

IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

1994 MTWCC 78

WCC No. 9312-6974

THOMAS J. DAVIS

Petitioner

vs.

LIBERTY NORTHWEST INSURANCE CORPORATION

Respondent/Insurer for

PACK RIVER LUMBER COMPANY

Employer.

DECISION AND JUDGMENT

This controversy arises under the Occupational Disease Act, Title 39, ch. 72, MCA (OD Act). At issue is whether the apportionment requirement specified by section 39-72-706, MCA, applies to the payment of medical benefits under section 39-72-704, MCA. The petitioner herein, Thomas J. Davis (Davis), has been determined by the Department of Labor and Industry (DLI) to suffer from a disease which is fifteen percent (15%) occupationally related. The respondent and insurer, Liberty Northwest Insurance Corp. (Liberty), contends that it is therefore liable for only fifteen percent (15%) of Davis' medical expenses, and has refused to pay the other eighty-five percent (85%). Davis petitioned the Court for a determination that Liberty is liable for one hundred percent (100%) of medical expenses incurred with respect to his disease. He also seeks a penalty and attorney fees.

The primary issue involves a matter of statutory interpretation. The factual predicate to the controversy has been provided by way of stipulated facts. Specifically, the parties have stipulated that the following facts may be considered true for the purposes of this case:

1. The Employment Relations Division ORDER dated May 19, 1993, found "the Department concludes FIFTEEN PERCENT (15%) of the claimant's DEGENERATIVE DISEASE arose out of and was contracted from their [sic] employment. Therefore, the claimant would be entitled to FIFTEEN PERCENT (15%) of their [sic] total disability benefits if they [sic] suffer a total wage loss as a direct result of the occupational disease. The claimant would also be entitled to medical and hospital expenses directly related to their [sic] occupational disease."

2. The Employment Relations Division ORDER OF DETERMINATION dated June 14, 1992 stated: "IT IS THEREFORE ORDERED the claimant is entitled to FIFTEEN PERCENT (15%) of their [sic] total disability benefits if they [sic] suffer a total wage loss as a result of the occupational disease. The claimant is also entitled to medical and hospital expenses directly related to their [sic] occupational disease"

3. At the time petitioner's occupational disease developed, the employer was enrolled under Compensation Plan No. 2 of the Workers' Compensation Act, and its insurer is Liberty Northwest Insurance Corporation.

4. The respondent agreed to pay 15% of the claimant's medical expenses directly related to his occupational disease and has refused to pay 100% of those same expenses.

5. The Department of Labor & Industry as interpreted MCA § 39-72-706 to apply only to the apportionment of wage loss benefits. While the respondent has agreed to submit this as an agreed fact, it believes the Department's interpretation is irrelevant.

(Stipulation filed January 20, 1994.) In addition the parties have supplied the Court with an exhibit containing the legislative history of the OD Act.

In his proposed findings Mr. Davis refers to the date of injury as April 7, 1991, which would make the 1989 version of the OD Act applicable to his claim, ***Buckman v. Montana Deaconess Hospital***, 224 Mont. 318, 730 P.2d 380 (1986). However, the date the claim arose is not a stipulated fact. Nonetheless, the failure to identify specific dates associated with the claim does not appear significant since the key sections at issue in this case -- sections 39-72-704 and 706, MCA -- have not been amended since 1989, and both parties are invoking the 1989 versions of the sections. Moreover, the 1989 amendments would not affect the result in this case. The 1989 amendment to section 39-72-704, MCA, merely substituted "the department" for "the division." 1989 Montana Laws, ch. 613, § 64. The amendment to section 39-72-706, MCA, added a new subsection (2), which pertains to apportionment in cases where a claimant is receiving social security disability benefits. 1989 Montana Laws, ch. 162, § 4. The last previous amendments to these sections were in 1981 and 1979. 1981 Montana Laws, ch. 21, § 9 (amending § 39-72-706, MCA) and 1979 Montana Laws, ch. 104, § 16 (amending § 39-72-704, MCA). Sections 39-72-701 and 703, MCA, which are also discussed by the parties, were last amended in 1981 and 1979 respectively. 1981 Montana Laws, ch. 21, § 8) and 1979 Montana Laws, ch. 104, §15. The current version of the OD Act is therefore used in this decision.

Section 39-72-704, MCA provides:

Medical and hospital expenses. In addition to the compensation provided by this chapter, an employee who becomes either totally or partially disabled from an

occupational disease is entitled to receive for treatment of the occupational disease, without limitation as to length of time or dollar amount, reasonable medical services, hospitalization, medicines, and other treatment approved by the department.

On its face it does not require that medical expenses be apportioned based on any contribution to the disease by non-occupational factors.

However, Liberty strenuously argues that a separate section of the Act, specifically section 39-72-706, MCA, requires such apportionment. Section 39-72-706, MCA, provides:

Aggravation. (1) If an occupational disease is aggravated by any other disease or infirmity not itself compensable or if disability or death from any other cause not itself compensable is aggravated, prolonged, accelerated, or in any way contributed to by an occupational disease, the compensation payable under this chapter must be reduced and limited to such proportion only of the compensation that would be payable if the occupational disease were the sole cause of the disability or death as such occupational disease as a causative factor bears to all the causes of such disability or death.

(2) If compensation is reduced a proportionate amount as in subsection (1) and the worker receives disability social security benefits, the offset entitlement granted to the insurer must be reduced in the same proportionate amount as the compensation as long as the worker continues to receive disability social security benefits.

Liberty asks the Court to construe the term "compensation," as used in the quoted section, to encompass the medical benefits provided under section 39-72-704, thus making the apportionment requirement applicable to the payment of medical benefits. As applied in this case, that interpretation would result in the insurer paying only fifteen percent (15%) of medical expenses incurred by Davis on account of his occupational disease.

Liberty has not identified any precedent under the OD Act which would support its requested interpretation. Rather, it relies on ***Carlson v. Cain***, 216 Mont. 129, 700 P.2d 607 (1985), a decision which held that medical benefits under that Workers' Compensation Act amount to "compensation benefits" for purposes of imposing a penalty under section 39-71-2907, MCA. That decision, however, was based on the specific features of the Workers' Compensation Act, features which are lacking in the OD Act. The penalty provision in the Workers' Compensation Act refers not only to "compensation" but to "compensation benefits."

The legislature did not limit the penalty to just the word "compensation;" it used instead the term "compensation benefits." There should be no argument that the

compensation benefits which an injured worker receives under the Act includes compensation for time off the job, for disability and for medical payments.

Id. at 136. The **Carlson** decision also pointed to sections in the Act which used the word "benefits" interchangeably with the word "compensation." **Id. at 137.** The legislative history of the penalty provision also evidenced an intent by the legislature to apply the penalty to medical benefits. As initially adopted the penalty applied only to "weekly award[s]", a term which can only be construed to encompass the weekly compensation payable directly to claimants, but a subsequent amendment deleted that reference and substituted language which applied the penalty to the "full amount of compensation benefits" due the claimant. Finally, the **Carlson** Court invoked the "liberal construction" rule, a rule which would favor Mr. Davis in the context of this case.

A careful reading of the **Carlson** decision shows the Court's interpretation of the words "compensation benefits" was based on the unique language and history of the Workers' Compensation Act. The act at issue in this case is the OD Act. While courts are required to coordinate and give effect to all statutes which may apply to a given situation, **Schuman v. Bestrom**, 214 Mont. 410, 415, 693 P.2d 536 (1985), that principle has no application here. The OD Act is a separate and comprehensive statutory scheme. It has its own provisions for payment of compensation and medical benefits. If possible its provisions must be interpreted within the context of that Act, not the Workers' Compensation Act.

Applying the foregoing principles to this case, it is apparent that the legislature did not intend to apportion medical benefits and that Liberty is required to pay one hundred percent (100%) of reasonable medical expenses which are related to the treatment of Mr. Davis' disease.

In the context of the present controversy, the key words in the OD Act are "the compensation." Section 39-72-701, MCA, which provides for payment of temporary total and permanent total disability benefits, begins with the words: "(1) **The compensation** to which an employee temporarily totally disabled or permanently totally disabled by an occupation . . . are entitled" (Emphasis added.) The section refers to, and incorporates by reference, the benefits payable under the Workers' Compensation Act to permanent total and temporary total disability, but it is clear that the reference to the Workers' Compensation Act is only to the weekly benefits payable to the worker and not to any medical benefits. In relevant part, the section provides more fully:

(1) **The compensation** to which an employee temporarily totally disabled or permanently totally disabled by an occupational disease other than pneumoconiosis, or the beneficiaries and dependents of the employee in the case of death caused by an occupational disease other than pneumoconiosis, are entitled under this chapter shall be the same payments which *are payable to an injured employee*, and such payments shall be made for the same period of time as

is provided in cases of temporary total disability, permanent total disability, and in cases of injuries causing death under the Workers' Compensation Act. [Bold and italics added.]

. . . .

Medical benefits are not payable "to the employee" and the words "the compensation" cannot be stretched to include medical benefits.

Section 39-72-704, MCA, which is the medical benefits section under consideration, begins: "In addition to **the compensation** provided by this chapter. . . ." (Emphasis added.) Section 39-72-706(1), MCA, which is the section providing for apportionment, applies the percentage factor derived under its provisions to "**the compensation** payable under this chapter." Plainly, the words "the compensation" mean "the compensation" specified in section 39-72-701, MCA, and do not encompass the medical benefits which are "[i]n **addition** to the compensation provided by this chapter," section 39-72-704, MCA. (Emphasis added.). Section 39-72-704, MCA, also states that medical expenses are payable "without limitation as to length of time or **dollar amount**." (Emphasis added.) This language is also inconsistent with apportioning medical payments.

Industrial has not directed the Court's attention to provisions in the OD Act which use "compensation" and "benefits" interchangeably. Section 39-72-705, MCA, which provides for burial expense, states in relevant part:

39-72-705. Burial expenses. *In addition to and separate and apart from any **other compensation or benefit** provided for in this chapter, there shall be paid in case of death of an employee . . . the reasonable burial expenses of the employee*

(Italics added.) Section 39-72-708, MCA, contains a similar reference to "compensation" **and** benefits, providing:

39-72-708. Prohibiting supplementing of benefits. No person receiving compensation or benefits under chapter 73 of this title [dealing with silicosis benefits] is entitled to *compensation or benefits under this chapter*.

(Italics added.) In interpreting particular words, the Court is guided by the requirement that it should "avoid any statutory interpretation that renders any sections of the statute superfluous and [which] does not give effect to all of the words used." **State v. Berger**, 259 Mont. 364, 367, 856 P.2d 552 (1993). In using the words "benefit" and "benefits" in the quoted sections, the legislature presumably intended to distinguish benefits from "compensation", therefore recognizing a difference between the two. The only logical explanation for using both terms is that the legislature recognized that "compensation" under the OD Act refers only to the weekly benefits payable to the employee pursuant to section 39-72-701, MCA.

While the parties have provided the Court with the legislative history of the OD Act, that history cannot be used to alter the Act where its meaning is clear from the face of the statute. "Where the language of a statute is plain, unambiguous, direct, and certain, the statute speaks for itself." **Blake v. State**, 226 Mont. 193, 198, 735 P.2d 262 (1987). Reference to legislative history is proper "only when intent cannot be determined from the content of the statute." **Dorn v. Board of Trustees**, 203 Mont. 136, 144, 661 P.2d 426 (1983).

In summary, the medical benefits payable under section 39-72-704, MCA, are not subject to the apportionment based on any contribution of non-occupational factors to claimant's disease. The apportionment formula set forth in section 39-72-706, MCA, applies only to compensation payable under section 39-72-701, MCA.

Davis has also requested the Court to award a penalty and attorney fees in the event he prevails. Both section 39-71-612, MCA (1989), the attorney fee provision invoked by claimant, and section 39-71-2907, MCA, which provides for a penalty, require a finding of unreasonableness as a prerequisite to any award under those sections. Although this case has been resolved in favor of Mr. Davis, Liberty's position in this matter was not unreasonable and does not provide a basis for a penalty or an award of attorney fees. The statutory interpretation found in **Carlson** provided at least the grist for legal argument. While I have found **Carlson** inapposite, and determined that the OD Act must be interpreted from its own four corners, Liberty's arguments were not beyond the pale of legitimate legal advocacy.

JUDGMENT

1. The petitioner, Thomas J. Davis, is entitled to payment of one hundred percent (100%) of medical and hospital expenses related to the treatment of his occupational disease as provided in section 39-72-704, MCA.
2. The petitioner is not entitled to a penalty.
3. The petitioner is not entitled to attorney fees.
4. The petitioner is entitled to costs in an amount to be determined by the Court.
5. Petitioner shall submit an affidavit of costs within ten (10) days of this decision. The respondent will then have ten (10) days in which to object to any cost item so submitted.
6. The JUDGMENT herein is certified as final for purposes of appeal pursuant to ARM 24.5.348.
7. Any party to this dispute may have twenty (20) days in which to request a rehearing.

DATED in Helena, Montana, this 6th day of September, 1994.

(SEAL)

/s/ Mike McCarter
JUDGE

c: Mr. David W. Lauridsen
Mr. Larry W. Jones