

IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

1993 MTWCC 6

WCC No. 9305-6781

GERALD D. PETTIT

Petitioner

vs.

STATE COMPENSATION INSURANCE FUND/STEVE LINDSEY

Defendant/Employer.

ORDER DISMISSING WITHOUT PREJUDICE

The petition filed herein seeks to set aside a settlement agreement. The Court has closely reviewed the file and finds that it has no jurisdiction to rule in this matter for the reason that mediation has not been completed. Section 39-71-2905, MCA, provides in relevant part:

39-71-2905. Petition to workers' compensation judge. A claimant or an insurer who has a dispute concerning any benefits under chapter 71 of this title may petition the workers' compensation judge for a determination of the dispute after satisfying dispute resolution requirements otherwise provided in this chapter. . . . After parties have satisfied dispute resolution requirements provided elsewhere in this chapter, the workers' compensation judge has exclusive jurisdiction to make determinations concerning disputes under chapter 71, except as provided in 39-71-317 and 39-71-516. [Emphasis added.]

Section 39-71-2408, MCA, provides in relevant part:

39-71-2408. Mandatory, nonbinding mediation. (1) Except as otherwise provided, in a dispute arising under chapter 71 or 72 of this title, the insurer and claimant shall mediate any issue concerning benefits and the mediator shall issue a report following the mediation process recommending a solution to the dispute before either party may file a petition in the workers' compensation court. [Emphasis added.]

Section 39-71-2411, MCA, provides in relevant part:

39-71-2411. Mediation procedure. (1) Except as otherwise provided, a claimant or an insurer having a dispute relating to benefits under chapter 71 or 72 of this title may petition the department for mediation of the dispute.

...

(5) After the parties have presented all their information and argument to the mediator, he shall recommend a solution to the parties within a reasonable time to be established by rule.

(6) A party shall notify the mediator within 45 days of the mailing of his report whether the party accepts the mediator's recommendation. If either party does not accept the mediator's recommendation, the party may petition the workers' compensation court for resolution of the dispute. [Emphasis added.]

The industrial accident which underlies the petition occurred July 15, 1991. The parties are therefore subject to mediation procedures mandated by the statutes. ARM 24.5.301(1)(e) requires petitioners to affirmatively allege compliance with mediation requirements. However, the petition herein states, "[D]efendant claims no mediation necessary - up to court." The response affirmatively alleges "that the mediation procedure has not been complied with." There is no other information in the Court file to indicate that the parties complied with the mediation requirement. Since mediation is a prerequisite to the filing of any petition and it does not affirmatively appear that mediation has taken place, the Court is without jurisdiction to consider the petition.

ACCORDINGLY, IT IS HEREBY ORDERED that the petition is **DISMISSED WITHOUT PREJUDICE.**

DATED in Helena, Montana, this 8th day of October, 1993.

(SEAL)

/s/ Mike McCarter
JUDGE

c: Mr. David A. Hawkins
Mr. Todd A. Hammer