IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

1999 MTWCC 6A

WCC No. 9806-8000

S.L.H.

Petitioner

vs.

STATE COMPENSATION INSURANCE FUND

Respondent/Insurer for

THIRSTY'S BAR

Employer.

ORDER AND JUDGMENT UPON REMAND

Summary of case: Despite persuasive evidence that the claimant suffers from a mental impairment, the Workers' Compensation Court declined claimant's request for an impairment award. The denial was based on the Court's determination that the 4th Edition of the AMA guides to impairment do not provide for percentage impairments. On appeal, the Supreme Court reversed, concluding that the Workers' Compensation Court could make its own determination of the percentage of impairment even though a physician could not. The case was remanded for the determination.

Held: In accordance with the Court's original findings of fact, the claimant suffers a moderate mental impairment. The Court references the 2nd Edition of the AMA Guides, which do provide percentages for mental impairments. Those Guides fix 25% - 50% for moderate mental impairments. In light of the nature and impact of the mental injuries in this case, the Court finds that the upper limit is appropriate and awards 50%.

Topics:

> **Benefits: Impairment Awards: Mental Impairment.** On appeal the Supreme Court determined that the Workers' Compensation Court must fix a percentage impairment award for mental impairment even though the applicable AMA guides to impairment do not provide percentages and claimant's treating psychiatrist declined to give one.

Benefits: Impairment Awards: Mental Impairment. Utilization of an earlier edition of the AMA guides is appropriate where the earlier edition provides a range of percentages for mental impairments.

Benefits: Impairment Awards: Mental Impairment. Where the nature and impact of the mental impairment are significant, the upper range for the category of impairment should be used.

¶1 This case is on remand from the Montana Supreme Court. While affirming this Court's decision on many points, the Supreme Court concluded that I erred in failing to order an impairment award on account of claimant's mental impairment. The Court remanded for me to make the determination.

¶2 Claimant asked for an award of between 25% and 49%. 1999 MTWCC 6 at ¶ 68. As I noted in my original decision, the 3rd and 4th Edition of the AMA Guides to the Evaluation of Permanent Impairment do not provide percentage ratings for mental impairment. The 2nd Edition, however, did. It is the best guidance available.

¶3 The 2nd Edition recommended 25% to 50% for moderate impairment. *Id*. at ¶ 71. Dr. Evans testified that "overall" the claimant falls between mild and moderate impairment, however, with respect to her post-traumatic stress disorder (PTSD), she falls in the moderate category. The Court must consider the condition which causes the worst impairment, as that condition is the one which is most limiting. Therefore, I find that claimant falls in the moderate category.

¶4 Given the nature of the claimant's mental injuries, and their impact on her life, I am further persuaded that her impairment should be at the upper end of the range set out in the 2nd Edition. I find 50% is appropriate.

¶5 Therefore, IT IS ORDERED AND ADJUDGED that the State Compensation Insurance Fund shall pay claimant an impairment award of 50%. The parties should be able to compute the amount due, however, the Court retains continuing jurisdiction to make the computation in the event the parties disagree.

DATED in Helena, Montana, this 23rd day of April, 2001.

(SEAL)

\s\ Mike McCarter
JUDGE

c: Ms. Sara R. Sexe
Mr. William O. Bronson