

IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

1998 MT WCC 45

WCC No. 9801-7897

ROBERT KEMP

Petitioner

vs.

MONTANA CONTRACTOR COMPENSATION FUND

Respondent/Insurer for

SLETTEN CONSTRUCTION

Employer.

ORDER DENYING MOTION FOR SUMMARY JUDGMENT REGARDING

TEMPORARY TOTAL DISABILITY BENEFITS

Summary: Petitioner moved for summary judgment with respect to TTD benefits during certain time period. His motion did not set forth facts in a serial statement and was not supported by specific reference to pleading, affidavit or other document.

Held: Motion denied for failure to comply with ARM 24.5.329 and because respondent's brief suggests existence of triable issues of fact.

Topics:

Constitutions, Statutes, Regulations and Rules: Workers' Compensation Court Rules: ARM 24.5.329(3). Motion for summary judgment denied for failure to comply with ARM 24.5.329(3) regarding presentation of alleged undisputed facts.

Summary Judgment: Affidavits. Motion for summary judgment denied for failure to comply with ARM 24.5.329(3) regarding presentation of alleged undisputed facts.

Summary Judgment: Motion for Summary Judgment. Motion for summary judgment denied for failure to comply with ARM 24.5.329(3) regarding presentation of alleged undisputed facts.

Summary Judgment: Disputed Facts. Motion for summary judgment denied for failure to comply with ARM 24.5.329(3) regarding presentation of alleged undisputed facts.

¶1 Petitioner has moved for summary judgment with respect to temporary total disability benefits he claims are payable between October 1996 through February 1997.

¶2 Initially, the motion does not comply with this Court's rules. Rule 24.5.329 requires the moving party to set forth a list of the facts she or he asserts are undisputed, along with citation to the admissible evidence supporting each fact. The rule provides in relevant part:

(3) Any party filing a motion under this rule shall include in its brief a statement of uncontroverted facts, which shall set forth in full the specific facts on which the party relies in support of the motion. The specific facts shall be set forth in serial fashion and not in narrative form. As to each fact, the statement shall refer to a specific pleading, affidavit, or other document where the fact may be found. . . .

Petitioner did not comply with the rule. There is no serial statement of facts; there are no citations to specific evidence supporting specific facts.

¶3 The motion also must fail because it is not supported by affidavits, depositions, answers to interrogatories, or exhibits produced during discovery. It therefore does not comply with Rule 24.5.329(2).

¶4 Finally, the motion must be denied because the respondent's brief indicates that there are factual issues which should be explored at trial.

¶5 THEREFORE, IT IS HEREBY ORDERED that claimant's motion for summary judgment on entitlement to temporary total disability is **denied**.

DATED in Helena, Montana, this 4th day of June, 1998.

(SEAL)

\s\ Mike McCarter
JUDGE

c: Mr. Thomas J. Murphy
Mr. Kelly M. Wills
Submitted: April 27, 1998