

IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

2003 MTWCC 35

WCC No. 2002-0566

TODD GEERY

Petitioner

vs.

TRAVELERS INSURANCE COMPANY

Respondent/Insurer.

**ORDER ON MOTIONS FOR PRODUCTION AND "TO VACATE JUDGMENT"
AND REGARDING SETTLEMENT CONFERENCE**

Summary: Following the Court's decision dismissing the claimant's requests for compensation benefits on the basis of a settlement agreement, he filed motions challenging the decision and raising new grounds for reopening the agreement. He also requested a transcript and a copy of a subpoena.

Held: All motions are denied. The substantive motions attack the partial judgment entered by the Court, therefore amounting to a request for reconsideration, and are untimely. As to the transcript, he is responsible for obtaining and paying for it. As to the subpoena, it was issued by opposing counsel, who has provided him with a copy.

Topics:

Procedure: Reconsideration. A motion challenging a decision and order of the Court, whether raising new grounds or not, is a motion for reconsideration which must be filed within 20 days of the decision and order. ARM 24.5.337.

Constitutions, Statutes, Rules, and Regulations: Workers' Compensation Court Rules: ARM 24.5.337. A motion challenging a decision and order of the Court, whether raising new grounds or not, is a motion for reconsideration which must be filed within 20 days of the decision and order. ARM 24.5.337.

Transcripts. The Court is not required to supply a claimant with a transcript of proceedings. The claimant is responsible for obtaining and paying for any transcript.

¶1 On February 13, 2003, the Court issued its Decision and Partial Judgment Dismissing Claim for Compensation Benefits. In that decision, the Court found that claimant had been

advised by his former attorney, Mr. Howard Toole, about the terms of a settlement entered into during October 2000, and authorized the settlement. In the alternative, the Court held that the claimant ratified the settlement. Accordingly, the Court dismissed claimant's challenge to the settlement agreement and his request for further compensation benefits. The only remaining, triable issue was the claimant's request for medical benefits denied by the insurer.

¶12 On March 26, 2003, claimant filed three motions. The first, captioned Motion for Production, asks the Court for two things: (1) "a copy of the transcript of the evidentiary hearing" held on claimant's contention he did not authorize or ratify the October 2000 settlement and (2) "a copy of the **subpoena** issued upon his previous attorney which led to the petitioners [sic] entire file being submitted to this court" The motion is denied.

¶13 Obtaining a transcript is claimant's responsibility. Nothing in Montana law or the rules of this Court requires the Court to bear the cost of obtaining a transcript for a claimant. In the case of appeals, Montana Rules of Appellate Procedure 9(b) provides that "the cost of producing the transcript shall be paid by the appellant, or the appellant shall make satisfactory arrangements with the reporter for the payment of such costs" If he wishes to obtain a transcript, claimant can contact the court reporter and make arrangements for transcription and payment.

¶14 As to the subpoena issued to Mr. Toole, the subpoena was not issued by the Court, but by Mr. Kelly M. Wills, counsel for respondent, in accordance with ARM 24.5.331. A copy of the subpoena is attached as Exhibit A to Respondent's Answer Brief in Opposition to Motion for Production, which was served upon claimant.

¶15 The claimant has also filed a Motion to Vacate Judgment Due to Breach of Contract and a Motion to Vacate Judgment Due to Mutual Mistake of Fact. In the February 13, 2003 Decision and Partial Judgment Dismissing Claim For Compensation Benefits issued by this Court, the following partial judgment was entered:

¶129 The claimant's request for further compensation benefits, including but not limited to his requests for permanent partial and rehabilitation benefits, is barred by his prior settlement agreement with Travelers and by the judgment entered in his prior action in this Court, WCC No. 2000-0149. Therefore, his claim for compensation benefits is **dismissed with prejudice**. (Decision and Partial Judgment Dismissing Claim For Compensation Benefits at 9.)

Through his two motions, the claimant is asking the Court to reconsider its ruling based on the new grounds he advances in the motions.

¶16 The motions are untimely and will not be considered. Any motion for reconsideration was required to be filed within twenty days of the decision. Rule 24.5.337 provides in relevant part:

RULE 24.5.337 MOTION FOR RECONSIDERATION. (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. . . .

Both of the motions in question were mailed March 25, 2003, and received by the Court on March 26, 2003. Even adding three days for mailing of the Court's February 13, 2003 decision, the motions should have been mailed by claimant no later than March 8, 2003.

¶17 Finally, both parties ask for the assistance of the Court's hearing examiner in conducting a settlement conference. The hearing examiner has been directed to contact the parties to discuss the setting of a settlement conference.

¶18 Trial of the claim for medical benefits shall be during the week of June 16, 2003, in Missoula, Montana, as previously scheduled.

ORDER

¶19 The motion for production of a transcript and subpoena is **denied**.

¶10 The claimant's Motion to Vacate Judgment Due to Breach of Contract and his Motion to Vacate Judgment Due to Mutual Mistake of Fact are untimely under Rule 24.5.337 and are **denied**.

DATED in Helena, Montana, this 1st day of May, 2003.

(SEAL)

\s\ Mike McCarter

JUDGE

c: Mr. Todd Geery

Mr. Thomas J. Harrington/Mr. Kelly M. Wills

Submitted: April 24, 2003