IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

2000 MTWCC 46

WCC No. 9906-8269

RONALD GRAYES,

Petitioner,

vs.

UNINSURED EMPLOYERS' FUND,

Respondent and Third-Party Petitioner,

ROLAND SNEDIGAR, et al.,

Respondents/Employer.

FINDINGS OF FACT, CONCLUSIONS OF LAW AND JUDGMENT

Summary of Case: Claimant seeks occupational disease benefits, alleging that he developed sore shoulders as a result of operating a tractor with a brush cutting mower.

Held: Claimant failed to establish that his sore shoulders were caused or aggravated by his operation of the tractor. Neither his treating physician nor the physician who conducted an occupational disease examination could relate his shoulder condition to his work activities.

Topic:

> **Causation: Medical Condition**. Claimant was not entitled to occupational disease benefits where neither his treating physician nor the physician who conducted an occupational disease examination could relate his shoulder condition to his operation of a tractor.
>
> **Medical Condition: Pain: Shoulder.** OD claimant failed to prove his claimed shoulder pain was the result of use of levers on tractor where not supported by medical testimony or credible evidence describing tractor and other aspects of claimant's work.

¶1 The trial in this matter commenced on March 15, 2000, in Kalispell, Montana, and was reconvened on May 8, 2000, at which time the testimony of Dr. John W. Hilleboe was heard. Petitioner, Ronald Grayes (claimant), was present and represented himself.

Respondent/Third-Party Petitioner, Uninsured Employers' Fund (UEF), was represented by Mr. Daniel B. McGregor. Respondent/Employer, Roland Snedigar/Meadow Creek Enterprises (employer), was represented by Mr. William A. Douglas. A transcript of the trial has not been prepared.

¶2 Exhibits: Exhibits 1 through 11 and 13 through 26 were admitted. Exhibit 12, 27, and 28 were refused. Exhibit 29 was admitted over objection.

¶3 Witnesses and Deposition: Claimant, Roland Snedigar, and Dr. John W. Hilleboe were sworn and testified. Mr. Grayes' deposition was submitted for the Court's consideration.

¶4 Issues Presented: As set forth in the pretrial order, the issues to be determined are:

1. Whether Ronald Grayes is suffering from a compensable occupational disease

2. In the event Mr. Grayes is successful in his claim, whether the UEF is entitled to full reimbursement for paid benefits from the employer/respondents.

¶5 Having considered the pretrial order, the testimony presented at trial, the demeanor and credibility of the witnesses, the deposition, and exhibits, the Court makes the following:

FINDINGS OF FACT

¶6 The uncontested facts as set forth in the pretrial order are:

1. Ronald Grayes performed some sporadic brush clearing work for Roland Snedigar and/or Meadow Creek Enterprises during part of 1997 and part of spring, 1998. Ronald Grayes quit working for Roland Snedigar and/or Meadow Creek Enterprises in June of 1998.

2. During the period of time that Ronald Grayes worked for Roland Snedigar, no workers' compensation insurance was in effect.

(Pretrial Order at 2.)

The Claim

¶7 Claimant submitted a claim for compensation which was received by the UEF on February 4, 1999. (Ex. 1.) The employer's first report with an attachment was filed on February 11, 1999. (Ex. 2 and 8.)

¶8 Claimant explained that while working for the employer as an operator of a brush cutter his shoulders became sore and have continued to be sore.

¶9 On the claim for compensation, the claimant indicated his disability began in November of 1998 (Ex. 1), but in a letter to Bernadette Rice, claims examiner, he corrected himself and said November 1997 was when he first noticed the pain in his shoulders. (Ex. 6 at 1.)

Work History of Ronald Grayes

¶10 Claimant is 48 years old. His work history includes working at a mine in Michigan, working as a logger, which he indicates was for most of his work life, some mechanical work on cars and/or trucks, chopping and selling wood, and cutting brush.

Previous Injuries

¶11 Claimant has suffered a number of work-related injuries. When he was employed at the Michigan mine he fell and lost some teeth. (Grayes Dep. at 15.) In 1988, while working as a logger in the Flathead area, a tree struck him on the top of his head, caving in his hard hat. He was off work for a couple of weeks. (*Id.* at 22.) Claimant then hurt his right knee in 1989 but did not report it. Later in 1989, he injured his left knee. This injury eventually required "patellar tendon cruciate replacement" in January 1990. (Ex. 25 at 5.) The injury was covered by a workers' compensation insurer.

¶12 Claimant has not worked on a regular basis since his 1989 knee injury. He has had some income from selling wood and auto mechanic work. He is presently receiving workers' compensation benefits on account of the knee injury.

¶13 In addition to his work-related injuries, claimant was in an altercation in 1985, which resulted in an injury to both his elbows. He testified, "I think they are [were] dislocated." (Grayes Dep. at 26.) He passed out when the incident occurred.

Current condition

¶14 At trial the claimant testified he has "zero" strength in his shoulders and that his shoulders hurt. He has trouble pulling the covers up at night and if he doesn't move his shoulders they get stiff. The higher he lifts his arms the more his shoulders hurt. (Trial Test.)

¶15 Dr. John V. Stephens, who examined claimant on March 30, 1999, recorded claimant's symptoms and history as follows:

> Current History & Management
>
> . . . He relates that in 1997 he noted that he was developing discomfort, primarily in his left shoulder but also somewhat in the right. . . .

He relates that he gets an aching in both shoulders in the lateral aspect and anterior aspect when he flexes them fully forward or abducts his shoulders. Raising his arms is more painful on the left than the right. He has not had specific numbness. . . .

(Ex. 18 at 1.)

Brush Cutting Operation

¶16 Claimant testified his symptoms began while clearing brush for Roland Snedigar (Snedigar), in Trego, Montana, in November 1997. (Grayes Dep. at 29.) The brush clearing jobs began in the fall of 1997, closed down in January of 1998, then started up again in April 1998.

¶17 Claimant operated a tractor with the brush cutting mower attached. His job was described as follows:

> Clearing and brushing shall consist of removal and disposal of limbs, residual brush, live roadside brush, small trees, and windfalls which are within, or obtrude upon the designated clearing limits on both sides of the roadway.

(Ex. 7 at 1.)

¶18 The tractor was a 1978 4-cylinder diesel tractor with an attached mower head. (Ex. 6 at 3; Ex. 26.) The mower head cuts brush and trees up to approximately four inches in diameter. Any tree larger than four inches was cut by hand.

¶19 The mower head attachment is controlled through four levers on the right side of the cab of the tractor. (Trial Test.; Ex. 26.) The amount of force which must be exerted by the operator to activate the levers is 1.7 pounds. The levers are below the driver's shoulder level. The tractor has power steering and is easily maneuvered.

¶20 Claimant was specific in stating that his shoulder soreness was caused by using the levers ("joy sticks") which control the brush cutting mower. He said that his soreness began in November 1997, when the weather was cold and he was working the lever controls a great deal. He testified that the condition did not just happen, and that at first he did not pay much attention, but then, "it got to the point where I was driving home, and it was hard to drive home. I couldn't lift my arms." (Grayes Dep. at 30.)

¶21 Claimant and Snedigar frequently worked together. According to the claimant Snedigar generally did the brush clearing handwork, which consisted of sawing down the larger trees and physically moving them from the side of the road. (Ex. 7.)

¶22 While the actual dates and hours the claimant worked are unclear, it appears that his longest segment of work was in May and June of 1998, when he earned $2,160.75, apparently clearing 21 miles of brush. His 1998 total earnings were $2582.75. (*Id*.) The is no evidence indicating the dates or hours of his work in 1997. Claimant testified that in September he picked up the tractor in Oregon and brought it to Montana. He then worked operating the tractor in October and November of 1997.

Medical

¶23 Claimant was treated by Dr. John W. Hilleboe for his 1989 knee injury. (Ex. 25.) Approximately a year after his shoulder soreness began, claimant consulted Dr. Hilleboe

about the soreness. He testified he did not seek medical treatment earlier because he could not afford it.

¶24 The relevant medical records from Dr. Hilleboe begin with his office note of an August 26, 1999 examination.

> Ron comes in, he's been working, apparently was down cleaning road and doing a lot of heavy work with his shoulders. He developed bilateral supraspinatus syndrome, worse on the L than the R. He was injected and given an exercise program and we'll follow him up if he needs it.

(Ex. 25 at 1; Ex. 29 at 2.) Dr. Hilleboe explained that the "supraspinatus" is a muscle/tendon group which is part of the rotator cuff of the shoulder.

¶25 The claimant asked Dr. Hilliboe about a feeling which he described as a "muscle ball" along his spine and behind his shoulder blade. Dr. Hilleboe explained this sensation was probably from the tree falling on his head and is due to referred pain from the neck. His neck injury also causes him pain in his arms and numbness in his fingers.

¶26 Claimant's shoulder symptoms are an aching type pain which is irritated by motion and by raising his arms or reaching upward.

¶27 Based on claimant's report that his condition developed when he was "road cleaning and doing a lot of heavy work with his shoulders," Dr. Hilleboe initially concluded that claimant's job caused or aggravated his supraspinatus syndrome. He based his opinion on his belief that the claimant was using his arms with his elbows higher than mid-chest. Dr. Hilleboe did not know the time frame during which claimant worked as a brush clearer.

¶28 When Dr. Hilleboe reached his initial opinion, he did not take a specific job history from the claimant but believed it consisted of throwing brush, picking up stuff, pulling, and shoving. Dr. Hilleboe did not know that claimant operated a tractor, or that the claimant related his problem to using the levers to control the mower.

¶29 At his deposition, Dr. Hilleboe reviewed Exhibit 26, which consists of pictures of the tractor and its attached mower. He was also told that the force required to operate the levers was 1.7 pounds. With this information, Dr. Hilleboe testified that operating the tractor and the levers did **not** cause or aggravate claimant's shoulder condition. As explained by the doctor, claimant's supraspinatus syndrome was caused by repetitive use of his arms above mid-chest level. Operating the levers in the tractor did not require claimant to use his arms above mid-chest level.

¶30 The Department of Labor and Industry sent the claimant to Dr. John V. Stephens for an occupational disease examination on March 30, 1999. Dr. Stephens was unable to relate claimant's shoulder complaints to his brush clearing work.

Resolution

¶31 The claimant has failed to prove that his shoulder condition is the result of his work clearing brush in 1997 and 1998. Claimant's belief that the soreness in his shoulders was the result of using the levers in the brush clearing tractor is not supported by the medical evidence or by the evidence describing the work he performed.

CONCLUSIONS OF LAW

¶32 The 1997 version of the Occupational Disease Act applies in this case since it was the law in effect at the time of the claimant's November 1997 occupational disease. *Buckman v. Montana Deaconess Hospital,* 224 Mont. 318, 321, 730 P.2d, 380, 382 (1986).

¶33 Claimant has the burden of proving that he is entitled to compensation. *See Ricks v. Teslow Consolidated,* 162 Mont. 469, 512 P.2d 1304 (1973); *Dumont v. Wicken Bros. Construction Co.,* 183 Mont. 190, 598 P.2d 1099 (1979). Thus, he bears the burden of proving that his shoulder condition is the result of the work he did while operating a brush cutting tractor to clear brush.

¶34 Claimant has not satisfied his burden. Throughout the trial, claimant maintained his condition was the result of his operation of the levers which controlled the mower on the brush cutting tractor. When shown the position for operating the levers and the amount of force required to operate the levers, Dr. Hilleboe testified that claimant's work did not cause claimant's shoulder condition. He explained that the condition from which the claimant suffers is caused by working for extended periods of time with the elbows above the mid-chest level. The work which the claimant performed for Snedigar did not require that type of use of his arms. Dr. Stephens also opined that claimant's complaints were not work related.

¶35 Having determined that the claimant did not suffer an occupational disease, it is unnecessary to consider the second issue stated in the pretrial order.

JUDGMENT

¶36 1. Claimant does not suffer from an occupational disease as a result of his work for Snedigar and Meadow Creek Enterprises.

¶37 2. This JUDGMENT is certified as final for purposes of appeal pursuant to ARM 24.5.348.

¶38 3. Any party to this dispute may have 20 days in which to request a rehearing from these findings of fact, conclusions of law and judgment.

DATED in Helena, Montana, this 24th day of July, 2000.

(SEAL)

/s/ Mike McCarter
JUDGE

c: Mr. Ronald Grayes - Certified Mail
Mr. Daniel B. McGregor
Mr. William A. Douglas
Date Submitted: May 23, 2000