

IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

1995 MTWCC 75A

WCC No. 9505-7308

WILLIAM BURGAN

Petitioner

vs.

NATIONWIDE INSURANCE COMPANY

Respondent.

ORDER AMENDING JUDGMENT, DENYING PETITION FOR REHEARING

Summary: Claimant requested clarification of certain matters following Judgment and asked for new trial.

Held: PPD rate is corrected. Impairment award should be credited against 250 weeks PPD ordered. Motion for new trial denied where claimant seeks to re-argue issues previously argued.

Topics:

Procedure: Post-Trial Proceedings: New Trial: Generally. Where claimant does not seek to present newly discovered evidence or claim accident or surprise, but rather seeks to re-argue grounds previously argued, motion for new trial is denied.

(SEE FOLLOWING ORDER)

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WILLIAM BURGAN,

Petitioner,

WCC No. 9505-7308

vs.

NATIONWIDE INSURANCE COMPANY,

Respondent/Insurer for

CENEX,

Employer.

FILED

NOV - 3 1995

OFFICE OF
WORKERS' COMPENSATION JUDGE
HELENA, MONTANA

ORDER AMENDING JUDGMENT,
DENYING PETITION FOR REHEARING

Two post-trial motions are presented to the Court. Petitioner moves the Court to correct the partial disability rate in paragraph 1 of the Judgment and for clarification concerning the application of a previously paid impairment award. (PETITIONER'S POST-TRIAL MOTIONS AND RESPONSES.) Respondent moves for a new hearing. (PETITION FOR REHEARING.)

Motion to Amend

Petitioner correctly points out that the Court misstated claimant's permanent partial disability rate in the first paragraph of the Judgment. The Court used \$143.00 per week. The correct rate is \$149.50 (Exs. 4 and 7.)

The Court also failed to state whether the impairment award already paid to claimant should be credited against the 250 weeks award. It intended that it should.

The Judgment shall be amended accordingly.

Petition for Rehearing

Petitions for new trials are governed by ARM 24.5.344, which provides, inter alia, that any party "may petition for a new trial or request amendment to the court's findings of fact and conclusions of law within 20 days after the order or judgement is served." The grounds for granting

a new trial are enumerated in section 25-11-102, MCA. There are three grounds applicable to cases tried without jury. They are:

(1) irregularity in the proceedings of the court, jury, or adverse party or any order of the court or abuse of discretion by which either party was prevented from having a fair trial;

...
(3) accident or surprise which ordinary prudence could not have guarded against;

(4) newly discovered evidence material for the party making the application which he could not, with reasonable diligence, have discovered and produced at the trial.

Respondent does not seek to present new evidence or claim accident or surprise. Rather, it argues that the Court abused its discretion in awarding claimant 250 weeks of permanent partial disability benefits and attorney fees. The Court carefully considered respondent's arguments the first time around. It finds no good cause to change its mind. The motion is therefore **denied**.

ORDER

The first paragraph of the judgment is amended to read as follows:

1. Under sections 39-71-703 to 39-71-708, MCA (1985), the claimant is entitled to permanent partial disability benefits of \$149.50 for 250 weeks. Those benefits total \$37,375.00. However, payments of 40 weeks of benefits paid by the insurer on account of claimant's impairment rating shall be credited against the award. Thus, the insurer is entitled to a credit of \$5,980.00 ($\$149.50 \times 40 \text{ weeks}$) and shall pay claimant a net award of \$31,395.00 in a lump sum.

IT IS FURTHER ORDERED that respondent's PETITION FOR REHEARING is **denied**.

This case is certified as final for purposes of appeal.

Dated in Helena, Montana, this 3rd day of November, 1995.

(SEAL)



JUDGE

c: Mr. Patrick R. Sheehy
Mr. Neil S. Keefer