IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

WCC No. 9502-7244

CINDY MINTYALA

Petitioner

vs.

STATE COMPENSATION INSURANCE FUND

Respondent/Insurer for

CENTRAL MONTANA MEDICAL CENTER

Employer.

ORDER DISMISSING PETITION

Claimant filed her Petition for Hearing on February 23, 1995, requesting retroactive reinstatement of temporary total disability benefits, a penalty, and attorney fees. On April 24, 1995, the respondent moved to dismiss on the ground that it had accepted liability for the retroactive benefits and would continue to pay benefits as a result of the January 31, 1995 back surgery performed on claimant.

The respondent's Motion to Dismiss came on for hearing on June 16, 1995. At that time respondent's counsel, Mr. Daniel J. Whyte, represented to the Court that temporary total disability benefits have been reinstated retroactively and paid up to date, and that the benefits are continuing at this time with no threat of cut-off. Mr. Whyte further represented that, according to the file, all medical bills received by the State Fund to date have been paid and that any outstanding bills relating to claimant's back surgery and condition will be paid.

Based on the representations of Mr. Whyte, which the Court deems binding on the respondent, and without any contradiction by claimant's counsel, Mr. Andrew J. Utick, I deem the claim for temporary total disability benefits to be moot.

The only remaining claims for relief are for attorney fees and a penalty. However, as a matter of law, the claimant is not entitled to either since the respondent has accepted liability for benefits prior to trial or judgment. *Paulsen v. Entech Inc.,* WCC No. 9209-5691 (February 22, 1994).

Therefore, IT IS ORDERED that the petition be and is hereby **dismissed**.

Dated in Helena, Montana, this 19th day of June, 1995.

(SEAL)

/S/ Mike McCarter
JUDGE

c: Mr. Andrew J. Utick
Mr. Daniel J. Whyte