

IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

2006 MTWCC 8

WCC No. 2003-0840

CATHERINE E. SATTERLEE, et al.

Petitioners

vs.

LUMBERMAN'S MUTUAL CASUALTY COMPANY, et al.

Respondents/Insurers.

ORDER GRANTING RESPONDENTS' MOTIONS TO STRIKE

Summary: Respondents, Montana State Fund and Lumberman's Mutual Casualty Company, filed motions to strike a reply brief and affidavit filed by Petitioners in support of a motion for reconsideration.

Held: Respondents' motions to strike are granted. ARM 24.5.337 provides only for the filing of an initial brief in support of a motion for reconsideration and, upon receipt of a response or the expiration of the time for filing a response, the motion is deemed submitted.

Topics:

Constitutions, Statutes, Regulations, and Rules: Administrative Rules of Montana: 24.5.337. ARM 24.5.337 does not allow for a reply brief to be filed by the moving party. Accordingly, the motion to file a reply brief must be denied. *Fleming v. International Paper Co.*, 2005 MTWCC 57.

¶1 On January 3, 2006, Petitioners filed a motion for reconsideration. Multiple Respondents filed objections to Petitioners' motion. On January 17 and 18, 2006, Respondents, Lumberman's Mutual Casualty Company and Montana State Fund, filed their responses to the motion. On February 1, 2006, Petitioners filed a reply to the Respondents' briefs in opposition. Montana State Fund and Lumberman's Mutual Casualty Company then filed motions to strike Petitioners' reply, including the affidavit of David Johnson, CPA.

¶2 The rule controlling motions for reconsideration in the Workers' Compensation Court is ARM 24.5.337. The rule provides as follows:

(1) Any party may move for reconsideration of any order or decision of the workers' compensation court. The motion shall be filed within 20 days after the order or decision is served. The opposing party shall have 10 days thereafter to respond unless the court orders an earlier response. Upon receipt of the response, or the expiration of the time for such response, the motion will be deemed submitted for decision unless the court requests oral argument.

¶3 This Court recently addressed the issue of filing a reply brief in support of a motion for reconsideration in *Fleming v. International Paper Co.*¹ In disallowing the filing of a reply brief in *Fleming*, this Court noted that ARM 24.5.337 "does not allow for a reply brief to be filed by the moving party. Accordingly, the motion to file a reply brief must be denied."² Similarly, in the present case ARM 24.5.337 did not allow Petitioners to file a reply brief in support of their motion for reconsideration. Accordingly, Respondents' motions to strike Petitioners' reply brief are well taken.

ORDER

¶4 Respondents' motions to strike the reply brief, including the affidavit of David Johnson, CPA, are **GRANTED**.

¶5 Pursuant to ARM 24.5.337, Petitioners' Motion for Reconsideration is deemed **SUBMITTED**.

DATED in Helena, Montana, this 2nd day of March, 2006.

(SEAL)

/s/ JAMES JEREMIAH SHEA
JUDGE

¹ 2005 MTWCC 57.

² *Fleming* at ¶2.

c: E-Mailed to Satterlee Distribution List (03/02/06)
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