

IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

2006 MTWCC 10

WCC No. 2005-1404

CHARLES LAWRENCE

Petitioner

vs.

UNINSURED EMPLOYERS' FUND

Respondent

and

MAHLON DONALD HESS

Employer/Respondent.

ORDER DENYING MOTION FOR RECONSIDERATION

Topics:

Procedure: Post-Trial Proceedings: Motion for Reconsideration. Where Respondent raises no new issues in its motion for reconsideration and the issue upon which its motion to dismiss was denied is clearly controlled by the Montana Supreme Court's decision in *Colmore v. Uninsured Employers' Fund*, 2005 MT 239, 328 Mont. 441, 121 P.3d 1007, Respondent's motion for reconsideration is denied.

¶1 Respondent Uninsured Employers' Fund moves for reconsideration of this Court's Order Denying [Respondent's] Motion to Dismiss.¹

¹ 2005 MTWCC 56.

¶2 Respondent raises no new issues in its motion for reconsideration. The arguments were considered and rejected in the Court's original decision.

¶3 In its initial brief and Reply Brief in Support of Motion to Dismiss, Respondent cited extensively from the recent Supreme Court decision, *Colmore v. Uninsured Employers' Fund*.² As this Court noted in its Order Denying [Respondent's] Motion to Dismiss, the *Colmore* Court addressed the same statute of limitations at issue here. In finding when the limitations period begins to run, the Court in *Colmore* held:

[T]he limitations period begins to run when the facts are such that the party seeking relief would have discovered the mistake had he exercised ordinary diligence. In the exercise of ordinary diligence UEF should have realized that it miscalculated the average weekly wage, as should have [the deceased worker's widow].³

¶4 In its Order Denying [Respondent's] Motion to Dismiss, this Court concluded that Petitioner "exercised, at a minimum, ordinary diligence in seeking a recalculation of benefits as information became available to him."⁴ Pursuant to the Supreme Court's holding in *Colmore*, therefore, the limitations period did not begin to run as to this requested recalculation until Petitioner received his Form 1099 from his employer and discovered the ostensible mistake in the calculation of his wages.

¶5 Based on the foregoing, Respondent Uninsured Employers' Fund's motion for reconsideration is **DENIED**.

DATED in Helena, Montana, this 8th day of March, 2006.

(SEAL)

/s/ James Jeremiah Shea
JUDGE

c: Mr. Thomas J. Murphy
Mr. Joseph Nevin
Mr. Mahlon Donald Hess
Submitted: January 5, 2006

² 2005 MT 239, 328 Mont. 441, 121 P.3d 1007.

³ *Id.*, ¶ 42 (citations omitted).

⁴ 2005 MTWCC 56, ¶ 9.