1995 MTWCC 80

IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

CRAIG DRAPER,

Petitioner, **WCC No. 9403-7009**

vs.

STATE COMPENSATION INSURANCE FUND,

Respondent/Insurer for

DONALD LYNN FELICIANO, d/b/a CLEAN RITE CLEANING,

Employer.

FILED
OCT 17 1995
OFFICE OF
WORKERS' COMPENSATION JUDGE
HELENA, MONTANA

ORDER FOR SPECIAL TRIAL SETTING

This case was filed by petitioner/claimant a year and a half ago on March 2, 1994. Through his petition, claimant sought reinstatement of temporary total disability benefits and payment of surgical expenses. The matter was initially set for trial in May, 1994, but the original trial date was vacated at claimant's request. MOTION TO CONTINUE (April 12, 1994). The matter was then reset for trial during the week August 29, 1994. ORDER RESETTING SCHEDULING ORDER (April 15, 1994).

On August 18, 1994, the day scheduled for a final pretrial conference, the State Fund moved to stay proceedings. The motion was based on the filing of a criminal fraud action against claimant and the issuance of a warrant for his arrest. The criminal complaint alleged that claimant had defrauded the State Fund of over $3,199.92. The affidavit of probable cause filed in connection with the criminal action alleged that claimant was working while receiving temporary total disability benefits.

On the same day as the filing of the motion, the Court conferred with counsel. During the conference the claimant's attorney received a telephone call informing him that the claimant had just been arrested. In light of the events of the day, I vacated the trial setting so that claimant's counsel could confer with his client to determine how to proceed in light of the criminal charges and to enable counsel for the State Fund to determine what additional information was available concerning the case. ORDER VACATING TRIAL (August 18, 1994.) I deferred ruling on the State Fund's request for an indefinite stay and directed counsel to set up another conference with the Court in approximately two weeks to discuss whether or when a new trial date should be set. *Id.*

On October 13, 1994, a further conference was held with counsel. At that time counsel entered into a stipulation deferring claimant's request for benefits and agreeing that the Court could

decide claimant's entitlement to temporary electrode implantation surgery based on letters of his treating physician. ORDER FOR MEDICAL PROCEDURE (October 13, 1994). After reviewing the letters, the Court ordered the State Fund to pay for the temporary implantation and further ordered that the "proceedings in this case shall be held in abeyance pending a follow-up report by the parties or a specific request on the part of one of the parties." *(Id.)*

Nothing transpired thereafter until April 7, 1995, at which time the claimant filed a motion requesting that a scheduling order be issued. MOTION OF CLAIMANT FOR SCHEDULING ORDER (April 7, 1995). On April 10, 1995, a new scheduling order was issued. A trial was set for the week of August 28, 1995, in Helena, Montana.

On August 7, 1995, the State Fund filed a MOTION FOR STAY-MOTION TO CONTINUE. The Court was then advised that claimant did not object to the motion for continuance but did object to the motion to indefinitely stay the proceedings. (August 24, 1995 Memorandum of Clarice V. Beck, Hearing Examiner.) The August 28, 1995 trial setting was therefore vacated, ORDER VACATING TRIAL WITHOUT DATE (August 24, 1995), and the Court now considers the State Fund's request for an indefinite stay.

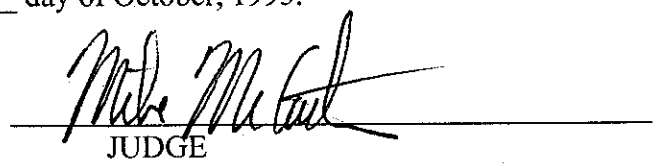
According to the State Fund's motion, the trial of the criminal matter was originally set for April 1995, but has been reset for November 1995. While the Court has not received any written response by claimant to the motion, it is clear from the history of this case that the claimant is not insisting that a trial in the Workers' Compensation Court precede the criminal trial. On the other hand, his orally communicated opposition to the motion for a stay indicates that he opposes an indefinite postponement of the present case.

I decline to indefinitely postpone a trial in this matter. Although the 1995 legislature expressly authorized this Court to stay its proceedings where a criminal prosecution is pending, a stay is not automatic. § 39-71-2911, MCA (1995). A year and a half has passed since the filing of claimant's petition. While the Court's schedule does not permit it to hear and decide his case by or before November, I will entertain a request to specially set the matter in Helena in December or January. Therefore,

IT IS HEREBY ORDERED that if claimant wishes the trial in this matter to be reset for December or January, he shall notify the Court within fourteen days of this Order. Otherwise, this case shall be put on the next regular Helena docket.

Dated in Helena, Montana, this 17th day of October, 1995.

(SEAL)



JUDGE

c: Mr. James G. Hunt
Mr. Daniel J. Whyte