

IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

1996 MTWCC 49A

WCC No. 9505-7294

SHIRLEY RANES

Petitioner

vs.

LUMBERMENS MUTUAL CASUALTY COMPANY

Respondent/Insurer for

BUTTREY FOOD AND DRUG

Employer.

AMENDMENT TO THE JUDGMENT

Summary: Claimant moved to amend the recent WCC decision insofar as it allowed the insurer to credit permanent partial disability benefits already paid by the insurer against liability for temporary total disability benefits relating to a separate condition.

Held: Claimant is correct, as the insurer agrees. That aspect of the prior decision is stricken.

Topics:

Benefits: Permanent Partial Benefits: Generally. Court granted motion to amend its prior decision to delete order permitting insurer to credit previously paid permanent partial disability benefits against liability for temporary total disability benefits relating to a separate condition.

Claimant has moved to amend the Court's Findings of Fact, Conclusions of Law and Judgment. She argues that it was error for the Court to credit permanent partial disability benefits already paid by Lumbermens to Lumbermens' liability for temporary total disability benefits.

The motion is meritorious. In its response, Lumbermens agrees, as does the Court, that upon reaching maximum healing with respect to her July 9, 1994 injury, claimant became entitled to permanent partial disability benefits with respect to her injury. Her entitlement

to those benefits is not affected by the fact that she continues to be temporarily totally disabled on account of a separate occupational disease.

As found in this Court's original decision, claimant reached maximum healing with respect to her industrial injury on June 5, 1995. Lumbermens informs the Court that the permanent partial disability benefits it has paid to date do not exceed its admitted liability for those benefits. Therefore, the Court improperly required the credit of the permanent partial benefits already paid.

In a telephone conference with counsel for claimant and Lumbermens, counsel agreed that the additional temporary total disability benefits awarded to claimant should be paid in addition to the permanent partial disability benefits already paid. They also concurred with the Court's suggestion that such result may be effected by deleting the second sentence of paragraph one of the judgment. That first paragraph read in full:

1. Lumbermens shall pay claimant temporary total disability benefits retroactive to December 13, 1994 and continue those benefits until such time as claimant is no longer temporarily totally disabled from her CTS. *It is entitled to a credit for the permanent partial disability benefits it has been paying her, and such payments shall not be charged against her permanent partial disability entitlement.*

Lumbermens shall also be entitled to a credit for temporary total disability benefits paid for those days claimant actually worked in November and December 1994.

The second sentence is italicized.

THEREFORE, IT IS HEREBY ORDERED that the judgment rendered July 5, 1996, be amended by deleting the second full sentence of paragraph one of the judgment. The amended paragraph shall now read:

1. Lumbermens shall pay claimant temporary total disability benefits retroactive to December 13, 1994 and continue those benefits until such time as claimant is no longer temporarily totally disabled from her CTS. Lumbermens shall also be entitled to a credit for temporary total disability benefits paid for those days claimant actually worked in November and December 1994.

DATED in Helena, Montana, this 26th day of August, 1996.

(SEAL)

/s/ Mike McCarter

JUDGE

c: Mr. James G. Hunt

Mr. Roger T. Witt

Submitted: August 14, 1996