

IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

1995 MTWCC 66

WCC No. 9403-7015

MICHAEL E. HEISLER

Petitioner

vs.

STATE COMPENSATION INSURANCE FUND

Respondent/Insurer for

HINES MOTOR COMPANY

Employer.

JUDGMENT

**REVERSED in *Heisler v. State Compensation Insurance Fund*,
282 Mont. 270 (1997) (No. 95-485)**

Summary: Claimant challenged insurer's refusal to approve his choice of treating physician and consequent failure to pay certain medical bills.

Held: Claimant's motion denied (but note that this decision was reversed in *Heisler v. State Compensation Insurance Fund*, 282 Mont. 270 (1997) (No. 95-485).

Topics:

Jurisdiction: Mootness. A moot question is one which existed once but because of an event or happening, it has ceased to exist and no longer presents an actual controversy. (Note, the WCC decision was reversed on other grounds in *Heisler v. State Compensation Insurance Fund*, 282 Mont. 270 (1997) (No. 95-485).)

Jurisdiction: Mootness. In determining questions of mootness, Montana follows the "capable of repetition, yet evading review" doctrine, which requires two elements: (1) the challenged action was in its duration too short to be fully litigated prior to the cessation

or expiration and (2) there was a reasonable expectation the same complaining party would be subjected to the same action again. (Note, the WCC decision was reversed on other grounds in *Heisler v. State Compensation Insurance Fund*, 282 Mont. 270 (1997) (No. 95-485).)

Jurisdiction: Mootness. Even though insurer has paid the medical bills of a physician that it previously contended had not been claimant's treating physician, the pending case is not moot where the insurer could evade judicial review by paying bills of disapproved physicians whenever the claimant petitions the WCC. (Note, the WCC decision was reversed on other grounds in *Heisler v. State Compensation Insurance Fund*, 282 Mont. 270 (1997) (No. 95-485).)

On June 1, 1995, the Court entered an Order Denying Summary Judgment wherein it rejected petitioner's legal challenges to the requirement that he obtain prior approval to change his treating physician. The Order directed that the matter be placed on the next trial calendar to determine whether petitioner is entitled to attorney fees or a penalty. Petitioner now informs the Court that he "intends to offer no further evidence or arguments regarding the issues raised in this petition" and requests that judgment be entered pursuant to the Court's prior ruling. (Petitioner's Request That the Court Enter Final Judgment Based on its Summary Judgment Order (August 29, 1995).) Accordingly,

IT IS HEREBY ORDERED AND ADJUDGED that the petition in this matter be and is hereby **dismissed with prejudice** and that the Court's prior Order Denying Summary Judgment shall constitute its decision in this case.

This judgment is certified as final for purposes of appeal.

Dated in Helena, Montana, this 31st day of August, 1995.

(SEAL)

/s/ Mike McCarter
JUDGE

c: Mr. Lawrence A. Anderson
Mr. Norman C. Peterson
Mr. Joseph P. Mazurek (Courtesy Copy)