

IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

2005 MTWCC 58

WCC No. 2005-1485

ROBERT ROGERS

Petitioner

vs.

MONTANA STATE FUND

Respondent/Insurer.

ORDER DENYING REQUEST FOR EMERGENCY TRIAL

Case Summary: Petitioner alleges he suffered a dislocated shoulder and torn rotator cuff while in the employ of Respondent's insured. Petitioner requests an emergency trial based on his allegation that he needs shoulder surgery as soon as possible along with his medical bills paid, and payment of temporary total disability benefits.

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 the present case, other than Petitioner's conclusory allegation that he needs shoulder surgery as soon as possible and his medical bills paid, Petitioner offers no details for the Court to determine whether good cause exists to set an emergency trial.

Topics:

Procedure: Emergency Petition. In order to determine whether good cause exists for the setting of an emergency trial, ARM 24.5.311 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." Absent sufficient detail, a request for emergency petition is denied.

Pleading: Amendments. Leave to amend a petition will be freely given when justice so requires. Where a petition fails to set forth facts in sufficient detail for the

Court to determine whether good cause exists to set a matter for emergency trial, Petitioner may amend the petition to set forth facts in sufficient detail for the Court to make such a determination.

¶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 In support of his request for emergency trial, Petitioner alleges that he needs "shoulder surgery as soon as possible along with his medical bills paid, and payment of temporary total disability benefits he is entitled to under Montana law." (Petition and Request for Emergency Trial at 6.) Although Petitioner goes on to allege that he has suffered severe pain and financial distress, he has provided no other details as to the nature of his pain, whether it is being managed with conservative care pending the arthroscopic evaluation indicated by Dr. Sherrill, or how the pain is interfering in Petitioner's daily life. Moreover, in the summary of medical records set forth in the petition, there is no reference one way or the other as to whether the arthroscopic evaluation must be done "as soon as possible." With respect to Petitioner's allegation of financial distress, he similarly offers no details as to the nature or severity of the financial distress. For example, Petitioner does not allege whether the unpaid medical bills are being turned over for collection, whether he is being denied necessary medical care because of the unpaid medical bills, whether he is unable to support himself and/or his family because of the current denial of benefits, whether he is facing adverse credit reporting because of the denial of benefits, nor any other details which, in this Court's judgment, may justify a finding of good cause to set an emergency trial. Absent such detail, as required by ARM 24.5.311, the Court must deny Petitioner's request.

¶4 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 certainly consider an amended petition setting forth such facts, presented in sufficient detail, for the Court to determine whether an actual emergency 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. As Petitioner has only recently filed his petition, such an order has not been entered in the present case. Moreover, as this Court has previously held, leave to amend a petition will be freely given when justice so requires.¹ Certainly, if facts exist which would justify an

¹ *Higgins v. Liberty Northwest Ins. Corp.*, 2004 MTWCC 31, ¶ 6.

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

¶5 Petitioner's request for an emergency trial setting is **denied**.

¶6 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 21st day of December, 2005.

(SEAL)

/s/ James Jeremiah Shea
JUDGE

c: Mr. Eric Rasmusson
Mr. Greg E. Overturf (Enc. copy of Petition and Request for Emergency Trial)
Mr. Ben Jones (Enc. copy of Petition and Request for Emergency Trial)