IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

1999 MTWCC 34.1

WCC No. 9808-8030

MICHAEL L. MILLER

Petitioner

vs.

STATE COMPENSATION INSURANCE FUND

Respondent/Insurer for

JACK GALT

Employer.

ORDER DENYING REQUEST FOR REHEARING

Summary: Pro se claimant requests rehearing of Court's decision that his request to reopen a settlement is barred by the statute of limitations. (See Miller v. State Fund, 1999 MTWCC 21.) In a paragraph to paragraph response to the Court's findings and conclusions, he explains that he was unaware of his right to reopen the settlement after it was made.

Held: If claimant were arguing that his settlement was made based on a mistake of law, an issue for resolution may be presented. His argument, however, is that he was ignorant of the statute of limitations and his right to move to reopen within the limitations period. Ignorance of the law does not toll the statute of limitations. Wisher v. Higgs, 257 Mont. 132, 140, 849 P.2d 152, 157 (1993).

Topics:

> **Limitations Period: Reopening of Settlements.** Pro se claimant requests rehearing of Court's decision that his request to reopen a settlement is barred by the statute of limitations. (See *Miller v. State Fund,* 1999 MTWCC 21.) In a paragraph to paragraph response to the Court's findings and conclusions, he explains that he was unaware of his right to reopen the settlement after it was made. If claimant were arguing that his settlement was made based on a mistake of law, an issue for resolution may be presented. His argument, however, is that he was ignorant of the statute of limitations and his right to move to reopen within the limitations period. Ignorance

of the law does not toll the statute of limitations. *Wisher v. Higgs*, 257 Mont. 132, 140, 849 P.2d 152, 157 (1993).

Settlements: Reopening: Mistake of Law. Pro se claimant requests rehearing of Court's decision that his request to reopen a settlement is barred by the statute of limitations. (See *Miller v. State Fund*, 1999 MTWCC 21.) In a paragraph to paragraph response to the Court's findings and conclusions, he explains that he was unaware of his right to reopen the settlement after it was made. If claimant were arguing that his settlement was made based on a mistake of law, an issue for resolution may be presented. His argument, however, is that he was ignorant of the statute of limitations and his right to move to reopen within the limitations period. Ignorance of the law does not toll the statute of limitations. *Wisher v. Higgs*, 257 Mont. 132, 140, 849 P.2d 152, 157 (1993).

¶1 On March 11, 1999, the Court issued its Findings of Fact, Conclusions of Law and Judgment. The Court denied claimant's request to reopen a 1988 settlement of his workers' compensation claim. Claimant requests a rehearing of the matter. The State Compensation Insurance Fund (State Fund) has not filed a brief in opposition to the motion but notified the Court that it opposes it. (See attached telephone contact sheet.)

¶2 Claimant has represented himself in this matter, and the Court is not unsympathetic to his plight. On the other hand, it cannot disregard the laws which apply to his request.

¶3 In the prior decision, I determined that the claimant's request came too late and is barred by the statute of limitations. In requesting reconsideration, claimant has filed a paragraph by paragraph response to my findings of fact and conclusions of law. Many of his responses provide explanation for his failure to formally seek reopening of his claim, including the fact that his lawyer did not pursue reopening and the State Fund did not advise him of his right to reopen.

¶4 In asking for a new trial, claimant does not dispute the Court's findings with regard to mistake of fact. Rather, he urges that he was unaware of his legal right to reopen.

¶5 If the 1988 settlement was based on a mistake of law, then his argument for a new trial might be persuasive. Section 28-2-410, MCA, provides:

28-2-410. What constitutes mistake of law. Mistake of law constitutes a mistake, within the meaning of this part, only when it arises from:

(1) a misapprehension of the law by all parties, all supposing that they knew and understood it and all making substantially the same mistake as to the law; or

(2) a misapprehension of the law by one party of which the others are aware at the time of contracting but which they do not rectify.

But the mistake of law identified by claimant occurred **after** the settlement.

¶ 6 While claimant has not properly framed the issue, the issue he raises is whether his ignorance of the law tolls the statute of limitations. The answer is that ignorance of the law does not toll the statute of limitations. *Wisher v. Higgs,* 257 Mont. 132, 140, 849 P.2d 152, 157 (1993). Therefore, his request for a new trial must be **denied**.

DATED in Helena, Montana, this 6th day of May, 1999.

(SEAL)

/s/ Mike McCarter
JUDGE

c: Mr. Michael L. Miller - Certified Mail
Mr. Thomas E. Martello
Date Submitted: April 13, 1999
Attachment: Telephone Contact Sheet