

IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

2008 MTWCC 11

WCC No. 2006-1610

DORIS WOODARDS

Petitioner

vs.

MONTANA INSURANCE GUARANTY ASSOCIATION

Respondent/Insurer.

ORDER DENYING PETITIONER'S MOTION FOR RECONSIDERATION

Summary: Petitioner seeks reconsideration of the Court's Order granting summary judgment in favor of Respondent and denying Petitioner's motion for summary judgment. Petitioner argues that the Court failed to consider Petitioner's entitlement to an impairment award in rendering its decision.

Held: The Court cannot reconsider Petitioner's entitlement to an impairment award because this issue was never submitted for the Court's consideration in the first place. Accordingly, Petitioner's Motion for Reconsideration is denied.

Topics:

Procedure: Reconsideration. Where the only issues before the Court on a motion to dismiss were whether the claimant was ineligible for PTD benefits and whether the claimant's TTD benefits were unlawfully converted to PPD benefits, and the claimant never raised the issue of her entitlement to an impairment award until she moved the Court to reconsider its order granting the motion to dismiss, the Court cannot "reconsider" an issue which was not before it in the first place.

¶ 1 Petitioner moves this Court for reconsideration of its decision in this matter.¹ In her motion, Petitioner argues that this Court “failed to acknowledge [that] Petitioner had an entitlement to a category of permanent partial disability benefits – an impairment award”² Petitioner further argues that although Respondent has not disputed her entitlement to an impairment award, this Court erroneously concluded that because she never met the full definition of permanent partial disability, that she was not entitled to one.³ Petitioner also requests oral argument on her motion.⁴

¶ 2 Respondent responds that the Court correctly concluded that Petitioner was never permanently partially disabled (PPD), that she is not entitled to permanent total disability (PTD) benefits, and that Respondent overpaid Petitioner’s temporary total disability (TTD) benefits. Respondent points out that ARM 24.5.337(1) does not provide for oral argument at the request of a party.⁵

¶ 3 In my previous decision in this matter, two issues were before the Court: “Whether § 39-71-710, MCA, and this Court’s ruling in *Satterlee v. Lumberman’s Mut. Cas. Co.*, 2005 MTWCC 55, renders Petitioner ineligible for PTD benefits”; and “Whether Respondent unlawfully retroactively converted Petitioner’s TTD benefits to PPD benefits.”⁶ Petitioner does not challenge my conclusion that she is ineligible for PTD benefits pursuant to *Satterlee*. However, Petitioner never raised the issue of her entitlement to an impairment award until now. Petitioner alleged only that Respondent unlawfully retroactively converted her biweekly benefits from TTD to PPD and then terminated those benefits without notice.⁷ I concluded that Petitioner was never PPD because from the date of her industrial injury forward, she was never able to return to work in any capacity.⁸ This has no bearing on Petitioner’s entitlement or lack of entitlement to an impairment award, and this Court was not asked to rule on any issue concerning Petitioner’s entitlement to an impairment award.

¹ *Woodards v. Montana Ins. Guaranty Assoc.*, 2007 MTWCC 55.

² Memorandum in Support of Motion for Reconsideration (“Memorandum”), Docket Item No. 30, at 1.

³ Memorandum at 2.

⁴ Petitioner’s Request for Oral Argument, Docket Item No. 31.

⁵ Reply Brief in Opposition to Motion for Reconsideration, Docket Item No. 32.

⁶ *Woodards*, ¶¶ 12-13.

⁷ *Woodards*, ¶ 20.

⁸ *Woodards*, ¶ 24.

¶ 4 It may indeed be the case that Petitioner is entitled to an impairment award. However, since this issue was never presented for my consideration in the first place, I cannot “reconsider” it now.

¶ 5 With respect to Petitioner’s request for oral argument, ARM 24.5.337(1) provides that a motion for reconsideration is deemed submitted upon receipt of the response brief or the expiration of the time for filing a response unless the Court requests oral argument. I do not believe oral argument is necessary in this matter.

JUDGMENT

¶ 6 Petitioner’s Motion for Reconsideration is **DENIED**.

¶ 7 Pursuant to ARM 24.5.348(2), this Judgment is certified as final and, for purposes of appeal, shall be considered as a notice of entry of judgment.

DATED in Helena, Montana, this 6th day of February, 2008.

(SEAL)

/s/ JAMES JEREMIAH SHEA
JUDGE

c: Charles G. Adams
Kelly M. Wills
Submitted: February 4, 2008