

IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

1994 MTWCC 62

WCC No. 9311-6935

IN THE MATTER OF RONALD GENE COLE

Petitioner

vs.

UNINSURED EMPLOYERS' FUND

Respondent/Insurer for

STRATFORD FARMS, INC., R.L.

STRATFORD and JOHN STRATFORD

Employer.

ORDER AND JUDGMENT DISMISSING PETITION WITH PREJUDICE

On April 13, 1994, the Court entered an Order Granting Sanctions and Compelling Discovery. The Order recited the history of claimant's failure to respond to written discovery and a deposition notice and required claimant to serve responses to written discovery; make himself available for deposition no later than June 15, 1994; and pay Stratford its fees and costs incurred in connection with its motion to compel. The Court further admonished claimant as follows:

The claimant is admonished that his **failure to comply** with this Order and with the rules of this Court **may lead to dismissal of his petition with prejudice.**

Despite this admonition claimant has not complied with the Order; thus, Stratford filed a second motion for sanctions, renewing its request that the Court dismiss the petition.

The reason for claimant's failure to comply with the Court's April 13, 1994 Order is explained by his counsel's response to second motion:

Counsel has not heard from Mr. Cole from the time of our last motions. The court gave the Petitioner a final break and he has not appeared.

Counsel has no way to respond to the request for sanctions other than to inform the court the Petitioner still has not appeared.

(Response of Counsel for Petitioner on Second Motion for Sanctions.) At the time of the first motion, claimant had not contacted his counsel since mid-February, 1994. Thus, it has now been nearly five months since claimant last contacted his counsel. That is twice the amount of time fixed by Court rules as the interval between the filing of a petition and the time of trial. Claimant commenced this action and is responsible for keeping his counsel informed of his whereabouts. His failure to do so can only be viewed as an abandonment of his petition and as good cause to dismiss his petition with prejudice.

In the interval between its first and second motions, Stratford also provided an affidavit enumerating the fees and costs expended in prosecuting its first motion. The total is \$660.00. Claimant was required to file any objections to Stratford's affidavit no later than May 4, 1994, but failed to do so. The amount submitted is therefore deemed reasonable.

Judgment

Having considered Employer's Second Motion for Sanctions, and finding good cause, the Court hereby enters **judgment** in favor of the employer, Stratford Farms, Inc., R.L. Stratford and John Stratford, and against claimant, Ronald Gene Cole, in the amount of \$660.00, together with interest thereon at the judgment rate of interest. Claimant's petition is **dismissed with prejudice**. This JUDGMENT is certified as final for purposes of appeal pursuant to ARM 24.5.348.

DATED in Helena, Montana, this 7th day of July, 1994.

(SEAL)

/s/ Mike McCarter

JUDGE

c: Mr. Brad L. Arndorfer

Mr. Brad H. Anderson

Mr. Robert J. Campbell