

**IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA**

**1993 MTWCC 19**

**WCC No. 9302-6692**

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**LELAND LEWIS**

**Petitioner**

**vs.**

**STATE COMPENSATION INSURANCE FUND**

**Respondent.**

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**ORDER DENYING MOTION FOR RECONSIDERATION**

On June 28, 1993, this Court entered an ORDER ON APPEAL affirming a decision of the Montana Department of Labor and Industry (DLI) which denied appellant's request for waiver of the one year statute of limitations for filing a workers' compensation claim. Following the entry of that Order the appellant filed a motion which is styled PETITION FOR HEARING TO ALLOW ORAL ARGUMENT AND MODIFICATION OF THE ORDER ON APPEAL. The motion sought two things. First, it requested that oral argument be allowed. Second, at least by implication, it requested that the original Order be reconsidered and set aside, and that a new order be entered reversing the DLI's decision. That request will be treated as a motion for reconsideration.

The request for oral argument was not opposed by the respondent. A hearing was therefore held on September 29, 1993 in Helena, Montana, to provide both parties the opportunity to present oral argument in support of their respective positions. Allen L. McAlear appeared and argued for appellant. Charles G. Adams appeared and argued for respondent.

Having reviewed the previous Order, which was issued by my predecessor in office; read the administrative file; and considered the arguments of counsel, both oral and written, I find no reason to reconsider or set aside the June 20, 1993 ORDER ON APPEAL.

The findings of the DLI hearing examiner show that appellant ceased work in December 1986, and formally retired effective July 31, 1987 essentially on account of hypertension caused by on-the-job stress. However, he did not file his workers' compensation claim until October 11, 1990, well after the twelve month period prescribed by section 39-71-601(1), MCA (1985).

The appellant argues that he should be excused from his failure to timely file a claim because he did not know until 1990 that the cardiac arrhythmia he had first experience in 1984 would reoccur, or that it was caused by stress. He argues that the arrhythmia should be considered a separate and latent injury. Finally, he argues that the statute of limitations should be tolled until 1990. His arguments are unpersuasive.

There was substantial evidence showing that when he quit work in December 1986, the appellant was aware his ill health prevented him from working and that he was informed his ill health was due to the stress of his employment. Thus, he should have "recognize[d] the nature, seriousness and probable, compensable character of his injury or disease" at that time, *Bowerman v. State Compensation Mutual Insurance Fund*, 207 Mont. 314, 319, 673 P.2d 476 (1983). While he may not have fully appreciated the full extent of his underlying medical conditions, he knew he was disabled and that his disability was job related. Nonetheless, he ignored the filing deadline. His assertion that the filing deadline should now be extended because he was not specifically aware of the continuing nature of his arrhythmia is equivalent to an assertion that he would have filed a workers' compensation claim within the prescribed statutory period had he then known more about his arrhythmia. That assertion is implausible in light of his failure to file a claim based on what he did know about the seriousness of his condition and hypertension.

Appellant has failed to persuade the Court that the original ORDER ON APPEAL was erroneous. His motion for reconsideration is therefore **denied**.

DATED in Helena, Montana, the 1st day of December, 1993.

(SEAL)

/s/ Mike McCarter

JUDGE

c: Mr. Allen L. McAlear

Mr. Charles G. Adams