

IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

1995 MTWCC 31

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 DENYING PETITION FOR NEW TRIAL

Summary: Petition for new trial or, in the alternative, motion to amend Court's Findings of Fact and Conclusions of law, alleges that claimant has experienced a decline in his condition since trial, is now off work, and may not be able to return to his United Parcel Service Job.

Held: While the Court will not simply reopen a case because claimant alleges subsequent developments, section 39-71-2909, MCA, grants the Court jurisdiction to consider subsequent changes in a claimant's disability. Claimant's remedy is to file a new petition.

Topics:

Disability: Change In. While the Court will not simply reopen a case because claimant alleges subsequent developments post-trial, section 39-71-2909, MCA, grants the Court jurisdiction to consider subsequent changes in a claimant's disability. Where claimant alleges decline in his condition since trial, including present inability to work and possible inability to return to his time-of-injury job, his remedy is to file a new petition.

Procedure: Post-Trial Proceedings: New Trial: Generally. While the Court will not simply reopen a case because claimant alleges subsequent developments post-trial, section 39-71-2909, MCA, grants the Court jurisdiction to consider subsequent

changes in a claimant's disability. Where claimant alleges decline in his condition since trial, including present inability to work and possible inability to return to his time-of-injury job, his remedy is to file a new petition.

Procedure: Post-Trial Proceedings: Reconsideration. While the Court will not simply reopen a case because claimant alleges subsequent developments post-trial, section 39-71-2909, MCA, grants the Court jurisdiction to consider subsequent changes in a claimant's disability. Where claimant alleges decline in his condition since trial, including present inability to work and possible inability to return to his time-of-injury job, his remedy is to file a new petition.

Petitioner has filed a petition for new trial and alternative motion to amend the Court's findings of fact and conclusions of law. The petition states that since the time of the trial the petitioner has experienced a decline in his condition, is now off work, and may not be able to return to his UPS job.

Based on the evidence presented at trial, the Court determined that claimant's job performance and prospects were unaffected by his 1984 back injury. The Court cannot go back and retry a matter simply because there have been subsequent developments.

However, the Court has jurisdiction to consider subsequent changes in a claimant's disability. § 39-71-2909, MCA. The subsequent developments set forth in the petition for new trial may well indicate a change in claimant's condition and his disability. Petitioner's remedy is therefore to file a new petition.

ACCORDINGLY, IT IS HEREBY ORDERED that the petition for new trial is **denied**.

Dated in Helena, Montana, this 1st day of May, 1995.

(SEAL)

/s/ Mike McCarter

JUDGE

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