

IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

1998 MTWCC 44

WCC No. 9801-7909

WILLIAM R. PITTSLEY

Petitioner

STATE COMPENSATION INSURANCE FUND

Respondent/Insurer for

3-MOR ENTERPRISES

Employer.

ORDER DENYING MOTION FOR PARTIAL SUMMARY JUDGMENT

Summary: Petitioner moved for partial summary judgment but failed to specify facts in serial fashion, supported by specific reference to pleading, affidavit or other document, which supported his motion.

Held: Motion denied for failure to comply with ARM 24.5.329(3) regarding presentation of alleged undisputed facts. The requirements to set forth facts serially and with reference to specific evidence reduces the time necessary to resolve a motion for summary judgment and avoids the possibility that the court would miss essential facts.

Topics:

Constitutions, Statutes, Regulations and Rules: Workers' Compensation Court Rules: ARM 24.5.329(3). Motion for summary judgment denied for failure to comply with ARM 24.5.329(3) regarding presentation of alleged undisputed facts. The requirements to set forth facts serially and with reference to specific evidence reduces the time necessary to resolve a motion for summary judgment and avoids the possibility that the court would miss essential facts.

Summary Judgment: Affidavits. Motion for summary judgment denied for failure to comply with ARM 24.5.329(3) regarding presentation of alleged undisputed facts. The requirements to set forth facts serially and with reference to specific evidence reduces the time necessary to resolve a motion for summary judgment and avoids the possibility that the court would miss essential facts.

Summary Judgment: Motion for Summary Judgment. Motion for summary judgment denied for failure to comply with ARM 24.5.329(3) regarding presentation of alleged undisputed facts. The requirements to set forth facts serially and with reference to specific evidence reduces the time necessary to resolve a motion for summary judgment and avoids the possibility that the court would miss essential facts.

Summary Judgment: Disputed Facts. Motion for summary judgment denied for failure to comply with ARM 24.5.329(3) regarding presentation of alleged undisputed facts. The requirements to set forth facts serially and with reference to specific evidence reduces the time necessary to resolve a motion for summary judgment and avoids the possibility that the court would miss essential facts.

¶1 The petitioner, who is a logger, has moved for partial summary judgment with regard to the inclusion of saw rental payments in calculating his benefits.

¶2 The motion does not comply with the rule governing motions for summary judgment. Rule 24.5.329(3) requires:

(3) Any party filing a motion under this rule shall include in its brief a statement of uncontroverted facts, which shall set forth in full the specific facts on which the party relies in support of the motion. **The specific facts shall be set forth in serial fashion and not in narrative form. As to each fact, the statement shall refer to a specific pleading, affidavit, or other document where the fact may be found.**

Any party opposing a motion filed under this rule shall include in their opposition a brief statement of genuine issues, setting forth the specific facts which the opposing party asserts establish a genuine issue of material fact precluding summary judgment in favor of the moving party. [Emphasis added.]

The rule further requires that the facts upon which the motion is based be supported by admitted allegations in the pleadings, affidavits, depositions, answers to interrogatories, and/or documents produced in response to requests for production. Rule 24.5.329(2). Petitioner did not make even a *de minimus* (minimal) attempt to comply with these requirements: Facts were not set forth in serial fashion, no affidavits or discovery were submitted to support the motion, and alleged facts were not supported by citation to supporting evidence.

¶3 The requirements ignored by petitioner have a salutary purpose. The requirement that facts be set forth serially and be supported by citation to supporting evidence reduces the time and effort of the Court when considering and disposing of the motion. It also reduces the chance that the Court will overlook some fact of consequence. Without sworn evidence supporting the factual "allegations" of the moving party, the motion is no better than the initial petition and there is no basis upon which the Court can render a decision.

¶4 Where the parties agree on the facts, the rule provides an alternative to the requirement of citation to supporting evidence. Rule 24.5.329(4) provides:

(4) If the movant and the party opposing the motion agree that there is no genuine issue of any material fact, they shall jointly file a stipulation with the court setting forth a statement of stipulated facts. This stipulation shall be prepared and filed in lieu of the statements required by (3) of this rule.

No such stipulation was filed in this case.

¶5 This is not a case involving a pure question of law which can be decided without a factual predicate. I decline to sift through the briefs and guess as to what facts the parties agree are uncontroverted. The motion is **denied**.

¶6 Henceforth, motions which do not comply with the Rule 24.5.329 will be returned to the moving party.

¶7 SO ORDERED.

DATED in Helena, Montana, this 4th day of June, 1998.

(SEAL)

\s\ Mike McCarter

JUDGE

c: Mr. Steve Fletcher

Ms. Susan C. Witte

Submitted: May 27, 1998