

IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

1994 MTWCC 17

WCC No. 9312-6960

THOMAS G. CISKE

Petitioner

vs.

LIBERTY NORTHWEST INSURANCE

Respondent/Insurer for

UNITED PARCEL SERVICE

Employer.

ORDER DENYING MOTION FOR SUMMARY JUDGMENT

Respondent has filed a motion for summary judgment. The predicates to the motion are the deposition of the petitioner and various affidavits. Petitioner has countered with an affidavit of his own.

Summary judgment is not favored. It may be granted only where there is non genuine issue of material fact and the moving party is entitled to judgement as a matter of law. Rule 56 (c), Mont.R.Civ.P.; **Cate v. Hargrave**, 209 Mont. 265, 269, 689 P.2d 952, 954 (1984). "[T]he procedure is never to be a substitute for trial if a factual controversy exists." **Reaves v. Reinbold**, 189 Mont. 284, 288, 615 P.2d 896, 898 (1980). If there is any doubt as to the propriety of a motion for summary judgment, it should be denied. **Rogers v. Swingly**, 206 Mont. 306, 312, 670 P.2d 1386 (1983). After reviewing the deposition and affidavits, I cannot say with conviction that every material fact essential to summary judgment is undisputed.

IT IS THEREFORE ORDERED that the motion for summary judgment is **denied**.

DATED in Helena, Montana, this 24th day of February, 1994.

(SEAL)

/S/ Mike McCarter

JUDGE

c: Ms. Janice S. VanRiper
Mr. Larry W. Jones

