IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

1995 MTWCC 96

WCC No. 9506-7322

EDWARD KILLOY, JR.

Petitioner

vs.

RELIANCE NATIONAL INDEMNITY

Respondent/Insurer for

RHONE-POULENC BASIC CHEMICALS COMPANY

Employer.

ORDER DENYING MOTION FOR REHEARING AND TO AMEND

REVERSED

See, Killoy v.Reliance National Indemnity, 278 Mont. 88, 923 P.2d 531 (1996) (No. 95-551).

Summary: Claimant sought rehearing with contention that his pain is so great he cannot work any job.

Held: While noting that pain is a subjective matter, WCC held that claimant's proffered rule would allow any claimant to determine his ability to work, based on his experience of pain. Note: Supreme Court reversed in Killoy v.Reliance National Indemnity, 278 Mont. 88, 923 P.2d 531 (1996) (No. 95-551).

Petitioner (claimant) has filed a motion for rehearing or, alternatively, to amend the Court's Findings of Fact, Conclusions of Law and Judgment. His motion and supporting briefs essentially reargue his contention that his degree of pain is so great that it precludes him altogether from working. While the Court found that claimant does indeed suffer from significant pain which precludes him from working at many jobs, it nonetheless found that his pain did not preclude him from working at two jobs identified by a vocational counselor and approved by claimant's treating physician.

In essence the claimant argues that the Court must, as a matter of law, accept his contention that his pain precludes him from all work. He notes, correctly, that pain is a subjective matter. But acceptance of his contention would result in a rule permitting

claimants to unilaterally determine that they cannot work. The fact finding mission of the Court would be nullified. The Court declines to adopt such a rule.

The motion is **denied**.

Dated in Helena, Montana, this 28th day of November, 1995.

(SEAL)

/s/ Mike McCarter
JUDGE

c: Mr. Bernard J. Everett
Mr. Brendon J. Rohan
Submitted: November 28, 1995