

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

**1997 MTWCC 33**

**WCC No. 9506-7320**

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**GERALD MADILL**

**Petitioner**

**vs.**

**STATE COMPENSATION INSURANCE FUND**

**Respondent/Insurer for**

**GREENFIELD IRRIGATION DISTRICT**

**Employer.**

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**JUDGMENT AWARDING ATTORNEY FEES**

**Summary:** Supreme Court directed Workers' Compensation Court to award attorney fees and costs to claimant. On remand, amount of fees is at issue.

**Held:** Documented costs awarded. Attorneys fees awarded regarding benefits attorneys work obtained for claimant. Attorneys fees denied with respect to claimant's successful pursuit of attorneys fees through appeal. Supreme Court decision governs scope of fees and does not authorize order of attorneys fees on attorneys fees. Moreover, authority for attorneys fees is statutory (section 39-71-612, MCA (1979)), with statutory language not authorizing attorneys fees on attorneys fees.

**Topics:**

**Constitutions, Statutes, Regulations and Rules: section 39-71-612, MCA (1979).** On remand following Supreme Court decision ordering award of attorneys fees, Workers' Compensation Court refused to order attorneys fees on successful appeal to obtain attorneys fees where statute does not authorize such fees.

**Attorney Fees: Cases Denied.** On remand following Supreme Court decision ordering award of attorneys fees, Workers' Compensation Court refused to order attorneys fees on successful appeal to obtain attorneys fees where section 39-71-612, MCA (1979) does not authorize such fees and Supreme Court opinion did not address such fees.

This case is on remand from the Supreme Court, which directed an award of attorney fees and costs to claimant, Gerald Madill (Madill). The decision of the Supreme Court governs the award.

. . . Madill is entitled to an attorney fee based on the difference between 300 weeks of benefits at his partial disability benefit rate, and the total disability benefits to which Madill has been entitled since May 31, 1988, and to which he will be entitled during the remainder of his life expectancy. The presumption is that a reasonable basis for the attorney fee award is Madill's fee agreement with his attorney. See *Wight v. Hughes Livestock Co., Inc.* (1983), 204 Mont. 98, 664 P.2d 303. That agreement provides for a fee equal to twenty percent of those amounts recovered due to the attorney's efforts. That portion of the fee related to those amounts which have already been paid is due in a lump sum. Any fee related to periodic benefits which are owed to Madill in the future should be paid periodically.

*Madill v. State Fund*, 930 P.2d 665, 673, 54 St.Rep. 54 (1996).

Subsequent to the remand, Madill, through his attorney, filed various statements and memoranda setting out his claim for attorney fees and costs. The amounts claimed are as follows:

(1) Attorney fees on benefits already paid	\$23,456.13
(2) Costs set out in original statement	\$3,709.60
(3) Costs on appeal	\$350.75
(4) Costs set forth in a supplementary Application for Taxation of Costs, dated March 7, 1997 (This application includes the costs of appeal set forth separately in item (3))	\$894.55
(5) Attorney's fees with respect to the award of attorney fees and costs	\$9,055.24
TOTAL CLAIMED	\$37,466.27

Respondent has three objections to the amount claimed. First, it objects to \$87.50 in undocumented costs. Second, it objects to the double counting of the costs on appeal. Third, it objects to any award of attorney fees upon attorney fees. Its objections are **meritorious** and are **sustained**. It also objects to claimant's request for interest.

The first and second objections require little discussion. The \$87.50 is indeed undocumented and claimant can recover his costs only once. Therefore, the amounts requested by claimant must be reduced by \$438.25 (\$87.50 plus \$350.75.)

As to claimant's request for an award of attorney fees with respect to his successful pursuit of attorney fees, he cites no authority for such award other than general language concerning the net award concept. His request is **denied** for two reasons. First, the Supreme Court decision in this case governs the scope of any award made upon remand and that decision does not authorize the award of attorney fees on attorney fees. Second, the statute governing an award of attorney fees expressly states that claimant is entitled to attorney fees based on the "difference between the amount settled for or awarded and the amount tendered or paid . . ." § 39-71-612, MCA (1979); *Madill v. State Compensation Ins. Fund*, No. 96-117, slip op. at 13 (Mont. January 2, 1997). The language is plain on its face, permitting an award only on the settlement amounts. The Court cannot write in an additional provision for an additional award of fees based on the successful pursuit of the attorney fees themselves. § 1-2-101, MCA.

Accordingly, claimant is entitled to the following amounts:

(1) Attorney fees on benefits already paid	\$23,456.13
(2) Costs set out in original statement	\$3,622.10
(3) Costs on appeal	\$350.75
(4) Costs set forth in a supplementary Application for Taxation of Costs, dated March 7, 1997	\$543.80
(5) Attorney's fees with respect to the award of attorney fees and costs	<u>\$0.00</u>
TOTAL AWARDED	\$27,972.78

Claimant also requests 10% interest with respect to the judgment in this case, citing section 25-9-205, MCA. Reply to State Compensation Insurance Fund's Response to Petitioner's Request for Entry of Judgment at 4. Section 25-9-205, MCA, provides that interest on any judgment entered by a court of this state shall be payable at 10% per annum unless a contract between the parties provides for a different rate. The statute does not authorize pre-judgment interest, only interest on the judgment once it is entered and until the date it is paid in full. On its face it applies to the judgment of any court, and thus to the Workers' Compensation Court. However, the remedies provided under the Workers' Compensation Act are exclusive and do not authorize interest on a judgment of the Workers' Compensation Court. *Carlson v. Cain*, 216 Mont. 129, 133-34, 700 P.2d 607 (1985). Therefore, the request for interest is **denied**.

THEREFORE, IT IS HEREBY ADJUDGED AND DECREED that respondent, State Compensation Insurance Fund, shall pay claimant the sum of \$27,972.78 in a lump sum.

IT IS FURTHER ORDERED, as directed by the Supreme Court, that fees owed with respect to future periodic benefits shall be paid periodically in conjunction with the future payments. No interest shall accrue on these amounts.

DATED in Helena, Montana, this 28th day of May, 1997.

(SEAL)

/s/Mike McCarter

JUDGE

c: Mr. Gregory H. Warner

Mr. William O. Bronson

Submitted: April 29, 1997