

**IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA**

**2003 MTWCC 29**

**WCC No. 2003-0738**

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**CARL FAHRENBRUCK**

**Petitioner**

**vs.**

**MONTANA POWER COMPANY**

**Respondent/Insurer.**

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**SUMMARY JUDGMENT**

**Summary:** Claimant previously obtained a judgment for 375 weeks of permanent partial disability (PPD) benefits for a 1985 industrial injury. He now seeks an additional 125 weeks.

**Held:** The claim for additional PPD benefits is barred by a full and final compromise settlement agreement entered into between claimant and the respondent subsequent to the prior judgment. While the agreement provided for payment of the total sum due claimant under the judgment, absent the agreement a portion of that amount would have been paid out on biweekly benefits. The agreement accelerated the payment of that portion by allowing claimant to collect it in a lump sum. Since there was consideration for the agreement it is enforceable.

**Topics:**

**Settlements: Contracts.** Where there is consideration for a full and final compromise settlement which releases the insurer from further liability for permanent partial disability benefits, that settlement bars any claim for such benefits absent proof of mutual mistake of fact or law, or some other legal ground which would permit the Court to set aside the agreement.

¶1 This matter is before the Court on the respondent's motion for summary judgment. The material undisputed facts are as follows:

Facts

¶2 On January 25, 1985, claimant injured his neck and lower back while working for Montana Power Company.

¶13 At the time of claimant's industrial injury, Montana Power was self-insured. It accepted liability for his claim.

¶14 Claimant previously petitioned this Court for permanent partial disability (PPD) benefits. The matter was tried to the Court on November 1, 1993. On June 24, 1994, the Court entered judgment determining that claimant is 75% disabled and awarding 375 weeks (75% x 500 weeks) of PPD benefits. *Fahrenbruck v. Montana Power Co.*, WCC No. 9307-6835. Claimant's total entitlement was \$53,625.00 (375 weeks x \$143.00 per week). Since Montana Power had already paid claimant \$27,109.74, or 189.5786 weeks, of PPD benefits, it owed claimant an additional \$26,515.26.

¶15 In addition to the PPD award made in the prior proceeding, the Court also awarded claimant his attorney fees and costs. (*Id.*) With attorney fees and costs, the total due claimant pursuant to the judgment was \$37,174.58.

¶16 Not all of the PPD benefits had accrued at the time of the judgment. Claimant, however, wanted an immediate, lump-sum payment of the entire \$37,174.58 and on August 10, 1994, he entered into a full and final compromise settlement of his PPD claim. The settlement called for payment of the entire \$37,174.58 in a lump sum. At the time of the settlement, only \$19,448.00 of the \$26,515.26 in additional PPD benefits awarded by the Court had accrued. Thus, under the Court's judgment the claimant was entitled to immediate payment of only \$30,107.32; the remaining \$7,067.26 would have been paid out in weekly benefits of \$143.00 weekly.

¶17 The settlement agreement "fully released and discharged" Montana Power "from all further obligations for partial benefits" for claimant's 1985 injuries.

¶18 The settlement agreement was approved by the Department of Labor and Industry on September 2, 1994, and claimant was then paid the entire \$37,174.58 in a lump sum.

¶19 Through his present petition, claimant seeks an additional 125 weeks of PPD benefits, which is the maximum allowed under the statutes in effect at the time of his injury.<sup>(1)</sup>

### Discussion

¶10 Respondent advances several grounds in support of its motion for summary judgment. One of those grounds is based on the settlement agreement, which the respondent asserts bars the present claim for additional PPD benefits.

¶11 A full and final settlement agreement is an enforceable contract. *Kienas v. Peterson*, 191 Mont. 325, 329, 624 P.2d 1, 2 (1980). While a settlement may be set aside for a mutual mistake of fact or law, *id.*, the claimant does not allege any mistake of fact or law, or any other ground which would allow the Court to set the agreement aside. Rather, he argues that the settlement agreement "merely affirmed the Court's award" and therefore does not bar an additional award. (Petitioner's Brief in Opposition to Respondent's Motion

for Summary Judgment at 1.) In that, he is wrong. As set out in paragraph 6, the settlement agreement accelerated claimant's entitlement to \$7,067.26 which would have otherwise been paid out in weekly benefits of \$143.00 weekly. Claimant bargained for and obtained the accelerated payment, thus there was consideration for the settlement. I therefore conclude that the settlement agreement, which releases Montana Power from further liability for PPD benefits, bars the current action.

¶12 I do not consider the other grounds advanced by respondent in support of its motion.

#### JUDGMENT

¶13 The claimant's request for additional PPD benefits is barred by the full and final compromise settlement he executed on August 10, 1994. His petition is **dismissed with prejudice**.

¶14 This JUDGMENT is certified as final for purposes of appeal.

DATED in Helena, Montana, this 24<sup>th</sup> day of April, 2003.

(SEAL)

\s\ Mike McCarter

JUDGE

c: Mr. Patrick R. Sheehy

Mr. David M. Sandler

Submitted: April 4, 2003

1. Section 39-71-703, MCA (1983), provided a maximum of 500 weeks of PPD benefits.