IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

2001 MTWCC 37A

WCC No. 2000-0077

MARSHA DAULTON

Petitioner

vs.

MHA WORKERS' COMPENSATION TRUST

Respondent/Insurer for

ST. PETER'S HOSPITAL

Employer.

ORDER DENYING MOTION FOR RECONSIDERATION

Summary: The Court issued a decision finding that claimant has reached maximum medical improvement (MMI) and is not entitled to reinstatement of her temporary total disability benefits. The claimant then moved for reconsideration.

Held: The motion is denied. (1) The third *Coles* criteria, even if applicable, requires only that the physician releasing a claimant to work consider her physical condition; it does not require the Court to make a de novo determination, based on claimant's subjective testimony, as to whether she in fact is capable of performing the job. (2) Claimant's subjective complaints that her condition was worsening does not contradict a finding that she has reached maximum medical improvement where she has presented no medical evidence that further medical treatment would materially improve her condition. § 39-71-116(18), MCA (1997-1999). (3) Claimant's argument that in fact she is incapable of working goes to the merits of a claim for permanent total disability and she is free to petition the Court for such benefits.

Topics:

> **Benefits: Termination of Benefits: Coles.** The third *Coles* criteria, even if applicable, requires only that the physician releasing a claimant to work consider her physical condition; it does not require the Court to make a de novo determination, based on claimant's subjective testimony, as to whether she in fact is capable of performing the job.

Maximum Medical Improvement. Claimant's subjective complaints that her condition was worsening does not contradict a finding that she has reached maximum medical improvement where she has presented no medical evidence that further medical treatment would materially improve her condition. § 39-71-116(18), MCA (1997-1999).

Constitutions, Statutes, Regulations and Rules: Montana Code Annotated: § 39-71-116(18) (1997-1999). Claimant's subjective complaints that her condition was worsening does not contradict a finding that she has reached maximum medical improvement where she has presented no medical evidence that further medical treatment would materially improve her condition. § 39-71-116(18), MCA (1997-1999).

Benefits: Termination of Benefits: Release to Return to Work. Where the claimant has reached maximum medical improvement, a physician's release to return to work is sufficient to terminate temporary total disability benefits so long as the physician releasing the claimant considers her physical condition; the Court is not required to make a de novo determination, based on claimant's subjective testimony, as to whether she in fact is capable of performing the job.

¶1 Claimant moves for reconsideration of the Court's decision denying her petition for reinstatement of temporary total disability benefits. In light of the lack of merit of her arguments, the Court does not address the legal criteria which must be met for reconsideration.

¶2 Initially, claimant argues that the Court ignored the third *Coles* criteria, specifically the part of the requirement that the physician's determination take into consideration the claimant's "physical condition." Based on claimant's testimony that she feels unable to work, she argues that this criteria was not satisfied. The argument is unpersuasive. First, as I found, *Coles* is inapplicable. Second, even if it is applicable, the requirement requires only that the physician take claimant's physical condition into consideration when releasing her to return to work; it does not require the Court to make a de novo determination, based on claimant's subjective testimony, as to whether she in fact is capable of performing the job. The medical documentation in this case shows that claimant's treating physicians were fully aware of her physical condition and took it into consideration.

¶3 Second, claimant argues that she has not reached MMI because her left shoulder is getting worse. That is certainly her perception. However, she has offered no medical evidence demonstrating that any further medical treatment would improve the condition of her left shoulder. Lacking such evidence the conclusion that she has reached maximum medical improvement with respect to the shoulder is inescapable. '"Medical stability," "maximum healing," or "maximum medical healing" means a point in the healing process

when further material improvement would not be reasonably expected from primary medical treatment.' § 39-71-116(18), MCA (1997-1999).

¶4 Finally, she persists in her argument that *in fact* there are no jobs she is capable of performing. That argument goes to the merits of a claim for permanent total disability. She can certainly pursue such claim and the Court will then consider the merits of that argument.

¶5 The motion for reconsideration is **denied**.

DATED in Helena, Montana, this 3rd day of August, 2001.

(SEAL)

\s\ Mike McCarter
JUDGE

c: Mr. John C. Doubek
Mr. G. Andrew Adamek
Date Submitted: July 24, 2001