

IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

2007 MTWCC 36

WCC No. 2006-1689

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**MATTHEW SOMERVILLE**

**Petitioner**

**vs.**

**MONTANA ASSOCIATION OF COUNTIES WORKERS' COMPENSATION TRUST**

**Respondent/Insurer.**

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ORDER DENYING PETITIONER'S MOTION FOR RECONSIDERATION

**Summary:** Petitioner moves for reconsideration of this Court's conclusion that Petitioner failed to meet his burden of proof that he was entitled to benefits. Petitioner urges the Court to reweigh the evidence and find in his favor.

**Held:** Petitioner's motion is denied. Petitioner directs the Court's attention to the same evidence which the Court already considered and the sum of his argument is that the Court should assign more weight to the discrepancies in the testimony of Respondent's witnesses, and less weight to the discrepancies in Petitioner's testimony. Having already considered the evidence which Petitioner emphasizes in his brief, the Court concluded Petitioner failed to meet his burden of proof. Upon reconsideration, that determination stands.

¶ 1 Petitioner Matthew Somerville moves the Court to reconsider its Findings of Fact, Conclusions of Law and Judgment entered June 11, 2007. Respondent Montana Association of Counties Workers' Compensation Trust responds, arguing that the Court should not disturb its June 11, 2007, decision in this matter.

¶ 2 A significant portion of the Findings in this case contrasts what each of Respondent's witnesses said at trial versus what they testified to at their respective depositions.<sup>1</sup> I likewise pointed out similar discrepancies in Petitioner's testimony, as well as places where

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<sup>1</sup> *Somerville v. Montana Association of Counties Workers' Compensation Trust*, 2007 MTWCC 20, ¶¶ 9-14, 17.

Petitioner's testimony differed from other evidence, including medical records.<sup>2</sup> Ultimately, I concluded Petitioner had not met his burden of proving by a preponderance of the evidence that he is entitled to workers' compensation benefits.<sup>3</sup> I explained:

In the case at hand, the Court has credibility concerns with all witnesses, but found Respondent's witnesses slightly more credible than Petitioner. Even if it was a toss-up, however, Petitioner would not prevail because of the burden he must meet.<sup>4</sup>

¶ 3 In his brief supporting his motion for reconsideration, Petitioner highlights these same discrepancies, argues that the discrepancies in the testimony of Respondent's witnesses are more significant than the discrepancies in his testimony, and urges the Court to reweigh the evidence and reach a result in Petitioner's favor. In issuing the Findings of Fact, Conclusions of Law and Judgment in this case, I considered the testimony and evidence and made credibility determinations regarding each witness. In his motion for reconsideration, Petitioner simply points out the evidence and discrepancies in testimony which I already took into account in reaching my original decision.

¶ 4 The Findings of Fact, Conclusions of Law and Judgment stand as issued, and Petitioner's motion for reconsideration is denied.

#### ORDER

¶ 5 Petitioner's motion for reconsideration is **DENIED**.

DATED in Helena, Montana, this 17<sup>th</sup> day of August, 2007.

(SEAL)

/s/ JAMES JEREMIAH SHEA  
JUDGE

c: Cameron Ferguson  
Norman H. Grosfield  
Submitted: July 11, 2007

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<sup>2</sup> *Somerville*, ¶¶ 15-17, 20-25.

<sup>3</sup> *Somerville*, ¶ 28.

<sup>4</sup> *Somerville*, ¶ 29.