

**IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA**

**1994 MTWCC 83A**

**WCC No. 9308-6873**

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**AETNA CASUALTY & SURETY COMPANY**

**Petitioner,**

**vs.**

**STATE COMPENSATION INSURANCE FUND**

**Defendant**

**IN RE: MARLA SMITH**

**Claimant.**

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**ORDER AMENDING FINDINGS OF FACT**

Claimant has filed a motion to amend findings of fact and conclusions of law. The motion has been fully briefed and is ready for decision.

Initially, claimant asks the Court to delete or amend Finding of Fact No. 20. That finding states, among other things, that "[o]n August 3, 1993, claimant further aggravated her back condition while drying her hair after a shower at home." Claimant correctly points out that "the relationship, if any, of an August, 1993 incident involving the Claimant to the liability of either insurer of this action is outside the scope of these proceedings and will not be decided by the Court." The Court did not intend by its finding to inject or decide such issue. However, the Court's use of the word "aggravated" could have legal significance in the context of the Workers' Compensation Act. Since the Court intended only to refer to a worsening of claimant's condition in August 1993, not to adjudicate the legal significance of that worsening, Finding of Fact No. 20 is amended to read as follows:

20. On August 3, 1993, claimant experienced a worsening of her back condition. That worsening is not an issue in this proceeding. An August 3, 1993 MRI revealed an extremely large L5-S1 disc herniation that was not present when a discogram had been performed on March 15, 1993. On August 20, 1993, Dr. Michael P. Haley performed repeat laminectomies at L4 and L5 and excised the L5 disc.

Claimant also requests the Court to reconsider and amend Finding of Fact No. 25 and Conclusions of Law Nos. 2 and 3. In essence, she requests the Court to reverse its

determination that she had not reached maximum healing prior to her April 1992 injury. The request is **denied**. The issue was fully argued and carefully considered. The claimant's request amounts to reargument of the case.

The Order herein is certified as final for purposes of appeal to the Montana Supreme Court pursuant to ARM 24.5.348.

Dated in Helena, Montana, this 18th day of November, 1994.

(SEAL)

/s/ Mike McCarter

JUDGE

c: Mr. Charles E. McNeil

Mr. Charles G. Adams

Mr. Darrell S. Worm