IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

WCC No. 9210-6608

STATE COMPENSATION MUTUAL INSURANCE FUND

Petitioner

vs.

HENRY G. GARCIA

Claimant and Respondent.

ORDER DENYING PETITIONER'S MOTION FOR RECONSIDERATION

On July 7, 1993, petitioner's counsel, Elizabeth A. Horsman-Wiitala, filed a MOTION FOR RECONSIDERATION OF ORDER GRANTING SUMMARY JUDGMENT and brief in support.

On July 13, 1993, Kurt M. Jackson, co-respondent, filed CO-RESPONDENT'S OPPOSITION TO STATE FUND'S MOTION FOR RECONSIDERATION.

No response was filed by claimant, Henry G. Garcia.

Petitioner contends that the hearing examiner "appears to confuse a 'reopening' versus a 'modification' of a live order". Petitioner's clear statements to the Court at trial limited the State Fund's request to repayment of benefits paid after April 20, 1991. These representations to the Court by Ms. Horsman-Wiitala did modify the request for repayment of benefits from claimant, Henry G. Garcia, and at the same time eliminated entirely the attorney fee issue raised against co-respondent, Kurt Jackson. Mr. Jackson's fee was approved by this Court on April 16, 1990.

Petitioner's repeated statements that she did not wish to reopen the prior Judgment in this matter leaves no viable theory which co-respondent Kurt Jackson can be liable as originally requested.

Co-respondent Kurt Jackson takes the position that the State Fund "do[es] not know when to stop beating a dead horse". He has personally been required to devote considerable time and appearances in this Court and the Montana Supreme Court since he was named as a party in this case on October 21, 1992.

The record is clear, the petitioner's position at trial leaves no question that as to co-respondent Kurt Jackson, there is no genuine issue of material fact and he is entitled to summary judgment.

The June 28, 1993 Order of this Court by the undersigned hearing examiner is not a final order of this Court but will be reviewed by the Judge as part of the Proposed Findings of Fact, Conclusions of Law and Proposed Judgment.

IT IS HEREBY ORDERED that petitioner's MOTION FOR RECONSIDERATION OF ORDER GRANTING SUMMARY JUDGMENT is **DENIED**.

DATED in Helena, Montana, this 26th day of July, 1993.

(SEAL)

ROBERT J. CAMPBELL
Hearing Examiner

Ms. Elizabeth A. Horsman-Wiitala
Mr. Kenneth R. Olson
Mr. Kurt M. Jackson