

IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

2005 MTWCC 1

WCC No. 2004-1126

MARSHA BURKE

Petitioner

vs.

MONTANA STATE FUND

Respondent/Insurer.

ORDER DENYING SUMMARY JUDGMENT AND VACATING TRIAL SETTING

Summary: The petitioner moved for summary judgment but failed to set forth the alleged uncontested facts in serial fashion and support each fact by specific citation to a pleading, affidavit, or admissible evidence.

Held: The motion for summary judgment is denied for failure to comply with Rule 24.5.329(3), which requires any motion for summary judgment to set forth facts serially and with citation to evidence. The rule is calculated to reduce the time necessary to resolve a motion for summary judgment and reduce the possibility that the Court will miss essential facts.

Topics:

Constitutions, Statutes, Regulations, and Rules: Workers' Compensation Court Rules: ARM 24.5.329(3). Motion for summary judgment denied for failure to comply with Rule 24.5.329(3), which requires any motion for summary judgment to set forth facts serially and with citation to evidence. The requirements reduce the time necessary to resolve a motion for summary judgment and reduces the possibility that the Court will miss essential facts.

Summary Judgment: Motion for Summary Judgment. Motion for summary judgment denied for failure to comply with Rule 24.5.329(3), which requires any motion for summary judgment to set forth facts serially and with

citation to evidence. The requirements reduce the time necessary to resolve a motion for summary judgment and reduces the possibility that the Court will miss essential facts.

Summary Judgment: Disputed Facts. Motion for summary judgment denied for failure to comply with Rule 24.5.329(3), which requires any motion for summary judgment to set forth facts serially and with citation to evidence. The requirements reduce the time necessary to resolve a motion for summary judgment and reduces the possibility that the Court will miss essential facts.

¶1 The petitioner in this matter, Marsha Burke (claimant), seeks reinstatement of total disability benefits. She now moves for summary judgment, alleging that the respondent has accepted liability for her disability and that it is undisputed that she is permanently totally disabled. However, she has failed to set forth a statement of undisputed facts in serial fashion with citations as required by Rule 24.5.329(3).

¶2 Rule 24.5.329(3) requires in relevant part:

(3) Any party filing a motion under this rule shall include in its brief a statement of uncontroverted facts, which shall set forth in full the specific facts on which the party relies in support of the motion. The specific facts shall be set forth in serial fashion and not in narrative form. As to each fact, the statement shall refer to a specific pleading, affidavit, or other document where the fact may be found.

The requirements of subsection (3) serve

a salutary purpose. The requirement that facts be set forth serially and be supported by citation to supporting evidence reduces the time and effort of the Court when considering and disposing of the motion. It also reduces the chance that the Court will overlook some fact of consequence.

Pittsley v. State Comp. Ins. Fund, 1998 MTWCC 44, ¶ 3.

¶3 Examination of the claimant's supporting brief in this case demonstrates the wisdom of the rule. That brief sets forth numerous conclusory statements which fall woefully short of the sort of facts required for summary judgment. Moreover, as demonstrated by the respondent's opposing brief and supporting affidavit, the conclusory facts set forth by the claimant may well be incomplete or inaccurate.

¶4 The respondent also represents that it has retroactively reinstated temporary total disability benefits on a disputed liability basis pending receipt of further information. In that light, it makes sense to vacate the current trial setting, which is set for the week of January 17, 2005, to allow a reasonable time for respondent to obtain and analyze the additional information. If that information supports the claimant's claim for benefits, then the petition may well become moot.

¶5 For the foregoing reasons, the motion for summary judgment is **denied** and the trial setting for the week of January 17, 2005, is **vacated**. The trial will be rescheduled for the next Missoula term of Court. A new scheduling order will issue accordingly.

SO ORDERED.

DATED in Helena, Montana, this 5th day of January, 2005.

(SEAL)

/s/ Mike McCarter
JUDGE

c: Mr. Steve M. Fletcher
Mr. Kelly M. Wills
Mr. Thomas J. Harrington
Submitted: November 29, 2004