IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

2002 MTWCC 60

WCC No. 2001-0321

GARY GALETTI

Petitioner

vs.

MONTANA POWER COMPANY

Respondent/Insurer

and

DEPARTMENT OF LABOR AND INDUSTRY
SUBSEQUENT INJURY FUND

Respondent.

JUDGMENT FOR ATTORNEY FEES

APPEAL DISMISSED 5/8/03

Summary: Claimant seeks attorney fees in old law case, asserting that he should receive fees on both the benefits he was awarded and the penalty ordered by the Court.

Held: Under the attorney fee provision, section 39-71-612, MCA (1983), fees apply only to "compensation" awarded to claimant. A "penalty" is not compensation.

Topics:

Attorney Fees. Penalty. Under the attorney fee provision, section 39-71-612, MCA (1983), fees apply only to "compensation" awarded to claimant. A "penalty" is not compensation.

Constitutions, Statutes, Regulations, and Rules: Montana Code Annotated: section 39-71-612, MCA (1983). Under the attorney fee provision, section 39-71-612, MCA (1983), fees apply only to "compensation" awarded to claimant. A "penalty" is not compensation.

Penalty: Insurers . Under the attorney fee provision, section 39-71-612, MCA (1983), fees apply only to "compensation" awarded to claimant. A "penalty" is not compensation.

¶1 The claimant in this matter is seeking attorney fees. There is no dispute that fees are due, however, claimant seeks fees not only with respect to the compensation benefits he was awarded, but also with respect to the penalty he was awarded. His argument for fees with respect to the penalty is without merit. Attorney fees are governed by section 39-71-612, MCA (1983), and apply only to "compensation," i.e. benefits, payable to the claimant under the Workers' Compensation Act. A penalty is not "compensation." It is what is says it is - a "penalty."

¶2 Since respondent Montana Power Company does not dispute the 25% rate of the fee, it shall pay claimant $10,486.43 in attorney fees based on the "compensation" benefits recovered.

¶3 This judgment is certified as final.

DATED in Helena, Montana, this 3rd day of December 2002.

(SEAL)

\s\ Mike McCarter
JUDGE

c: Mr. Chris J. Ragar
Mr. Kelly M. Wills
Ms. Julia W. Swingley
Submitted: June 3, 2002