

IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

2003 MTWCC 71

WCC No. 2003-0911

AMERICAN INTERSTATE INSURANCE COMPANY

Petitioner

vs.

HAROLD G. KURTH

Respondent.

DECISION AND ORDER DENYING SUMMARY JUDGMENT

Summary: Insurer brought petition requesting Court approval to terminate benefits on account of claimant's failure to submit to an independent medical examination. Claimant filed a brief which in essence requests the Court to summarily dismiss the petition.

Held: The claimant's brief will be treated on the basis of its substance, therefore it is deemed a motion for summary judgment. Since it does not comply with the Court rule governing such motion, and since claimant has submitted no admissible evidence to support the facts he outlines in his brief, the motion is denied.

Topics:

Pro Se. A party appearing and representing himself or herself must comply with Court rules.

Summary Judgment: Motion for Summary Judgment. A motion for summary judgment which does not cite to admissible evidence and which is not supported by admissible evidence must be denied summarily.

Summary Judgment: Affidavits. A motion for summary judgment which does not cite to affidavits, depositions, written discovery responses, or other admissible evidence and which is not supported by affidavits, depositions, written discovery responses, or other admissible evidence must be denied summarily.

¶1 The insurer in this action filed a petition requesting the Court to authorize suspension of the claimant's benefits on account of his failure to comply with its requests that he attend an Independent Medical Examination (IME). Claimant thereafter filed his response. He also

filed a brief arguing that another IME is not reasonable. It appears that the brief is in the nature of a motion for summary judgment and the Court will treat it as such.

Discussion

¶2 Motions for summary judgment are governed by Rule 24.5.329. The rule, which is set out at the end of this decision, requires the moving party to set out a statement of uncontested facts with citations to affidavits, depositions, written discovery, and other admissible evidence. Claimant has failed to comply with the rule. Although he sets out various facts, he does not provide any citation to admissible evidence. More fundamentally, he has failed to provide the Court with any admissible evidence to support his factual contentions.

¶3 Claimant is appearing without counsel in this case. However, his *pro se* status does not relieve him from compliance with Court rules. Therefore, his motion must be summarily denied.

¶4 As a further note, in light of the claimant's statement that he wishes to close out his workers' compensation claim and the apparent ongoing disputes between him and the insurer, the Court suggests that claimant and the insurer consider a settlement conference with the Court's hearing examiner.

ORDER

¶5 The claimant's motion for summary judgment, styled "THIS BRIEF SUPPORTS WHY ANOTHER IME IS NOT A REASONABLE REQUEST OF RESPONDENT", is denied. The matter will proceed to trial as scheduled.

DATED in Helena, Montana, this 23rd day of December, 2003.

(SEAL)

/s/ MIKE McCARTER
JUDGE

c: Mr. G. Andrew Adamek
Mr. Harold G. Kurth