

IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

WCC No. 9507-7348

DON HAMLIN

Petitioner

vs.

STATE COMPENSATION INSURANCE FUND

Respondent/Insurer for

HERITAGE INN

Employer.

FINDINGS OF FACT, CONCLUSIONS OF LAW AND JUDGMENT

Summary: 28-year-old hotel worker suffered work-related injury to left knee, leading to arthroscopic surgery. In following year, he re-injured the same knee outside work, leading to additional arthroscopic surgery. The parties disputed whether second injury was compensable as causally connected to the work injury. Claimant testified at length that his knee remained unstable after the first operation, including statements that he discussed the problems with his physician. The physician's records, however, did not support claimant's statements and the WCC found him lacking credibility in his testimony that his knee remained unstable after the first surgery.

Held: Under section 39-71-407(5), MCA (1993), if a claimant who has reached maximum medical healing suffers a subsequent nonwork-related accident to the same part of the body, the insurer is not liable for compensation or medical benefits caused by the subsequent nonwork-related injury. However, the insurer remains liable if the new incident was itself precipitated by a residual condition caused by the original industrial accident. See Pulliam v. Liberty Mutual Ins. Co., 1994 MTWCC 1997. Here, section 39-71-407(5), MCA (1993) relieves the insurer of liability where the Court finds, as a matter of fact, that claimant did not suffer from instability of his knee following his first surgery and that his non-work related fall was not caused by a pre-existing work-related knee condition.

Topics:

Constitutions, Statutes, Regulations and Rules: Montana Code Annotated: section 39-71-407(5), MCA (1993). Section 39-71-407(5), MCA (1993) relieves the insurer of liability for claimant's knee condition following non-work related fall

where he had reached MMI after knee surgery following industrial accident and the Court finds, as a matter of fact, that claimant did not suffer from instability of his knee following his first surgery and that his non-work related fall was not caused by a pre-existing work-related knee condition.

Causation: Injury. Section 39-71-407(5), MCA (1993) relieves the insurer of liability for claimant's knee condition following non-work related fall where he had reached MMI after knee surgery following industrial accident and the Court finds, as a matter of fact, that claimant did not suffer from instability of his knee following his first surgery and that his non-work related fall was not caused by a pre-existing work-related knee condition.

Injury and Accident: Subsequent Injury. Section 39-71-407(5), MCA (1993) relieves the insurer of liability for claimant's knee condition following non-work related fall where he had reached MMI after knee surgery following industrial accident and the Court finds, as a matter of fact, that claimant did not suffer from instability of his knee following his first surgery and that his non-work related fall was not caused by a pre-existing work-related knee condition.

Injury and Accident: Causation. Section 39-71-407(5), MCA (1993) relieves the insurer of liability for claimant's knee condition following non-work related fall where he had reached MMI after knee surgery following industrial accident and the Court finds, as a matter of fact, that claimant did not suffer from instability of his knee following his first surgery and that his non-work related fall was not caused by a pre-existing work-related knee condition.

Injury and Accident: Non-work-related. Section 39-71-407(5), MCA (1993) relieves the insurer of liability for claimant's knee condition following non-work related fall where he had reached MMI after knee surgery following industrial accident and the Court finds, as a matter of fact, that claimant did not suffer from instability of his knee following his first surgery and that his non-work related fall was not caused by a pre-existing work-related knee condition.

The trial in this matter was held on October 12, 1995, in Great Falls, Montana. Petitioner, Don Hamlin (claimant), was present and was represented by Mr. Cameron Ferguson. Respondent, State Compensation Insurance Fund, was represented by Ms. Ann E. Clark. The claimant testified on his own behalf. Additionally, Dr. Catherine Capps provided telephonic testimony. Exhibits 1 through 10, 13 and 16 were admitted without objection. Exhibits 12, 14 and 15 were withdrawn. Exhibit 11 was admitted over the objection of Mr. Ferguson. The deposition of claimant was submitted for the Court's consideration.

Issues presented: The claimant contends that a non-work-related injury to his left knee which occurred in July 1994 is causally related to an earlier industrial injury he suffered July 31, 1993. He also seeks attorney fees and costs.

Post-trial exhibits: Subsequent to trial the Court determined that the medical records of Dr. Melvin, who treated claimant for his injuries, were incomplete. I concluded that the missing records may provide helpful information concerning whether claimant's industrial injury contributed to his 1994 injury, and directed the parties to obtain the additional records. I also provided them with an opportunity to object to the additional records once obtained. The records were thereafter obtained by the parties and submitted to the Court without objection. They have been added to Exhibit 4 as pages three through six.

Having considered the Pre-trial Order, the testimony presented at trial, the demeanor and credibility of the witnesses, the deposition and exhibits, and the arguments of the parties, the Court makes the following:

FINDINGS OF FACT

1. Claimant is 28 years old. He has a GED and has worked in the past as a construction laborer, cook, dishwasher, and caterer.
2. In the summer of 1993, claimant was employed by the Heritage Inn in Great Falls, Montana, to set up banquet rooms for weddings, parties and other special events.
3. On July 31, 1993, while working at Heritage and porting a heavy table down some stairs, claimant suffered an industrial injury. His left knee gave way as he was going down the stairs. Claimant felt immediate pain and fell. After getting up he was unable to straighten his left leg.
4. At the time of the injury, Heritage was insured by the State Fund, which accepted liability for the claim for compensation. Following its acceptance of liability, the State Fund paid medical, temporary total, and permanent partial disability benefits.
5. Immediately following his injury, claimant sought treatment at the Columbus Hospital emergency room. Dissatisfied with Columbus, he then went to the Montana Deaconess Medical Center emergency room where he was seen by M. F. Doubek, M.D. Dr. Doubek diagnosed lumbago and left knee pain but also felt that claimant was exhibiting behavior suggestive of malingering. Dr. Doubek prescribed analgesic and anti-inflammatory medications. (Ex. 5 at 2, 4; Hamlin Dep. at 52-53.)
6. Claimant continued to have difficulty with his knee and was examined by Dr. Paul Melvin, an orthopedic surgeon, on August 4, 1993. Dr. Melvin suspected claimant had torn his medial meniscus and recommended an MRI . He took claimant off work. (Ex. 4 at 4; Ex. 3 at 3.)

7. Claimant underwent an MRI on August 5, 1993. The MRI report revealed the following:

1. Small amount of fluid within the joint space.
2. Tear of the posterior horn of the medial meniscus.
3. Increased signal in the posterior cruciate ligament and apparent disruption of the anterior cruciate ligament.

(Ex. 9 at 2.)

8. Dr. Melvin performed arthroscopic surgery on claimant's left knee on August 18, 1993 to repair a tear of the anterior cruciate ligament and a tear of the mid and posterior horns of the medial meniscus. The surgical report states:

There was a complete tear in the mid substance of the anterior cruciate ligament. The lateral compartment appeared to be normal. The lateral meniscus was intact. There was a displaceable tear of the mid and posterior horns of the medial meniscus. This was a peripheral tear, and it was thought to be quite amenable to repair.

(Ex. 6 at 2.)

9. Claimant's recovery initially was uneventful. Upon examination by Dr. Melvin on August 31, 1993, claimant had "almost complete extension and . . . flexion to 80 degrees." (Ex. 4 at 1.) On September 14, 1993, his left knee had complete extension and 90 degrees flexion. (*Id.*) His flexion had increased to 110 degrees by September 29, 1993, and on that date Dr. Melvin referred him to a physical therapist to strengthen his leg muscles. (*Id.*)

10. Claimant testified that at the time Dr. Melvin prescribed physical therapy he was living three and one-half miles outside of Great Falls, did not have a car, and was unable to make several scheduled physical therapy and doctor's appointments. Claimant indicated he did go to physical therapy a couple of times but for the most part exercised at home. (Hamlin Dep. at 23-25.)

11. The only physical therapy records submitted to the Court are found in Exhibit 10 and reflect a single physical therapy session on October 18, 1993. The therapist's report to Dr. Melvin reflects that claimant reported "some swelling with any activity, i.e., prolonged walking, otherwise does not complain of much pain" and that he was "moderately limited" in his walking, and going up and down stairs and standing. (Ex. 10 at 1.) The report does not indicate whether the limitations were due to anything more than the increased swelling associated with those activities and there is no mention of any locking or catching of the knee, or of any other physical abnormality. The therapist noted that he would assist claimant in establishing a home exercise program which emphasized strengthening of the quadriceps and hamstring muscles.

12. Claimant was again examined by Dr. Melvin on November 9, 1993. At that time claimant reported some soreness of his knee and commented that he did not "think his knee was quite strong enough" but that he was "working hard on strengthening it." (Ex. 4 at 4.) On examination, Dr. Melvin noted that the knee was somewhat swollen but had complete extension and flexion to 115 degrees. Dr. Melvin released claimant to work as of December 1 and instructed he return as needed. (*Id.*)

13. On November 29, 1993, claimant went back to Dr. Melvin complaining that his knee "popped" while lifting 20 pounds and that "it's thrown him back a bit." (Ex. 4 at 4.) Dr. Melvin was concerned about the meniscal repair. On examination the claimant had some tenderness on the medial joint line. At claimant's request, Dr. Melvin provided a work release with a 15 pound weight restriction. Dr. Melvin indicated claimant should be followed closely. (*Id.*)

14. Claimant returned to Dr. Melvin on December 17, 1993, and asked for an impairment rating. Dr. Melvin's note for that date states as follows:

PROGRESS: Comes in wanting an evaluation of his knee. I have told him that his healing period is not completely over, but I think he is headed for a good result. He was told that he may have more trouble that is not apparent right now. He says that he understands that, but still wants the rating.

(Ex. 4 at 4.)

15. Dr. Melvin went ahead and did an impairment evaluation. The results of his evaluation and further information concerning claimant's injury and his condition on December 17, 1993, are contained in a letter Dr. Melvin wrote to Carol Morris, a State Fund claims examiner, on December 30, 1993. Of significance, Dr. Melvin reported:

I saw Donald Hamlin in my office on 12/17/93. Mr. Hamlin injured his left knee on the [sic] 7/31/93 while carrying a table at work. He had episodes of **recurrent instability and catching** in his knee and sought my medical attention. At my advice, he underwent arthroscopy His postoperative course has been marked with some pain and swelling, but has been one of gradual improvement. When I examined him on 12/17/93, he had complete extension in his knee and flexion back to 110 degrees. His Lachman's was negative and his wound was well healed. He had no effusion at that time. He had no tenderness on the medial joint line.

(Ex. 2 at 3.) Dr. Hamlin went on to provide a 16% whole-person impairment rating.

16. On March 17, 1994, Dr. Melvin wrote to Heidi Erickson, a registered nurse working for Crawford and Company. (Ex. 2 at 4.) The letter was in apparent response to a query from Erickson. In his letter, Dr. Melvin noted that he had last seen claimant on December 17,

1993, and that "[a]t that time, I thought that he was doing well and was headed for a good result." (*Id.*)

17. At Crawford's request, Dr. Melvin examined claimant again on April 13, 1994. (Exs. 4 at 4 and 2 at 5.) Dr. Melvin's report of his examination is contained in an April 25, 1994 letter to Crawford. (Ex. 2 at 5.) In the letter he reiterated that claimant was reporting "recurrent instability" of his knee in the summer of 1993, and that he subsequently performed arthroscopic surgery. After summarizing the surgery and follow-up, Dr. Melvin stated that on April 13, 1995, that "at that time **other than some aching when he stands for any period of time he had no complaints.**" Dr. Melvin further noted, "He has a negative Lachman's **and no other instability.**" He placed no restrictions on claimant's activities "other than he should not be involved in athletic activities which require running or sudden cutting." (*Id.*)

18. Claimant testified at trial that even after his 1993 surgery his left knee frequently hyper extended. He described hyperextension as feeling as though his knee separates and then pops back into place. In further testimony he said that when his leg hyperextended it locked and he could not straighten it or if he was able to straighten the leg it would pop when he did so. He testified that following his 1993 surgery this happened when he walked too fast or he stepped down from an elevated surface. He described two particular incidents, one approximately three months after his 1993 surgery when he was stepping off his porch, and another when he stepped off a curb. He testified at trial and in his deposition that he had difficulty walking on dirt roads and ice. (Hamlin Dep. at 31, 45.)

19. Claimant testified that within six months of his 1993 surgery his knee popped out totally and that on those occasions he had to treat himself with bed rest for three to four days. He further testified that several times he told Dr. Melvin about these incidents and that Dr. Melvin had replied that he should expect it to happen.

20. Claimant also testified that seven to eight months after his 1993 surgery, while going to Dr. Melvin's office he hyperextended his knee. He claims that he told Dr. Melvin about the incident and that Melvin took x-rays and then told him not to worry.

21. Dr. Melvin's notes do not reflect any reports such as described by claimant in Findings 18, 19 and 20. More will be said about this later.

22. On approximately July 23, 1994, claimant suffered a second injury to his left knee. He was camping or picnicking with his family. While carrying a cooler down a hill, he fell. In direct examination, he testified that his knee hyperextended and gave out, causing his fall. He later testified that he had a tiny slip, then his knee hyperextended and he fell. In his deposition he could not recall whether he slipped and tried to catch himself or if his knee just gave out:

Q. Back in July of '94, you were walking down the hill or down an incline. Was it a steep incline?

A. A pretty good incline, yeah. It's been so long. I can't remember if I slipped and tried to catch myself or if I just stepped down on my knee or my leg and my knee gave out.

(Hamlin Dep. at 37.)

23. Claimant again sought out Dr. Melvin, who saw him on July 5, 1994. (Ex. 4 at 5.) Dr Melvin's note of that date states that claimant "fell and twisted his left knee and he has been unable to straighten it." Claimant had tenderness along the medial joint line and slight effusion. Dr. Melvin noted that the knee was not locked but that claimant could not get his knee "much past about 30 degrees." Dr. Melvin recommended that claimant stay on crutches and return in ten days.

24. Dr. Melvin reexamined claimant on July 20, 1994. (Ex. 4 at 5.) The swelling was less but claimant told the doctor that his knee "is continuing to lock and catch on him and he cannot trust it." This is the first mention in Dr. Melvin's records of claimant's knee locking and catching post-surgically.

25. Dr. Melvin recommended further arthroscopic surgery. The surgery was performed on knee on July 25, 1994. According to the surgical report:

The anterior cruciate ligament repair was intact but looked as though there had been some shredding, but it seemed to function well as viewed after a Lachman was done. The medial meniscus was torn. This was a different tear than he had originally sustained. It was a posterior horn tear bucket handling into the center of the joint. This was removed arthroscopically. The remaining rim was intact. There was a very small tear in the lateral meniscus that was a flap tear posteriorly which was removed arthroscopically as well. The remaining menisci appeared to be intact.

(Ex. 7 at 2.)

26. Dr. Melvin followed claimant post-operatively and his notes are in Exhibit 4, at 6. Claimant made a good recovery but of some significance to my decision in this case, Dr. Melvin noted on October 26, 1994, that claimant is "having difficulty walking any distance and **particularly over rough ground.**" (*Id.* at 6.)

27. In a September 15, 1995 letter to Kevin Bartsch, a claims adjuster for the State Fund, Dr. Melvin opined that claimant's second injury is causally connected to his industrial accident, explaining:

I believe that anyone who has had an anterior cruciate ligament reconstruction and has had a repair of a torn medial meniscus and then re-tears the meniscus has a

definite causal relationship. The fact that the tear was a different tear than before, I don't think really has much bearing on whether this is a new injury or not and it is my impression that the second injury he had is definitely related to his industrial accident injury.

(Ex. 2 at 6.) Dr. Melvin reiterated that opinion in a second letter to Mr. Bartsch dated October 19, 1994:

It is my opinion that the torn meniscus more probably than not is a reflection of the fact that Mr. Hamlin had torn his meniscus in the past. I realize that this tear was not exactly like the other but I still feel that the fact that he had torn his meniscus before and that it had been repaired has great bearing and has a definite causal relation on the fact that he tore the meniscus again. I want to emphasize to you that we are dealing with probabilities and I think that it is more probable than not that his second tear of the meniscus is definitely related to his initial industrial injury.

(*Id.* at 7.)

28. At respondent's request, Dr. Catherine Capps, who is a board certified orthopedic surgeon, examined claimant. She also reviewed his medical records and other documents related to his left knee injuries. She concluded that the second, July 1994 injury to claimant's left knee was independent of and not causally related to his July 1993 industrial injury. In a February 7, 1995 letter to Kevin Bartsch, she summarized her opinion as follows:

I do feel that Mr. Hamlin's July 1994 injury is a separate injury. Therefore I feel the arthroscopy to treat his condition is not industrial in nature. I feel that the medial miniscal tear is in a different location and was not a peripheral tear. Therefore it was not a failure of the repair but rather a new tear. Likewise, the patient previously did not have a lateral miniscal tear. The patient has good stability of his cruciate ligaments and good strength on manual muscle testing arising from a squatting position, etc. Although he does have some mild quadriceps atrophy, I feel that anybody with an uninjured knee in a similar circumstance where they fell into a hole while carrying a cooler could have sustained this type of injury. Thus, based on those reasons I do feel that it is an unrelated injury. Had the patient had a lot of knee instability on examination and failure of the ACL graft, the injury could have been attributed to instability and thus could have been interpreted as being industrial in origin. However, this is not the case.

(Ex. 11 at 6-7.)

29. Dr. Capps also testified by telephone at trial. She reiterated her opinion that claimant's second injury was not related to his July 31, 1993 injury. She explained that the 1993 and 1994 injuries resulted from different types of events. In her opinion, the July 31, 1993 injury was most likely the result of a severe, sudden force causing the tibia to move forward over

the femur, detaching the anterior cruciate ligament and tearing the outer part of the medial meniscus. The 1994 injury was more of a rotary injury caused by a twisting motion which tears the inner part of the meniscus. She noted that the claimant appeared to have recovered from the first surgery and opined that the second injury could have happened irrespective of the first injury.

30. On cross examination, Dr. Capps acknowledged that if claimant was having ongoing symptoms of instability she would be more inclined to relate the two injuries. She indicated that if the claimant was having difficulty walking on uneven surfaces or down curbs after the first surgery, this would be evidence of a slight sub-clinical predisposition to reinjury. Further, she felt that such difficulty might be indicative of a slight tear existing before his fall in July of 1994. In her review of claimant's medical records, however, she did not find evidence of this type of instability.

31. Even though Dr. Melvin is the treating physician in this case, his opinion is unpersuasive. He provides no basis for his opinion other than his statement that the second injury must be considered related to the first simply because the first injury in fact occurred. It is apparent from his letter that he is of the opinion that any additional injury of the knee following meniscus and anterior cruciate surgery should be considered as caused by the original injury. He did not address the statutory criteria for subsequent aggravations of a preexisting condition.

32. Dr. Capps, on the other hand, provided persuasive and logical reasons for her opinion that the second injury was a new injury and was unrelated to the first. She noted that the miniscal tear resulting from the second incident was to a different part of the meniscus. She pointed out that the mechanical force (sheering) causing the first injury was different than the mechanical force (twisting) causing the second. She also pointed out that the second injury could have occurred even if the claimant had not previously injured his knee.

33. I am not persuaded that claimant's fall in July 1994 was caused by preexisting instability of his knee, i.e., I am not convinced that he suffered from a preexisting knee condition which caused his fall. While claimant testified that following his first injury he continued to experience hyperextension of his knee, in listening to and observing claimant testify about that history I had grave doubts about his credibility. My doubts were the primary reason for my Order directing the parties to obtain Dr. Melvin's missing records. (Order Directing the Parties to Obtain Medical File at 2, November 21, 1995.) As I noted in my Order, and reiterate here, it is apparent to me that Dr. Melvin is a meticulous note keeper. I noted that the records that were provided did not support claimant's testimony concerning instability of his knee following the first surgery. After reviewing his complete records, I find that the complete records do not support claimant's testimony. They fail to support his claim that he repeatedly told Dr. Melvin about incidents of hyperextension or difficulty walking on dirt roads, or that Dr. Melvin took x-rays after one of his reports. Dr. Melvin did note that

claimant reported locking and catching of his knee in walking on dirt roads, but that note was made **subsequent** to the second injury. It demonstrates that Dr. Melvin considered those matters sufficiently significant to note them. It is unlikely that his notes would be silent, as they are, if claimant's testimony concerning his persistent and emphatic complaints of pre-July 1994 knee instability were true. I do not find claimant's testimony concerning instability of his knee credible. I am unpersuaded that claimant's knee was unstable or that he experienced incidents of hyperextension after he had healed from his first surgery.

34. Following his July 31, 1993 industrial accident, claimant had reached maximum medical improvement at least by April 13, 1994. (Ex. 2 at 5.)

CONCLUSIONS OF LAW

1. The law in effect at the time of the injury governs the claimant's entitlement to benefits. *Buckman v. Montana Deaconess Hospital*, 224 Mont. 318, 730 P.2d 380 (1986). Thus, the 1993 version of the Workers' Compensation Act governs this case.

2. The claimant has the burden of proving by a preponderance of the evidence that he is entitled to compensation. *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).

3. Section 39-71-407(5), MCA (1993), provides:

If a claimant who has reached maximum healing suffers a subsequent nonwork-related injury to the same part of the body, the workers' compensation insurer is not liable for any compensation or medical benefits caused by the subsequent nonwork-related injury.

4. An injury and accident is defined in section 39-71-119 (1) (2), MCA (1993), which provides in relevant part:

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.

The July 1994 incident satisfies the injury/accident definition. Claimant experienced an unexpected and unusual strain at a specific time and place, due to a specific incident on a single day. He suffered internal physical harm to a specific part of his body (knee).

5. The criteria for an application of section 39-71-407(5), MCA, are therefore satisfied unless the 1994 incident was itself precipitated by a residual condition caused by the original industrial accident. Claimant contends that his industrial accident left him with a residual instability of the knee which in turn directly precipitated his fall in July 1994, and the reinjury of his knee. See *Janna Pulliam v. Liberty Mutual Ins. Co.*, WCC No. 94-9-7140 (December 22, 1994.) The Court, however, did not find his evidence credible or persuasive. I have found that he did not in fact suffer from instability of his knee and that his fall was not in fact caused by any preexisting knee condition.

6. Since claimant has not prevailed, he is not entitled to attorney fees or costs. § 39-71-611, MCA (1993).

JUDGMENT

1. The respondent is not liable for claimant's July 1994 injury of his left knee.
2. Claimant is not entitled to attorney fees or costs.
3. This JUDGMENT is certified as final for purposes of appeal pursuant to ARM 24.5.348.
4. 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 29th day of December, 1995.

(SEAL)

/s/ Mike McCarter

JUDGE

c: Mr. Cameron Ferguson

Ms. Ann E. Clark

Date Submitted: December 18, 1995