

IN THE SUPREME COURT OF THE STATE OF MONTANA

No. DA 07-0651

FILED

DEC 05 2007

Ed Smith
CLERK OF THE SUPREME COURT
STATE OF MONTANA

ORDER

FILED

DEC 10 2007

OFFICE OF
WORKERS' COMPENSATION JUDGE
HELENA, MONTANA

CHARLES LANES,

Petitioner and Appellee,

v.

MONTANA STATE FUND,

Respondent/Insurer and Appellant.

Appellant Montana State Fund (MSF) has filed a Notice of Appeal and certifies, among other matters, that "this appeal is an appeal from an order certified as final under M. R. Civ. P. 54(b)."

MSF included in its Notice of Appeal the certification regarding Rule 54 apparently based upon the provision in M. R. App. P. 4(4)(b) that requires an appellant to state this fact in its notice of appeal and to provide a copy of the certification order. Rule 4(4)(b) further directs the Clerk of Court to forward immediately copies of the notice of appeal to the Supreme Court for review. The rule further provides that the appeal shall not proceed until the Court has reviewed the certification order, determined that the certification complies with M. R. Civ. P. 54(b) and M. R. App. P. 6(6), and entered an order allowing the appeal to proceed.

The Court has reviewed MSF's Notice of Appeal and the Order of the Workers' Compensation Court from which it appeals. Paragraph 53 of the Workers' Compensation Court's Findings of Fact, Conclusions of Law and Judgment provides that "this JUDGMENT is certified as final for purposes of appeal." Despite this statement by the Workers' Compensation Court, the Workers' Compensation Court appears to have resolved all issues raised on appeal.

The court's Order states that the following issues were presented in the pretrial order: 1) whether the Respondent is required to accept responsibility for Petitioner's right knee occupational disease; 2) whether Petitioner is entitled to temporary total

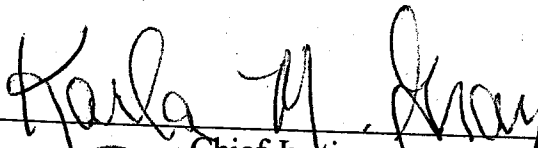
disability benefits for his right knee occupational disease; 3) whether Petitioner is entitled to permanent total disability benefits for his right knee occupational disease; 4) whether the Petitioner is entitled to his costs and attorney's fees; and 5) whether Petitioner is entitled to a 20% penalty pursuant to § 39-71-2907, MCA. The court proceeds to resolve all five of these issues in the course of its Order. Nothing remains to be resolved by the Workers' Compensation Court.

The appeal should proceed pursuant to the timelines established in the Montana Rules of Appellate Procedure. We emphasize, however, that MSF's appeal is not subject to the requirement in Rule 4(4)(b) of the Montana Rules of Appellate Procedure despite the language in the Workers' Compensation Court's Order certifying the judgment is final for purposes of appeal in light of the fact that the Workers' Compensation Court resolved all issues presented to it. We encourage the Workers' Compensation Court to distinguish cases in which it wishes to certify an interlocutory appeal pursuant to M. R. Civ. P. 54(b) from judgments that it certifies as final based on its resolution of all issues presented. Accordingly,

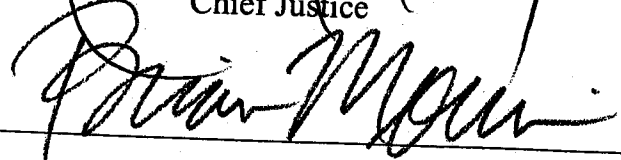
IT IS HEREBY ORDERED that MSF's appeal shall proceed pursuant to the timelines and rules established in the Montana Rules of Appellate Procedure.

The Clerk of Court shall mail a copy of this Order to all counsel of record.

DATED this 5th day of December 2007.

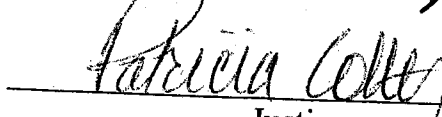


Chief Justice









Justices

OFFICE OF
WORKERS COMPENSATION JUDGE
HELENA, MONTANA

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