

IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

2007 MTWCC 1

WCC No. 2004-1054

ANNA JOHNSON

Petitioner

vs.

LIBERTY MUTUAL FIRE INSURANCE COMPANY

Respondent/Insurer.

*Appealed to Supreme Court February 2, 2007
Appeal Dismissed with Prejudice May 14, 2007*

FINDINGS OF FACT, CONCLUSIONS OF LAW AND JUDGMENT

Summary: Petitioner alleges she fell at work, injuring her neck and upper back, and that she reported the injury to co-managers who left that employment shortly thereafter and apparently failed to file the report. Petitioner later filed a claim form with Respondent, alleging a progressive neck injury. Respondent accepted Petitioner's claim regarding degenerative changes in her neck, but has since denied her upper back claim.

Held: Although it is certainly plausible that an injured worker may submit a report of injury which a supervisor then fails to file properly, the empirical evidence presented in this case does not support Petitioner's claim. Petitioner's extensive contemporary medical records contain no evidence that Petitioner ever claimed that she was injured in a fall at work until nearly two years after she left this employment. Petitioner's claim is denied.

Topics:

Credibility. Petitioner claimed to have reported an industrial accident to a supervisor at about the same time as the supervisor left that employment, but no accident report was found. The Court did not find Petitioner's industrial accident claim credible where Petitioner's testimony was inconsistent, Petitioner did not describe the accident on the claim form she filed with Respondent, and Petitioner's extensive contemporary medical

records contained no evidence that Petitioner ever claimed that she was injured in a fall at work until nearly two years after she left her employment.

Evidence: Credibility. Petitioner claimed to have reported an industrial accident to a supervisor at about the same time as the supervisor left that employment, but no accident report was found. The Court did not find Petitioner's industrial accident claim credible where Petitioner's testimony was inconsistent, Petitioner did not describe the accident on the claim form she filed with Respondent, and Petitioner's extensive contemporary medical records contained no evidence that Petitioner ever claimed that she was injured in a fall at work until nearly two years after she left her employment.

¶ 1 The trial in this matter was held on Monday, May 1, 2006, in the Workers' Compensation Court, Helena, Montana. Petitioner Anna Johnson was present and represented by Richard J. Pyfer. Respondent was represented by Larry W. Jones.

¶ 2 Exhibits: Exhibits 1 through 6 were admitted without objection.

¶ 3 Witnesses and Depositions: The depositions of Anna Johnson, Paul Eodice, D.O., Cathy Drynan, and Gus G. Varnavas, M.D., were taken and submitted to the Court. Anna Johnson, Karen Clausen, Elaine Lee, Jack Lee, and Steve Peek were sworn and testified at trial.

¶ 4 Issues Presented: The Court restates the following contested issues of law found in the Pretrial Order:

¶ 4a Whether Respondent is liable for Petitioner's continuing care by Dr. Eodice for her upper back region;

¶ 4b Whether Respondent is liable for additional medical treatment; and

¶ 4c Whether Petitioner is entitled to reinstatement of biweekly temporary total disability (TTD) benefits, retroactive to the date of their termination.¹

¹ Pretrial Order at 2.

FINDINGS OF FACT

¶ 5 Petitioner was hired in the fall of 2002 as a housekeeper at Hunters Pointe, and was soon promoted to head housekeeper.²

¶ 6 Hunters Pointe is a retirement facility located in Helena, Lewis and Clark County, Montana.³ It is owned by Holiday Retirement Corporation.⁴ Respondent was the insurer at the time of Petitioner's injury and has paid Petitioner some wage-loss and medical benefits.⁵

¶ 7 Hunters Pointe has been managed by Elaine and Jack Lee since May 2002.⁶ At the time the Lees began working at Hunters Pointe, their co-managers were Dwayne and Carol Curry.⁷ The co-managers are subordinate to the managers.⁸ Both the managers and co-managers live on-site at Hunters Pointe.⁹

¶ 8 The Currys left Hunters Pointe on December 18 or 19, 2002.¹⁰ Ms. Curry worked as a co-manager until they departed.¹¹ Mr. Curry went on medical leave in November 2002 and did not work as a co-manager from that time forward.¹² The Lees rarely saw Mr. Curry from the time he went on medical leave until the Currys left Hunters Pointe, as he was on bed rest and rarely left his room.¹³

² Trial Test. 28:3-22.

³ Response to Emergency Petition for Hearing at 1; Trial Test 6:21-23.

⁴ Trial Test. 52:23 - 53:4.

⁵ Response to Emergency Petition for Hearing at 1-2.

⁶ Trial Test. 26:14 - 27:5.

⁷ Trial Test. 27:6-12; 47:6-7.

⁸ Trial Test. 47:21-25.

⁹ Trial Test. 64:3-8.

¹⁰ Trial Test. 30:20-21.

¹¹ Trial Test. 30:15-17.

¹² Trial Test. 29:22-25.

¹³ Trial Test. 30:8-14.

¶ 9 The Currys had the authority to receive reports of on-the-job injuries from employees.¹⁴ Both the Currys and the Lees were trained by their employer in the procedure to follow when reporting an injury.¹⁵ Ms. Lee testified that she could not speak as to whether the Currys were conscientious about following procedures.¹⁶ Mr. Lee testified that to the best of his knowledge, the Currys informed the Lees of anything that happened at Hunters Pointe while the Lees were not present. The Lees did the same for the Currys. However, Mr. Lee felt that the communication between the managers and co-managers was problematic.¹⁷

¶ 10 When Petitioner first began to work at Hunters Pointe, she was a housekeeper assigned to the second floor.¹⁸ Her duties included general cleaning, serving meals, and disposing of garbage.¹⁹ She moved to the first floor when she became head housekeeper.²⁰ As head housekeeper, her responsibilities included maintaining a housekeeping room on the first floor.²¹

¶ 11 Petitioner claims that she was injured in a fall in the housekeeping room. According to Petitioner, she was standing on a small stepladder pulling down a bag of items from the top shelf. An adjacent box filled with cans of Ajax fell off the shelf and knocked her off the stepladder. She fell backwards and landed against a large metal cart.²²

¶ 12 No one witnessed Petitioner fall.²³ Petitioner testified that when she left the housekeeping room, she saw Mr. Curry in the hallway. She informed him about the

¹⁴ Trial Test. 30:23 - 31:6.

¹⁵ Trial Test. 40:9-11.

¹⁶ Trial Test. 40:11-12.

¹⁷ Trial Test. 55:9-22.

¹⁸ Trial Test. 68:6-9.

¹⁹ Johnson Dep. 11:3-16.

²⁰ Trial Test. 68:6-9.

²¹ Trial Test. 68:10 - 69:5.

²² Trial Test. 70:7-23.

²³ Trial Test. 72:7-10.

accident and he told her to tell Ms. Curry.²⁴ According to Petitioner, at some point during her shift, she sought out Ms. Curry and told her about the incident. Ms. Curry gave her a form to fill out which Petitioner completed and returned to Ms. Curry.²⁵

¶ 13 At her deposition, Petitioner testified that she believed this incident occurred in early January 2003.²⁶ She further testified that she worked for about another week after the incident.²⁷ She also testified that she reported the incident to the Currys.²⁸ At trial, however, Petitioner testified that the incident actually occurred in December 2002, prior to the Currys' departure on December 18 or 19.²⁹

¶ 14 On the day of the alleged accident, Petitioner completed her work shift.³⁰ She testified that, after she got home that evening, her neck and back started bothering her so she called her doctor the following day to make an appointment.³¹ Her doctor was busy because of the cold and flu season and she was given an appointment for a few weeks later.³² In the meantime, Petitioner had difficulty completing some of her regular duties at work, such as vacuuming, carrying meal trays, and taking out the garbage.³³

¶ 15 Petitioner testified that she went to an appointment with Dr. Will Snider, D.O., on January 14 or 15, 2003. She told him that she had gotten hurt at work and that her neck

²⁴ Trial Test. 72:12-16. During trial, Respondent objected to Petitioner's testimony regarding things which the Currys and Lees allegedly said to her as hearsay. Petitioner argues that these statements are properly admitted because the Currys and Lees, as employees of Holiday Retirement Corporation, are party-opponents. Respondent replied that it is the party-opponent and that this Court generally does not consider employers to be party-opponents. The Court took this matter under advisement. Ultimately, as will be expounded upon in this decision, the Court has not found Petitioner's version of events to be credible, and thus the issue of whether the statement allegedly made by Mr. Curry is inadmissible hearsay is moot.

²⁵ Trial Test. 76:20 - 77:15.

²⁶ Johnson Dep. 22:8-19.

²⁷ Johnson Dep. 27:23 - 28:3.

²⁸ Johnson Dep. 23:4-8; 26:8-9.

²⁹ Trial Test. 69:25 - 70:2.

³⁰ Trial Test. 78:12-14.

³¹ Trial Test. 81:14-17.

³² Trial Test. 81:21.

³³ Trial Test. 79:8-11.

and upper back were bothering her. After having x-rays taken, her doctor indicated that she had a problem in her neck and he referred Petitioner to Dr. Varnavas.³⁴

¶ 16 On January 14, 2003, Petitioner informed her employer that she would be taking the following day off of work to seek medical treatment.³⁵ Dr. Dennis Palmer took x-rays of Petitioner's cervical and thoracic spine on January 15, 2003.³⁶ According to Petitioner, on the evening of January 15, 2003, Mr. Lee called Petitioner and asked her how her medical appointment had gone. She told him that the x-rays showed that she had a "step" in her neck. Mr. Lee then informed Petitioner that, due to poor work performance, she would no longer be employed at Hunters Pointe.³⁷ Mr. Lee denies that this phone call took place.³⁸ However, it is undisputed that after January 15, 2003, Petitioner no longer worked at Hunters Pointe.

¶ 17 Ms. Lee had not heard that Petitioner had filed an incident report with Ms. Curry.³⁹ Petitioner asked the Lees for the name of Hunters Pointe's workers' compensation insurance carrier, and she then contacted Respondent.⁴⁰ Respondent sent Petitioner a claim form.⁴¹ Ms. Lee did not initiate a claim with Respondent.⁴² Respondent later contacted Ms. Lee.⁴³ The incident report which Petitioner claims to have filled out with Ms. Curry was not found in Petitioner's employment file.⁴⁴

³⁴ Trial Test. 81:24-25; 82:7-15.

³⁵ Trial Test. 83:6-10.

³⁶ Eodice Dep. Ex. 1 at 49.

³⁷ Trial Test. 84:12-17; *see also* n. 24, above, for discussion of hearsay testimony.

³⁸ Trial Test. 57:24 - 58:6.

³⁹ Trial Test. 31:9-12.

⁴⁰ Trial Test. 85:12-22.

⁴¹ Trial Test. 87:3-16.

⁴² Trial Test. 34:14-16.

⁴³ Trial Test. 34:3-16.

⁴⁴ Trial Test. 62:8-12.

¶ 18 Petitioner filled out a First Report of Injury and Occupational Disease for Respondent on February 13, 2003.⁴⁵ Petitioner testified at trial that she filled out this form by calling Respondent and obtaining the assistance of a representative of Respondent via telephone.⁴⁶ At trial, Petitioner testified that she filled out the form only for her neck because Respondent's representative told her to fill in the form only for the neck problems and that her back problems would be filed separately.⁴⁷ However, Petitioner never completed an additional claim form for her back problems. At her deposition, Petitioner offered a different explanation as to why she referenced only her neck in her claim form. Petitioner testified that she identified only her neck in this claim form because Dr. Snider wanted her to get her neck taken care of first.⁴⁸ She did not claim that this was at the urging of Respondent. On cross-examination at trial, Petitioner was asked why, at her deposition, she did not mention that a representative of Respondent helped her fill out the claim form and she replied that she had forgotten about it.⁴⁹

¶ 19 On the form, Petitioner described her injury as, "Progressive neck injury do [sic] to [e]xcessive heavy duties, causing extreme neck pain, [h]eadaches, [d]izziness, and nausea." She listed the cause of injury as "heavy lifting," the part of body as "neck" and the nature of the injury as "step in neck." She wrote that the date and time of injury was January 15, 2003, and that her employer was notified on January 20, 2003.⁵⁰ Petitioner explained at her deposition that she did not describe the incident with the falling box on the form because she had informed the co-managers when it happened.⁵¹

¶ 20 The medical records of Dr. Snider indicate that Petitioner visited him on December 10, 2002, for sinus problems.⁵² Dr. Snider's next record is dated January 17, 2003. Dr. Snider notes, "Due to her neck pain, we checked a cervical spine and thoracic spine films. The thoracic spine films were normal and the cervical spine films did show degenerative

⁴⁵ Ex. 5.

⁴⁶ Trial Test. 89:2-11.

⁴⁷ Trial Test. 90:3-7.

⁴⁸ Johnson Dep. 18:20 - 19:7.

⁴⁹ Trial Test. 108:2-7.

⁵⁰ Ex. 5.

⁵¹ Johnson Dep. 22:25 - 23:6.

⁵² Ex. 1 at 28.

changes She mainly has localized discomfort and pain with motion about her neck.”⁵³ There is nothing in Dr. Snider’s records concerning the alleged incident in the housekeeping room at Hunters Pointe. According to the January 31, 2006, medical record of Dr. Eodice, a plain film x-ray of Petitioner’s cervical and thoracic spine was interpreted by Dr. Dennis Palmer on January 15, 2003, and showed a normal thoracic spine and degenerative changes in Petitioner’s neck.⁵⁴

¶ 21 Petitioner again saw Dr. Snider on February 4, 2003. Dr. Snider recorded that Petitioner was present for follow-up on her neck pain, and noted that the pain in Petitioner’s neck and upper back was worsening.⁵⁵ Dr. Snider noted a continued worsening at Petitioner’s appointment of March 7, 2003, and referred her to an orthopedic surgeon for further evaluation.⁵⁶ Dr. Snider referred Petitioner to Gus G. Varnavas, M.D.⁵⁷

¶ 22 On May 2, 2003, in response to an inquiry from Respondent, Dr. Snider wrote a letter to Gary W. Holt, Senior Claims Manager. Dr. Snider stated, in pertinent part:

Thank you for contacting me regarding Ms. Johnson’s work-related injury with regard to her employment at Hunter’s [sic] Pointe. I am in agreement with Dr. Varnavas . . . that her injury, which likely will ultimately require surgical intervention, is likely work-related. The type of work she does as a retirement home aide could directly contribute to these problems of neck pain, dizziness, lightheadedness, headaches and decreased range of motion. These likely occurred from the degenerative changes and subsequent cervical disk herniation with neuro-compromise.

. . . .

I believe that the answer to your questions regarding whether the job in question could have contributed to her problems is yes. . . . Ms. Johnson has had significant debilitation.⁵⁸

⁵³ *Id.* at 22.

⁵⁴ Eodice Dep. Ex. 1 at 1.

⁵⁵ Ex. 1 at 21.

⁵⁶ *Id.* at 19.

⁵⁷ Varnavas Dep. 7:17-21.

⁵⁸ Ex. 1 at 16.

¶ 23 Notably absent from Dr. Snider's May 2, 2003, letter is any mention of problems with Petitioner's upper back, or any mention of Petitioner's injury being caused by any sort of specific incident. In fact, Dr. Snider's letter describes Petitioner's neck problems as being degenerative and stemming from her job duties, not from an on-the-job accident. Furthermore, in a follow-up letter to Mr. Holt on May 23, 2003, Dr. Snider states, "I believe the medical evidence suggests that even as early as the middle of January, 2003, the patient was having significant symptoms in her neck."⁵⁹ Again, there is no mention of problems with Petitioner's upper back and no mention of a specific incident in December 2002.

¶ 24 Dr. Varnavas saw Petitioner on April 3, 2003,⁶⁰ after Dr. Snider referred her for neck and upper scapular pain.⁶¹ According to Dr. Varnavas, Petitioner informed him that she was injured while lifting a patient at a nursing home in late November or early December 2002.⁶²

¶ 25 The history taken at Petitioner's Functional Capacity Evaluation (FCE) on September 23 and 25, 2003, notes that Petitioner first began noticing symptoms of neck pain at the end of November and early December 2002, which worsened by January 15, 2003, when she filed a claim. The FCE notes that her symptoms at that time were primarily in her neck, but also into the left arm and right shoulder.⁶³ There is no mention of a specific incident in December 2002, nor is there mention of upper back pain.

¶ 26 In a memorandum dated November 23, 2003, Dr. Varnavas stated that Petitioner was experiencing discomfort in her thoracic region, and that Petitioner informed him that this discomfort started at the time Petitioner completed her FCE. Dr. Varnavas diagnosed a ligamentous strain and referred Petitioner to Dr. Eodice for a trigger-point injection.⁶⁴

¶ 27 On April 6, 2004, Dr. Varnavas gave Petitioner a 5% whole person impairment rating for her neck injury. He released her to work but restricted her to medium duty. At the

⁵⁹ *Id.* at 13.

⁶⁰ Varnavas Dep. 8:14-17.

⁶¹ Varnavas Dep. 7:19-21.

⁶² Varnavas Dep. 9:19-22.

⁶³ Varnavas Dep. Ex. A at 101.

⁶⁴ Varnavas Dep. Ex. A at 3.

same time, he opined that Petitioner's "muscle injury" was a separate issue unrelated to her neck injury or surgery.⁶⁵

¶ 28 On December 16, 2003, Dr. Varnavas received four Job Analyses for Petitioner which he approved.⁶⁶ On April 12, 2004, Dr. Varnavas approved Petitioner for her time-of-injury position without modification.⁶⁷

¶ 29 Paul Eodice, D.O., is board certified in family medicine.⁶⁸ Petitioner was referred to Dr. Eodice by Gus G. Varnavas, M.D.⁶⁹ When Dr. Eodice began treating Petitioner in December 2003, he had not received any of her medical records.⁷⁰ In the history Dr. Eodice recorded, Petitioner told him that she was injured in a fall at work on January 15, 2003.⁷¹ On June 9, 2005, with Petitioner continuing to suffer from thoracic pain, Dr. Eodice described her thoracic pain history as follows:

The patient reports her thoracic pain has been present for a significant amount of time, and it didn't just start after her cervical procedure. In reviewing notes that were recently presented to me from Dr. Wil [sic] Snider, her primary medical doctor, this does appear to be the case. The mechanism of injury was when the patient was pulling boxes filled with different chemicals off the shelf overhead. It resulted in a significant amount of weight coming down on the patient which she could not support. The weight came down on her upper extremities and her neck resulting her to fall back, striking her cart which was behind her. The area of trauma was her mid thoracic region. The pain remains localized over the left-sided scapular area.⁷²

¶ 30 When Dr. Eodice was deposed, he clarified that the records sent to him from Dr. Snider's office were missing the dates between December 10, 2002, and January 17,

⁶⁵ Varnavas Dep. Ex. A at 1.

⁶⁶ Varnavas Dep. Ex. A at 62-63.

⁶⁷ Varnavas Dep. Ex. A at 59.

⁶⁸ Eodice Dep. 5:15-18.

⁶⁹ Eodice Dep. 6:11-14.

⁷⁰ Eodice Dep. 7:8-15.

⁷¹ Eodice Dep. Ex. 1 at 21.

⁷² Eodice Dep. Ex. 1 at 10.

2003, and that he has no information from Dr. Snider which states Petitioner's mechanism of injury.⁷³ He asserted that the account of Petitioner's mechanism of injury detailed in his June 9, 2005, notes came from Petitioner herself.⁷⁴

¶ 31 Dr. Eodice opined that Petitioner's thoracic problem is a soft-tissue generated injury.⁷⁵ He found Petitioner to be at maximum medical improvement (MMI) on June 9, 2005, and assigned her a 0% impairment rating.⁷⁶ He believes Petitioner remains at MMI for her thoracic condition.⁷⁷

¶ 32 Dr. Eodice admitted that Petitioner suffers from chronic pain in her mid back and he does not believe she will ever be pain-free. Dr. Eodice stated that Petitioner needs to manage her pain with medication, treat her depression and insomnia, and she may require occasional physical therapy or trigger-point injections. However, Dr. Eodice opined that Petitioner should be employable with her present level of discomfort, and that she should be able to function in the positions submitted to him in the Job Analyses, although some restrictions might be needed in light of her thoracic pain.⁷⁸ Dr. Eodice suggested that Petitioner might try the approved jobs on a trial basis to see if they are manageable jobs in light of her thoracic pain.⁷⁹

¶ 33 It is plausible that Petitioner reported a fall in the housekeeping room and that the Currys – in the final days of their employment at Hunters Pointe and leaving under less than amicable circumstances – failed to file the report. Petitioner's confusion regarding whether the accident took place in December 2002 or January 2003, in and of itself, is likewise not sufficient for this Court to doubt Petitioner's version of events. However, a thorough review of the record in its entirety leads the Court to conclude that Petitioner did not report this accident at the time it allegedly occurred, and further causes this Court to doubt whether the accident occurred at all. Until Dr. Eodice's history, taken on June 9, 2005, the record is devoid of any mention of this accident. The claim form Petitioner claims to have given to Ms. Curry has never been found, and neither Dr. Snider nor Dr.

⁷³ Eodice Dep. 9:2-17.

⁷⁴ Eodice Dep.10:11-14.

⁷⁵ Eodice Dep. 11:13-17.

⁷⁶ Eodice Dep. Ex. 1 at 11.

⁷⁷ Eodice Dep. 15:4-7.

⁷⁸ Eodice Dep. 27:5-18.

⁷⁹ Eodice Dep. 28:7 - 29:9.

Varnavas ever mentioned any such trauma in Petitioner's medical records. To the contrary, Petitioner's radiology report, dated April 3, 2003, gives her clinical history as "38-YEAR-OLD FEMALE WITH NECK PAIN, **NO HISTORY OF AN INJURY.**"⁸⁰

¶ 34 While it is conceivable to believe that one or more of these parties may have recorded an incomplete or inaccurate history, the fact that no one memorialized this alleged incident – not even Petitioner herself in the February 2003 claim form she filed with Respondent – until Dr. Eodice over two years later, strains credulity. This is especially true in light of the discrepancies between Petitioner's deposition and trial testimony. Moreover, although Petitioner attempts to explain the myriad inconsistencies and omissions, if the alleged incident in the housekeeping room and subsequent report to the Currys is discounted, all of the other events are consistent with each other. Petitioner and her doctors describe her neck problems as degenerative or progressive, not as the result of a specific trauma. The Court therefore finds that Petitioner's claim of a specific injury to her upper back is not credible.

¶ 35 Finally, aside from the Court's factual finding that Petitioner's testimony regarding a specific injury is not credible, it bears noting that all the medical testimony in this case is that Petitioner is at MMI with a 0% impairment rating for her back and has been released to her time-of-injury job without restriction.

CONCLUSIONS OF LAW

¶ 36 This case is governed by the 2001 version of the Montana Workers' Compensation Act since that was the law in effect at the time of Petitioner's injury.⁸¹

¶ 37 Petitioner bears the burden of proving by a preponderance of the evidence that she is entitled to the benefits she seeks.⁸²

¶ 38 For the reasons set forth in the above Findings of Fact, Petitioner has failed to meet her burden. Regarding the first issue, Petitioner has not proven that she is entitled to ongoing care for her upper back. As noted above, the Court does not find Petitioner's claim of an industrial injury to be credible. Regarding the second issue, Petitioner has not specified what "additional medical treatment" she believes she may be entitled to. Since the gravamen of Petitioner's claim is for an alleged upper back injury, the Court assumes

⁸⁰ Dr. Varnavas Dep. Ex. A at 35 (emphasis added).

⁸¹ *Buckman v. Montana Deaconess Hosp.*, 224 Mont. 318, 321, 730 P.2d 380, 382 (1986).

⁸² *Ricks v. Teslow Consol.*, 162 Mont. 469, 512 P.2d 1304 (1973); *Dumont v. Wickens Bros. Constr. Co.*, 183 Mont. 190, 598 P.2d 1099 (1979).

the “additional medical treatment” is in reference to this injury as well. Having found that the injury did not occur, Petitioner’s request for this relief is denied.

¶ 39 Regarding the third issue, Petitioner requests reinstatement of her biweekly TTD benefits, retroactively reinstated to the date upon which they were terminated. “Temporary total disability” means a physical condition resulting from an injury that results in total wage loss and exists until the injured worker reaches MMI.⁸³ Aside from the factual findings which this Court has made, the medical evidence establishes that Petitioner has reached MMI. Accordingly, Petitioner is not entitled to reinstatement of her biweekly TTD benefits.

JUDGMENT

¶ 40 Petitioner’s request that Respondent be adjudged liable for continuing care by Dr. Eodice for her upper back region is **DENIED**.

¶ 41 Petitioner’s request that Respondent be held liable for “additional medical treatment” is **DENIED**.

¶ 42 Petitioner’s request for reinstatement of TTD benefits, retroactive to the date of their termination, is **DENIED**.

¶ 43 This JUDGMENT is certified as final for purposes of appeal.

¶ 44 Any party to this dispute may have twenty days in which to request reconsideration from these FINDINGS OF FACT, CONCLUSIONS OF LAW AND JUDGMENT.

DATED in Helena, Montana, this 5th day of January, 2007.

(SEAL)

/s/ JAMES JERMIAM SHEA

JUDGE

c: Richard J. Pyfer
Larry W. Jones
Submitted: June 26, 2006

⁸³ § 39-71-116(35), MCA.