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**FILED**

**DEC -6 2000**

OFFICE OF  
WORKERS' COMPENSATION JUDGE  
HELENA, MONTANA

IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

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| <p>ROBERT FLYNN,<br/><br/>Petitioner,<br/><br/>vs.<br/><br/>MONTANA STATE FUND,<br/><br/>Respondent/Insurer,<br/><br/>SALISH KOOTENAI COLLEGE,<br/><br/>Employer.</p> | <p>WCC NO. 2000-0222<br/><br/><b>RESPONSE TO PETITION<br/>FOR HEARING</b></p> |
|---|---|

COMES NOW Respondent Montana State Fund (hereinafter State Fund), by and through its counsel of record, Ann E. Clark, and hereby responds to the Petition for Hearing as follows:

1. In response to paragraph 1 of the Petition for Hearing, the State Fund admits only that Petitioner suffered an occupational disease arising out of and in the course of his employment with Salish Kootenai College in Lake County, Montana and that Petitioner injured his arms and hands while performing repetitive activity. The State Fund disagrees with Petitioner's assertion that this occupational disease began June 23, 1993.
2. In response to paragraph 2 of the Petition for Hearing, the State Fund admits.
3. In response to paragraph 3 of the Petition for Hearing, the State Fund admits only that a dispute exists between the parties.
4. In response to paragraph 4 of the Petition for Hearing, the State Fund admits.

5. In response to paragraph 5 of the Petition for Hearing, the State Fund is without sufficient information to either admit or deny the allegation contained therein, and therefore denies.
6. In response to paragraph 6 of the Petition for Hearing, the State Fund asserts that the issues presented to the Court are not within the jurisdiction of the mediation unit, and therefore no mediation occurred.
7. Paragraph 7 of the Petition for Hearing requires no response.
8. Paragraph 8 of the Petition for Hearing requires no response.

### RESPONDENT'S CONTENTIONS

1. The Uncontested Facts in this matter are as follows:
  - a. On August 26, 1993, Petitioner filed a claim for compensation for an occupational disease which Petitioner suffered in the course and scope of his employment with Salish Kootenai College in Lake County, Montana. Petitioner injured his arms and hands while performing repetitive activity.
  - b. At the time the occupational disease claim was filed, petitioner's employer was enrolled under compensation plan III of the Workers' Compensation Act, and its insurer was the State Compensation Insurance Fund.
  - c. The State Fund accepted liability for Petitioner's claim and has paid both medical and wage loss benefits.
2. The correct date for the onset of Petitioner's occupational disease is July 6, 1993 as this was the date Petitioner was diagnosed and first treated for his condition.
3. Petitioner is not statutorily entitled to a pro rata share of attorney fees incurred to obtain his social security benefits.
4. State Fund has not acted unreasonably in the handling of this matter.
5. State Fund has exchanged all pertinent records related to Petitioner's condition and will continue to do so.
6. Should this matter proceed to trial, no witnesses will be required.
7. Should this matter proceed to trial State Fund may introduce the following into evidence:

- a. All relevant portions of Petitioner's claim file.
- b. All relevant medical records.
- c. Petitioner's exhibits.
- d. All relevant documents revealed during the course of discovery.

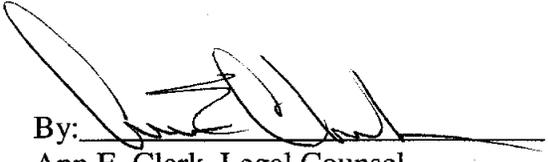
8. There is no need for a trial in this matter. The issue presented is purely one of statutory interpretation. This matter should be submitted on briefs.

WHEREFORE, the State Fund respectfully prays that the Workers' Compensation Court find that:

1. Petitioner is not entitled to the relief requested;
2. State Fund's handling of the claim was reasonable.
3. Grant such other relief as the Court deems just.

DATED this 6<sup>th</sup> day of December, 2000.

MONTANA STATE FUND

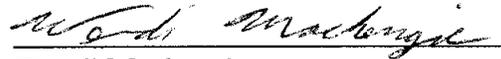
By:   
Ann E. Clark, Legal Counsel  
Special Assistant Attorney General

**CERTIFICATE OF SERVICE**

I hereby certify that I served a true and correct copy of the foregoing on the following party:

Rex Palmer, Esq.  
Attorneys Inc., P.C.  
301 West Spruce  
Missoula, MT 59802

by depositing the same in the United States Mail, postage prepaid, on this 6<sup>th</sup> day of December, 2000.



Wendi Mackenzie  
Legal Administrative Support

9178/Flynn/response to petition