

IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

1997 MTWCC 10

WCC No. 9701-7690

STAN GUEDESSE

Petitioner

vs.

LIBERTY MUTUAL FIRE INSURANCE COMPANY

Respondent/Insurer for

GENERAL MILLS, INCORPORATED

Employer.

ORDER DENYING MOTION FOR PARTIAL SUMMARY JUDGMENT

Summary: Claimant, who seeks temporary total, permanent partial, and medical benefits, moves for summary judgment on ground that insurer's failure to accept or deny his claim within 30 days constitutes automatic acceptance under the Workers' Compensation Act, pursuant to [*Haag v. Montana Schools Group Ins. Authority*, 274 Mont. 109, 906 P.2d 693 \(1995\)](#). Insurer had accepted the claim under the Occupational Disease Act.

Held: Where the claim form signed by claimant did not state any specific event or any specific time or place for an alleged injury, it fails to identify an industrial accident or injury within the meaning of the Workers' Compensation Act. *Haag* comes into play only if the insurer has received a valid claim for injury, containing sufficient information to inform the employer and insurer of the nature and basis of the claim. As the insurer argues, the claim submitted in this case, at best, suggests claimant is suffering from an occupational disease, and the insurer accepted the claim as such.

Topics:

Constitutions, Statutes, Regulations and Rules: Montana Code Annotated:

Section 39-71-119, MCA (1993). Where the claim form signed by claimant did not state any specific event or any specific time or place for an alleged injury, it fails to identify an industrial accident or injury within the meaning of the Workers' Compensation Act.

Constitutions, Statutes, Regulations and Rules: Montana Code Annotated:

Section 39-71-606, MCA (1993). Where the claim form signed by claimant did not state any specific event or any specific time or place for an alleged injury, it fails to identify an industrial accident or injury within the meaning of the Workers' Compensation Act. The "automatic acceptance" rule of *Haag v. Montana Schools Group Ins. Authority*, 274 Mont. 109, 906 P.2d 693 (1995) comes into play only if the insurer has received a valid claim for injury, containing sufficient information to inform the employer and insurer of the nature and basis of the claim. As the insurer argues, the claim submitted in this case, at best, suggests claimant is suffering from an occupational disease, and the insurer accepted the claim as such.

Cases Discussed: Workers' Compensation Court Cases: Haag v. MSGIA. Where the claim form signed by claimant did not state any specific event or any specific time or place for an alleged injury, it fails to identify an industrial accident or injury within the meaning of the Workers' Compensation Act. The "automatic acceptance" rule of *Haag v. Montana Schools Group Ins. Authority*, 274 Mont. 109, 906 P.2d 693 (1995) comes into play only if the insurer has received a valid claim for injury, containing sufficient information to inform the employer and insurer of the nature and basis of the claim. As the insurer argues, the claim submitted in this case, at best, suggests claimant is suffering from an occupational disease, and the insurer accepted the claim as such.

Claims: Acceptance. Where the claim form signed by claimant did not state any specific event or any specific time or place for an alleged injury, it fails to identify an industrial accident or injury within the meaning of the Workers' Compensation Act. The "automatic acceptance" rule of *Haag v. Montana Schools Group Ins. Authority*, 274 Mont. 109, 906 P.2d 693 (1995) comes into play only if the insurer has received a valid claim for injury, containing sufficient information to inform the employer and insurer of the nature and basis of the claim. As the insurer argues, the claim submitted in this case, at best, suggests claimant is suffering from an occupational disease, and the insurer accepted the claim as such.

Claims: Filing. Where the claim form signed by claimant did not state any specific event or any specific time or place for an alleged injury, it fails to identify an industrial accident or injury within the meaning of the Workers' Compensation Act. The "automatic acceptance" rule of *Haag v. Montana Schools Group Ins. Authority*, 274 Mont. 109, 906 P.2d 693 (1995) comes into play only if the insurer has received a valid claim for injury, containing sufficient information to inform the employer and insurer of the nature and basis of the claim. As the insurer argues, the claim submitted in this case, at best, suggests claimant is suffering from an occupational disease, and the insurer accepted the claim as such.

Claims: Sufficiency. Where the claim form signed by claimant did not state any specific event or any specific time or place for an alleged injury, it fails to identify an industrial accident or injury within the meaning of the Workers' Compensation Act. The "automatic acceptance" rule of *Haag v. Montana Schools Group Ins. Authority*, 274 Mont. 109, 906 P.2d 693 (1995) comes into play only if the insurer has received a valid claim for injury, containing sufficient information to inform the employer and insurer of the nature and basis of the claim. As the insurer argues, the claim submitted in this case, at best, suggests claimant is suffering from an occupational disease, and the insurer accepted the claim as such.

Petitioner in this matter seeks temporary total, permanent partial and medical benefits on account of an alleged industrial injury occurring on May 20, 1995. He now moves for partial summary judgment respecting liability for the claim. He argues that the insurer is liable as a matter of law because it failed to accept his written claim for compensation within 30 days, as required by section 39-71-606, MCA (1993).⁽¹⁾

Undisputed Facts

The following undisputed facts are taken from the parties' pleadings, their briefs and an Affidavit of Deborah Fotopoulos (Affidavit).

Petitioner, Stan Guedesse (claimant), alleges that he injured his low back on May 20, 1995, while working for General Mills, Inc. (General Mills). (Petition para. 1.) At the time of the alleged industrial accident, respondent, Liberty Mutual Fire Insurance Company (Liberty), insured General Mills. (Petition para. 2.)⁽²⁾

Liberty initially received a written claim on June 19, 1995. That claim, which was prepared by General Mills' safety coordinator, was not signed by claimant. (Affidavit para. 8.) The unsigned claim was returned for signature.

On June 26, 1995, Liberty received a signed claim which was otherwise identical to the one received June 19th. (*Id.*) Thereafter, 30 days elapsed without Liberty taking any action regarding the claim. (*Id.* para. 13.) Finally, by letter dated September 15, 1995, Liberty notified claimant that it was accepting the claim as compensable under the Occupational Disease Act (ODA). (*Id.* para. 14; Ex. C.)

A copy of the claim submitted to Liberty is attached as Exhibit A to the Affidavit. The date and time of the alleged injury are listed as "unknown." In response to a question asking, "What specific object or substance caused the injury?" the response states, "Unknown." Under the section asking for information concerning the accident, the following explanation is provided:

Stan called in 05/22/95 at 6:00 a.m. and told the Checker that he would not be in to work. On 05/23/95 Stan called in again at 6:00 a.m. and told the Checker he would

not be in for work because of a bad back. Supervisor called Stan at 7:30 a.m. (05/23/95) and said he didn't know what happened but that Sunday morning (05/21/95) his right foot felt numb. He would be making a doctors appointment. Supervisor has talked to Stan several times since this date, the last being 06/12/95. Again **he cannot pinpoint anytime [sic] when anything happened. He says that it just hasn't been the same since 07/21/94.**

(Affidavit Ex. A, emphasis added.) Under the employer section of the claim, where asked "Do you have any reason to question this accident?" the employer responded, "No accident reported and no incident pinpointed." (*Id.*)

The claimant signed the claim on June 22, 1995, thereby adopting the statements contained therein.

Discussion

Citing [*Haag v. Montana Schools Group Ins. Authority*, 274 Mont. 109, 906 P.2d 693 \(1995\)](#), the claimant argues that Liberty's failure to respond to the claim within 30 days amounted to an automatic acceptance of the claim under the Workers' Compensation Act (WCA). Section 39-71-608, MCA (1993), requires an insurer to accept or deny a workers' compensation claim within 30 days of its *receipt* of the claim. *Haag* holds that an insurer's failure to do so amounts to an acceptance of the claim as a matter of law.

Haag, however, presupposes the receipt of a **valid claim**. Claims are governed by section 39-71-601(1), MCA, ⁽³⁾ which requires the claimant to submit a written and signed claim within 12 months of the industrial accident. The claim must set forth sufficient information to inform the employer and insurer of the nature and basis of the claim, *Weigand v. Anderson-Meyer Drilling Co.*, 232 Mont. 390, 393, 758 P.2d 260, 261-62 (1988), and enable it to investigate the claim and, if necessary, prepare a defense, *id*; *Scott v. Utility Line Contractors*, 226 Mont. 154, 157, 734 P.2d 206, 208 (1987).

The claim submitted in this case was legally insufficient. Section 39-71-119(1)(2), MCA (1993), defines injury and accident as follows:

39-71-119. Injury and accident defined. (1) "Injury" or "injured" means:

- (a) internal or external physical harm to the body;
- (b) damage to prosthetic devices or appliances, except for damage to eyeglasses, contact lenses, dentures, or hearing aids; or
- (c) death.

(2) An injury is caused by an accident. An accident is:

- (a) an unexpected traumatic incident or unusual strain;

(b) identifiable by time and place of occurrence;

(c) identifiable by member or part of the body affected; and

(d) caused by a specific event on a single day or during a single work shift. [Emphasis added.]

The claim herein does not identify any specific event or any specific time or place, thus it fails to identify an industrial accident or industrial injury within the meaning of the WCA. As Liberty argues, at best it suggests that claimant is suffering from an occupational disease, and Liberty has accepted the claim as such.

Since the so-called claim did not constitute a claim within the meaning of the WCA, the insurer had no duty to accept or reject it.

MOTION DENIED.

DATED in Helena, Montana, this 12th day of March, 1997.

(SEAL)

/s/ Mike McCarter

JUDGE

c: Mr. J. David Slovak

Mr. Larry W. Jones

Appendix Attached

Submitted: March 6, 1997

APPENDIX

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.

(2) The department may waive the time requirement up to an additional 24 months upon a reasonable showing by the claimant of:

(a) lack of knowledge of disability;

(b) latent injury; or

(c) equitable estoppel.

39-71-606. Insurer to accept or deny claim within thirty days of receipt -- notice of benefits and entitlements to claimants -- notice of denial notice of reopening -- notice to employer. (1) Every insurer under any plan for the payment of workers' compensation benefits shall, within 30 days of receipt of a claim for compensation, either accept or deny the claim, and if denied shall inform the claimant and the department in writing of such denial.

(2) The department shall make available to insurers for distribution to claimants sufficient copies of a document describing current benefits and entitlements available under Title 39, chapter 71. Upon receipt of a claim, each insurer shall promptly notify the claimant in writing of potential benefits and entitlements available by providing the claimant a copy of the document prepared by the department.

(3) Each insurer under plan No. 2 or No. 3 for the payment of workers' compensation benefits shall notify the employer of the reopening of the claim within 14 days of the reopening of a claim for the purpose of paying compensation benefits.

(4) Upon the request of an employer it insurers, an insurer shall notify the employer of all compensation benefits that are ongoing and are being charged against that employer's account.

1. See Appendix for full text of section 39-71-606, MCA (1993).

2. The allegation is not denied in Liberty's Response to Petition for Trial and is therefore deemed admitted.

3. See Appendix for full text of section 39-71-601, MCA (1993).