

IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

1999 MTWCC 26

WCC No. 9903-8174

**STANDARD FIRE INSURANCE COMPANY/SISTERS OF CHARITY OF LEAVENWORTH
HEALTH SERVICES CORPORATION,**

Appellants,

vs.

VICTORIA AUSTIN,

Respondent.

ORDER STAYING DEPARTMENT DECISION

Summary: Insurer appealed determination of DOL hearing officer that claimant suffered from an occupational disease. Under DOL order, claimant was entitled to retroactive benefits of approximately \$29,000.00. Insurer requested stay of payment of retroactive benefits pending resolution of appeal in WCC, noting claimant would receive biweekly benefits.

Held: Where claimant will receive biweekly benefits, and insurer's solvency is not at issue, stay is appropriate pending resolution of appeal in WCC.

Topics:

Judicial Review: Stay on appeal to WCC. Insurer appealed determination of DOL hearing officer that claimant suffered from an occupational disease. Under DOL order, claimant was entitled to retroactive benefits of approximately \$29,000.00. Insurer requested stay of payment of retroactive benefits pending resolution of appeal in WCC. Where claimant will receive biweekly benefits, and insurer's solvency is not at issue, stay is appropriate pending resolution of appeal in WCC.

1 This is an appeal from a Department decision finding that claimant suffers from an occupational disease. The appellant insurer is presently paying biweekly benefits under a reservation of rights and indicates that it will continue to do so during the pendency of the appeal. Claimant, however, has demanded payment, in full, of retroactive benefits. The insurer seeks to stay such payment.

2 The retroactive benefits sought by claimant are substantial, amounting to approximately \$29,000. It goes without saying that if the insurer prevails in its appeal the retroactive benefits will not have to be paid. If the matter at hand involved an appeal to the Supreme Court from a district court judgment, the appellant would be entitled to a stay as a matter of right upon posting of a supersedeas bond. Rule 7, Mont.R.App. Pro. The purpose of the bond is to ensure that the judgment will be paid if affirmed on appeal. While there is no supersedeas bond for appeals from the Department's decision, the appellant is an insurer subject to state regulation and presumably capable of paying any final amount determined to be due.

3 Claimant in the meantime is receiving biweekly benefits. The time for completion of briefing and rendering a final decision is not so long that a delay in payment of retroactive benefits will be onerous.

4 Finding good cause,

5 IT IS HEREBY ORDERED that the appellant insurer shall continue to pay biweekly benefits, as it has agreed to do, during the pendency of this appeal, but the decision below is otherwise **stayed**.

DATED in Helena, Montana, this 13th day of April, 1999.

(SEAL)

\s\ Mike McCarter
JUDGE

c: Mr. Peter J. Stokstad
Mr. Norman H. Grosfield
Date Submitted: April 8, 1999