

IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

2006 MTWCC 17

WCC No. 2006-1589

LEONARD L. LYONS

Petitioner

vs.

MONTANA STATE FUND

Respondent/Insurer.

ORDER DENYING REQUEST FOR EMERGENCY TRIAL

Case Summary: Petitioner alleges he sustained injuries while employed by Respondent's insured. According to Petitioner's Emergency Petition, Respondent has denied liability on the grounds that Petitioner allegedly failed to timely notify his employer of his injuries pursuant to § 39-71-603, MCA (2005). Petitioner requests an emergency trial setting.

Held: The request for an emergency trial setting is denied. ARM 24.5.311 requires good cause be shown to justify the setting of an emergency trial. To determine whether good cause exists, the rule requires that "[f]acts constituting the emergency must be set forth in the petition in sufficient detail for the court to determine whether an actual emergency exists." In his petition, Petitioner expounds at length as to the circumstances of his injury and the timing of his notice to his employer. However, he devotes one sentence in support of justification for an emergency setting. In this sentence, Petitioner offers no details which would allow the Court to determine whether good cause exists to set an emergency trial.

Topics:

Constitutions, Statutes, Regulations, and Rules: Administrative Rules of Montana: 24.5.311. Where Petitioner asserts he is "permanently disabled, unable to pay his medical bills and unable to do his job of injury," but offers no details or support for this allegation, Petitioner's pleading is insufficient to demonstrate good cause for an emergency setting.

Procedure: Emergency Petition. Where Petitioner asserts he is "permanently disabled, unable to pay his medical bills and unable to do his

job of injury,” but offers no details or support for this allegation, Petitioner’s pleading is insufficient to demonstrate good cause for an emergency setting.

¶1 Petitioner has requested this Court to set the matter for an emergency trial pursuant to ARM 24.5.311. For the reasons set forth below, Petitioner’s motion is denied.

¶2 ARM 24.5.311 allows for the setting of trials upon less than 75 days notice when good cause is shown. In order to determine whether good cause exists, the rule requires that “[f]acts constituting the emergency must be set forth in the petition in sufficient detail for the court to determine whether an actual emergency exists.” In the present case, such detail is lacking.

¶3 Petitioner expounds at length in his petition as to the circumstances of his injury and the timing of his notice to his employer, which appears to be the center of the dispute between Petitioner and Respondent. With respect to demonstrating good cause for an emergency setting, however, Petitioner devotes one sentence of his petition towards demonstrating that good cause exists. Under the heading of “Emergency Petition Justification,” Petitioner quotes from the relevant ARM followed by a sentence which reads: “Petitioner is permanently disabled, unable to pay his medical bills and unable to do his job of injury.”

¶4 Other than this single, unsupported allegation, Petitioner offers no details which would allow the Court to determine whether good cause exists to set an emergency trial. Moreover, other parts of Petitioner’s Emergency Petition do not support the allegation he makes in support of an emergency setting. Although Petitioner alleges that he is permanently disabled, the medical records excerpted in his petition do not support this allegation. The most recent medical note of any substance excerpted in Petitioner’s Emergency Petition is a May 14, 2005 treatment note, apparently from St. James Healthcare in Butte, which prescribes pain medication, limits Petitioner’s lifting to five pounds until released, and instructs him not to work for two days. Moreover, although Petitioner alleges that he is unable to pay his medical bills and unable to do his job of injury, the Court is left completely in the dark as to whether Petitioner is working in another job, whether he is being denied necessary medical care, or to what degree, if any, that he may be suffering financial hardship because of the denial of benefits.

¶5 This Court has previously held that if a petition lacks sufficient detail to enable the Court to determine whether good cause exists to justify an emergency trial setting pursuant to ARM 24.5.311, the request must be denied.¹ As in *Rogers*, however, the Court recognizes that facts may exist in the present case which may justify an emergency trial setting. If this is the case, the Court will consider an amended petition setting forth such facts, presented in sufficient detail, for the Court to determine whether an actual emergency

¹ *Rogers v. Montana State Fund*, 2005 MTWCC 58.

exists. Pursuant to ARM 24.5.316, the time for filing any motion to amend a pleading shall be fixed by the Court in a scheduling or other order. Such an order has not yet been entered in the present case. Leave to amend a petition will be freely given when justice so requires.² If facts exist which would justify an emergency setting pursuant to the rule, justice would require the Court's consideration of these facts. In the absence of an amended petition setting forth such facts in sufficient detail, however, the Court will not simply infer facts justifying an emergency setting.

ORDER

¶6 Petitioner's request for an emergency trial setting is **DENIED**.

¶7 Petitioner is granted leave to amend his petition to set forth facts in sufficient detail for the Court to determine whether an actual emergency exists. If no amended petition is received by the Court within twenty days from the date of this Order, this matter will be placed on the Court's regular trial schedule.

DATED in Helena, Montana, this 26th day of April, 2006.

(SEAL)

/s/ James Jeremiah Shea
JUDGE

c: Robert C. Kelleher, Sr.
Ben Jones

² *Id.* at ¶ 4 (citing, *Higgins v. Liberty Northwest Ins. Corp.*, 2004 MTWCC 31, ¶ 6).