

IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

1994 MTWCC 10

WCC No. 9303-6740

RANDY HEINRICH

Petitioner

vs.

MONTANA MUNICIPAL INSURANCE AUTHORITY

Respondent/Insurer for

CITY OF HELENA

Employer.

ORDER GRANTING PARTIAL SUMMARY JUDGMENT

The matter before the Court is Montana Municipal Insurance Authority's (MMIA) eve of trial motion for partial summary judgment. The matter has been fully briefed.

At issue is the Court's jurisdiction to order payment for or credit for vacation and sick hours used by a worker following a work-related injury because an insurer denies liability for temporary total disability benefits. Resolution of the jurisdictional issue requires resort only to the contentions and issues set forth in the pleadings and pretrial order. While certain unsworn information has been provided to the Court, it is not the basis for the present decision. Therefore, this Court's admonition concerning the need for sworn evidence, ***State Fund v. Richter***, WCC No. 9308-6867 (*Order of October 8, 1993*) and ***McClure v. State Compensation Mutual Insurance Fund***, WCC No. 9304-6772 (*Order of October 7, 1993*), is inapplicable.

In his petition the petitioner alleges, inter alia, "that the Defendant has failed and refused to reimburse the Claimant fully for the accumulated sick leave and vacation time that he had to use while the Defendant wrongfully refused to make any compensation payments to him." He has carried the allegation over into the pretrial order. He alleges in the alternative that he should be paid temporary total disability benefits "for the time periods during which he was forced to take sick leave and vacation time." (Pretrial Order, Petitioner's Contention No. 5.) As phrased in the pretrial order, the issues raised are as follows:

4) Whether the Petitioner is entitled to be reimbursed for all of the sick leave and vacation time, except for the first six days thereof, that he took in this matter, or, in the alternative, whether the Claimant is entitled to temporary total disability benefits for that same time period. *The Respondent disputes the Court's jurisdiction over this issue.* [Emphasis added.]

Initially there appears to be some confusion as to exact nature of the relief sought by petitioner. MMIA argues that petitioner is seeking an order that petitioner's employer, the City of Helena, reinstate the vacation and sick leave he used following his industrial injury. It vigorously argues that the Court lacks jurisdiction to enter such an order against the City. However, the issue as framed by petitioner seeks a monetary award against MMIA, not relief against the City, and the Court will not give any more expansive interpretation to petitioner's claim.

In opposing MMIA's motion, petitioner relies on the prior decision of this Court in **Redman v. City of Laurel**, WCC No. 8811-4946 (September 7, 1989), in which the Court ordered MMIA's adjustor, Gates McDonald,

. . . to pay, with a twenty percent penalty, that amount necessary to allow Claimant to repurchase his sick leave paid out during that period May 5, 1988 to December 19, 1988, or, at the Claimant's option, the "cash out" value, if any, of his expended sick leave.

Slip Opinion at 35. Having reviewed the **Redman** decision and the arguments of the parties, I conclude that this Court lacks jurisdiction to order MMIA to reimburse petitioner for the vacation time and sick leave time he alleges he took because of MMIA's refusal to pay him temporary total disability benefits. **Redman** is overruled insofar as it is inconsistent with this decision.

The Workers' Compensation Court is a specialized court. Its jurisdiction is limited by statute to "disputes concerning any benefits" under the Workers' Compensation Act. Section 39-71-2905, MCA. While this grant of jurisdiction has been interpreted as encompassing matters which are ancillary to benefits, such as employment status and liability as among insurers, *e.g.*, **State ex rel. Uninsured Employers' Fund v. Hunt**, 191 Mont. 514, 625 P.2d 539 (1981), this Court is unaware of any Supreme Court decision interpreting the jurisdictional statute as permitting it to award monetary relief above and beyond the specific benefits and penalties provided by statute. In **Carlson v. Cain**, 216 Mont. 129, 134, 700 P.2d 607, 611 (1985), the Supreme Court expressly acknowledged that "[t]he penalties and assessments allowed against an insurer under the Workers' Compensation chapter are the exclusive penalties and assessments that can be assessed against an insurer." Other than the 20% penalty and attorney fees authorized by the Act where the insurer has acted unreasonably, there is no provision in the Act for an award of damages caused by a failure of the insurer to pay benefits.

That does not mean that the petitioner is wholly without remedy where forced to take sick leave because an insurer denies liability. Along with a penalty and attorney fees, petitioner has requested in the alternative that he be awarded temporary total disability benefits for the period during which he took sick leave and vacation time. MMIA resists that request on the basis of Section 39-71-736(2), MCA, which states that an injured worker is not entitled to benefits while he is receiving sick pay. Petitioner's allegations, however, raise the possibility that the insurer may be estopped from invoking the section. **See *Schaub v. Vita Rich Dairy*, 236 Mont. 389, 770 P.2d 522 (1989).** If so, temporary total disability benefits could be awarded for the period petitioner was receiving sick pay. (Section 39-71-736(2) does not in any event preclude benefits during periods in which petitioner received vacation pay.)

IT IS THEREFORE ORDERED that partial summary judgment is hereby entered striking petitioner's request that he be awarded reimbursement for all of the sick leave and vacation time he used on account of MMIA's refusal to pay temporary total disability benefits. Respondent's request for a summary ruling barring petitioner's claim for temporary total benefits during the time he was receiving sick pay or vacation pay is **denied**.

DATED in Helena, Montana, this 11th day of February, 1994.

(SEAL)

/s/ Mike McCarter

JUDGE

c: Mr. Andrew J. Utick

Mr. Oliver H. Goe