IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

2001 MTWCC 66

WCC No. 2001-0278

EULA MAE HIETT

Petitioner

vs.

MONTANA SCHOOLS GROUP INSURANCE AUTHORITY

Respondent/Insurer for

MISSOULA COUNTY PUBLIC SCHOOLS

Employer.

ORDER DENYING MOTION FOR RECONSIDERATION

Summary: Claimant moves for reconsideration of the Court's decision denying her request for medical benefits.

Held: The request is denied. The Court's original decision addressed her contentions and stands.

Topics:

Procedure: Post-Trial Proceedings: Motion for Reconsideration. It is improper for a party to reargue his or her case through a motion for reconsideration. Where the arguments have previously been raised, the proper remedy is an appeal, not a motion to reconsider.

Statutes and Statutory Interpretation: Plain Meaning. Legislative intent is in the first instance gleaned from the words of the statute; if those words are plain and clear, the Court must apply the statute as written.

Statutes and Statutory Interpretation: Inserting or Removing Terms. Rules of statutory construction prohibit a court from inserting entitlements, restrictions, or other matters which are not in the statute. §1- 2-101, MCA.

Statutes and Statutory Interpretation: General versus Specific. A general policy statement of a statute must give way to the more specific provisions of the statute.

Procedure: Issues. Issues cannot be raised for the first time in a pretrial motion for reconsideration.

Procedure: Post-Trial Proceedings: Motion for Reconsideration. Issues cannot be raised for the first time in a pretrial motion for reconsideration.

¶1 Claimant moves for reconsideration of this Court's Findings of Fact, Conclusions of Law and Judgment, 2001 MTWCC 52.

¶2 Initially, claimant takes issue with the Court's construction of the settlement agreement. Reargument of her position is improper. She had full opportunity to argue the position before the Court issued its decision and the decision addressed her contentions. While she may disagree with the Court's resolution of the matter, her remedy is an appeal, not a motion for reconsideration.

¶3 Second, she argues that the settlement agreement contained no provision conditioning payment of medical benefits upon claimant being employed and that the insurer therefore waived any objection to payment based upon claimant not being employed. The argument is without merit. The agreement said nothing pro or con about employment. It merely preserved claimant's right to medical benefits, and that right is tied to her compliance with the statutes governing medical benefits. By entering into the agreement, the insurer did not waive statutory provisions governing payment of future medical benefits.

¶4 Third, she takes issue with the Court's estoppel findings. She argues that she "probably could never prove, after the fact, that she could have gotten a higher impairment award" and contends that had she known that her construction was erroneous, she would not have entered into the agreement and might have been able to negotiate a higher impairment rating. (Brief in Support of Motion for Reconsideration at 4.) Her contention is flawed. If indeed she was entitled to a greater impairment award, she could have presented evidence of the fact and had the Court determine her entitlement. If her position was sound, then she might have proved detriment. If she could not prove that she was entitled to a higher impairment award then detriment based on negotiating possibilities is purely speculative; she did not carry her burden of proof as to the element.

¶5 Fourth, she argues with the Court's statutory interpretation, asserting that the Court's "literal interpretation is that it fails to look to the legislative intent" and the stated public policy concerning workers' compensation benefits, § 39-71-105, MCA. (Brief in Support of Motion for Reconsideration at 6.) There are multiple problems with adopting her arguments, however much I would like to.

¶6 Legislative intent is in the first instance gleaned from the words of the statute; if those words are plain and clear, the Court must apply the statute as written. "When interpreting a statute, we look first to the plain meaning of its words. When the statute is plain, unambiguous, direct and certain, the statute speaks for itself and there is no need to resort

to extrinsic means of interpretation." *Marriage of Christian,* 1999 MT 189*, ¶* 12, 295 Mont. 352, 983 P.2d 966. In a sense, the rule regarding intention of the legislature is double talk. Intent in the ordinary sense is a subjective matter, i.e., what was in the mind of the person or body at the time of the act taken. But the plain meaning is an objective one and is conclusive when the statute is unambiguous.

¶7 Moreover, rules of construction prohibit a court from inserting entitlements, restrictions, or other matters which are not in the statute. Section 1-2-101, MCA, provides, "In the construction of a statute, the office of the judge is simply to ascertain and declare what is in terms or in substance contained therein, not to insert what has been omitted or to omit what has been inserted." As I read the decisions of the Montana Supreme Court of recent years, the Court has strictly adhered to this rule and the plain meaning rule.

¶8 Moreover, a general policy statement such as contained in section 39-71-105, MCA, must give way to a specific statute. "[W]hen two statutes deal with a subject, one in general and comprehensive terms and the other in minute and more definite terms, the more definite statute will prevail to the extent of any opposition between them." *Smith v. State, Driver's Imp. Bureau,* 1998 MT 94, ¶ 15, 288 Mont. 383, 958 P.2d 677 (1998).

¶9 Fifth, and finally, claimant asserts that the decision in this matter deprives her of her constitutional rights. The argument is belated. It was never raised in the pleadings, Pretrial Order, or prior arguments.

ORDER

¶10 The Motion For Reconsideration is **denied**.

DATED in Helena, Montana, this 19th day of December, 2001.

(SEAL)

\s\ Mike McCarter
JUDGE

c: Ms. Sydney E. McKenna
Mr. Leo S. Ward
Submitted: October 11, 2001