

IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

1994 MTWCC 2

WCC No. 9206-6464

CONNECTICUT INDEMNITY

Petitioner

vs.

BRENDA NERPEL

Respondent. _____

ORDER DENYING RESPONDENT'S MOTION TO EXPAND ISSUES

The matter before the Court is a motion filed by respondent wherein she seeks to add new issues. The new issues relate to other claims for occupational disease. No opposition has been received from the petitioner, and the time for filing any opposing brief has expired. Notwithstanding the lack of opposition, the respondent has failed to show good cause for adding new issues.

This case was originally tried on March 8, 1993. A decision favorable to petitioner was entered on June 30, 1993. However, based on new and additional medical evidence, the Court granted respondent's motion for a new trial and the case was placed on the trial docket for the week of February 14, 1994.

The issues presented the first time around were whether the respondent suffered a compensable back injury on July 25, 1989 and whether the alleged injury proximately caused her current physical condition. Three other issues were also presented but all three related to the alleged July 25, 1989 injury.

In her present motion the respondent asks the Court to permit her to add new issues. The new issues relate to two occupational disease claims. One of those claims apparently involves bilateral carpal tunnel syndrome. The other is apparently for the same back condition which is the subject of the present litigation, and is being pursued as an alternative basis for compensation. According to respondent's brief, this latter occupational disease claim is presently pending before the Montana Department of Labor following the insurer's denial of the claim, but "has been placed in abeyance pending resolution of the claimant's claim under the injury act."

Respondent has failed to demonstrate good cause for expanding the issues in this case. The carpal tunnel claim appears to be wholly unrelated to petitioner's claims regarding her

back condition. Little time and expense would be saved by including the claim and its inclusion would likely delay a re-trial of the original petition. Inclusion of the second occupational disease claim appears premature. Primary jurisdiction for adjudicating that claim rests with the Department of Labor and Industry, see section 39-72-602, 611 and 612, MCA, and the administrative process has not been completed.

THEREFORE, IT IS HEREBY ORDERED that the respondent's motion to enlarge the issues in this case is **denied**.

DATED in Helena, Montana, this 3rd day of January, 1994.

(SEAL)

/s/ Mike McCarter

JUDGE

c: Ms. Susan J. Rebeck

Mr. Andrew J. Utick