IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

1997 MTWCC 13

WCC No. 9701-7690

STAN GUEDESSE

Petitioner

vs.

LIBERTY MUTUAL FIRE INSURANCE COMPANY

Respondent/Insurer for

GENERAL MILLS, INCORPORATED

Employer.

ORDER DENYING MOTION FOR RECONSIDERATION AND LIMITING EVIDENTIARY ISSUES AT TRIAL

Summary: Following denial of motion for partial summary judgment, petitioner moved for reconsideration, raising myriad factual issues not raised in the original motion and briefs. Parties also presented to the Court their dispute regarding examination about timeliness of denial of claim, which respondent contended was barred by Court's determination that facts did not support a timeliness claim.

Held: Motion for reconsideration raising factual issues not raised in original motion will be denied. Where Court has already ruled that allegations do not raise issue regarding timeliness of claim denial, petitioner will not be permitted to question witnesses regarding that denial. Issue is perfected already for appeal.

Topics:

Procedure: Reconsideration. Motion for reconsideration raising factual issues not raised in original motion will be denied.

Discovery: Depositions. Where Court has already ruled that allegations do not raise issue regarding timeliness of claim denial, petitioner will not be permitted to question witnesses regarding that denial. Issue is perfected already for appeal.

Discovery: Protective Orders. Where Court has already ruled that allegations do not raise issue regarding timeliness of claim denial, petitioner will not be permitted to question witnesses regarding that denial. Issue is perfected already for appeal.

On March 12, 1997, the Court entered its Order Denying Motion for Partial Summary Judgment. In that Order I ruled that the claim for workers' compensation submitted by claimant was *on its face* insufficient under section 39-71-601(1), MCA, and that *Haag v. Montana Schools Group Ins. Authority,* 274 Mont. 109, 906 P.2d 693 (1995), is therefore inapplicable to the claim. Petitioner takes issue with my ruling and has filed Petitioner's Motion for Reconsideration and Supporting Memorandum.

The motion is **denied**. The motion for reconsideration raises a myriad of factual issues never raised in the original motion and briefs. I note that the facts set forth in the Affidavit of Deborah Fotopoulos, which petitioner asserts the Court accepted as true and thereby "stepped into a minefield" (Petitioner's Motion for Reconsideration and Supporting Memorandum at 2), were not contested by the petitioner in his brief supporting his motion for summary judgment. Rather, petitioner said of those facts:

The litany of facts attached to the Respondent's Reply Brief (Affidavit of Deborah Fotopoulos) makes for enjoyable reading, but has no bearing on the dispositive issue of whether the claim was timely denied. While raising all sorts of purported issues of facts, the Affidavit ignores the material facts concerning timeliness of denial--facts that are uncontroverted and require judgment to be entered in favor of the Petitioner.

(Petitioner's Reply Brief in Support of Motion for Partial Summary Judgment at 2.) More importantly, the **only fact of consequence** to the Court's ruling was the claim itself, which I found insufficient on its face.

The Court has also received correspondence from counsel indicating that counsel are locked in a dispute concerning evidence relating to the *Haag* issue. In a letter faxed by Mr. Slovak to Mr. Jones on March 19, 1997, Slovak says, "I do intend on examining Ms. Fotopoulos and Ms. Bean at length concerning the timeliness of the denial of this case." He further states:

I understand from your letter that you will instruct the witnesses not to respond to such questions. Please be advised that you will do so at your own peril as we believe the questions are not only relevant, but necessary for purposes of perfecting the record for appeal should it be necessary for either side to appeal the issue.

A conference call with the Court was requested to resolve the matter.

A conference call is unnecessary. The Court has ruled on the *Haag* issue as a matter of law. That ruling is based on the facial insufficiency of the claim. In his motion for reconsideration the petitioner has set out what constitutes an offer of proof with respect to

what he would prove factually concerning the timeliness issue. No further evidence is necessary to perfect the record for purposes of appeal. Therefore, the Court will not permit petitioner to examine "Ms. Fotopoulos and Ms. Bean at length concerning the timeliness of the denial of this case." The timeliness issue has been decided.

SO ORDERED.

DATED in Helena, Montana, this 20th day of March, 1997.

(SEAL)

/s/ Mike McCarter
JUDGE

c: Mr. J. David Slovak
Mr. Larry W. Jones
FAXED and Mailed