

IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

1993 MTWCC 11

WCC No. 9206-6464

CONNECTICUT INDEMNITY COMPANY

Petitioner/Insurer

vs.

BRENDA NERPEL

Respondent/Claimant.

—
ORDER DENYING MOTION TO RECONSIDER;
ORDER GRANTING NEW TRIAL

The matter before the Court is a motion filed by petitioner to reconsider a previous order granting a new trial. There is also a counter-request by respondent for sanctions against the petitioner for bringing the motion to reconsider. Both motions are **denied**.

The petitioner is insurer for Thriftway North, a retail store in Helena, Montana. Respondent in this matter was an employee of Thriftway and filed a claim alleging she suffered a work-related back injury on July 25, 1989. Thriftway's insurer ultimately denied the claim and brought this petition seeking a determination that respondent's back condition is not related to any injury suffered while working for Thriftway. After trial Judge Timothy W. Reardon entered findings of fact and conclusions of law determining that respondent "has not proven by a preponderance of the probative, credible evidence that she sustained a compensable injury on July 25, 1989." **Judgement, ¶ 2.**

Respondent moved for a new trial on two grounds, including new evidence of Dr. Allen Weinert, Jr. On August 19, 1993, Judge Reardon granted a new trial based on representations of respondent's counsel as to certain testimony Dr. Weinert would give at a new trial. Petitioner then filed a motion to reconsider, attaching reports of Dr. Weinert. The information contained in the reports does not, however, *directly* repudiate the contemplated testimony outlined by respondent's counsel and upon which Judge Reardon based his opinion. In his order granting a new trial Judge Reardon stated that he was "unable to draw any firm conclusions as to whether it [Dr. Weinert's testimony] might change the outcome." Since Judge Reardon heard the case, the present Judge is not in a position to second guess him as to the possible impact of testimony by Dr. Weinert. I must therefore defer to his conclusion that the testimony outlined by respondent's counsel, if presented at trial, might have changed the outcome.

Respondent's cross-motion for sanctions is without merit. There is no clear authority precluding reconsideration of a grant of a new trial. There is authority which at least suggests that reconsideration of an order for a new trial is within the discretion of the trial court. See *Ming Inc. v. District Court*, 155 Mont. 84, 466 P.2d 907 (1970). Moreover, there is specific authority allowing motions for reconsideration generally, even when addressed to a successor judge or judge of coordinate jurisdiction. In *Hayworth v. School District No. 19*, 243 Mont. 503, 505, 795 P.2d 470 (1990), the Supreme Court considered the grant of summary judgement by a successor judge after his predecessor had denied the motion. On appeal the losing party argued that the successor had exceeded his authority in granting the motion. The Supreme Court responded:

We disagree. It is true that judges of coordinate jurisdictions sitting in the same court and in the same case may not ordinarily overrule the decisions of each other. This rule articulates the sound policy that when an issue is once judicially determined, that should be the end of the matter as far as judges and courts of coordinate jurisdictions are concerned. However, this rule is not an imperative and it does not necessarily mandate that a court does not have discretion, in appropriate circumstances, to reconsider a ruling made by another judge in the same case. [Citations omitted.]

In this case the respondent failed to disclose all of what Dr. Weinert might say at any retrial. The information provided by petitioner is clearly relevant to any opinions of Dr. Weinert. In light of respondent's failure to bring the information to the Court's attention, it was not improper for petitioner to do so.

IT IS THEREFORE ORDERED that the MOTION FOR RECONSIDERATION OF ORDER GRANTING NEW TRIAL and the REQUEST FOR SANCTIONS are **DENIED**.

IT IS FURTHER ORDERED that the new trial be held in Helena, Montana, during the week of February 14, 1994. The entire matter shall be reheard at that time.

DATED in Helena, Montana, the 29th day of October, 1993.

(SEAL)

/S/ Mike McCarter
JUDGE

c: Ms. Susan J. Rebeck
Mr. Andrew J. Utick