

IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

1994 MTWCC 60A

WCC No. 9310-6907

WCC No. 9310-6915

KIM WUNDERLICH

Petitioner

vs.

LUMBERMENS MUTUAL CASUALTY COMPANY

Respondent/Insurer for

BUTTREY FOOD & DRUG

Employer.

ORDER AMENDING FINDINGS OF FACT AND CONCLUSIONS OF LAW

The petitioner (claimant) has filed a Motion for Amendment to Findings of Fact and Conclusions of Law. In large part the motion reargues factual and legal issues already addressed and resolved in the Court's original decision. Two matters, however, require further clarification by way of an amendment to the decision.

The first matter concerns claimant's argument that he is entitled to an impairment award and that such an award was within the scope of his request for benefits under section 39-71-703, MCA (1985). The Court declined to make such an award. Finding of Fact No. 34 found, among other things, that the impairment rating was not provided until after the commencement of this litigation. Footnote No. 4 to that Finding of Fact states that claimant did not request the Court to order payment of an impairment award.

I have reviewed the original Petition for Hearing and the Proposed Findings of Fact and Conclusions of Law and still do not find any specific request for an impairment award. Nonetheless, claimant is correct that an impairment award is part of the benefits payable under section 39-71-703, and therefore a matter encompassed within his general request for benefits under that section.

However, claimant did not carry his burden of proof with respect to an impairment award. As found in Finding of Fact No. 34, I gave little weight to Dr. Stoebe's rating because of medical records indicating subsequent aggravations of claimant's back condition. The

claimant is entitled to an impairment award based on impairment suffered as a result of his industrial accident. I am not satisfied that the impairment rating given by Dr. Stoebe was limited to impairment suffered as a result of claimant's industrial accident. Moreover, as found in Finding of Fact No. 35, the claimant failed to persuade me that his mid- and upper-back complaints are the result of his industrial accident.

The second matter which requires clarification is two Findings of Fact which are numbered "36." The latter of the two should be numbered 37.

In light of the above discussion, IT IS HEREBY ORDERED that the last finding of fact be renumbered Finding of Fact No. 37. The renumbering has been accomplished by interlineation on the original decision. A copy of the interlined page is attached to this Order. It is FURTHER ORDERED that Finding of Fact No. 34 be amended to read as follows:

34. Dr. Stoebe provided a written impairment rating of 8 percent. However, he did not testify concerning the rating, and in light of other medical records, including Dr. Stoebe's own records, which indicate subsequent aggravations to claimant's mid- and upper-back conditions, the Court gives little weight to the impairment evaluation and is not persuaded that the rating is based on claimant's industrial accident.

As to the other requested amendments, the claimant's motion is **denied**.

DATED in Helena, Montana, this 6th day of September, 1994.

(SEAL)

/S/ Mike McCarter

JUDGE

c: Mr. Richard J. Martin

Mr. Thomas A. Marra

Enclosure