

IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

1995 MTWCC 67

WCC No. 9408-7127

BUD STRODE

Petitioner

vs.

STATE COMPENSATION INSURANCE FUND

Respondent/Insurer for

BLUE RIBBON BUILDERS

Employer.

ORDER AND JUDGMENT DISMISSING APPEAL

Summary: Though pro se claimant settled his underlying case with State Fund, he wished to proceed against the Department of Labor on his petition for review of the DOL's denial of 49 day temporary total disability benefits and its decision on the impairment rating process prescribed by section 39-71-711, MCA.

Held: Where the underlying claim is settled, there is no pending case or controversy between the claimant and the DOL. The case is dismissed.

Topics:

Jurisdiction: Mootness. Where the underlying claim against State Fund is settled, there is no pending case or controversy between the claimant and the DOL over its denial of 49-day benefits under section 39-71-610, MCA (1989), and its order on the impairment award process under section 39-71-711, MCA (1989).

Petitioner, appearing pro sé, filed a Petition for Review seeking judicial review of the Department of Labor and Industry's denial of his request pursuant to section 39-71-610, MCA, for 49 days of temporary total disability benefits and its decisions regarding the impairment rating process prescribed by section 39-71-711, MCA (1989). Subsequent to

the filing of his petition he entered into a full and final compromise settlement agreement with the insurer, State Compensation Insurance Fund. He then agreed to dismissal of the State Fund as a party to this proceeding but contends that the Department is still a party and that he should be allowed to proceed against the Department.

In its response the Department moves to dismiss. The motion is **granted**.

This Court is empowered to judicially review actions of the Department. However, that power extends only to concrete cases and controversies before the Department. The Court will not address moot issues. See *State v. Murray*, 183 Mont. 499, 503, 600 P.2d 1174, 1176 (1979). "A moot question is one which existed once but because of an event or happening, it has ceased to exist and no longer presents an actual controversy." *Id.* In this case, the claimant has settled all his claims against the State Fund. In light of the settlement agreement, the case and controversy mentioned in the petition is moot since the agreement precludes claimant from further pursuing any claim for additional benefits.

JUDGMENT

IT IS HEREBY ORDERED AND ADJUDGED that the Petition for Review is **dismissed with prejudice**.

This judgment is certified as final for purposes of appeal.

Dated in Helena, Montana, this 31st day of August, 1995.

(SEAL)

/s/ Mike McCarter

JUDGE

c: Mr. Bud Strobe - Certified Mail
Mr. Robert J. Campbell
Ms. Ann E. Clark