

IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

2005 MTWCC 32

WCC No. 2004-1148

GARRY D. HANSEN

Petitioner

vs.

LIBERTY NORTHWEST

Respondent/Insurer.

ORDER DENYING RECONSIDERATION OR NEW TRIAL

Summary: Following entry of the Court's Findings of Fact, Conclusions of Law and Judgment, 2005 MTWCC 27, the petitioner, who represents himself, wrote the Court a letter in which he requested, in substance, either reconsideration of the Court's decision or a new trial.

Held: The letter requesting reconsideration or new trial will be treated as a motion. However, the motion is denied where the documents and information submitted in support were available to the party at the time of trial and in any event do not undermine the Court's findings of fact and conclusions of law.

Topics:

Pro Se. A letter from a party representing himself or herself will be considered based on its substance. Therefore, a letter seeking reconsideration or a new trial will be treated as a motion requesting that relief.

Procedure: Treatment of Communications with Court. At least where a party is representing himself or herself, communications from a party will be treated in accordance with their substance.

Procedure: Post-trial Proceedings: New Trial: Newly Discovered Evidence. Where the evidence tendered in support of a motion for a new trial was available to the party at the time of trial, the request for a new trial is denied.

¶1 This Court entered its Findings of Fact, Conclusions of Law and Judgment on May 9, 2005. Subsequently, on May 20, 2005, it received FAX correspondence with attachments from the petitioner. In the correspondence, the petitioner indicates that new evidence requires reconsideration of the Court's decision. Based on the substance of the correspondence, I treat

the request as a motion for reconsideration, ARM 24.5.337, or a new trial based upon discovery of new evidence.

¶2 As to any request for reconsideration, I find no good grounds to revisit the original decision and reaffirm it.

¶3 Treating the request as one for a new trial, the request is governed by section 25-11-103, MCA (2003), which provides:

No new trial may be granted in cases tried by the court without a jury, except on the grounds mentioned in subsections (1), (3), and (4) of 25-11-102.

The grounds mentioned in section 25-11-102, MCA (2003), are as follows:

(1) irregularity in the proceedings of the court, jury, or adverse party or any order of the court or abuse of discretion by which either party was prevented from having a fair trial;

. . . .
(3) accident or surprise which ordinary prudence could not have guarded against;

(4) newly discovered evidence material for the party making the application which he could not, with reasonable diligence, have discovered and produced at the trial

The petitioner has set out no facts which satisfy any of these grounds. Each document upon which he bases his request either was contemporaneously directed to him or indicates that he was contemporaneously copied with the document. Moreover, they do not undermine the Court's finding that at the time he entered into the settlement agreement at issue in the case he was not operating under a material mistake of fact concerning his medical condition and disability.

¶4 The request for reconsideration or new trial is **denied**.

SO ORDERED.

DATED in Helena, Montana, this 23rd day of June, 2005.

(SEAL)

/s/ MIKE McCARTER
JUDGE

c: Mr. Garry D. Hansen
Mr. Larry W. Jones
Submitted: June 20, 2005