

IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

1998 MTWCC 88

WCC No. 9809-8048

SUE JOHNSON

Appellant

vs.

TRANSPORTATION INSURANCE COMPANY

Respondent.

ORDER DISMISSING APPEAL

Summary: Claimant appealed from Department of Labor order that she submit to Independent Medical Examination (IME). After she agreed to submit to the IME, respondent/insurer moved to dismiss appeal. Claimant objected, arguing that she agreed to the IME on the condition she could pursue appeal and that her entitlement to TTD was still at issue.

Held: Appeal dismissed. Claimant's letter agreeing to IME does not condition examination on appeal. Moreover, where a party voluntarily complies with a judgment, appeal on the judgment becomes moot. The TTD issue was not and could not have been raised below; thus is outside the scope of appeal.

Topics:

Appeals (To Workers' Compensation Court): Generally. Where claimant had agreed to comply with Department of Labor order that she undergo an Independent Medical Examination, her appeal, which challenged that order, was dismissed on respondent/insurer's motion. Although claimant still wanted the WCC to resolve the appeal, her agreement to the IME was not in fact conditioned on pursuit of the appeal and courts, in any event, do not resolve issues mooted by a party's voluntary compliance with a judgment.

¶1 This appeal is from Findings of Fact; Conclusions of Law; and Final Order of the Department of Labor and Industry (Department). The decision appealed directed the appellant to submit to an Independent Medical Examination (IME).

¶12 Respondent/Insurer moves to dismiss the appeal as moot because the claimant has now agreed to submit to the IME. The motion is **granted**.

¶13 Appellant advances two arguments in support of her opposition to the motion. First, she argues that her agreement to submit to the IME was conditioned on her being permitted to pursue this appeal. Second, she argues that her entitlement to temporary total disability (TTD) benefits is still at issue. Neither argument has merit.

¶14 The Court has reviewed the letter wherein appellant agreed to the IME. While the letter states appellant's *intent* to "continue our appeal", it does not condition her submission to an IME upon her ability to do so. (Letter from Thomas Murphy to Sandy Mayernik dated 9/30/98.)

¶15 As to her TTD argument, the only issue raised below and reviewable on appeal is the IME issue. The Department did not address TTD benefits and did not have jurisdiction to do so. §§ 39-71-2905, -2401, MCA.

¶16 Where a party voluntarily complies with a judgment, an appeal from the judgment becomes moot. *In re Marriage of Griffin*, 275 Mont. 37, 41, 909 P.2d 707, 709 (1996). Courts do not review judgments or administrative orders for the mental exercise or recreation. They do so only where the appellate seeks and can be afforded meaningful relief from the judgment or order. Appellant in this case has agreed to submit to the IME and therefore agreed to comply with the Department's Order; thus, she is no longer seeking to nullify the Order. The TTD issue she wants to raise on appeal is outside the scope of appeal.

¶17 Accordingly, IT IS HEREBY ORDERED that the appeal is **dismissed**.

¶18 Any party to this dispute may have 20 days in which to request an amendment or reconsideration of this Decision.

DATED in Helena, Montana, this 8th day of December, 1998.

(SEAL)

/s/ Mike McCarter

JUDGE

c: Mr. Thomas J. Murphy

Mr. Todd A. Hammer

Ms. Sandy Duncan -- E-mailed

Ms. Anne L. MacIntyre -- E-mailed

Date Submitted: December 3, 1998