

IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

1994 MTWCC 57A

WCC No. 9307-6835

CARL FAHRENBRUCK

Petitioner

vs.

MONTANA POWER COMPANY

Respondent/Insurer/Employer.

ORDER AMENDING CONCLUSIONS OF LAW AND JUDGMENT

On June 23, 1994, this Court entered its Findings of Fact, Conclusions of Law and Judgement finding claimant 75 percent disabled. We awarded claimant 375 weeks of benefits at \$143.00 per week but credited the respondent for payment of 189.5786 weeks of benefits. Thus, the net amount due claimant is 185.4214 weeks at \$143.00 per week, or \$26,515.26. In its conclusions of law the Court indicated that the benefits should be paid retroactively to April 29, 1993, the date on which claimant returned to his pre-injury job at full wages. (Conclusion of law 4 , last ¶ at page 9.) As set forth in Petitioner's Request for Amendment of Conclusion of Law under arm 24.5.344, utilization of the April 29, 1993 date was in error.

As found, between May 18, 1988 and April 28, 1993, the respondent paid claimant \$27,109.74 in permanent partial disability benefits. The total amount of benefits paid during this period amounted to 189.5786 weeks of benefits based on the claimant's maximum weekly rate of \$143.00. However, the Court overlooked the fact that the time period over which the payments were actually made amounted to 257.857 weeks (1805 days/7 = 257.857). Since indemnity benefits are payable at claimant's maximum weekly rate and claimant's permanent partial disability commenced on May 18, 1988, claimant is entitled to benefits retroactive to the date which is 189.5786 weeks after May 18, 1988. According to the Court's calculation, that date is January 5, 1992.

Therefore, the last paragraph of conclusion of law number 4, which is entitled "Determination", is amended to read as follows:

Determination

Having considered and weighed all factors, I find that claimant is 75 percent disabled. He is therefore entitled to 375 weeks of disability benefits at his maximum permanent partial disability rate of \$143.00 per week. MPC has paid claimant \$27,109.74 (Ex. 1), or 189.5786 weeks, in permanent partial disability benefits, and is entitled to an offset in that amount. Claimant is therefore entitled to an additional 185.4214 weeks of benefits at \$143.00 per week. Since claimant's permanent partial disability began on May 18, 1988, and claimant has received the equivalent of 189.5786 weeks of benefits at his maximum rate, the additional benefits shall be payable retroactively to the date which is 189.5786 weeks after May 18, 1988. According to the Court's calculations, that date is January 5, 1992. The amounts accrued to date shall be paid in a lump sum. The remainder shall be paid in biweekly payments of \$286.00.

Paragraph 2 of the Judgment is also amended to read:

2. Claimant has established a 75 percent disability and is entitled to 375 weeks of permanent partial disability benefits at a weekly rate of \$143.00, less \$27,109.74, or 189.5786 weeks of benefits, already paid by MPC. Thus, claimant is entitled to a net award of 185.4214 weeks of additional benefits at \$143.00 per week retroactive to the date which is 189.5786 weeks after May 18, 1988.

DATED in Helena, Montana, this 28th day of July, 1994.

(SEAL)

/s/ Mike McCarter

JUDGE

c: Mr. Patrick R. Sheehy

Mr. Robert T. O'Leary