

IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

1996 MTWCC 20A-2

WCC No. 9502-7230

CATHERINE E. SATTERLEE

Petitioner

vs.

LUMBERMEN'S MUTUAL CASUALTY COMPANY

Respondent/Insurer for

BUTTREY FOOD & DRUG.

ORDER DENYING MOTION FOR ORDER NUNC PRO TUNC

This matter is on remand from the Supreme Court, which reversed this Court's decision rejecting petitioner's claim that she is permanently totally disabled. Following remand, I entered the following judgment:

JUDGMENT IS HEREBY ENTERED FINDING that the claimant is presently permanently totally disabled as a result of her July 25, 1992 industrial injury, and ordering respondent Lumbermen's Mutual Casualty Company to pay claimant biweekly permanent total disability benefits until and unless claimant's disability status shall change. Claimant's requests for attorney fees and a penalty are **denied**.

In its Order the Supreme Court said:

[W]e reverse the judgment of the Workers' Compensation Court to the extent that it denied Satterlee's claim for **total disability benefits**, and remand this case to that court for entry of judgment in favor of the claimant, Catherine Satterlee. [Emphasis added.]

Satterlee v. *Lumbermen's Mutual Casualty Company*, No. 96-102, slip.op. at 13 (Mont. December 10, 1996). Seizing on the lack of any reference to "permanent" or "permanently," respondent moves to strike those words from the judgment on remand. (MOTION AND MEMORANDUM FOR ORDER NUNC PRO TUNC.)

The motion is without merit. The issue stated in the PRETRIAL ORDER was whether claimant is permanently totally disabled. There are only two types of total disability - permanent and temporary -- and no issue regarding temporary total disability was ever

raised. This Court's original decision addressed whether the claimant was **permanently** totally disabled and found that she was not. It was from that determination that claimant appealed and it was **that** determination which the Supreme Court **reversed**. In reversing this Court the Supreme Court determined I was in error when I denied **permanent** total disability benefits. Since it was error for me to deny **permanent** total disability benefits, it follows that I should have granted **permanent** total disability benefits. Respondent's hyper-technical motion takes the Supreme Court's directive out of context and ignores the very issue adjudicated. The motion is denied.

DATED in Helena, Montana, this 17th day of June, 1997.

(SEAL)

\s\ Mike McCarter
JUDGE

c: Mr. Bernard J. Everett

Mr. Thomas A. Marra

Date Submitted June 16, 1997