

IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

1996 MTWCC 53

WCC No. 9604-7534

JIM DAENZER

Petitioner

vs.

STATE COMPENSATION INSURANCE FUND

and CURTIS BARTELL

Respondents.

ORDER DENYING MOTION TO DISMISS

Summary: Uninsured employer filed petition asking WCC to find his employee was not injured in the course and scope of employment and the employee's claim for benefits is fraudulent. The employee was allegedly injured while performing work on a contract with an insured employer. State Compensation Insurance Fund, the insurer for that second employer, accepted liability for the claim under section 39-71-405, MCA, which acceptance is challenged through the present petition. On the present motion to dismiss, State Fund alleges the Court does not have jurisdiction over the petition, that the issue of injury within course and scope should go first to the Department of Labor and Industry under section 39-71-415, MCA (1993).

Held: While issues over independent contractor status are within the original jurisdiction of the DOL under the statute at issue, the petitioner concedes he was claimant's employer. Under State ex re. Uninsured Employer's Fund v. Hunt, 191 Mont. 514, 625 P.2d 539 (1981), holding the WCC has jurisdiction to consider an employer's petition contesting a claim for compensation, the present petition is properly before the WCC and the motion to dismiss is denied.

Topics:

Constitutions, Statutes, Regulations and Rules: Montana Code Annotated: section 39-71-415, MCA (1993). Uninsured employer filed petition asking WCC to find his employee was not injured in the course and scope of employment. Insurer had accepted claim under section 39-71-405, MCA (1993), based on policy of company contracting with employer. WCC rejected insurer's motion to dismiss,

which argued section 39-71-415, MCA (1993) required matter to be adjudicated by DOL. While issues over independent contractor status are within the original jurisdiction of the DOL under the statute, the petitioner concedes he was claimant's employer. Under *State ex re. Uninsured Employer's Fund v. Hunt*, 191 Mont. 514, 625 P.2d 539 (1981), holding the WCC has jurisdiction to consider an employer's petition contesting a claim for compensation, the present petition is properly before the WCC and the motion to dismiss is denied.

Jurisdiction: Employer's Petition. Uninsured employer filed petition asking WCC to find his employee was not injured in the course and scope of employment. Insurer had accepted claim under section 39-71-405, MCA (1993), based on policy of company contracting with employer. WCC rejected insurer's motion to dismiss, which argued section 39-71-415, MCA (1993) required matter to be adjudicated by DOL. While issues over independent contractor status are within the original jurisdiction of the DOL under the statute, the petitioner concedes he was claimant's employer. Under *State ex re. Uninsured Employer's Fund v. Hunt*, 191 Mont. 514, 625 P.2d 539 (1981), holding the WCC has jurisdiction to consider an employer's petition contesting a claim for compensation, the present petition is properly before the WCC and the motion to dismiss is denied.

The petition in this case is brought by Jim Daenzer (Daenzer), who employed Curtis Bartell. Bartell was allegedly injured on June 10, 1995, in the course and scope of his employment with Daenzer. At that time Daenzer was uninsured but was performing a subcontract for Bourbon Valley Company, Inc., which was insured by the State Compensation Insurance Fund (State Fund). In light of the Daenzer's uninsured status, the State Fund accepted liability for Bartell's claim under section 39-71-405, MCA. Anticipating that the State Fund may seek indemnification for payments to Bartell, Daenzer asks this Court to determine whether the claim was properly accepted. He specifically alleges that Bartell was not injured in the course and scope of his employment and that the claim is fraudulent.

In its response to the petition, the State Fund alleged that the Workers' Compensation Court lacks jurisdiction to determine Bartell's employment status. In light of the jurisdictional challenge, I stayed further proceedings and asked the parties to brief the jurisdictional issue. Thereafter, the State Fund filed a Motion to Dismiss and Brief in Support. The motion has now been fully briefed and is ready for decision.

Discussion

The State Fund's jurisdictional challenge is premised on section 39-71-415, MCA, which provides that the Department of Labor and Industry has original jurisdiction to determine the employment status of a claimant. A dissatisfied party may then appeal the Department's determination to this Court. The section provides in relevant part:

39-71-415. Procedure for resolving disputes regarding independent contractor status. (1) If an individual, employer, or insurer has a dispute as to whether an individual is an independent contractor or an employee as defined in this chapter, any party may petition a department of labor and industry appeals referee for resolution of the dispute in accordance with 39-51-1109 and may appeal from a decision of the appeals referee in the same manner as prescribed in 39-51-2403 and 39-51-2404.

(2) If a claimant and insurer have a dispute over benefits and the dispute involves an issue of whether the claimant is an independent contractor or employee as defined in this chapter, either party may petition the workers' compensation judge for resolution of the dispute in accordance with 39-71-2905.

The petition in this case, however, does not ask the Court to adjudicate Bartell's employment status. Daenzer concedes for purposes of the present action that Bartell was in fact his employee.

On its face, section 39-71-415, MCA, does not apply to course and scope issues or to fraudulent claims. Jurisdiction over those issues is governed by the Supreme Court decision in *State ex rel. Uninsured Employers' Fund v. Hunt*, 191 Mont. 514, 625 P.2d 539 (1981), which held that the Workers' Compensation Court has jurisdiction to consider an employer's petition contesting a claim for compensation. The Court noted that such petition ultimately relates to benefits which may be due the claimant and that under section 39-71-2905, MCA, the Worker's Compensation Court has jurisdiction to adjudicate issues relating to benefits.

In *Hunt* the putative employer alleged that its putative employee was in fact an independent contractor. The legislature subsequently enacted section 39-71-415, MCA, to vest the Department with original jurisdiction over independent contractor disputes. 1987 Mont. Laws, ch. 314, § 7. However, it did not divest the Workers' Compensation Court of jurisdiction to adjudicate other issues raised by an employer and affecting a claimant's entitlement to benefits. Thus, pursuant to *Hunt*, this Court has jurisdiction to adjudicate the issues raised by the petition in the present case.

The motion to dismiss is **denied**.

DATED in Helena, Montana, this 17th day of July, 1996.

(SEAL)

/s/ Mike McCarter
JUDGE

c: Mr. Douglas Anderson
Mr. Laurence A. Hubbard

Mr. Curtis Bartell - Certified Mail
Submitted: July 15, 1996