IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

2000 MTWCC 18A

WCC No. 2000-0041

AUBREY SCHNEIDER

Petitioner

vs.

Respondent/Insurer for

JOEL BOS d/b/a/ BOS TOP DAIRY

Employer.

ORDER GRANTING MOTION FOR RECONSIDERATION

Summary: Claimant, who was denied interim benefits (39-71-610) in prior decision (2000 MTWCC 18), sought reconsideration, asking permission to submit additional medical records and an affidavit showing financial hardship.

Held: Motion for reconsideration granted. While the Court intends to handle requests for interim benefits informally and quickly whenever possible, it will not unduly proscribe the presentation of a party's case for or against interim benefits. On the other hand, section 39-71-610 proceedings should not become a hearing on the merits, which would require discovery and considerable delay.

Topics:

> **Benefits: Interim (39-71-610) Benefits.** While the Court intends to handle requests for interim benefits informally and quickly whenever possible, it will not unduly proscribe the presentation of a party's case for or against interim benefits. On the other hand, section 39-71-610 proceedings should not become a hearing on the merits, which would require discovery and considerable delay.

¶1 Claimant has filed a motion requesting the Court to reconsider its April 4, 2000 denial of his request for interim benefits. (Order Regarding 39-71-610 Benefits. 2000 MTWCC 18.) The request is **granted**, however, no further action will be taken on the original request until additional medical records are submitted and a further telephonic conference held with counsel and claimant.

Prior Order

¶2 In the prior Order, I denied interim benefits because the claimant's failure to continue in a work-conditioning program was not supported by medical documentation submitted by the parties. Having failed to carry through with the recommended treatment, Dr. Ross' finding of maximum medical improvement (MMI) was justified and supported. I therefore determined that claimant had not presented a strong *prima facia* case for reinstatement of temporary total disability (TTD) benefits and that his request for interim TTD benefits under section 39-71-610, MCA, should be denied.

Request for Reconsideration

¶3 Following my Order, the claimant requested reconsideration based on additional medical records and an affidavit showing financial hardship, which he has now submitted for the Court's consideration. He pointed out that the Court's determination was based on incomplete information and a short telephone conference call with counsel.

Discussion

¶4 As discussed in the prior Order and in *Smith v. State Compensation Insurance Fund,* 2000 MTWCC 9, requests for interim benefits under section 39-71-610, MCA, require prompt action, thus the Court intends to handle such requests informally and quickly *whenever possible*. It is not the Court's intent to unduly proscribe the presentation of a party's case for or against interim benefits, and if need be it is prepared to hold an evidentiary hearing to listen to witnesses. On the other hand, proceedings under section 39-71-610, MCA, should not be turned into a hearing on the merits since a merits hearing would require full discovery and delay consideration of the request. Moreover, the purpose of a hearing under section 39-71-610, MCA, is not to decide the merits, only to determine whether sufficient circumstances exist to warrant an order that the insurer pay benefits for an additional 49 days while claimant awaits a hearing on the merits.

¶5 There is no well developed law regarding hearings or determinations under section 39-71-610, MCA. The Court's two recent decisions - in this and the *Smith* cases - represent developing law. In this case, claimant's attorney may not have appreciated the need to fully develop his case for benefits during the prior telephone proceeding, and may not have appreciated the fact that he could request a more formal proceeding. For that reason, I find it appropriate to grant the motion for reconsideration and reopen the proceeding for further evidence and argument. In future 610 proceedings, parties should provide the Court with all documentary evidence in advance of a telephone conference, or let the Court know that they wish to proceed on a more formal basis.

¶6 During today's telephone conference, the Court learned that Dr. Jackson, who provided the opinion that claimant is not at MMI, has now terminated his services to claimant. However, Dr. Jackson has seen the claimant since the last time reflected in the records produced to the Court. Also, claimant's attorney informed the Court that claimant will be

examined in the next two weeks by an orthopedic surgeon, who will be provided with claimant's medical records. Since the additional information may be helpful in determining whether claimant has a "strong *prima facia*" case for reinstatement of TTD benefits, the Court will defer further proceedings until the additional records are available. The Court will then initiate another conference call to hear additional arguments and telephone testimony the parties wish to present. It will then make its final decision.

DATED in Helena, Montana, this 13th day of April, 2000 .

(SEAL)

/s/ Mike McCarter
JUDGE

c: Mr. Geoffrey C. Angel
Mr. Larry W. Jones
Date Submitted: April 6, 2000