IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

2000 MTWCC 21

WCC No. 9912-8392

SAMUEL G. DEAN

Petitioner

vs.

MONTANA POWER COMPANY

Respondent/Insurer/Employer.

ORDER REGARDING JURISDICTION AND FURTHER PLEADINGS

Summary: Pretrial hearing held on whether WCC has original jurisdiction to hear claimant's request for extension of medical benefits under law in effect in 1973, section 92-706.1, RCM (1947).

Held: Where statute in effect at time of injury has been repealed or amended, the statute still applies to substantive rights (here, the right to medical benefits for 36 months and to extended benefits for good cause), but current procedures for dispute resolution govern. Thus, WCC has jurisdiction over this dispute where no current statute continues such jurisdiction elsewhere.

Topics:

Constitutions, Statutes, Regulations and Rules: Montana Code: 92-706.1, RCM (1947). Where statute in effect at time of work injury has been repealed or amended, the statute still applies to substantive rights (here, the right to medical benefits for 36 months and to extended benefits for good cause), but current procedures for dispute resolution apply. Thus, WCC had jurisdiction to resolve dispute over extension of medical benefits where no current statute continues said jurisdiction in Division, which no longer exists, or places such jurisdiction in Department of Labor.

Adminisrative Agencies: Jurisdiction. Where statute in effect at time of work injury has been repealed or amended, the statute still applies to substantive rights (here, the right to medical benefits for 36 months and to extended benefits for good cause), but current procedures for dispute resolution apply. Thus, WCC had jurisdiction to resolve dispute over extension of medical benefits under section 92-

706.1, RCM (1947) where no current statute continues said jurisdiction in Division, which no longer exists, or places such jurisdiction in Department of Labor.

Jurisdiction: Original Jurisdiction. Where statute in effect at time of work injury has been repealed or amended, the statute still applies to substantive rights (here, the right to medical benefits for 36 months and to extended benefits for good cause), but current procedures for dispute resolution apply. Thus, WCC had jurisdiction to resolve dispute over extension of medical benefits under 92-706.1, RCM (1947) where no current statute continues said jurisdiction in Division, which no longer exists, or places such jurisdiction in Department of Labor.

Jurisdiction: Where Procedural Statute Repealed. Where statute in effect at time of work injury has been repealed or amended, the statute still applies to substantive rights (here, the right to medical benefits for 36 months and to extended benefits for good cause), but current procedures for dispute resolution apply. Thus, WCC had jurisdiction to resolve dispute over extension of medical benefits under 92-706.1, RCM (1947) where no current statute continues said jurisdiction in Division, which no longer exists, or places such jurisdiction in Department of Labor.

¶1 After hearing the parties' arguments on the petitioner's Request for Hearing and Motion for Leave to present additional evidence, and discussing amendments to the pleadings with counsel, the Court **finds** and **orders** as follows:

- The Workers' Compensation Court has original jurisdiction to hear the petitioner's request for extension of medical benefits and shall therefore hold an evidentiary hearing into that matter.
- Petitioner may amend his petition to add any other benefits disputes he may have regarding his claim.
- The amended petition shall be filed within 10 days of this Order, after which a Scheduling Order will be issued.
- A response to the amended petition shall be filed as set forth in the Scheduling Order.

Discussion

¶2 Petitioner appealed from a Department decision denying his request to extend the period of his medical benefits. The request arises under 1973 law, specifically section 92-706.1, RCM (1947). The section provides in relevant part:

92-706.1. Medical and hospital services approved by the division are furnished. In addition to the compensation provided by this act and as an additional benefit separate and apart from compensation, the following shall be furnished:

> During the first thirty-six(36) months after the happening of the injury, the employer or insurer shall furnish reasonable services by a physician or surgeon, reasonable hospital services and medicines when needed, and such other treatment as may be approved by the division for the injuries sustained. The division, upon application of the injured workman may, for good cause, grant reasonable extensions of the benefits provided in this section.

¶3 Petitioner sought an extension of medical benefits with respect to a 1974 ankle injury. Since the Division of Workers' Compensation was eliminated in 1989, and its responsibilities assumed by the Department of Labor and Industry, 1989 Montana Laws, ch. 613, he submitted his request to the Department. A Benefits Examiner of the Department issued an initial order denying the claim. (Order Denying Extension of Medical Benefits, December 3, 1999 (Department File).)

¶4 Thereafter, uncertain of the proper forum for seeking a hearing regarding his request, the petitioner appealed the decision to the Department *and* filed a petition with this Court.[(1)] Citing 1999 amendments to the Workers' Compensation Act, the Department notified claimant and Montana Power that in light of the 1999 amendments the matter would be transferred to the Court unless either party elected to keep the proceeding before the Department. Neither party elected to do so and the appeal was transferred to the Court. Thus, the Court has before it both the petition and the so-called appeal.

¶5 The matter presently before the Court is petitioner's request for an evidentiary hearing. The Court met with counsel on March 31, 2000, to discuss the motion. At that time, both parties agreed that the Court has jurisdiction to conduct an evidentiary hearing. I concur.

¶6 Jurisdiction to hear a controversy is a procedural matter and current procedures apply. *State Compensation Ins. Fund v. Sky Country, Inc.,* 239 Mont. 376, 780 P.2d 1135 (1989). Section 92-706.1, RCM (1947), has been repealed or amended. Insofar as it provided substantive rights -- i.e., the right to medical benefits for 36 months and to extended benefits for good cause - the statute still applies. However, its procedural provision designating the Division as the forum for seeking an extension of benefits no longer applies. Instead, current dispute resolution provisions apply. Those provisions vest original jurisdiction over all benefits disputes in the Court unless the Workers' Compensation Act specifically provides otherwise.[(2)]

Since there is no longer any provision providing for jurisdiction in either the Division, which no longer exists, or the Department, the general jurisdictional provisions apply. Accordingly, the Court is the proper forum for a hearing on petitioner's request.

DATED in Helena, Montana, this 11th day of April, 2000.

(SEAL)

/s/ Mike McCarter
JUDGE

c: Mr. Charles G. Adams
Mr. W. Wayne Harper
Submitted: March 31, 2000

1. Both the petition and the appeal were filed December 30, 1999.

2. Section 39-71-2905(1), MCA (1999), provides in relevant part:

> **39-71-2905. Petition to workers' compensation judge -- time limit on filing.** (1) A claimant or an insurer who has a dispute concerning any benefits under chapter 71 of this title may petition the workers' compensation judge for a determination of the dispute after satisfying dispute resolution requirements otherwise provided in this chapter.

Section 39-71-2401, MCA (1999), provides in relevant part:

> **39-71-2401. Disputes -- jurisdiction -- settlement requirements -- mediation.** (1) A dispute concerning benefits arising under this chapter or chapter 72, other than the disputes described in subsection (2), must be brought before a department mediator as provided in this part. If a dispute still exists after the parties satisfy the mediation requirements in this part, either party may petition the workers' compensation court for a resolution.
>
> (2) A dispute arising under this chapter that does not concern benefits or a dispute for which a specific provision of this chapter gives the department jurisdiction must be brought before the department.