

IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

1995 MTWCC 25A

WCC No. 9303-6721

---

STEVEN K. BURGLUND

Petitioner

vs.

LIBERTY MUTUAL NORTHWEST INSURANCE COMPANY

Respondent.

---

*Affirmed Burglund v. Liberty Mutual Northwest Ins. Co.,  
279 Mont. 298 (1996)*

ORDER GRANTING STAY OF EXECUTION

**Summary:** Where parties both appealed judgment awarding claimant twenty percent permanent partial disability benefits, Respondent requests stay of execution pending appeal. Claimant opposes the stay but agrees to waive any requirement that Respondent post bond.

**Held:** Stay granted.

**Topics:**

**Constitutions, Statutes, Regulations and Rules: Montana Code Annotated: section 39-71-2910(2), MCA (1989).** Where parties both appealed judgment awarding claimant twenty percent permanent partial disability benefits, Respondent requests stay of execution pending appeal. Claimant opposes the stay but agrees to waive any requirement that Respondent post bond. Stay granted.

**Appeals (To Supreme Court): Stay of Execution of Judgment.** Where parties both appealed judgment awarding claimant twenty percent permanent partial disability benefits, Respondent requests stay of execution pending

appeal. Claimant opposes the stay but agrees to waive any requirement that Respondent post bond. Stay granted.

**Appeals (To Supreme Court): Supersedeas Bond.** Where parties both appealed judgment awarding claimant twenty percent permanent partial disability benefits, Respondent requests stay of execution pending appeal. Claimant opposes the stay but agrees to waive any requirement that Respondent post bond. Stay granted.

The respondent in this matter has cross-appealed the judgment awarding claimant twenty (20%) percent permanent partial disability benefits. It requests a stay of execution pending resolution of the appeal.

Section 39-71-2910(2), MCA (1989), governs the request. The subsection provides:

The appellant may request of the workers' compensation judge or the supreme court, upon service of a notice of appeal, a stay of execution of the judgment or order pending resolution of the appeal. The appellant may request a stay by presenting a supersedeas bond to the workers' compensation judge and obtaining his approval of the bond. The bond must have two sufficient sureties or a corporate surety as authorized by law. A court granting a stay may waive the bond requirement. The procedure for requesting a stay and posting a supersedeas bond must be the same as the procedure in Rule 7(b), Montana Rules of Appellate Procedure.

Rule 7(b), Mont.R.App.P., which is referenced in the statute as governing the procedure for requesting a stay and posting a supersedeas bond, provides:

Upon service of notice of appeal, if the appellant desires a stay of execution, the appellant must, unless the requirement is waived by the opposing party, present to the district court and secure its approval of a supersedeas bond which shall have two sureties or a corporate surety as may be authorized by law. The bond shall be conditioned for the satisfaction of the judgment or order in full together with costs, interest, and damages for delay, if for any reason the appeal is dismissed or if the judgment or order is affirmed, and to satisfy in full such modification of the judgment or order and such costs, interests, and damages as the supreme court may adjudge and award. When the judgment or order is for the recovery of money not

otherwise secured, the amount of the bond shall be fixed at such sum as will cover the whole amount of the judgment or order remaining unsatisfied, costs on the appeal, interest, and damages for delay, unless the district court after notice and hearing and for good cause shown fixes a different amount or orders security other than the bond. When the judgment or order determines the disposition of property in controversy as in real actions, replevin, and actions to foreclose mortgages, or when such property is in the custody of the sheriff or when the proceeds of such property or a bond for its value is in the custody or control of the court, the amount of the supersedeas bond shall be fixed at such sum only as will secure the amount recovered for the use and detention of the property, the costs of the action, costs on appeal, interest, and damages for delay. On application, the supreme court in the interest of justice may suspend, modify, restore, or grant any order made under this subdivision.

Lacking in section 39-71-2910(2), MCA, and in Rule 7(b), Mont.R.App.P., is any reference to the discretion, if any, of the Workers' Compensation Court or the Supreme Court to deny a stay where the appellant satisfies the supersedeas bond requirement. However, the purpose of the provisions is to protect the appellant's right to appeal while assuring the prevailing party that the judgment will be paid should it be affirmed. Where there is a levy on an execution prior to resolution of the appeal, there is no assurance that the amount collected from the levy will be recovered if the appellant is successful. Thus, stays should be routinely granted. In civil proceedings in district court, stays are routinely granted upon compliance with the bond requirement. The language in section 39-71-2910(2), MCA, does not indicate that stays in the Workers' Compensation Court should be granted on any different basis than in district court cases.

In this case the respondent represents that the petitioner "has agreed to waive the bond requirement" if a stay is granted. (Motion to Stay and Supporting Brief at 2.) While opposing a stay, the petitioner does not repudiate that representation. (See Opposition to Motion to Stay Judgment and Brief in Support of Opposition to Motion to Stay Judgment.) In light of this agreement, the Court, for purposes of the motion, must deem the bond requirement satisfied.

The petitioner has filed an affidavit indicating that the equity in his house and personal property are sufficient to secure repayment of any judgment. However, he has no liquid assets and repayment would require the sale of his house or substantial personal property.

Finding good cause,

IT IS HEREBY ORDERED that the execution of judgment in this matter is **stayed**.

Dated in Helena, Montana, this 5th day of June, 1995.

(SEAL)

/s/ Mike McCarter  
\_\_\_\_\_  
JUDGE

c: Mr. Darrell S. Worm  
Mr. Larry W. Jones