

IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

1998 MTWCC 42

WCC No. 9707-7796

JERRY HENRY

Petitioner

vs.

STATE COMPENSATION INSURANCE FUND

Respondent/Insurer for

APPLIANCE CARE, INCORPORATED

Employer.

DECISION AND ORDER

Summary: Insurer accepted liability for claimant's herniated disk as an occupational disease. The parties settled the claim under section 39-71-405, MCA, but claimant reserved the right to challenge the insurer's denial of rehabilitation benefits to claimant. The insurer contends rehabilitation benefits are not available under the Occupational Disease Act. Claimant does not disagree, but challenges the constitutionality of the ODA's failure to provide such benefits under the equal protection clause of the Montana and United States Constitutions.

Held: In *Eastman v. Atlantic Richfield Co.*, 237 Mont. 332, 777 P.2d 882 (1989) the Montana Supreme Court has already determined that the different treatment of workers suffering from occupational disease from those suffering from injury does not violate equal protection guarantees. Where *Eastman* has neither been expressly nor impliedly overruled, it is controlling at the trial court level. [Note: the WCC was overruled in this conclusion in *Henry v. State Fund*, 1999 MT 126 (98-351).]

Topics:

Benefits: Rehabilitation Benefits. The failure of the Occupational Disease Act to provide rehabilitation benefits to occupationally diseased workers does not violate the equal protection clause of the Montana or United States Constitutions. [Note: the WCC was overruled in this conclusion in [Henry v. State Fund, 1999 MT 126](#).]

Constitutional Law: Equal Protection. The failure of the Occupational Disease Act to provide rehabilitation benefits to occupationally diseased workers does not violate the equal protection clause of the Montana or United States Constitutions. [Note: the WCC was overruled in this conclusion in [*Henry v. State Fund*, 1999 MT 126.](#)]

Occupational Disease: Rehabilitation Benefits. The failure of the Occupational Disease Act to provide rehabilitation benefits to occupationally diseased workers does not violate the equal protection clause of the Montana or United States Constitutions. [Note: the WCC was overruled in this conclusion in [*Henry v. State Fund*, 1999 MT 126.](#)]

¶1 The petitioner in this action, Jerry Henry (Henry), suffered a herniated disk in his back on April 1, 1995, when he was moving and lifting appliances for his employer, Appliance Care, Incorporated. At the time of this incident, Appliance Care's workers' compensation insurance carrier was the State Compensation Insurance Fund (State Fund).

¶2 Petitioner made a claim for his herniated disk. The State Fund accepted liability for the claim as an occupational disease. Ultimately the parties settled the claim under 39-72-405, MCA, but petitioner reserved the right to challenge the State Fund's denial of his request for rehabilitation benefits. The State Fund contends that rehabilitation benefits are not available under the Occupational Disease Act (ODA). Petitioner does not disagree, rather he contends that the ODA's failure to provide such benefits violates his right to equal protection of the laws.

FACTS

¶3 The parties have submitted this case for decision on an agreed statement of facts. The stipulated facts are as follows:

1. On April 1, 1995, the Petitioner was injured while employed with Appliance Care, Inc., in Lake County, Montana. The Petitioner suffered a herniated disc in his back, when he was moving and lifting appliances. The Petitioner injured his back, herniating his disc, but the symptoms did not manifest themselves until weeks later. The claim was treated and accepted as an occupational disease.
2. The State Fund accepted liability for the claim as an occupational disease and medical and compensation benefits were paid. Mr. Henry reached maximum medical improvement and the parties settled the case pursuant to Section 39-72-405, MCA.
3. The Petitioner requested rehabilitation benefits after reaching maximum medical improvement but the State Fund denied all liability for rehabilitation benefits because the claim was accepted as an occupational disease.

4. The Petitioner was unable to return to his time of injury job because of his herniated disc.

5. The Petitioner is married and has three children, ages 9, 8, and 3.

(Respondent's Reply Brief at 1-2.)

DISCUSSION

¶4 Initially, the Court will briefly address whether this case should be considered under the Workers' Compensation Act (WCA) or under the Occupational Disease Act (ODA). The description of the condition as occurring in a single incident on a single day, and parts of the parties' arguments, suggest that there might be an issue as to which act applies. However, other facts, as well as the issues phrased by the parties, put this controversy squarely under the ODA. The Court need not, and will not, consider whether the handling of the claim under the ODA is appropriate.

¶5 The applicable date the claim arose in this case is April 1995. The parties agree that in April 1995, and continuously to the present, the ODA has made no provision for rehabilitation benefits. That failure is the basis for the claimant's constitutional challenge. The challenge is based on the fact that the WCA provides such benefits. § 39-71-2001, MCA (1993).

¶6 Henry contends that the failure of the ODA to provide equivalent rehabilitation benefits as provided under the WCA violates his right to equal protection as guaranteed under both the Montana and United States Constitutions. He urges that equal protection principles are violated because:

there is no evidence that an injured worker, who is allowed to receive rehabilitation benefits, suffers more occupational displacement than an occupational disease claimant, who is prohibited from receiving rehabilitation benefits. In other words, there is absolutely no rational relationship between the degree of vocational displacement suffered by an injured worker and an occupational disease claimant. Therefore, it follows that there is no rational basis for denying an occupational disease claimant the right to collect rehabilitation benefits.

(Petitioner's Brief at 3.)

¶7 Petitioner must persuade this court **beyond a reasonable doubt** that the failure of the legislature to provide rehabilitation benefits under the ODA is unconstitutional. *Vainio v. Brookshire*, 258 Mont. 273, 277, 852 P.2d 596, 599 (1993).

¶8 The Montana Supreme Court has already determined that the different treatment of workers suffering from occupational disease from those suffering industrial injuries does not violate equal protection guarantees. *Eastman v. Atlantic Richfield Co.*, 237 Mont. 332,

777 P.2d 862 (1989). In *Eastman* the Court held that principles of equal protection do not require the legislature "to award the same or comparable benefits under the Occupational Disease Act as compared to the Workers' Compensation Act." 237 Mont. at 339, 777 P.2d at 866. To rule in favor of petitioner, this Court would have to overrule *Eastman*.

¶9 A trial level court should not be just hesitant at overruling a decision of the Supreme Court of Montana, it should be terrified by that prospect. Our legal system is founded on rule by law and the supreme courts of this state and nation are the final arbiters of what the law is. I can disregard *Eastman* if, and only if, it has been overruled, either expressly or impliedly, by a subsequent decision of the Montana Supreme Court.

¶10 The Supreme Court has not expressly overruled *Eastman*. Therefore, I must determine whether it has implicitly overruled that decision.

¶11 Petitioner urges that the present case is governed by *Heisler v. Hines Motor Co.*, 282 Mont. 270, 937 P.2d 45 (1997). In *Heisler* the Supreme Court held:

Cost-control alone cannot justify disparate treatment which violates an individual's right to equal protection of the law. Discrimination, that is, offering services to some while excluding others for any arbitrary reason, will *always* result in lower costs. We do not, however, allow discrimination merely for the sake of fiscal health.

282 Mont. at 283, 937 P.2d at 52. If the treatment of occupational disease is based solely on cost control considerations, I would have to seriously consider whether *Heisler* implicitly overrules *Eastman*.

¶12 *Eastman*, however, was not based exclusively on cost-control considerations. The Supreme Court noted a fundamental, non-cost-control related reason for distinguishing between occupational injuries and diseases:

Mr. Eastman argues that there is no rational basis upon which to distinguish an employee who suffers from an occupational disease from an employee who suffers an injury. We disagree. A historical inquiry into the subject reveals a legislative purpose for this differentiation.

Historically workers' compensation was enacted to compensate victims of industrial accidents and injuries. It was not set up to respond to workers suffering occupational disease. That distinction was partially explained by the common law historical background which had allowed tort suits for injuries but generally had shown that the negligence of an employer was not a basis for a common law action. As stated in 1B Larson, Workmen's Compensation Law, Section 41.20 (1987):

To the extent that compensation acts were thought of as substituting nonfault liability for the kind of injuries that were potential subjects of fault liability, there was thought to be no place for occupational diseases, which (in the sense of a disease

due to the "normal" conditions of the industry as distinguished from the negligence of the employer) had consistently been held incapable of supporting a common-law action.

As the incidence of devastating diseases of the work place increased, legislatures concluded that some system of compensation was needed. Gradually the law was expanded to provide benefits for the victims of occupational disease, notably silicosis and asbestosis. 32 Labor Law Journal (1981), 212, 213.

237 Mont. at 338, 777 P.2d at 865-66. Plainly, considerations other than cost underlie the different treatment of occupational disease. *Heisler* does not overrule *Eastman*.

JUDGMENT

¶13 1. The failure of the legislature to provide rehabilitation benefits to claimants suffering from occupational diseases does not violate the Equal Protection Clauses of the Montana and United States Constitutions.

¶14 2. Petitioner is not entitled to rehabilitation benefits and his petition is **dismissed with prejudice**.

¶15 3. Petitioner has not prevailed in this action and is not entitled to costs or attorney fees.

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

¶17 5. Any party to this dispute may have 20 days in which to request a rehearing from this Decision and Order.

DATED in Helena, Montana, this 13th day of May 1998.

(SEAL)

/s/ Mike McCarter

JUDGE

c: Mr. Steve M. Fletcher

Ms. Susan C. Witte

Date Submitted: February 2, 1998