

IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

1997 MTWCC 49

WCC No. 9706-7764

BETTY M. TUCKER

Petitioner

vs.

STATE COMPENSATION INSURANCE FUND

Respondent/Insurer for

BOB WARD & SONS and ERIC R. REIMERS

Employers.

ORDER DENYING MOTION TO JOIN DEPARTMENT OR DISMISS PETITION

Summary: Over two years after the Department of Labor and Industry disapproved a settlement between claimant and State Fund, claimant petitioned the Workers' Compensation Court asking that it approve the settlement. State Fund asserts that the Department of Labor is a necessary party in the proceeding in this Court.

Held: The request to join the Department of Labor is denied. The position of the DOL in this matter is no different than in any other case in which one of its decisions is reviewed by the WCC.

Topics:

Settlements: Generally. The Department of Labor is not a necessary party to a proceeding asking the Court to approve a settlement agreement which the Department of Labor and Industry refused to approve. Such a proceeding is no different than any other matter in which the WCC reviews a decision of the DOL.

This case arises out of a \$30,000 settlement agreement reached between petitioner/claimant (claimant) and the respondent/insurer (State Fund) on February 2, 1995. The agreement was submitted to the Department of Labor and Industry (Department), which disapproved it. The Department forwarded the file to the Court but the Court declined to review it under the statute which provides that in old law cases, the Court may disapprove of settlements within 10 days of their approval by the Department. The statute did not apply since the Department did not approve the settlement. In my letter returning the file, I noted that if the parties disputed the Department's denial then their remedy was to file a petition with the Court. The

Department's Order notified the parties of their right to "appeal" to the Court. In any event, no further legal action was taken until June 13, 1997, when the claimant petitioned the Court asking that it approve the settlement.

In its response, and by way of a separate motion, the State Fund asserts that the Department is a necessary party and asks that it be joined as a party or that the petition be dismissed. According to the State Fund, it (the State Fund) "cannot provide her with the remedy she seeks." (Brief in Support of Motion to Dismiss or in the Alternative to Join the Employment Relations Division of the Department of Labor and Industry at 2.) The motion is without merit.

The position of the Department is no different in this case than it is in any case involving judicial review of one of its decisions. (Judicial review in fact may be the appropriate remedy with respect to the denial, but the Court makes no decision concerning the nature of this proceeding since the parties have not addressed the matter at this point of time.) Contrary to the State Fund's argument, it is the one that must provide the relief claimant requests should she prevail, i.e., it is the one which would have to pay the \$30,000.

Motion **denied**.

DATED in Helena, Montana, this 5th day of September, 1997.

(SEAL)

/s/ Mike McCarter
JUDGE

c: Ms. Betty M. Tucker - Certified Mail
Ms. Susan C. Witte
Ms. Carol Gleed - Courtesy Copy
Mr. Kevin M. Braun - Courtesy Copy