

IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

1993 MTWCC 3

WCC No. 9303-6751

WCC NO. 9307-6838

THOMAS W. HODGETTS

Appellant

vs.

STATE COMPENSATION INSURANCE FUND

Respondent.

DECISION AND ORDER ON MOTION TO RECONSIDER

Defendant, State Compensation Insurance Fund (State Fund), has moved for reconsideration of an order consolidating an administrative appeal, WCC No. 9303-6751, with a separate petition filed by claimant, WCC No. 9307-6838. The order in question was filed August 16, 1993, and granted a motion for consolidation of the two cases. On September 7, 1993, the date the undersigned took office, the defendant filed its motion to reconsider and a supporting brief. A brief in opposition was thereafter filed by claimant on September 20, 1993.

In his appeal (WCC No. 9303-6751), claimant seeks judicial review of a decision of the Montana Department of Labor and Industry (DOLI) determining that claimant can return to work in a related occupation suited to his education and marketable skills. See § 39-71-1012(1)(c), MCA. In a separately filed petition (WCC NO. 9307-6838) the claimant alleges: "The State Fund has refused to pay the claimant its appropriate temporary total disability rate, to pay for chiropractic treatment, certain medical treatment and improperly terminated his total rehabilitation benefits, and temporary total disability benefits." (Paragraph 3.) He also alleges that the State Fund unreasonably refused to reinstate temporary total disability benefits even though he has not reached maximum medical improvement. In his August 16, 1993 order, Judge Reardon determined that the consolidation of the two cases would promote judicial economy, noting that "the two cases reflect surprising similarities."

In its request for reconsideration, the State Fund argues among other things, that certain issues have already been tried before the DOLI. It expressly resists any "de novo" review of the issues decided by the DOLI.

The Court is reluctant to reconsider a ruling by its predecessor in the same case. As a general rule "judges of coordinate jurisdiction sitting in the same court and in the same case may not ordinarily overrule the decisions of each other." *Hayworth v. School District No. 19*, 243 Mont. 503, 505, 795 P.2d 470 (1990). However, as the Court acknowledges in *Hayworth*, "this rule is not an imperative" and the Court does have some discretion in "appropriate circumstances" to reconsider a previous ruling by another judge in the same case. *Id.*

The practical effect of Judge Reardon's order is to postpone briefing and decision in claimant's appeal from the DOLI decision. The order does not reopen the record in that case or change the scope of review mandated by the Court's rules or the Montana Administrative Procedure Act. Nor does it determine what evidence or issues may be presented in connection with the claimant's petition. On its face, the petition contains numerous issues, some of which, e.g. claimant's temporary total disability rate and payment of medical bills, are clearly outside of the issues determined by the DOLI under the rehabilitation panel statutes. Insofar as defendant seeks to preclude the introduction of evidence regarding any issues decided by the DOLI, whether on collateral estoppel grounds (*Martelli v. Anaconda-Deer Lodge County*, 50 St. Rptr. 479 (May 6, 1993)), or other grounds, it is not precluded from doing so by the consolidation order.

For the foregoing reasons, the motion for reconsideration is denied. The Court will hear argument regarding claimant's appeal from the DOLI decision at the time of trial and will adopt a simultaneous briefing schedule for both cases. The decision in the appeal will be governed by the scope of judicial review set forth in the Court's rules and the Montana Administrative Procedure Act.

DATED in Helena, Montana, this 28th day of September, 1993.

(SEAL)

/s/ Mike McCarter
JUDGE

c: Mr. Larry W. Jones
Ms. Elizabeth A. Horsman-Wiitala
Mr. Norman C. Peterson