IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

2000 MTWCC 32A

WCC No. 9903-8176

KESTER C. ROMANS,

Petitioner,

vs.

LIBERTY MUTUAL FIRE INSURANCE COMPANY,

Respondent/Insurer for

SUPERVALU, INCORPORATED,

Employer.

ORDER DENYING NEW TRIAL

Summary: Pro se claimant requested new trial based on argument that some witnesses did not testify at trial and that judge decided case wrongly.

Held: Motion denied where claimant had opportunity to produce witnesses at trial and desire to reargue case or obtain different result is not grounds for new trial.

Topic:

> **Procedure: Post-Trial Proceedings: New Trial: Generally.** Desire to reargue case or produce witnesses claimant previously had opportunity to produce is not cause for new trial; litigant must identify newly discovered evidence he could not have reasonably discovered prior to trial; some accident or surprise he could not have guarded against; or some irregularity or abuse of discretion.

¶1 Petitioner requests a new trial. His request is governed by ARM 24.5.344, which provides, *inter alia*, that any party "may petition for a new trial or request amendment to the court's findings of fact and conclusions of law within 20 days after the order or judgment is served." As applicable here, the grounds for granting a new trial are:

> (1) irregularity in the proceedings of the court, jury, or adverse party or any order of the court or abuse of discretion by which either party was prevented from having a fair trial;
>
> . . . .

(3) accident or surprise which ordinary prudence could not have guarded against;

(4) newly discovered evidence material for the party making the application which he could not, with reasonable diligence, have discovered and produced at the trial;

. . . .

(6) insufficiency of the evidence to justify the verdict or other decision or that it is against law;

(7) error in law occurring at the trial and excepted to by the party making the application.

§ 25-11-102, MCA.

¶2 Essentially, petitioner does not like the Court's findings of fact and its evidentiary rulings. He wishes to reargue his case. That is not enough. He must identify newly discovered evidence he could not have reasonably discovered prior to trial; some accident or surprise he could not have guarded against; or some irregularity or abuse of discretion. He argues that witnesses did not testify at trial. His argument is unpersuasive. He was given ample opportunity to present his witnesses and was free to subpoena any witness he felt necessary to his case. The evidence is more than sufficient to support my findings of fact and I stand by my evidentiary rulings and conclusions of law.

¶3 The request is **denied**.

DATED in Helena, Montana, this 7th day of July, 2000.

(SEAL)

Mike McCarter
JUDGE

c: Mr. Kester C. Romans - Certified Mail
Mr. William J. Mattix
Submitted: June 30, 2000