

IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

1998 MTWCC 36

WCC No. 9712-7890

ARVIL RAY KING

Petitioner

vs.

STATE COMPENSATION INSURANCE FUND

Respondent/Insurer for

DAVID BENSON

Employer.

ORDER DENYING MOTION TO STRIKE ANSWERS TO REQUESTS FOR ADMISSION

Summary: Petitioner moved to strike respondent's late answers to requests for admission, taking the position the requests were deemed admitted when no timely response was filed.

Held: Although the M.R.Civ.P. provide that a request for admission is deemed admitted if not denied in thirty days, the WCC rules do not contain such a provision. Rather, the WCC rules treat a request for admission as a form of interrogatory, meaning that the WCC rules for compelling answers to interrogatories, and requesting sanctions where appropriate, govern the matter.

Topics:

Constitutions, Statutes, Regulations and Rules: Workers' Compensation Court

Rules: ARM 24.5.323(6). Although the M.R.Civ.P. provide that a request for admission is deemed admitted if not denied in thirty days, the WCC rules do not contain such a provision. Rather, the WCC rules treat a request for admission as a form of interrogatory, meaning that the WCC rules for compelling answers to interrogatories, and requesting sanctions where appropriate, govern the issue of remedy for respondent's late answers to a request to admit.

Discovery: Requests for Admission. Although the M.R.Civ.P. provide that a request for admission is deemed admitted if not denied in thirty days, the WCC rules do not contain such a provision. Rather, the WCC rules treat a request for admission as a form of interrogatory, meaning that the WCC rules for compelling answers to

interrogatories, and requesting sanctions where appropriate, govern the issue of remedy for respondent's late answers to a request to admit.

¶1 Petitioner in this matter moves to strike the respondent's late answers to requests for admission. Petitioner has previously filed a notice that he deems the requests for admission as admitted.

¶2 Rule 36 of the Montana Rules of Civil Procedure provides for the use of requests for admissions and specifically provides that a request for admission is deemed admitted if not answered within 30 days. This Court declined to adopt that rule. Instead, the Court amended its own rule pertaining to interrogatories to provide that "[a]n interrogatory is not objectionable merely because it is phrased in the form of a request for admission." ARM 24.5.323(6) (added April 1, 1994). Failure to answer such an interrogatory must be treated just as any other failure to answer an interrogatory. There is no provision for an automatic admission; there is provision for a motion to compel and sanctions. ARM 24.5.326. Since the matter is covered by this Court's procedural rules, it is unnecessary and inappropriate to look to the Montana Rules of Civil Procedure.

¶3 THEREFORE, IT IS HEREBY ORDERED that the motion is **denied**. The matters set out in petitioner's requests for admissions are **not** deemed admitted.

DATED in Helena, Montana, this 4th day of May, 1998.

(SEAL)

\s\ Mike McCarter

JUDGE

c: Mr. Michael J. Milodragovich
Mr. Charles G. Adams