

IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

1995 MTWCC 103

WCC No. 9511-7444

CAROL GIEST

Petitioner

vs.

LUMBERMENS MUTUAL CASUALTY COMPANY

Respondent/Insurer for

BUTTREY FOOD AND DRUG

Employer.

ORDER DENYING MOTION TO DISMISS

Summary: Insurer moved to dismiss petition for failure to comply with statutory mediation requirements where petition was filed same day claimant rejected mediator's recommendation.

Held: Motion to dismiss denied. Under section 39-71-2411 (6), MCA (1995), the jurisdiction of the WCC exists where either party rejects the mediator's recommendation; there is no waiting requirement for the other party's consideration of the report.

Topics:

Mediation: General. Petition for hearing with the WCC may be filed same day claimant rejected mediator's recommendation. Under section 39-71-2411(6), MCA (1995), petition may be filed if "either" party rejects the mediator's recommendation.

Respondent has moved to dismiss the petition on the ground that petitioner failed to comply with mediation requirements. The facts, as appear from the parties' briefs and attachments, show that the mediator's report was mailed to the parties on November 17, 1995. On November 20, 1995, the petitioner's attorney mailed a letter to the mediator advising her that the petitioner rejected the recommendation. On the same day, petitioner also filed her petition.

Section 39-71-2411(6), MCA, provides:

(6) A party shall notify the mediator within 25 days of the mailing of the mediator's report whether the party accepts the mediator's recommendation. If **either** party does not accept the mediator's recommendation, the party may petition the workers' compensation court for resolution of the dispute. [Emphasis added.]

Respondent argues that it did not have enough time to consider the mediator's recommendation, and apparently takes the position that it should have the full 25 days to do so. The argument ignores the plain words of the statute, which permit a petition to be filed when "either party" rejects the recommendation. The petitioner rejected the recommendation on November 20, 1995, thereby triggering jurisdiction of the Court.

The motion to dismiss is **denied**.

Dated in Helena, Montana, this 8th day of December, 1995.

(SEAL)

/s/ Mike McCarter

JUDGE

c: Mr. R. Russell Plath

Mr. Steven S. Carey

Date submitted: December 8, 1995