

IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

1997 MTWCC 4

WCC No. 9608-7582

ANTONIO J. ESTRADA

Petitioner

vs.

STATE COMPENSATION INSURANCE FUND

Respondent/Insurer for

OXYGEN LTD.

Employer.

PARTIAL SUMMARY JUDGMENT

Summary: Claimant and insurer submitted on stipulated facts the issue whether claimant filed a timely claim for compensation within section 39-71-601, MCA (1993). Claimant, an Oregon resident employed by an Oregon corporation, was injured in an automobile accident in Montana. He submitted a claim to his employer, and for Oregon workers' compensation benefits, within a year following the accident, but did not submit a claim to a Montana insurer until more than one year following the accident. State Fund's motion to dismiss, treated as a motion for summary judgment due to stipulated facts, argued claimant had to submit the claim to a Montana insurer within one year.

Held: Section 39-71-601, MCA (1993) provides that within one year of an industrial accident the claimant must submit a signed claim "to the employer, the insurer, or the department." By using the word "or," the statute permits the claimant to submit a timely claim to any of the entities listed. Where the employer received a claim within one year, the insurer's argument for dismissal because no claim was submitted to it within a year has no merit.

Topics:

Constitutions, Statutes, Regulations and Rules: Montana Code Annotated: Section 39-71-601, MCA (1993). Claimant, an Oregon resident employed by an Oregon corporation, was injured in an automobile accident in Montana. Insurer moved to dismiss where claimant submitted a claim to his employer, and for Oregon

workers' compensation benefits, within a year following the accident, but did not submit a claim to a Montana insurer until more than one year following the accident. Motion denied because section 39-71-601, MCA (1993) provides that within one year of an industrial accident the claimant must submit a signed claim "to the employer, the insurer, or the department." By using the word "or," the statute permits the claimant to submit a timely claim to any of the entities listed.

Cases Discussed: Workers' Compensation Court Cases: Haag v. MSGIA. Under *Haag v. Montana School Group Insurance Authority*, 274 Mont. 109, 906 P.2d 693 (1995), the insurer's duty to accept or reject a claim within 30 days arises upon the insurer's receipt of the claim. While section 39-71-601, MCA (1993) allows a claimant to submit a timely claim "to the employer, the insurer, or the department," the insurer does not risk liability under Haag unless it fails to act on a claim it has received.

Claims: Acceptance. Under *Haag v. Montana School Group Insurance Authority*, 274 Mont. 109, 906 P.2d 693 (1995), the insurer's duty to accept or reject a claim within 30 days arises upon the insurer's receipt of the claim. While section 39-71-601, MCA (1993) allows a claimant to submit a timely claim "to the employer, the insurer, or the department," the insurer does not risk liability under Haag unless it fails to act on a claim it has received.

Limitations Periods: Claim Filing: Generally. Claimant, an Oregon resident employed by an Oregon corporation, was injured in an automobile accident in Montana. Insurer moved to dismiss where claimant submitted a claim to his employer, and for Oregon workers' compensation benefits, within a year following the accident, but did not submit a claim to a Montana insurer until more than one year following the accident. Motion denied because section 39-71-601, MCA (1993) provides that within one year of an industrial accident the claimant must submit a signed claim "to the employer, the insurer, or the department." By using the word "or," the statute permits the claimant to submit a timely claim to any of the entities listed.

The petitioner in this case, Antonio J. Estrada (claimant), alleges that he suffered an industrial accident in the course and scope of his employment with Oxygen Ltd., which is insured within the State of Montana by the State Compensation Insurance Fund (State Fund). In its response the State Fund denies that claimant suffered an industrial industry and affirmatively alleges (1) that it does not insure Oxygen Ltd. and (2) that if claimant was injured in an industrial accident it was not a Montana accident. (Response to Petition for Hearing at 2.)

As an additional affirmative defense, stated as a motion to dismiss, the State Fund alleges that claimant failed to submit a claim for compensation within the one-year period prescribed by section 39-71-601, MCA (1993). (*Id.*) The parties have agreed to submit this issue to the Court on an Agreed Statement of Facts and Issue filed on October 17, 1996. Counsel have briefed the issue and the matter is now ready for decision.

Issue presented: The sole issue presently before the Court is whether the claimant filed a timely claim for compensation complying with section 39-71-601, MCA (1993).

AGREED FACTS

For purposes of the present proceeding, the parties agree that the following facts are true:

1. On August 24, 1993, Antonio Estrada, an Oregon resident, was employed as a tree planter for Oxygen, Ltd., an Oregon corporation owned by Oregon resident Steve O. Sorrenson.
2. On August 24, 1993, Mr. Estrada was in a vehicle which was involved in an automobile accident in Montana and alleges injuries as a result thereof. Mr. Sorrenson owned the vehicle and a claim was submitted to Mr. Sorrenson's automobile insurance carrier for Mr. Estrada's injuries. (Exhibits 1 and 2.)
3. On August 11, 1994, Mr. Estrada's attorney, Arthur Stevens, submitted a claim for Oregon workers' compensation benefits to both the employer and the employer's Oregon workers' compensation insurer, SAIF Corp. (Exhibit No. 3.)
4. On August 12, 1994, the employer wrote to Mr. Stevens and explained why he didn't file a workers' compensation claim on Mr. Estrada. (Exhibit No. 4.)
5. By letter dated August 23, 1994, the SAIF Corp. notified Mr. Estrada and his attorney that his claim was not a viable claim under Oregon workers' compensation law and suggested that he file a claim with the State of Montana. (Exhibit No. 5.)
6. On August 25, 1994, Mr. Sorrenson signed both a completed Oregon workers' compensation claim form and a completed Montana employer's first report and submitted those to the appropriate state agencies. (Exhibits Nos. 6 and 7.)
7. On August 31, 1994, the State Fund received the employer's first report of injury from Mr. Sorrenson. (Exhibit No. 7.)
8. By letter dated September 2, 1994, the State Fund requested that Mr. Estrada complete a written claim for compensation. (Exhibit No. 8.)
9. By letter dated September 9, 1994, the State Fund advised Mr. Estrada that it was denying his yet unsubmitted claim for compensation on the grounds that it had not been filed within 12 months of the date of the accident. (Exhibit No. 9)

10. On September 19, 1994, the State Fund received a completed Claim for Compensation signed by Mr. Estrada on September 13, 1994. (Exhibit No. 10.)

(Agreed Statement of Facts and Issue.)

In addition to the specific facts listed above, the parties have submitted Exhibits 1 through 10 for the Court's consideration. One of the exhibits is the Oregon claim submitted to SAIF, a copy of which was also submitted directly to Oxygen, Ltd. (Ex. 3.)

DISCUSSION

In light of the parties stipulation of facts, the State Fund's motion to dismiss will be treated as a motion for summary judgment. ARM 24.5.329(4). Summary judgment is appropriate where there are no material issues of fact and one of the parties is entitled to judgment as a matter of law. ARM 24.5.329(2).

The facts concerning notice are undisputed. While claimant submitted a claim for compensation to his employer and his employer's *Oregon* insurer within one year of his accident, he did not submit a claim directly to the employer's *Montana* insurer within the one year. According to the State Fund, "It is *axiomatic* that in order to meet the one year requirement of § 39-71-601, MCA, one must make a claim for Montana workers' compensation benefits." (Brief of State Compensation Insurance Fund at 2; italics added, underlining in original.) Thus, it argues, his claim was untimely and his petition must be dismissed.

On its face, section 39-71-601, MCA (1993), provides that within one year of an industrial accident the claimant must submit a signed claim "to the employer, the insurer, **or** the department." (Emphasis added.)

39-71-601. Statute of limitation on presentment of claim -- waiver. (1) In case of personal injury or death, all claims must be forever barred **unless signed by the claimant or the claimant's representative and presented in writing to the employer**, the insurer, **or** the department, as the case may be, within 12 months from the date of the happening of the accident, either by the claimant or someone legally authorized to act on the claimant's behalf. [Emphasis and italics added.]

In listing the entities to which a claim must be submitted, section 39-71-601, MCA, uses the word "or." Unless the context requires otherwise, the word must be interpreted and applied in its ordinary, disjunctive sense. *State ex rel. Goings v. City of Great Falls*, 112 Mont. 51, 56, 112 P.2d 1071 (1941); *Shields v. Shields*, 115 Mont. 146, 155, 139 P.2d 528 (1943). There is nothing in the section, or in any other provision of the Workers' Compensation Act, which requires a claimant to submit a claim to the insurer and the Court cannot insert such an additional requirement. § 1-2-101, MCA; *Russette v. Chippewa Cree Housing Authority*, 265 Mont. 90, 93, 874 P.2d 1217, 1219 (1994). Therefore,

claimant's submission of a signed claim to his employer on August 11, 1994, satisfied section 39-71-601, MCA.

Supreme Court decisions applying section 39-71-601, MCA, support my conclusion. Relying on *Scott v. Utility Line Contractors*, 226 Mont. 154, 157, 734 P.2d 206, 208 (1987), the Supreme Court in *Weigand v. Anderson-Meyer Drilling Co.*, 232 Mont. 390, 394, 758 P.2d 260, 262 (1988), stated that the purpose of section 39-71-601, MCA, is to provide the **employer** with notice of the industrial accident so the employer can investigate the claim and if necessary prepare a defense. In *Scott* the Court found that a written Employer's First Report prepared with the claimant's assistance within one year of the accident satisfied section 39-71-601, MCA (1981). In *Weigand* the employer prepared the Employers' First Report, also with claimant's assistance, within a year of the accident. However, the insurer argued that a claim form specifically published for claimants to fill out (Form 54) is the exclusive method by which a claim may be submitted. The Court rejected the argument and again held that the Employer's First Report satisfied section 39-71-601, MCA (1981).

In *Scott* the Employer's First Report set out the claimant's name, social security number, address, date of birth, wages, accident information, the identity of witnesses, and treatment information, among other things. In the present case the claim form signed by claimant and forwarded to Oxygen, Ltd. set forth the claimant's name, address, phone number, date of birth, and social security number; the date of the accident; a description of the accident; the parts of the body affected by the accident; the name of the hospital at which he was treated; the names of the treating physician; the name, address and phone number of the employer; and the name of the witnesses to the accident. This information was adequate to permit the employer to investigate the claim and prepare any defenses, and the State Fund does not argue otherwise.

The State Fund's fear that its ability to timely reject a claim pursuant to section 39-71-606, MCA, will be jeopardized unless the Court requires the claimant to file his claim in Montana within a year is unfounded. That fear is based on *Haag v. Montana School Group Insurance Authority*, 274 Mont. 109, 906 P.2d 693 (1995), which held that the failure of an insurer to reject a claim within 30 days amounts to an automatic acceptance of the claim. However, the duty to accept or reject a claim arises upon the insurer's **receipt** of the claim. § 39-71-606, MCA.

Based on the foregoing discussion, the State Fund's motion is **denied** and partial summary judgment is hereby entered finding that the claimant submitted a timely and adequate claim under section 39-71-601, MCA (1993).

SO ORDERED.

DATED in Helena, Montana, this 14th day of January, 1997.

(SEAL)

/s/ Mike McCarter

JUDGE

c: Ms. Laurie Wallace

Mr. Thomas E. Martello

Submitted: November 4, 1996