

IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

1999 MTWCC 45

WCC No. 9906-8242

MICHAEL BARE

Petitioner

vs.

LIBERTY MUTUAL FIRE INSURANCE COMPANY

Respondent/Insurer for

UNITED PARCEL SERVICE

Employer.

ORDER AND JUDGMENT DISMISSING PETITION

¶1 Claimant in this case seeks permanent total disability benefits. This is the second time he has done so. In a prior proceeding this Court dismissed an identical petition for lack of jurisdiction. The Supreme Court affirmed in *Bare v. Liberty Mutual Fire Ins. Co.*, 1998 MT 106.

¶2 The prior decision was based on claimant's failure to exhaust the rehabilitation panel procedures applicable to his claim. §§ 39-71-1001 to -1033, MCA (1989). He sought to bypass those procedures by petitioning the Court to independently determine his disability.

¶3 Liberty Mutual Fire Insurance Company (Liberty) moves to dismiss this latest petition on identical grounds. It has provided the Court with a copy Findings of Fact, Conclusions of Law and Order issued by a Department of Labor and Industry hearing officer with respect to rehabilitation options. That decision, issued March 25, 1998, determined that the Rehabilitation Panel's finding that option (c) – return to work in a related occupation– was not supported by substantial evidence. The hearing officer remanded the matter to the “[Rehabilitation] Panel for a determination of the next most appropriate option.” Claimant did not appeal the decision and his petition does not seek review of any proceedings following the remand.

¶4 In response to the motion to dismiss, claimant has notified the Court that he “will not be filing a response” Rule 24.5.316(4) of this Court's rules provides:

(4) Failure to file briefs may subject the motion to summary ruling. Failure of the moving party to file a brief with the motion shall be deemed an admission that the motion is without merit. Failure of the adverse party to timely file an answer brief may be deemed an admission that the motion is well taken. Reply briefs are optional and failure to file a reply brief will not subject the motion to summary ruling.

Claimant's failure to respond to the motion indicates either that he views his position as untenable or that he is so confident in the merits of his claim that he need not reply.

¶15 Whatever his intent, this case is indistinguishable from the prior case. Claimant does not challenge Liberty's assertion that a hearing officer remanded his rehabilitation claim to the Rehabilitation Panel, that the decision was not appealed, and that remedies on remand have not been exhausted.

¶16 Finding good cause, the petition is dismissed. Judgment is entered accordingly.

DATED in Helena, Montana, this 23rd day of July, 1999.

(SEAL)

/s/ Mike McCarter

JUDGE

c: Ms. Laurie Wallace

Mr. Larry W. Jones

Date Submitted: July 16, 1999