

IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

1996 MTWCC 32

WCC No. 9603-7525

WILLIAM POLK

Appellant

vs.

PLANET INSURANCE COMPANY

Respondent.

**ORDER GRANTING MOTION TO AMEND AND
DENYING MOTION TO DISMISS**

Summary: After the Department of Labor and Industry denied claimant's occupational disease claim, he filed a "Petition for Trial and Other Appropriate Relief" in the Worker's Compensation Court. The insurer moved to dismiss, pointing out that claimant sought to present evidence in the Worker's Compensation Court not presented below and asked for other inappropriate relief.

Held: The petition will be treated as commencing an appeal. Although the Court may grant leave for the presentation of additional evidence to the DLI (ARM 24.5.350), appellant has not justified such a request. De novo evidence may not be taken in this Court. Respondent's additional arguments should be addressed in its response brief on appeal.

Topics:

Pro Se. Motion to dismiss denied where appellant's "Petition for Trial and Other Appropriate Relief" may be treated as appeal from DLI over which the Workers' Compensation Court does have jurisdiction.

Although commenced by a document styled a Petition for Trial and Other Appropriate Appellate Relief, this action is an appeal from a decision of the Montana Department of Labor and Industry (DLI) which denied appellant's occupational disease claim. Following the filing of the appeal, the respondent/insurer moved to dismiss on the grounds that the appeal interjects "inappropriate issues and adds additional witnesses." In its supporting brief, the insurer also asserts that the appeal should be dismissed because the original petition failed to set forth any request for relief.

Appellant has countered the motion to dismiss with his own motion to amend his pleading. The motion is accompanied by another document styled Amended Petition for Trial and Other Appropriate Appellate Relief. The amended petition, as did the original one, lists numerous witnesses and exhibits the appellant apparently intends to proffer at a hearing. Unlike the original petition, the amended petition sets forth specific prayers for relief.

Since this is an appeal from a determination of the DLI, and this Court's jurisdiction is appellate jurisdiction, § 39-72-612, MCA, the appellant's captioning of his pleadings and his inclusion of lists of witnesses and exhibits are inappropriate and shall be ignored. The Court may not conduct a de novo hearing; additional evidence is allowed only by leave of Court, and then must be presented to the DLI. ARM 24.5.350; *Gary Wingfield v. State Compensation Ins. Fund*, WCC No. 9502-7243 at 5-6 (May 19, 1995). Appellant has filed no motion to remand the case for additional evidence nor provided the Court with any facts to establish good cause to do so. ARM 24.5.350(5).

Rather than delay this matter further, the Court will file the amended petition and treat it as an appeal. The amended pleading satisfies the Court's requirements that the grounds of appeal and the relief requested be set forth in the appeal, thereby rendering moot one of the asserted grounds for dismissal. The respondent's argument that the appeal raises issues which were not presented in the proceeding below requires consideration of the record below and should be raised in respondent's brief rather than by motion to dismiss. The motion to dismiss is therefore **denied**.

SO ORDERED.

Dated in Helena, Montana, this 26th day of April, 1996.

(SEAL)

/s/ Mike McCarter

JUDGE

c: Mr. Lawrence A. Anderson

Ms. Sara R. Sexe

Submitted: April 25, 1996