IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

1995 MTWCC 75

WCC No. 9505-7308

WILLIAM BURGAN

Petitioner

vs.

NATIONWIDE INSURANCE COMPANY

Respondent/Insurer for

CENEX

Employer.

FINDINGS OF FACT, CONCLUSIONS OF LAW AND JUDGMENT

Summary: Claimant sought permanent partial disability benefits pursuant to sections 39-71-705 through -708, MCA (1985).

Held: The permanent partial disability benefits available under sections 39-71-705 through -708, MCA (1985), commonly referenced as "indemnity benefits," seek to indemnify the injured worker for "possible" loss of future earning capacity, rather than any "actual" loss of earning capacity. These benefits are based on a schedule of injuries, but in the case of a non-scheduled injury, such as the back injury at issue here, the maximum number of weeks of benefits is 500 weeks, with the award for less than a total loss to "be proportionate to loss or loss of use." §39-71-706(1), MCA (1985). In determining disability, the Court must consider the claimant's age, education, work experience, pain and disability, actual wage loss, and possible loss of future earning capacity. Considering all these factors, the Court finds claimant entitled to 250 weeks of permanent partial disability benefits at the maximum rate. Claimant is also entitled to attorneys fees and costs, as well as a penalty under section 39-71-2907, MCA (1985) because the claimant's right to some amount of permanent partial disability benefits should have been patently clear to the insurer, but it made no offer to settle claims for permanent partial disability benefits, but tied offers to settle to claimant's relinquishment of all claims for TTD and PTD benefits.

Topics:

Constitutions, Statutes, Regulations and Rules: Montana Code Annotated: sections 39-71-705 through -708, MCA (1985). The permanent partial disability benefits available under sections 39-71-705 through -708, MCA (1985), commonly referenced as "indemnity benefits," seek to indemnify the injured worker for "possible" loss of future earning capacity, rather than any "actual" loss of earning capacity. These benefits are based on a schedule of injuries, but in the case of a non-scheduled injury, such as the back injury at issue here, the maximum number of weeks of benefits is 500 weeks, with the award for less than a total loss to "be proportionate to loss or loss of use." §39-71-706(1), MCA (1985). In determining disability, the Court must consider the claimant's age, education, work experience, pain and disability, actual wage loss, and possible loss of future earning capacity.

Constitutions, Statutes, Regulations and Rules: Montana Code Annotated: sections 39-71-2907, MCA (1985). Claimant is also entitled to a penalty under section 39-71-2907, MCA (1985) because the claimant's right to some amount of permanent partial disability benefits should have been patently clear to the insurer, but it made no offer to settle claims for permanent partial disability benefits, but tied its offers to relinquishment of all claims for TTD and PTD benefits.

Benefits: Permanent Partial Disability Benefits: Lost Earning Capacity. The permanent partial disability benefits available under sections 39-71-705 through -708, MCA (1985), commonly referenced as "indemnity benefits," seek to indemnify the injured worker for "possible" loss of future earning capacity, rather than any "actual" loss of earning capacity. These benefits are based on a schedule of injuries, but in the case of a non-scheduled injury, such as the back injury at issue here, the maximum number of weeks of benefits is 500 weeks, with the award for less than a total loss to "be proportionate to loss or loss of use." §39-71-706(1), MCA (1985). In determining disability, the Court must consider the claimant's age, education, work experience, pain and disability, actual wage loss, and possible loss of future earning capacity.

Penalties: Insurers. Claimant is also entitled to a penalty under section 39-71-2907, MCA (1985) because the claimant's right to some amount of permanent partial disability benefits should have been patently clear to the insurer, but it made no offer to settle claims for permanent partial disability benefits, but tied its offers to relinquishment of all claims for TTD and PTD benefits.

The trial in this matter was held on August 15, 1995, in Billings, Montana. Petitioner, William Burgan (claimant), was present and represented by Mr. Patrick R.

Sheehy. Respondent, Nationwide Insurance Company (Nationwide), was represented by Mr. Neil S. Keefer. The claimant and William Strauch testified at trial. In addition, the depositions of William Shaw, M.D. and claimant were submitted for the Court's consideration. Exhibits 1 through 9 were admitted by stipulation.

Issues Presented: Claimant seeks permanent partial disability benefits pursuant to sections 39-71-705 through 708, MCA (1985). He also seeks attorney fees, costs and a penalty.

Citations to record: A transcript of trial testimony has not been prepared. Therefore, no citation is made where the basis of the finding is testimony introduced at trial. Also, since claimant testified both at trial and by deposition, and there is substantial overlap in that testimony, I have not specifically cited to his deposition.

Having considered the Pretrial Order, the testimony presented at trial, the demeanor and credibility of the witnesses, the depositions, the exhibits, and the arguments of the parties, the Court makes the following:

FINDINGS OF FACT

1. Claimant is 46 years old. He is married and resides in Billings, Montana, with his wife and young child.

2. Claimant is a high school and college graduate. He received a Bachelor of Arts degree in business and economics in 1973.

3. After graduating from college, claimant went to work for Cenex at its Laurel, Montana refinery in March of 1974. He has continued to work at the Laurel refinary since that time (over 22 years). He has no other significant employment history and has never utilized his college degree in his employment.

4. Claimant was initially hired by Cenex in an entry level position as a laborer. After two years in that position he bid into the position of assistant operator in the crude unit and, except for a few brief periods, has been employed in that position since that time.

5. The crude unit at the Laurel refinery is split into two sides which are operated by four workers. A console operator monitors computer readings from both sides of the unit. A zone operator supervises all work on both sides of the unit. Finally, there are two assistant zone operators (assistant operators), one on each side of the unit.

6. The assistant operators perform much of the physical work involved in the operation of the crude unit. That work includes climbing ladders and stairs on tanks and towers to

read gauges, checking equipment, and adjusting valves. Some of the towers are over 100 feet high. From 15% to 100% of a shift may involve climbing. The assistant operator opens and closes valves which are 16 to 18 inches in diameter and wheels which are up to 30 inches in diameter. The valves are especially difficult to turn in cold weather and some require the use of a 36-inch pipe wrench to obtain adequate leverage to turn them. The job also involves substantial walking, and on occasion the use of a bicycle to get from place to place. Walking is typically on a concrete surface. Most of the time the assistant operator is on his feet. The assistant operator must also respond quickly to emergency situations. Those situations may require dragging heavy hoses and lifting heavy equipment in tight and awkward places.

7. The zone operator supervises the two assistant operators. The zone operator may also perform some of the physical work.

8. On August 15, 1986, while working as an assistant operator, claimant fell off a pipe while working at the Laurel refinery and injured his lower back.

9. Following his fall claimant was initially treated by a chiropractor. He was then examined by Dr. William Shaw, who specializes in occupational medicine, on September 23, 1986. (Ex. 3 at 19.) Dr. Shaw noted that claimant "had a radiculopathy, most likely at the L5 or S1 root." (Shaw Dep. at 6.)

10. In early October 1986, claimant was evaluated at the Billings Deaconess Hospital by Dr. Robert C. Wood. Dr. Wood diagnosed a right lumbar nerve root contusion. (Ex. 3 at 21.)

11. Claimant was off work for a short time, then returned to light-duty work at the recommendation of Dr. Shaw. He returned to full duty in early December 1986.

12. Despite his full return to work, claimant continues to have low-back pain and right leg pain consistent with a right L5 radiculopathy. On April 10, 1987, Dr. Shaw evaluated claimant and found him to be at maximum medical healing but with an 8% whole person impairment rating based on his injury. (Shaw Dep. at 11, 15.) Dr. Shaw's prognosis at that time was:

> I would anticipate the condition is permanent and will remain stable though there is the possibility of progression. However this is unlikely. At this time, I would not restrict him medically for protective reasons. I believe he can safely pursue any activity he can tolerate. However, I anticipate that there will be times when he has significant enough discomfort that his condition will warrant his avoiding heavy lifting or repetitive bending or overhead work. I

do not anticipate that those restrictions will be permanent unless his condition changes significantly.

(Ex. 3 at 16.)

13. Concerned about his condition, claimant sought a second opinion from Dr. James D. Hinde on June 5, 1987. Dr. Hinde is a physiatrist. He concurred in the diagnoses of Drs. Shaw and Wood and encouraged claimant to continue with the conservative course of treatment they recommended. (Ex. 3 at 30.)

14. Since his 1986 injury, the claimant has continued to experience low-back pain radiating into his right leg. Although he has continued working in his heavy-labor position, he has experienced increased pain over the years. During the first couple of years following his injury, claimant was generally able to cope with his pain without medication. He testified that he was able to "lean into the pain, basically, instead of backing away from it." (Burgan Dep. at 45.) He has suffered periodic flare-ups of his condition, usually brought on by increased activity. Typically, the flare-ups last three or four days. Recently the flare-ups have occurred more frequently and with greater intensity. Claimant now has no pain free days. His pain level is higher when he arises in the morning than it was during the first couple years after the injury. The pain is across his lower back at the belt line, down his right leg, across his foot and into the big toe. Sometimes he has pain in his left leg. Claimant testified at trial at times it feels as though the toe on his right foot is being shot off with a shotgun.

15. Over the years, the claimant has dealt with his pain by taking analgesics, as needed, although he does not like to take medication. He also attempts to use proper body mechanics when performing labor and walks up to 12 hours a week to maintain his physical condition.

16. In May of 1995, the claimant suffered a particularly severe flare-up of his condition after working long hours while standing on concrete. He sought medical care and was first examined on May 4, 1995, by Ronald K. Handlos, a physician's assistant who works for Dr. Shaw. (Ex. 3 at 3-4.) Mr. Handlos prescribed an additional analgesic, Ultram, and arranged for an epidural injection of cortisone which was administered on May 5. (This procedure provides an application of anti-inflammatory around the general area of the irritated nerve root.) Handlos also took claimant off work. (Burgan Dep. at 21, Shaw Dep. at 36-37.)

17. Dr. Shaw saw claimant on May 8, 1995, and at that time approved claimant's return to work on a half-day basis with lifting, bending, and posture restrictions. (Ex. 3 at 1.) Dr. Shaw described the flare-up on this occasion as "an exacerbation that was worse than most of them." (Shaw Dep. at 36.)

18. On May 23, 1995, Dr. Shaw again saw claimant and ordered a selective nerve root block, which is an injection of cortisone directly into the sheath around the nerve root itself. The nerve root block was performed on May 24 by Dr. Brian Harrington. Claimant continued working at a light-duty level. (Shaw Dep. at 38-39, Burgan Dep. at 22.)

19. The flare-up resolved and claimant returned to full duty on June 8, 1995.

20. Claimant takes Darvocet when his back condition flares up. Darvocet is a "centrally acting narcotic analgesic agent." Physicians' Desk Reference at 1216 (1994 Ed.). Claimant takes up to six to ten Darvocet pills a month. However, he takes them only when absolutely necessary because they make him groggy and depressed, and make his interpersonal relationships more difficult.

21. Claimant is now taking approximately 15 Ibuprofen (3000 milligrams) daily for pain relief. (Burgan Dep. at 45.) Lacking a doctor's authorization, the recommended maximum dosage for non-prescription, over-the-counter Ibuprofen is 1200 milligrams daily. Physicians' Desk Reference for Nonprescription Drugs at 735 (1995 Ed.).

22. Claimant's testimony concerning his pain was credible and convincing. His pain complaints are well documented in medical records. Moreover, Dr. Shaw testified that claimant shows no evidence of exaggerating his pain. (Shaw Dep. at 10.) Respondent challenged the level of pain reported by claimant at trial by noting that he has not complained of pain to his supervisors. I find that argument unpersuasive in light of claimant's consistent report of pain to Dr. Shaw and other medical providers, his desire to continue working, and my perception that he is not a complainer. If anything, claimant minimizes his pain.

23. Dr. Shaw has been claimant's treating physician since his August 1986 injury and is in the best position to predict the future course of his condition. Dr. Shaw observed that "[t]he past is generally the best predictor of the future." He expects that claimant will continue to have episodes of pain and that some of those episodes will be sufficiently severe to medically restrict his activities. Claimant's daily back pain is likely to continue for the foreseeable future. (Shaw Dep. at 41-42.)

24. Dr. Shaw estimates that there is a 20 to 30% chance claimant will require back surgery some time in the future. (Shaw Dep. at 29-30.) Claimant wants to avoid surgery if at all possible and Dr. Shaw agrees that surgery should be used only as a last resort. He has advised claimant to pursue conservative treatment for as long as possible. (Shaw Dep. at 43-45.) However, claimant testified he is willing to undergo surgery if on a constant basis his pain reaches the level it was during his recent flare-up in May 1995. I believe him.

25. Claimant likes his job and does not intend to seek a lighter-duty job as long as he can continue to perform his present job. If necessary, however, he will take a lighter-duty job.

26. The claimant has worked for short periods as a zone operator and a console operator. In 1993, he bid and obtained the zone operator position. His tenure in that position was personally stressful because of a number of unusual incidents in which he was involved. In late 1993, he successfully bid on a console operator position. He found the console operator unsatisfactory because he "couldn't handle . . . psychologically" being enclosed in a room for eight hours sitting in front of a console. (Burgan Dep. at 47.) He bid back to an assistant operator position.

27. Claimant also worked for a short time in the refinery's laboratory. The claimant did not like it. He also did not bid it and was assigned the job only on a temporary basis. The job is not physically demanding. However, claimant found the lab job difficult because it required the he stand for long periods of time on concrete.

28. Claimant also identified a warehouse position as a less physically demanding job which he might bid, if he can no longer perform his present job.

29. Claimant enjoys his present job and intends to remain in it until retirement if he is able.

30. Because he bid into the zone operator and console positions in 1993, claimant is ineligible to bid into any other job for the next one and a half years. However, should he be unable to perform his present job, the union contract with Cenex would allow a waiver of that ineligibility. Claimant has high seniority and could likely obtain a less physically demanding position if necessary.

31. In addition to bidding rights for lighter-duty jobs, the agreement between Cenex and the union provides claimant with approximately one year of full pay in the event he should be unable to work due to disability. The agreement, however, is renegotiated periodically. It does not guarantee the benefit beyond the immediate contract period nor does it guarantee claimant continued employment until retirement.

32. Based on Dr. Shaw's impairment rating, Nationwide owed claimant 40 weeks of p-ermanent partial disability benefits. It paid 36 of those 40 weeks. Its failure to pay the full 40 weeks, however, appears to be due to inadvertence and it has agreed to pay the remaining four weeks of benefits.

33. Since his injury, the claimant has suffered only a minimal wage loss due to time lost during flare-ups of his back condition since the time of his injury.

34. Claimant's wage at the time of his injury was $14.66 per hour. His present wage is $19.93 per hour. (Burgan Dep. at 6.)

35. Claimant presented no vocational testimony concerning his earning capacity if he loses his job with Cenex. He also did not present evidence that lighter-duty positions at Cenex pay less than his current position.

36. With his education and background, management positions at Cenex may be available to claimant. However, he is not interested in those positions and there is no certainty that he can obtain a management position.

37. Nationwide offered to settle claimant's permanent partial disability for 125 weeks of benefits, or $18,687.50. The offer was made on August 2, 1995. It was increased to 130 weeks, or $19,435.00, after the deposition of Dr. Shaw on August 4, 1995. Then, on August 11, 1995, Nationwide made a final offer of 150 weeks, or $22,425.00. All offers were made with the proviso that claimant sign a Full and Final Compromise Settlement releasing Nationwide from any further obligation for benefits due now or in the future, and thus encompassed claimant's possible future entitlement to temporary and permanent total disability benefits. Nationwide did not offer to settle only the claim for permanent partial disability benefits.

38. Nationwide's refusal to offer any amount to solely settle claimant's claim for permanent partial disability benefits was unreasonable. Based on the evidence presented in this case, it is clear that claimant is entitled to something. But Nationwide offered nothing unless claimant gave up his right to, in the future, pursue additional temporary total and/or permanent total disability benefits. Claimant reasonably rejected the offer since his future is plainly uncertain. His back condition clearly may degenerate and require surgery, thereby resulting in his return to temporary total disability status. Further degeneration may also result in his inability to work, although that is less likely.

CONCLUSIONS OF LAW

1. The law in effect at the time of the injury governs the claimant's entitlement to benefits. *Buckman v. Montana Deaconess Hospital,* 224 Mont. 318, 730 P.2d 380 (1986). Thus, the 1985 version of the Workers' Compensation Act governs this case.

2. The claimant has the burden of proving by a preponderance of the evidence that he is entitled to compensation. *Ricks v. Teslow Consolidated,* 162 Mont. 469, 512 P.2d 1304 (1973)*; Dumont v. Wicken Bros. Construction Co.,* 183 Mont. 190, 598 P.2d 1099 (1979).

3. Claimant is seeking indemnity benefits pursuant to sections 39-71-705 through 708, MCA (1985). The permanent partial disability benefits available under sections 39-71-705

through 708, MCA (1985), are commonly referred to as "indemnity benefits." They are based on the schedule of injuries set forth in section 39-71-705, MCA (1985). That schedule sets forth the maximum number of weeks of benefits payable on account of the loss of limbs and other body parts. In the case of a non-scheduled injury, such as a back injury, the maximum number of weeks of benefits is 500 weeks. § 39-71-706, MCA. Benefits for less than total loss of a scheduled part "shall be proportionate to loss or loss of use." § 39-71-706(1), MCA (1985). The purpose of the indemnity benefits is to indemnify the injured worker for "possible" loss of future earning capacity, rather than any "actual" loss of earning capacity. *Stuker v. Stuker Ranch,* 251 Mont. 96, 98, 822 P.2d 105, 107 (1991).

4. Indemnity benefits are computed by determining a percentage of disability and multiplying the percentage times the maximum number of weeks specified in the schedule. *McDanold v. B.N. Transport, Inc.,* 208 Mont. 470, 679 P.2d 1188 (1984). In determining disability, the Court must consider the claimant's age, education, work experience, pain and disability, actual wage loss, and possible loss of future earning capacity. *Hartman v. Staley Continental,* 236 Mont. 141, 145, 768 P.2d 1380, 1383 (1989)*; accord, Holton v. F.H. Stoltze Land and Lumber Co.,* 195 Mont. 263, 271, 637 P.2d 10, 14 (1981).

5. I have evaluated the disability factors as follows:

EDUCATION: Claimant has a high school education and a college degree in business and economics. Claimant obtained his college degree in 1973, more than 20 years ago. Because he obtained his degree so long ago and has never worked in a job which utilized his education, it is doubtful that his college degree has any specific application in the job market. On the other hand, his education demonstrates his intelligence and capacity to learn. The type of work he has chosen to pursue does not require the level of education he has achieved but his education is a positive factor in his employability.

WORK HISTORY: With the exception of some part-time employment while he was in college, claimant's entire work history is with Cenex at its Laurel refinery. Claimant's job is a heavy, physically demanding position and he is presently able to perform it. However, there is a very real possibility that he may become unable to perform this position in the future. If he is unable to perform his current job, claimant has a reasonable prospect of employment in a lighter-duty position at Cenex, especially as a console operator or warehouseman, and less likely as a laboratory technician. However, there is no guarantee that he would be able to perform those positions or that they would be immediately available to him.

PAIN & DISABILITY: Claimant suffers a significant degree of pain on a daily basis. His recent exacerbation is evidence of a decline in his condition and the likelihood of

increased pain in the future. Dr. Shaw indicated that, at a minimum, the claimant will be medically restricted from work activities on occasion in the future. Although claimant has admirably coped with his pain, he may not always be able to do so. There is a significant possibility that he will require surgery in the future.

ACTUAL AND FUTURE WAGE LOSS: Claimant failed to prove that he has suffered any actual wage loss, or that he will suffer wage loss in the future. There was no vocational testimony in this case. At present, he is working in the same position he held at the time of his injury and is earning more money than he made before his injury. He has seniority and some job security. On the other hand, the deterioration of his back condition raises serious questions as to how long he will be able to continue working in his present condition. Also, he is already employed in a high-wage position. Outside of Cenex, claimant is less likely to be able to find such high wage employment.

AGE: Claimant is 46. His age works as a disadvantage should he become unable to perform his present job. "[T]he longer the person is on the labor market the more economic losses he will suffer, all other factors being equal. However, a younger individual who can be retrained or has transferable skills will be able to ameliorate some of his post-injury earning losses in the long run through additional training." *Carroll v. Wells Fargo Armored Serv.,* 245 Mont. 495, 500, 802 P.2d 618, 621 (1990). The claimant's entire work history is at Cenex. While he has a college education, it is doubtful that it is the springboard for employment at the high wage he is presently earning.

6. Determining the indemnity award due claimant in this case is difficult. Other injured workers with equivalent injuries would have quit long ago. Claimant is a highly motivated individual who is toughening it out. He likes his job and I am convinced that he will keep it as long as he possibly can. His motivation and toughness appear to work against him when considering his entitlement to permanent partial disability benefits. His failure to present vocational evidence concerning the jobs he might do and the wages they might pay if he can no longer perform heavy labor also make my determination more difficult. Ultimately, there are no mathematical criteria for determining entitlement in a case such as this.

7. Having considered and weighed all of the evidence in this case, I find that claimant is entitled to 250 weeks of permanent partial disability benefits at the maximum rate.

My decision in this matter may well be characterized, and properly so, as "splitting the baby." But I see no other reasonable alternative. A college education is no guarantee of high earnings. Over the past two years, I have heard vocational testimony fixing the prospective earnings of many college graduates at far below the claimant's wages. Moreover, claimant's education is too stale to qualify him for jobs in the field of his education. On the other hand, his education, intelligence, and current job enhance his

employment prospects, including prospects for management positions. While claimant genuinely does not want to work in management or at other lighter-duty laboring positions, he is a survivor and I am convinced that he will pursue and accept whatever job he can perform to enable him to support himself and his family. But, ultimately, there are many uncertainties, and it is probable that he will have to confront those uncertainties. I am convinced that his back condition will continue to deteriorate and that he will most likely have to confront surgery and/or a lighter-duty job.

8. The claimant is entitled to an award of attorney fees and costs. § 39-71-611, MCA (1985). Both the Pretrial Order and Respondent's Proposed Findings of Fact and Conclusions of Law reflect respondent's position that claimant is not entitled to permanent partial indemnity benefits. In *Carroll v. Wells Fargo Armored Service,* 240 Mont. 151, 156, 783 P.2d 387, 391 (1989) and *Hartman v. Staley Continental,* 236 Mont. 141, 148, 768 P.2d 1380, 1385 (1989), the Supreme Court held that an insurer's assertion that a claimant is not entitled to permanent partial disability benefits amounts to a denial of disability entitling claimant to attorney fees under section 39-71-611, MCA (1985). Moreover, in this case, the offer of settlement made by Nationwide was expressly contingent upon claimant's releasing all future claims for temporary and permanent total disability benefits. Nationwide never made an offer just to settle claimant's permanent partial disability entitlement. By tying its offer to a release of all possible benefits, Nationwide made no offer at all concerning claimant's permanent partial disability claim.

9. Claimant is entitled to a penalty. Section 39-71-2907, MCA (1985), provides:

> **39-71-2907. Increase in award for unreasonable delay or refusal to pay.** When payment of compensation has been unreasonably delayed or refused by an insurer, either prior or subsequent to the issuance of an order by the workers' compensation judge granting a claimant compensation benefits, the full amount of the compensation benefits due a claimant, between the time compensation benefits were delayed or refused and the date of the order granting a claimant compensation benefits, may be increased by the workers' compensation judge by 20%. The question on unreasonable delay or refusal shall be determined by the workers' compensation judge, and such a finding constitutes good cause to rescind, alter, or amend any order, decision, or award previously made in the cause for the purpose of making the increase provided herein.

Nationwide's liability for some amount of permanent partial disability benefits should have been patently clear to it. However, it made no offer to settle the claim for permanent partial disability benefits. Rather, Nationwide tied its settlement offer to claimant agreeing to give up his right to make future claims for temporary total and permanent total disability benefits.

These potential claims are not insignificant, since Dr. Shaw estimated claimant's need for future surgery at 30% and claimant's condition appears to be degenerating.

JUDGMENT

1. Under sections 39-71-703 to 39-71-708, MCA (1985), the claimant is entitled to permanent partial disability benefits of $143 for 250 weeks. Those benefits total $35,750 (*$143 x 250)* and shall be paid in a lump sum.

2. Pursuant to section 39-71-611, MCA (1985), claimant is entitled to attorney fees in an amount to be determined by the Court.

3. Pursuant to section 39-71-611, MCA (1985), claimant is entitled to costs in an amount to be determined by the Court. Claimant shall submit an affidavit concerning costs within 10 days of the date of this decision. Respondent shall then have 10 days in which to file its objections, if any, to the claimed costs.

4. Pursuant to section 39-71-2907, MCA (1985), the respondent shall pay a 20% penalty on the 250 weeks of permanent partial disability benefits due claimant.

5. This JUDGMENT is certified as final for purposes of appeal pursuant to ARM 24.5.348.

6. Any party to this dispute may have 20 days in which to request a rehearing from these Findings of Fact, Conclusions of Law and Judgment.

DATED in Helena, Montana, this 4th day of October, 1995.

(SEAL)

/s/ Mike McCarter

JUDGE

c: Mr. Patrick R. Sheehy
Mr. Neil S. Keefer