

IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

1998 MTWCC 5

WCC No. 9502-7246R1

ELIZABETH M. KUZARA

Petitioner

vs.

STATE COMPENSATION INSURANCE FUND

Respondent/Insurer for

SPRING CREEK COAL COMPANY

Employer.

ORDER AND MEMORANDUM

Summary: Following reversal and remand by the Montana Supreme Court, hearing was held before the Hon. Russell C. Fagg on whether State Compensation Insurance Fund could rebut claimant's evidence that she gave notice to her employer of a back injury.

Held: The Court rejected the testimony of respondent's witnesses, finding that claimant did in fact give notice.

Topics:

Claims: Notice to Employer or Insurer: Supervisor. Following reversal and remand by the Montana Supreme Court, hearing was held before the Hon. Russell C. Fagg on whether State Compensation Insurance Fund could rebut claimant's evidence that she gave notice to her employer of a back injury. The Court rejected the testimony of respondent's witnesses, finding that claimant did in fact give notice.

Limitations Periods: Notice to Employer. Following reversal and remand by the Montana Supreme Court, hearing was held before the Hon. Russell C. Fagg on whether State Compensation Insurance Fund could rebut claimant's evidence that she gave notice to her employer of a back injury. The Court rejected the testimony of respondent's witnesses, finding that claimant did in fact give notice.

For the reasons stated below,

¶1 IT IS HEREBY ORDERED that the State Fund's Request for Amendment of Findings and/or Reconsideration is DENIED.

MEMORANDUM

¶2 After remand from the Montana Supreme Court, which held that Petitioner supplied sufficient notice of injury, but that the notice could be rebutted, the Court held trial in this matter on November 12 and 13, 1997. The Court issued its Findings of Fact, Conclusions of Law, and Order ruling for Petitioner on November 15, 1997. On December 15, 1997, State Fund moved the Court to amend its Findings of Fact and Conclusions of Law, or for the Court to reconsider its findings the claimant provided notice. The State Fund essentially argues that its witnesses provided ample evidence Undermining Petitioner's case. Specifically, the State Fund argues that the testimony of six of its witnesses established that Petitioner failed to inform Spring Creek Coal Company of her work-related injury in a timely fashion.

¶3 The State Fund also argues Claimant's testimony should be rejected as incredible. However, the Court specifically found the State Fund's witnesses did not rebut Petitioner's testimony. As the State Fund is well aware, a greater number of witnesses does not necessarily establish a particular fact or set of facts.

¶4 The State Fund also requests the Court to clarify its Findings regarding the credibility of the respective witnesses. Clearly there are two sides to this story. In the end analysis, the Court finds Ms. Kuzara's testimony credible. Petitioner informed Spring Creek of her work-related injury in a timely manner. For these reasons, the Court denies the State Fund's request for amendment of its findings and/or reconsideration of its findings.

DATED this 28th day of January, 1998.

IsI RUSSELL C. FAGG

District Court Judge

c: Ms. Elizabeth M. Kuzara
Mr. Charles G. Adams