

IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

1996 MTWCC 71

WCC No. 9606-7555

AMMIE L. COATES

Petitioner

vs.

LIBERTY NORTHWEST INSURANCE CORPORATION

Respondent/Insurer for

VALLEY VIEW ESTATES NURSING HOME

Employer.

FINDINGS OF FACT, CONCLUSIONS OF LAW AND JUDGMENT

Summary: 22-year old certified nurse's assistant fell while assisting patient. After her employment was terminated, she did not obtain other work, but complained about ongoing, debilitating back pain. Orthopedic surgeon evaluating claimant diagnosed lumbar strain, "if anything," noting there was not "enough organic, real evidence to justify an MRI." He found "dysfunctional pain behavior." Pain specialist assumed claimant's pain reports were truthful and diagnosed somatoform disorder, based on his observation the pain reports were grossly out of proportion with evidence of any objective medical condition. Claimant sought continued temporary total disability benefits.

Held: WCC did not credit claimant's reports of pain and disability and found she purposefully exaggerated her complaints to obtain benefits. This conclusion was based on several factors, including: the lack of objective medical evidence of any continued condition; contradiction between her demeanor in court and records of pain behavior displayed for physicians; conflicts between her testimony and that of medical providers; conflicts between her deposition and trial testimony.

Topics:

Benefits: Temporary Total Benefits. Claim for continued TTD benefits denied where WCC did not credit claimant's reports of pain and disability and found she purposefully exaggerated her complaints to obtain benefits. This conclusion was based on several factors, including: the lack of objective medical evidence of any

continued condition; contradiction between her demeanor in court and records of pain behavior displayed for physicians; conflicts between her testimony and that of medical providers; conflicts between her deposition and trial testimony; observations of pain behavior by medical providers.

Medical Conditions (By Specific Condition): Somatoform Disorder. Although pain expert diagnosed somatoform disorder following back injury, WCC found claimant was purposefully exaggerating her complaints and alleged disability in order to obtain benefits. Further TTD denied.

Pain. Claim for continued TTD benefits denied where WCC did not credit claimant's reports of pain and disability and found she purposefully exaggerated her complaints to obtain benefits. This conclusion was based on several factors, including: the lack of objective medical evidence of any continued condition; contradiction between her demeanor in court and records of pain behavior displayed for physicians; conflicts between her testimony and that of medical providers; conflicts between her deposition and trial testimony; observations of pain behavior by medical providers.

Witnesses: Credibility. Claim for continued TTD benefits denied where WCC did not credit claimant's reports of pain and disability and found she purposefully exaggerated her complaints to obtain benefits. This conclusion was based on several factors, including: the lack of objective medical evidence of any continued condition; contradiction between her demeanor in court and records of pain behavior displayed for physicians; conflicts between her testimony and that of medical providers; conflicts between her deposition and trial testimony; observations of pain behavior by medical providers.

The trial in this matter was held in Missoula, Montana, on October 21, 1996. Petitioner, Ammie Coates (claimant), was present and represented by Mr. Howard C. Greenwood. Respondent, Liberty Northwest Insurance Corporation (Liberty), was represented by Mr. Larry W. Jones.

Exhibits: Exhibits 1 through 8 were admitted at trial without objection by either party.

Witnesses and Depositions: Claimant, Rod Moore, and Martin Cheatle, Ph.D., testified at trial. In addition, the parties submitted depositions of Dr. James H. Chandler, Dr. Martin D. Cheatle, Dr. James R. Burton, Dr. Walker J. Ashcraft, and claimant to the Court for its consideration.

No transcript of the trial has been prepared.

Issues Presented: Claimant seeks additional temporary total disability benefits on account of a back injury she suffered on November 30, 1994. She also seeks attorney fees, costs, and a penalty.

* * * * *

Having considered the pretrial order, the testimony presented at trial, the demeanor and credibility of the witnesses, the depositions and exhibits, and the arguments of the parties, the Court makes the following:

FINDINGS OF FACT

1. Claimant is 22 years old and resides in Darby, Montana, with her 3 ½ year old daughter and her fiancé, Rod Moore.
2. Claimant quit school in the ninth grade but subsequently obtained her GED.
3. Claimant has previously worked at McDonald's, county fairs, and Kentucky Fried Chicken, and has cleaned houses.
4. On November 30, 1994, claimant was working as a certified nurse's assistant (CNA) for Valley View Estates Nursing Home (Valley View). Claimant's job duties included bathing, dressing, moving, and feeding residents.
5. On November 30, 1994, claimant strained her lower back while she and a co-worker were lifting a resident. The resident became combative and claimant's co-worker let go of the resident, causing claimant and resident to fall to the floor. Claimant felt immediate pain in her lower back.
6. Claimant reported the accident that same day to the charge nurse. According to claimant, her employment at Valley View was terminated the following day. The circumstances and reasons for her termination are not an issue in this case and the Court makes no findings regarding the termination.
7. At the time of claimant's industrial accident, Valley View was insured by Liberty. Liberty accepted liability for the claim and thereafter paid medical expenses and temporary total disability benefits.
8. Rod Moore testified that on the date of the accident claimant came home from work and appeared to be in pain. He gave claimant a couple of Darvocet, a pain medication for which he apparently had a prescription. Claimant testified that the Darvocet made her "feel not so bad."
9. Claimant described the location of her back pain as across her lower back. In her deposition she testified that it has worsened since the day of her injury. (Coates Dep. at 21,

24.) She further testified that she has also experienced tingling and numbness in her right buttock and upper leg. (*Id.* at 23.)

10. Claimant described her activities in her deposition. She said that on an average day she arises around 7:30 a.m. and cooks breakfast. (*Id.* at 26.) Her mother helps her do the shopping, cooking and cleaning. (*Id.* at 33.) In the afternoon, she goes to town or visits relatives. (*Id.* at 26-28.) She testified that everyday activities, including lifting her "heavy" daughter, make her pain worse over the course of the day, and that she sometimes has problems eating or sleeping because of her back pain. (*Id.* at 32.)

11. According to claimant, she is unable to stand for long periods because her legs become numb. (*Id.* at 51.) She said that she can only sit for a couple of hours and that walking sometimes makes her back worse. (*Id.* at 52.) She described an incident in August of 1995 when she leaned over to pick up a potato from the ground and passed out from pain.

12. Claimant did not seek medical care until January 1995, when she saw Dr. Walker Ashcraft, a family practitioner, on January 4, 1995. Dr. Ashcraft ordered an x-ray of claimant's back and diagnosed her as suffering a muscle strain of her back. (Ex. 1 at 1; Ashcraft Dep. at 9-10.)

13. Over the next few months Dr. Ashcraft prescribed a series of anti-inflammatory medications that either did not help claimant or made her sick. (Ex. 1 at 1-2.) Dr. Ashcraft stated that it was unusual, although not unheard of, for several different anti-inflammatories to fail. (Ashcraft Dep. at 8.)

14. Claimant testified at trial that none of the pain medications alleviated her pain.

15. Because claimant continued to complain of back pain, Dr. Ashcraft ordered a CT scan of claimant's back. On June 16, 1995, he reported the results as negative and wrote that "there is no objective evidence to keep her from going back to work." (Ex. 1 at 2.)

16. Dr. Ashcraft testified in his deposition that "under normal conditions, all of the things that were done should have cleared her up; that is, being off work, the anti-inflammatories, the physiotherapy. I don't know why she didn't get better." (Ashcraft Dep. at 10.)

17. Because of her continuing complaints, Dr. Ashcraft referred claimant to Dr. Frechette, an orthopedic surgeon, for further evaluation on April 3, 1995. (Ex. 1 at 1.) The parties failed to furnish the Court with Dr. Frechette's records. However, according to a June 1, 1995 letter of Dr. Ashcraft, Dr. Frechette ordered physical therapy. (*Id.* at 3.)

18. Claimant missed several physical therapy sessions during a month of therapy. She testified that she missed the sessions because her car was inoperative. (Coates Dep. at 38.) Moreover, she testified that the physical therapy made her back worse. Dr. Ashcraft observed that it is uncommon for physical therapy to worsen a back condition. (Ashcraft

Dep. at 8.) According to Dr. Ashcraft, claimant was "told" by Dr. Frechette "to go back to work." (Ex. 1 at 1.)

19. Dr. James Burton, a board certified orthopedic surgeon, performed an independent medical evaluation of claimant on April 27, 1995, at the request of the insurer (ex. 5) and testified by deposition. Dr. Burton initially observed claimant in his waiting room:

I go out and get them [the patients] myself and introduce myself and walk with them down the hall into the examination room. So all of this takes place before anything on this piece of paper takes place And so that is my very first initial evaluation of the patient. And that's actually part of the exam. The patient doesn't think of it as part of the exam. . . . [Y]ou can tell an awful lot just by observing the casual movements of the patient within the waiting room before you ever introduce yourself to them.

And then once you get into the examination room, I always have a patient -- I weigh them and they sit. And then I measure their height and they sit. And I do these things that require them to sit and stand and sit and stand so I can observe that. And if it's appropriate, I try to have them take their shoes off, and so they have to bend over and take their shoes off. Not because I really want their shoes off, but I just want to see how well they do it.

And so there's a lot of things going on here that happen before the patient would think that the examination has actually started.

(Burton Dep. at 28-29.) He observed claimant get up from the waiting room, walk down the hall, sit down in a chair, and take off her shoes. (*Id.*) During this time Dr. Burton did not notice any lumbar restrictions. (*Id.*)

20. Dr. Burton thereafter examined claimant a second time on May 16, 1995.

21. Dr. Burton's records indicate, and he testified, that he performed a physical examination of claimant on both visits, including cervical, upper extremity, thoracic, lumbar, and lower extremity maneuvers. (Ex. 5; Burton Dep. at 9-12.) Claimant, on the other hand, testified that Dr. Burton performed no physical examination other than reflex tests of her knees. I found claimant's testimony concerning Dr. Burton's examination unbelievable and incredible.

22. Dr. Burton also took x-rays and found them to be completely within normal limits. (Burton Dep. at 12.)

23. Dr. Burton diagnosed a probable lumbar strain. (Ex. 5 at 3.) He ruled out everything except lumbar strain. "We are left with, you know, **if anything**, lumbar strain." (Burton Dep. at 14, emphasis added.) Even then, he based his diagnosis exclusively on claimant's subjective complaints and her report of an injury. (*Id.* at 16.)

24 Dr. Burton did not believe there was "enough organic, real evidence to justify an MRI." (Ex. 5 at 4.) In his opinion, claimant was displaying "dysfunctional pain behavior" and "she really didn't have much wrong with her." (Burton Dep. at 19.) Her symptoms were out of proportion to his medical findings. (*Id.* at 20.) He found no physical explanation for her complaints of pain. (*Id.* at 25.)

25. On May 16, 1995, Dr. Burton found claimant to be "at pre-injury status" and "able to return to her job of injury." (Ex. 5 at 4.) That finding amounted to a determination that she had reached maximum medical healing. See *Belton v. Carlson Transport*, 202 Mont. 384, 385, 658 P.2d 405, 406 (1983).

26. Based on Dr. Burton's report of maximum healing, on May 17, 1995, Liberty informed claimant that it was terminating her benefits effective June 6, 1995. (Ex. 2.) On June 6 it in fact terminated benefits.

27. Claimant continued to see Dr. Ashcraft. (Ex. 1.) In August 1995, Dr. Ashcraft referred her to Dr. Chandler, a board certified orthopedic surgeon.

28. Dr. Chandler initially examined claimant on August 16, 1995. (Ex. 6.) His examination revealed no clinical abnormalities and he was unable to find a physiological explanation for her continuing complaints. (Chandler Dep. at 8.)

29. Dr. Chandler ordered an MRI. (Ex. 6 at 2.) The MRI, done on September 28, 1995, was normal. (Chandler Dep. at 9; Ex. 7 at 3.)

30. Dr. Chandler diagnosed claimant with recurrent dorsolumbar back strain and concluded that she could return to all occupational activity. (Ex. 7 at 3-4.) He testified that no further tests or evaluations are warranted. (Chandler Dep. at 13-14.) He suggested, however, that claimant might benefit from a pain clinic evaluation. (Ex. 7 at 3.)

31. Martin Cheatle, Ph.D., is a psychologist who specializes in pain. He is the director of the pain center at St. Patrick Hospital in Missoula, Montana.

32. Dr. Cheatle examined claimant on April 3, 1996. He found her to be "a highly anxious and immature 21 y/o woman who presents with chronic back pain out of proportion with clinical data to date." (Ex. 4 at 6.) His impressions following the examination were 1) Somatoform pain disorder - severe; 2) Persistent low-back pain without radicular features, consistent with myofascial type pain syndrome; complicated by deconditioning, obesity, anxiety and somatization; and 3) Adjustment disorder with anxiety. (*Id.* at 5.)

33. Further evaluation by the pain clinic was done on April 15, 1996. A physical and occupational therapist performed a Baltimore Therapeutic Equipment (BTE) test on claimant. (Cheatle Dep. at 7.) The BTE, a computerized work simulator, included testing of claimant's upper extremity strength through right and left grasping exercises. (*Id.* at 8.) Dr. Cheatle requested the testing as "validity check" to determine how much effort the

claimant put into the test. (*Id.* at 7.) Dr. Cheatle testified that a low-back injury should not affect grip strength. Claimant's performance on the test indicated she was putting forth less effort than expected of someone with a low-back injury. (*Id.* at 8.) He stated that this could indicate "a very significant somatoform disorder." (*Id.* at 9.) He explained that people with this disorder have a "sort of disease conviction that they feel that their whole body is weak and that just anything in any type of effort will cause discomfort." (*Id.*) "[B]asically what it shows is the person's presentation of pain and dysfunction are most likely out of proportion with clinical data." (*Id.*)

34. Claimant also completed a Minnesota Multiphasic Personality Inventory, second edition (MMPI-2) and the Millon Clinical Multiaxial Inventory, second edition (MCMI-2). (*Id.* at 7; Ex. 3 at 3.) Dr. Cheatle referred these tests to Dr. Velin, a neuropsychologist, for an "unbiased" interpretation. (Cheatle Dep. at 9.) Dr. Velin's report was not provided to the Court. (*Id.* at 58.) However, in Dr. Cheatle's deposition, the following portion of Dr. Velin's report was read: "In general, this woman's presentation on objective personality testing suggests that she tends to convert psychological stressors into physical symptoms and remains resistant to the notion that this dynamic is present." (*Id.* at 10.)

35. Dr. Cheatle diagnosed claimant as suffering from somatoform pain disorder associated with both psychological factors and a general medical condition. According to the Diagnostic and Statistical Manual, fourth edition (DSM IV):

The common feature of the Somatoform Disorders is the presence of physical symptoms that suggest a general medical condition (hence, the term *somatoform*) and are not fully explained by a general medical condition, by the direct effects of a substance, or by another mental disorder (e.g., Panic Disorder).

American Psychiatric Association, Diagnostic and Statistical Manual of Mental Disorders (4th ed.1994) at 445. Somatoform disorders are distinguished from factitious disorders and malingering in that "the physical symptoms are not intentional (i.e., under voluntary control)." *Id.* (parenthesis in original). Factitious disorders and malingering involve physical symptoms that are intentionally produced, feigned or exaggerated, *id.* at 471, 683, in other words, faked. In the case of malingering the fabrication is motivated by "external incentives," including "financial compensation." *Id.* at 683. In the case of factitious disorder, the secondary gain is less focused and the "motivation is a psychological need to assume the sick role (i.e., gain sympathy)." *Id.* at 471 (parenthesis in original).

36. The distinctions outlined in the preceding paragraph are important in the resolution of this case. Dr. Cheatle did not question claimant's credibility. He assumed her reports of pain and other symptoms to be true. Thus, he did not consider the possibility that claimant may be deliberately fabricating or exaggerating her symptoms.

37. Dr. Cheatle noted that claimant's condition is "further complicated by her lack of goals, questionable motivation and insight." (Ex. 4 at 6.) He testified in deposition that she was "unable to elaborate on any long-term goal planning except for alluded to possibly working in computers." (Cheatle Dep. at 15.) In Dr. Cheatle's opinion, motivation is important to a return to work. (*Id.* at 24.) He concluded that claimant is not motivated to return to work. (*Id.* at 30.) Work is not claimant's primary goal; in fact, she is content in staying home with her daughter and having her parents dote on her. (*Id.* at 30-31.) He concluded that she is not a good candidate for a pain program. (*Id.* at 37.)

38. As with Dr. Burton's reports and testimony, claimant disputed many of Dr. Cheatle's observations.

a. Dr. Cheatle reported and testified that claimant told him she becomes "dizzy" while driving a car. She denied it and claimed that she told him that her leg becomes numb because she drives a manual transmission car.

b. Dr. Cheatle reported that he talked to claimant for one and a half hours. Claimant insisted he spent only a half hour with her.

c. Dr. Cheatle reported that during his interview the claimant was "overtly anxious and sat on the edge of her chair." (Ex. 4 at 4.) Claimant testified that she was no more nervous than she presented at trial. In the Court's observation of claimant at trial, she was "cool as a cucumber" and evidenced no anxiety or nervousness. In observing the claimant in the courtroom, Dr. Cheatle agreed that she was not overtly anxious but testified that her presentation at her interview was very different.

d. In his report, Dr. Cheatle recorded, "The patient noted minimal job satisfaction stating '**I hated working there.**'" (*Id.*, emphasis added.) Claimant denied making the statement and insisted that she only disliked working at Valley View when it was understaffed.

e. Dr. Cheatle reported that claimant said she had pain in her **left** leg. Claimant denied it, testifying that she said that she had pain in her **right** leg.

f. Dr. Cheatle reported that claimant's parents moved from Washington to Montana after her injury to help care for her and their granddaughter, and that her mother helps out shopping, cooking and cleaning. Claimant testified at trial that her parents did not move from Washington to help her out, that she had little contact with her parents, and that her mother does not help her.

39. After considering and weighing all of the evidence in this case, including the demeanor of the witnesses, I find that claimant is not credible or truthful. I further find that she has fabricated or at least exaggerated her back complaints in an attempt to gain compensation.

Finally, I find that she reached maximum medical improvement at least by May 16, 1995, and that she is not entitled to any further benefits. My findings are based on the following:

a. There is no objective medical evidence which explains claimant's continued complaints. X-rays, a CT scan, and an MRI were all negative. Dr. Ashcraft stated: "And under normal conditions, all of the things that were done should have cleared her up; that is, being off work, the anti-inflammatories, the physiotherapy. I don't know why she didn't get better." (Ashcraft Dep. at 10.) Dr. Burton diagnosed claimant with "probable lumbar strain" based solely on her subjective complaints and her report of injury. (Burton Dep. at 16.) He did not believe there was "enough organic, real evidence to justify ordering a MRI." (Ex. 5 at 4.) Dr. Chandler could find no physical explanation for her complaints and concluded that no further tests or evaluations were appropriate. (Chandler Dep. at 13-14.)

b. Claimant's demeanor at trial contrasted starkly with the pain behavior reported by both Drs. Burton and Cheatle during their examinations of claimant. In the Court's observation, claimant was unusually cool and composed when testifying at trial and while sitting with her counsel in the courtroom. I found Dr. Cheatle's description of claimant credible. While Dr. Burton testified by deposition, my own observation of claimant leads me to believe that she presented herself very differently to her doctors than in the courtroom.

c. If I were to believe claimant's testimony, I would have to believe that Dr. Burton fabricated his report and testimony, including the test results he reported. I would also have to believe that Dr. Cheatle fabricated portions of his report and testimony. I personally observed Dr. Cheatle and found him entirely credible. He candidly admitted that he could have erroneously recorded claimant's leg complaints as in her left rather than her right leg, and that his observation concerning claimant's parents moving from Washington to help care for claimant may have been an impression rather than a specific statement by claimant. However, some of the statements he attributed to claimant, and which she denied, were in quotation marks, reflecting his practice to enclose verbatim statements of his patients in quotation marks. Moreover, despite Dr. Cheatle's admission that he could have been mistaken about which leg claimant said was bothering her, I note that Dr. Burton reported that claimant complained of "pain in the posterior thighs, **bilaterally**" (ex. 5 at 1, emphasis added), and that Dr. Chandler reported that she complained of "intermittent extending **left** leg pain" (ex. 6 at 1, emphasis added). After considering claimant's testimony I do not believe her and reject her allegations against both Dr. Burton and Dr. Cheatle.

d. Claimant's deposition testimony was inconsistent in important respects with her trial testimony. At trial she denied that her parents had moved to Montana following

her injury in order to assist her. She testified that her parents moved to Montana before her injury. But in her deposition she said that her parents moved to Montana "just a little while **after** [she] was injured." (Coates Dep. at 28, emphasis added.) At trial she testified on direct examination that she sees her parents only once or twice a week and that her daughter may spend one night a week with them "if that." On cross-examination she conceded she sees her parents nearly every day, then attempted to explain the discrepancy in her testimony by saying that she "runs into" her parent in town but does not spend much time talking to them. In her deposition she testified, "My mom and dad have her [claimant's daughter] a lot." (*Id.* at 32.) Claimant testified at trial that her mother does not help her with housework, cooking and shopping. However, in response to a similar question put to her during her deposition, claimant responded, "She helps me. She doesn't do it all of the time. They are in the process of moving" (*Id.* at 33.)

e. Claimant testified at trial, and reported to Dr. Ashcraft, that none of the pain medications prescribed for her have helped her back. (Ex. 1 at 1-2.) However, in an attempt to discredit Dr. Burton, she testified at trial she was not "moaning and groaning" as Dr. Burton described in his report (ex. 5 at 4) because she had taken Darvocet that day.

f. I found totally incredible the testimony by claimant and her fiancé that claimant passed out on account of back pain when picking up a potato.

40. While Dr. Cheatle accepted claimant's pain complaints as true and genuine, I do not. Dr. Cheatle assumed claimant's reports of her symptoms to be credible and true. The evidence in this case persuades me that they were not, and are not. I find that claimant has deliberately fabricated, or at least exaggerated, her pain complaints in an attempt to secure further benefits.

41. Liberty's termination of temporary total disability benefits was reasonable.

CONCLUSIONS OF LAW

1. Claimant must prove her entitlement to benefits by a preponderance of the probative credible evidence. *Dumont v. Wicken Bros. Construction Co.*, 183 Mont. 190, 598 P.2d 1099 (1979). Claimant has failed to carry her burden. She is not entitled to further benefits.

2. Claimant is not entitled to attorney fees, a penalty, or costs.

JUDGMENT

1. Claimant is not entitled to temporary total disability benefits or any other benefits.

2. Claimant is not entitled to attorney fees, a penalty, or costs.

3. This JUDGMENT is certified as final for purposes of appeal pursuant to ARM 24.5.348.

4. Any party to this dispute may have 20 days in which to request a rehearing from these Findings of Fact, Conclusions of Law and Judgment.

DATED in Helena, Montana, this 18th day of November, 1996.

(SEAL)

/s/ Mike McCarter

JUDGE

c: Mr. Howard C. Greenwood

Mr. Larry W. Jones

Date Submitted: November 4, 1996