

IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

1995 MTWCC 84

WCC No. 9504-7268

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JAMES KELLY COAKLEY

Petitioner

vs.

ITT HARTFORD INSURANCE COMPANY and  
STATE COMPENSATION INSURANCE FUND

Respondents.

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ORDER DISMISSING CLAIM REGARDING TREATING PHYSICIAN

**Summary:** Insurer moved to dismiss petitioner's claim regarding choice of treating physician for failure to mediate. Petitioner argues that claim was mediated.

**Held:** Mediation is a statutory prerequisite. Any issue that has not been mediated cannot be considered by the Court. Where petitioner's mediation petitions do not request mediation regarding his choice of treating physician, and mediator's report states there has not been mediation of issue of change in physician, that issue is not properly before the Court and is dismissed.

**Topics:**

**Constitutions, Statutes, Regulations and Rules: Montana Code Annotated: section 39-71-2401, MCA (1995).** Workers' Compensation Court lacks jurisdiction to consider any issue not mediated. Where petitioner's mediation petitions do not request mediation regarding his choice of treating physician, and mediator's report states there has not been mediation of issue of change in physician, that issue is not properly before the Court and is dismissed.

**Mediation: General.** Workers' Compensation Court lacks jurisdiction to consider any issue not mediated. Where petitioner's mediation petitions do not request mediation regarding his choice of treating physician, and mediator's report states there has not been mediation of issue of change in physician, that issue is not properly before the Court and is dismissed.

**Jurisdiction: Mediation.** Workers' Compensation Court lacks jurisdiction to

consider any issue not mediated. Where petitioner's mediation petitions do not request mediation regarding his choice of treating physician, and mediator's report states there has not been mediation of issue of change in physician, that issue is not properly before the Court and is dismissed.

(SEE FOLLOWING ORDER)

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**JAMES KELLY COAKLEY,**

**Petitioner,**

**WCC No. 9504-7268**

**vs.**

**ITT HARTFORD INSURANCE COMPANY and  
STATE COMPENSATION INSURANCE FUND,**

**Respondents/Insurers for**

**OLSTEN STAFFING and McCALL POOLS,**

**Employers.**

**FILED**  
OCT 31 1995  
OFFICE OF  
WORKERS' COMPENSATION JUDGE  
HELENA, MONTANA

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**ORDER DISMISSING CLAIM REGARDING TREATING PHYSICIAN**

Respondent ITT-Hartford has moved to dismiss petitioner's claim regarding his choice of a treating physician. Respondent alleges that the issue was not mediated. Petitioner disagrees.

Mediation is a prerequisite to the filing of a petition. § 39-71-2401 and -2905, MCA. All issues presented in a petition must have been mediated. Any issue that has not been mediated cannot be considered by the Court.

I have reviewed the information supplied by the parties concerning the issues mediated. Petitioner's assertion that issues regarding a change in treating physician were mediated is unsupported. While petitioner's SUPPLEMENTAL MEDIATION PETITION mentions that he has chosen a physician to perform proposed surgery, it does not indicate that the insurer refused to acknowledge a change in treating physician and does not request that his choice of treating physician be mediated. (See Ex. 3 to PETITIONER'S BRIEF IN OPPOSITION TO RESPONDENT/INSURER'S MOTION TO DISMISS.) Moreover, the mediator's report states, "There has been no mediation of the issue whether a change in physician is appropriate . . ." (RESPONDENT/INSURER ITT-HARTFORD'S REPLY BRIEF IN SUPPORT OF MOTION TO DISMISS at 2.)

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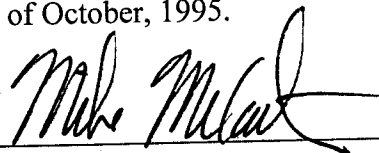
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596-20-12

The claim regarding petitioner's choice of treating physician is **dismissed** on account of his failure to mediate that issue.

Dated in Helena, Montana, this 31<sup>st</sup> day of October, 1995.

(SEAL)



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JUDGE

c: Mr. Paul E. Toennis  
Mr. William O. Bronson  
Mr. Charles G. Adams  
Submitted Date: October 30, 1995