

IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

2002 MTWCC 51

WCC No. 2002-0629

JUDITH M. JAMES

Petitioner

vs.

UNINSURED EMPLOYERS' FUND

Respondent

and

MARJORIE McLEAN

Employer.

DECISION AND ORDER DISMISSING PETITION

Summary: Petition by claimant whose claim with the Uninsured Employers' Fund was denied. The employer and UEF move to dismiss the petition on account of claimant's failure to timely request mediation.

Held: The mediation request was untimely and since mediation is a prerequisite to Workers' Compensation Court jurisdiction, the claimant's petition for benefits must be dismissed.

Topics:

Constitutions, Statutes, Regulations and Rules: Montana Code Annotated: § 39-71-520, MCA (2001). Section 39-71-520, MCA, requires that following a benefits determination by the Uninsured Employers' Fund an aggrieved party must request mediation within 90 days, otherwise the determination is final. Since mediation is a prerequisite to filing a petition in the Workers' Compensation Court, §§ 39-71-2401(1), -2408(1), and -2905, MCA, a failure to request mediation within 90 days bars the Court from reviewing the UEF determination.

Uninsured Employers' Fund: Appeal of UEF Benefits Determination. Section 39-71-520, MCA, requires that following a benefits determination by the Uninsured Employers' Fund an aggrieved party must request mediation within 90 days, otherwise the determination is

final. Since mediation is a prerequisite to filing a petition in the Workers' Compensation Court, §§ 39-71-2401(1), -2408(1), and -2905, MCA, a failure to request mediation within 90 days bars the Court from reviewing the UEF determination.

Limitations Periods: Petition Filing. Section 39-71-520, MCA, requires that following a benefits determination by the Uninsured Employers' Fund an aggrieved party must request mediation within 90 days, otherwise the determination is final. Since mediation is a prerequisite to filing a petition in the Workers' Compensation Court, §§ 39-71-2401(1), -2408(1), and -2905, MCA, a failure to request mediation within 90 days bars the Court from reviewing the UEF determination.

¶11 The petitioner (claimant) is seeking benefits from the Uninsured Employers' Fund (UEF). She alleges she was injured on September 11, 2001, while working for Marjorie McLean. McLean was uninsured and claimant submitted a claim to the UEF, which denied the claim on January 30, 2002. On August 9, 2002, the claimant filed her initial petition, in letter form, with this court. The employer now moves to dismiss the petition as untimely. The UEF concurs and joins in the motion. Since the claimant failed to request mediation within 90 days as required by section 39-71-520, MCA (2001), the motion to dismiss is granted.

Factual Background

¶12 The employer's motion to dismiss was not supported by an affidavit, although copies of pertinent documents were attached. However, in concurring in the employer's motion, the UEF has provided the Court with uncontradicted affidavits of Kay L. Henry, an employee of the mediation unit of the Department of Labor and Industry (Department), and Bernadette Rice, a claims adjuster for the UEF. The motion is further supported by facts alleged in the claimant's petition or admitted in her response to the motion to dismiss.

¶13 The petition and affidavits disclose the following facts:

¶13A On December 29, 2001, the claimant filled out a claim for compensation alleging she suffered a work-related injury on September 12, 2001. A copy of the claim, which is attached to the claimant's initial petition, discloses it was received by the UEF on January 4, 2002.

¶13B On January 30, 2002, the UEF notified the claimant by letter that it was denying her claim. The letter included a paragraph notifying the claimant of her right to request mediation within 90 days pursuant to section 39-71-520, MCA. (Rice Affidavit.)

¶13C Meanwhile, on January 22, 2002, the putative employer filed a request for mediation. However, following the UEF denial of the claim, on January 31, 2002, the employer requested dismissal of the mediation request. The request was dismissed. On February 4, 2002, the claimant was notified by telephone of the dismissal of the employer's mediation request. (Henry Affidavit.)

¶13D Claimant did not file a request for mediation with respect to the denied claim until July 8, 2002, some five months after the UEF determination. (Henry Affidavit.)

¶13D The initial petition herein was filed in letter form and received by the Court on August 9, 2002.

Discussion

¶14 Section 39-71-520, MCA (2001), provides:

39-71-520. Time limit to appeal. A dispute concerning uninsured employers' fund benefits must be appealed to mediation within 90 days from the date of the determination or the determination is considered final.

On its face, the section precludes mediation unless requested within the 90 day limit. Since mediation is in turn a jurisdictional prerequisite to this Court's jurisdiction, §§ 39-71-2401(1), -2408(1), and -2905, MCA, failure to request mediation within 90 days prevents this Court from reviewing a UEF determination.

¶15 In this case the claimant failed to request mediation within 90 days. In her response to the motion for summary judgment, claimant indicates she was confused by the employer's request for mediation and the statement in the employer's request that "this matter needs a judge." While the Court is sympathetic to the plight of unrepresented claimants, the undisputed facts presented to the Court show that claimant was notified by letter dated January 30, 2002, that her claim had been denied by the UEF and that she had to appeal the denial within 90 days, a notice she concedes she received on February 2, 2002. On February 4, 2002, she was notified that the putative employer's request for mediation had been dismissed. While claimant may have misunderstood the process and believed she would receive a hearing before the Court without further action on her part, section 39-71-520, MCA, contains no exception for that misunderstanding. The section made it claimant's responsibility to insure she made a timely request for mediation. Her failure to do so precludes this Court from exercising jurisdiction over her claim for benefits. See *Kujich v. Lillie*, 127 Mont. 125, 139, 260 P.2d 383, 390 (1953) ("The trial court has not been given the judicial discretion to alter, change or lessen the limits allowed by the written law of this state for the commencement of actions . . .").

JUDGMENT

¶16 The petition is **dismissed with prejudice**.

¶17 This judgment is certified as final for all purposes.

DATED in Helena, Montana, this 22nd day of October, 2002.

(SEAL)

MIKE McCARTER

JUDGE

c: Ms. Judith M. James

Mr. Kevin M. Braun

Mr. Patrick R. Sheehy

Submitted: October 18, 2002