

IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

1994 MTWCC 102

WCC No. 9212-6666

BRIAN WRAY

Petitioner

vs.

STATE COMPENSATION INSURANCE FUND

Respondent/Insurer for

HARP LINE CONSTRUCTION COMPANY

Employer.

JUDGMENT UPON REMITTITUR

This matter was remanded to this Court for entry of judgment in accordance with the Supreme Court's August 16, 1994 decision on appeal. The directions to this Court included an instruction to determine and award attorney fees. However, that matter has been settled and on November 9, 1994, the claimant filed a Satisfaction of Claim for Attorney Fees and Costs.

ACCORDINGLY, IT IS HEREBY ORDERED, ADJUDGED AND DECREED THAT:

1. Respondent, State Compensation Insurance Fund, is not entitled to recoup lump sum advances made in November of 1987, June of 1988 and March of 1989 from temporary total disability benefits paid to claimant heretofore or in the future.⁽¹⁾
2. Respondent is hereby prohibited from recouping the three lump sum advances out of any temporary total disability benefits paid to claimant.
3. Within thirty (30) days of this judgment, respondent shall reimburse claimant for all amounts it has already recouped from his temporary total disability benefits on account of the three lump sum advances.

Dated in Helena, Montana, this 10th day of November, 1994.

(SEAL)

/s/ Mike McCarter
JUDGE

c: Mr. Darrell S. Worm
Mr. Thomas R. Bostock

1. The claimant requests the Court to enter judgment determining that the defendant is not entitled to recoupment from his "current biweekly benefits." The Court declines to do so since it is not aware what type of benefits are currently being paid. The Supreme Court decision addresses recoupment from temporary total disability benefits, holding "that the Workers' Compensation Court" erred in determining that the State Fund could recoup the lump sum advances from Wray's temporary total disability benefits." Slip Opinion at 9-10. However, despite continued payment of temporary total disability benefits the State Fund apparently considers claimant to be permanently totally disabled. Finding of Fact No. 6. It is therefore foreseeable that at some time the State Fund will, or already has, converted claimant's benefits to permanent total disability benefits. Neither the Supreme Court nor this Court addressed the right of the State Fund to recoup the lump sum advances from permanent total disability benefits. Thus, claimant's requested language is too broad.