

IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

1994 MTWCC 8

WCC No. 9305-6801

GORDON C. COLLINS

Petitioner

vs.

STATE COMPENSATION INSURANCE FUND

Respondent/Insurer for

ARCHER'S CASINO

Employer.

DECISION AND ORDER GRANTING SUMMARY JUDGMENT

Respondent, State Compensation Insurance Fund (State Fund), has filed a **Motion For Summary Judgment**. The motion has been fully briefed by both parties and is now ready for decision.

FACTS

The summary judgment motion is based on the pleadings, a deposition of the petitioner, Gordon C. Collins (Claimant) and psychological treatment records for claimant. The psychological records are attached as Exhibit "A" to an affidavit of the State Fund's attorney. The affidavit states that "Exhibit 'A' is a true and accurate copy of all medical records that Affiant possesses regarding petitioner's claims for compensation." Claimant does not dispute the authenticity of the records.

Two separate workers' compensation claims are at issue. Both arose during claimant's employment by Archer's Casino, where claimant worked as a bartender. The first claim arises out of a robbery which occurred at Archer's on September 29, 1992, at approximately 1:30 a.m. Two individuals wearing gorilla masks entered Archer's. Brandishing guns, one of the robbers fired two shots which narrowly missed the claimant. One of the shots was so close that it "parted" claimant's hair. The second shot whizzed past his right ear. Neither shot caused physical injury to claimant.

Completing their illicit deed, and angry that they netted so little cash, the robbers tied up claimant and two other employees, then left. One of the other employees worked his bonds free in short order and untied the others. Claimant then summoned the police.

Claimant suffered some bumps, bruises and rope burns to his wrists. However, he did not require or seek medical attention.

Q Then let me ask the question that I just posed to you, did you seek medical attention for any physical injury that you received as a result of the robbery?

A No.

Q Okay. And not only, I think got confused, might have confused a few things there. First of all, the shot did not break your skin; is that right?

A That's correct.

Q Did you receive any other physical injuries from the way you were handled by the robbers?

A Other than bumps and bruises, no.

Q And what type of bumps and bruises did you receive?

A When they grabbed me when I was coming out from behind the bar, reached over and grabbed me physically like this, pulled on me, causing my arm to have a couple of black and blue marks on it, and when I landed on the floor. Other than that, when they tied us up, that is about it, rope burns, wrist burns.

Q Did you seek any medical attention for any of those physical injuries.

A No.

Q Do they bother you today any? Do you have any residual problems from any of those?

A No.

(Collins Dep. 20-21.)

Following the robbery the claimant took a few days off work and then returned to his normal schedule and duties. On October 31, 1992, in an apparent Halloween prank, another employee of Archer's entered the casino wearing a gorilla mask. The claimant, who was working, was frightened but did not suffer any physical contact or harm.

Claimant returned to work the following morning and continued working for Archer's until December 21 or 22, 1992, when he quit his employment. At the time of his resignation, claimant was suffering from diarrhea, sleeplessness, upset stomach, nervousness and stress, all of which he attributes to the two scares at work. He is being treated by Dr. Veraldi, a psychologist, and has not returned to full-time employment.

Claimant filed separate claims respecting the robbery and his co-employee's callous prank. On February 12, 1993, the State Fund began paying benefits under a reservation

of rights, section 39-71-608, MCA. Thereafter, it denied both claims. This litigation ensued.

STANDARD OF REVIEW

The rules of the Workers' Compensation Court do not specifically provide for motions for summary judgment. They do, however, refer in passing to motions "to dismiss, to quash or **for other summary ruling**," ARM 24.5.316 (1). The Supreme Court has approved the practice of borrowing from the Montana Rules of Civil Procedure when this Court's rules do not specifically regulate a procedural matter. **Murer v. State Fund**, 257 Mont. 434, 436, 849 P.2d 1036 (1993). Rule 56, Mont.R.Civ.P., and precedents thereunder, will therefore be applied to motions for summary judgment brought in Workers' Compensation Court.

Rule 56(c) provides that "summary judgment . . . shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issues of material fact and that the moving party is entitled to a judgment as a matter of law." Summary judgment is appropriate where the facts, viewed most favorably to the opposing party, nonetheless entitle the moving party to judgment as a matter of law. **Kaseta v. Northwestern Agency of Great Falls**, 252 Mont. 135, 138, 827 P.2d 804 (1992).

DISCUSSION

Adopting claimant's version of the events, we conclude that as a matter of law claimant's psychological condition is not a compensable injury within the meaning of the Montana Workers' Compensation Act. Summary judgment dismissing his petition must therefore be granted.

Under pre-1987 law, a psychological condition caused or aggravated by a work-related physical injury was compensable. In **O'Neil v. Industrial Accident Board**, 107 Mont. 176, 183, 81 P.2d 688 (1938), the Supreme Court said: "Neurosis resulting from an injury in an industrial accident is compensable." In **Schumacher v. Empire Steel Manufacturing**, 175 Mont. 411, 574 P.2d 987 (1977), the Court extended its **O'Neil** holding to work-related physical injuries which aggravate pre-existing psychological conditions. In **McMahon v. Anaconda Company**, 208 Mont. 482, 486, 678 P.2d 661 (1984), the Court cited **Schumacher** in stating, "This Court has held that psychological disability **stemming** from a work-related injury is compensable under the Workers' Compensation Act." (Emphasis added.) In **O'Neil** the claimant suffered a physical injury to his back. After his healing period had ended he continued to suffer pain, but his physicians could find no physical cause for the pain and attributed it to post-traumatic psycho-neurosis. In **Schumacher** the claimant suffered physical injuries to his neck, shoulder and arm. The injuries healed but claimant continued to suffer pain. Finding no physical basis for his continued pain, claimant's physicians attributed it to hypochondriacal neurosis. In each of the cases the psychological condition determined to be compensable was a direct consequence of a compensable physical injury.

The 1987 Montana Legislature revised the definition of injury, making it more specific and expressly excluding injuries which result from mental or emotional stress or a

nonphysical stimulus or activity. Section 39-71-119, MCA, was revised to read in relevant part:

39-71-119. Injury and accident defined. (1) "Injury" or "injured" means:

(a) internal or external physical harm to the body;

. . .

(2) An injury is caused by an accident. An accident is:

(a) an unexpected traumatic incident or unusual strain;

(b) identifiable by time and place of occurrence;

(c) **identifiable by member or part of the body affected**; and

(d) caused by a specific event on a single day or during a single work shift.

(3) "Injury" or "injured" does **not** mean a physical or mental condition **arising from**:

(a) emotional or mental stress; or

(b) a nonphysical stimulus or activity. [Emphasis added.]

The section has not been amended since 1987. It therefore applies to claimant's alleged injuries. ***Buckman v. Montana Deaconess Hospital***, 224 Mont. 318, 730 P.2d 380 (1986) (*the law in effect at the time of the injury applies*).

The mental stress which claimant suffered as a result of the Halloween prank is clearly outside the definition of injury. The incident that night involved no physical contact. It also did not involve an "identifiable . . . member or part of the body." The alleged injury is therefore no different than that alleged in ***Stratemeyer v. Lincoln County***, 50 St. Rep. 731 (June 23, 1993).

Claimant argues, however, that the mental trauma arising out of the robbery stands on a different footing because he suffered bumps, bruises and rope burns. Those injuries may well have been compensable if they were disabling or required medical attention, but in fact they were not disabling and did not require medical attention. Therefore, the question which must be answered by the Court is whether those insignificant physical injuries entitle claimant to compensation for a psychological condition which would otherwise be non-compensable.

The ***Stratemeyer*** decision contains the following parenthetical statement: "Statutory law prohibits coverage for a mental (stress) injury suffered without a physical component." 50 St. Rep. at 732 (*parentheses omitted*). The statement, however, was a general observation about the statute and was not related to any issue in the case. The sole issue in ***Stratemeyer*** was the constitutionality of the mental stress exclusion. I

therefore do not read the statement as indicating that psychological conditions which arise as a result of events which are incidentally accompanied by inconsequential injuries are compensable.

To determine if the claimant's psychological condition is compensable, we must construe section 39-71-119, MCA, looking first to the statute itself. If the section is plain and unambiguous, then analysis is at an end and the Court must apply the statute as written. ***Bogli v. Glacier Mountain Cheese Co.***, 238 Mont. 426, 429, 777 P.2d 1303 (1989).

The plain words of section 39-71-119 define "injury" as physical, bodily harm resulting from trauma to a specific member or part of the body. The emotional distress from which claimant is suffering does not constitute direct physical harm to a part or member of the body. The mental condition also is not a direct consequence of the physical injuries he did suffer. Compare with ***O'Neil and Schumacher***. His various psychological symptoms (diarrhea, stress, sleeplessness, stomach problems, and nervousness) are the result of the psychological trauma of the robbery, not from rope burns or bruises. The records of Dr. Veraldi show that claimant is angry and feels victimized. It is clear that the disabling condition is an emotional or psychological reaction to the events of September 29, 1992, and not from any specific physical harm. It does not meet the injury definition of the section is also within the express exclusion of section 39-71-119 (3).

The claimant has failed to show that his mental condition is an injury under the Workers' Compensation Act. He is not entitled to benefits or any other relief.

JUDGMENT

1. This Court has jurisdiction over this matter pursuant to section 39-71-2905, MCA.
2. Claimant is not entitled to benefits and his petition is **dismissed**.
3. Claimant is not entitled to attorney fees, costs, or a penalty.
4. The JUDGEMENT herein is certified as final for purposes of appeal pursuant to ARM 24.5.348.

DATED in Helena, Montana, this 3rd day of February, 1994.

(SEAL)

/S/ Mike McCarter
JUDGE

c: Mr. Don Edgar Burris
Mr. Michael P. Heringer