

IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

1997 MTWCC 4A

WCC No. 9608-7582

ANTONIO J. ESTRADA

Petitioner

vs.

STATE COMPENSATION INSURANCE FUND

Respondent/insurer for

OXYGEN LTD.

Employer.

ORDER DENYING MOTION FOR RECONSIDERATION

Summary: Insurer moved for reconsideration of WCC decision that claim was timely filed where Oregon resident employed by Oregon corporation injured in Montana submitted a claim to his employer, but not Montana insurer, within one year. Insurer argued claim was insufficient because it only claimed Oregon workers' compensation benefits.

Held: Section 39-71-601, MCA (1993) does not require the claimant to correctly identify, at his peril, the proper insurer or proper jurisdiction in order to perfect his claim. The principal purpose of the section is to provide the employer with sufficient information to enable it to investigate the claim and, if necessary, prepare any defenses it may have.

Topics:

Constitutions, Statutes, Regulations and Rules: Montana Code Annotated: section 39-71-601, MCA (1993). Section 39-71-601, MCA (1993) does not require the claimant to correctly identify, at his peril, the proper insurer or proper jurisdiction in order to perfect his claim. The principal purpose of the section is to provide the employer with sufficient information to enable it to investigate the claim and, if necessary, prepare any defenses it may have.

Limitations Periods: Claim Filing: Generally. Section 39-71-601, MCA (1993) does not require the claimant to correctly identify, at his peril, the proper insurer or proper jurisdiction in order to perfect his claim. The principal purpose of the section is to

provide the employer with sufficient information to enable it to investigate the claim and, if necessary, prepare any defenses it may have.

Respondent, State Compensation Insurance Fund (State Fund), requests the Court to reconsider its order granting partial summary judgment to claimant. The Partial Summary Judgment (January 14, 1997) held that petitioner (claimant) complied with the one-year filing requirement, § 39-71-601, MCA, when within one year he gave his employer written notice of his industrial injury. While claimant contemplated the submission of his claim to the employer's *Oregon* insurer, the Court rejected the respondent's contention that section 39-71-601, MCA, required him to submit his claim to the employer's *Montana* insurer and that his failure to do so bars his claim against the State Fund.

In arguing for reconsideration, the State Fund states that it does not disagree with the Court's ruling that the claimant may submit his claim to the employer rather than the insurer. However, it contends that the claim was deficient because it "only claimed Oregon workers' compensation benefits." (Respondent's Request for Reconsideration and Amendment of Order on Partial Summary Judgment at 2.) The State Fund would apparently insert a requirement that the claimant identify a specific insurer, or at least a specific state, when filing his claim. There is no such requirement in the statute and the Court will not insert one. § 1-2-101, MCA; *Russette v. Chippewa Cree Housing Authority*, 265 Mont. 90, 93, 874 P.2d 1217, 1219 (1994). The legislature has not required the claimant to correctly identify, at his peril, the proper insurer or proper jurisdiction in order to perfect his claim. Moreover, that type of information may not be readily available or apparent to a claimant.

The State Fund's argument that a claim is "akin to a complaint in district court" is unpersuasive. (Reply Brief in Support of Respondent's Request for Reconsideration and Amendment of Order on Partial Summary Judgment at 2.) The statute does not require a claimant to file his petition in Workers' Compensation Court within a year. It requires only that he submit a written claim to his employer within that year. To reiterate what was said in the Court's earlier ruling, the principal purpose of the section is to provide the employer with sufficient information to enable it to investigate the claim and, if necessary, prepare any defenses it may have to it. (Partial Summary Judgment at 4.)

As to the State Fund's argument that language in the *Haag* decision appears to broaden the duty imposed upon insurer's by section 39-71-608, MCA, to accept or deny a claim within 30 days, the Court does not agree. There is nothing in the decision which indicates that the duty arises prior to the insurer's **receipt** of a claim.

The motion for reconsideration is **denied**.

SO ORDERED.

DATED in Helena, Montana, this 6th day of February, 1997.

(SEAL)

/s/ Mike McCarter
JUDGE

c: Ms. Laurie Wallace
Mr. Thomas E. Martello
Submitted: February 3, 1997