

IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

1995 MTWCC 54A

WCC No. 9501-7214

STEVE KASTELLA

Petitioner

vs.

PLUM CREEK TIMBER COMPANY

Respondent.

ORDER DENYING MOTION FOR RECONSIDERATION

Summary: Respondent moved for reconsideration of decision on appeal, arguing the Court exceeded the scope of the appeal, among other grounds.

Held: Motion denied. Where notice of appeal and appellant's brief clearly argued error of law in order below, decision based on hearing officer's erroneous application of statute was within scope of appeal.

Topics:

Appeal (To Workers' Compensation Court): Issues Considered. Where notice of appeal and appellant's brief clearly argued error of law in order below, decision based on hearing officer's erroneous application of statute was within scope of appeal.

Respondent seeks reconsideration of this Court's DECISION AND JUDGMENT ON APPEAL. It advances two grounds for reconsideration.

Respondent first argues that the appeal was limited to a review of the findings of fact below and that the Court exceeded the scope of appeal when it determined that the hearing examiner committed an error of law when applying section 39-72-706, MCA. I am perplexed by this contention. The Notice of Appeal states that petitioner is contesting the hearing examiner's findings of fact and conclusions of law as "clearly erroneous, an arbitrary abuse of discretion, and **in error of law.**" Moreover, petitioner vigorously

contended in his briefs on appeal that the hearing examiner erred in his apportionment of disability. Respondent's argument is meritless.

Respondent then urges that the Court erred in interpreting and applying apportionment and attorney fee statutes. After reviewing the various arguments advanced by respondent, I find no reason to change my decision.

The motion is **denied**.

Dated in Helena, Montana, this 13th day of September, 1995.

(SEAL)

/S/ Mike McCarter
JUDGE

c: Mr. David W. Lauridsen
Mr. Kelly M. Wills