.

Procedure: Post-Trial Proceedings: Motion for Reconsideration. A party cannot hold back evidence when responding to a motion for summary judgment and then use it in requesting reconsideration of an order granting or denying summary judgment, at least where that evidence was known or should have been known to the party.

Procedure: Post-Trial Proceedings: Motion for Reconsideration. Upon a motion to reconsider a grant of summary judgment, the Court will not consider issues not raised by the pleadings.

¶1 Petitioner requests reconsideration of the Summary Judgment entered January 7, 2002, and mailed to both parties' counsel that day.

¶2 The motion for reconsideration was filed January 29, 2002, 22 days after service of the Judgment. Respondent urges that the motion is untimely, citing Rule 24.5.337, which provides:

> (1) Any party may move for reconsideration of any order or decision of the workers' compensation court. The motion shall be filed within 20 days after the order or decision is served. The opposing party shall have 10 days thereafter to respond unless the court orders an earlier response. Upon receipt of the response, or the expiration of the time for such response, the motion will be deemed submitted for decision unless the court requests oral argument.

However, this rule is qualified by Rule 24.5.303, which allows for an additional three days for filing where the document is served by mail:

> 3) Whenever a party has the right or is required to do some act within a prescribed period of time after the service of a notice or other paper upon the party and the notice or paper is served by mail, three days shall be added to the prescribed period.

The Court's orders are routinely served by mail and there is no indication that the Summary Judgment in this case was not. The period for filing the motion was therefore 23 calendar days. Since the motion for reconsideration was filed on the 22nd day, it is timely. *ERC/UEF v. Total Mechanical Heating,* 2000 MTWCC 70, is distinguishable. In that case 30 days had elapsed following the service of the Order. *Id.* at ¶ 7.

¶3 In requesting reconsideration, petitioner has submitted an affidavit of his attorney. That affidavit sets forth additional facts concerning the settlement and petitioner argues that

those facts require reconsideration. This Court has previously held that a party cannot hold back evidence in the face of a motion and then request reconsideration based upon a subsequent tender of the evidence. *Wiard v. Liberty Northwest Ins. Corp.*, 2001 MTWCC 31A, ¶ 2. Petitioner has offered no evidence that the additional facts set out in the affidavit were unknown to him and could not have been submitted before. The Court will not consider the additional facts.

¶4 Moreover, the motion also presents new issues outside the scope of the petition, to wit: the settlement agreement should either be rescinded or reformed. Since those issues were not raised in the pleadings or in briefs leading up to the summary judgment, they cannot be considered on a motion to reconsider.

Finding no merit to the motion for reconsideration, it is **denied**.

DATED in Helena, Montana, this 8th day of February, 2002.

(SEAL)

\s\ Mike McCarter
JUDGE

c: Mr. Richard J. Martin
Mr. Todd A. Hammer
Submitted: February 7, 2002