

IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

1998 MTWCC 46

WCC No. 9801-7897

ROBERT KEMP

Petitioner

vs.

MONTANA CONTRACTOR COMPENSATION FUND

Respondent/Insurer for

SLETTEN CONSTRUCTION

Employer.

ORDER GRANTING PARTIAL SUMMARY JUDGMENT ON

CONSTITUTIONAL ISSUE

Summary: Respondent moved for summary judgment rejecting claimant's challenge to the constitutionality of section 39-71-1006, MCA (1995), which governs rehabilitation benefits. Claimant argued that the statute violates due process by placing the rehabilitation decision in the hands of the rehabilitation provider, denying him due process through judicial review and unconstitutionally delegating legislative authority.

Held: Claimant's constitutional argument is rejected and summary judgment is granted to the insurer. On its face, the statute does not prohibit the parties from petitioning the WCC when a dispute arises over a rehabilitation decision. Even if the section did prohibit review, the remedy would be to strike down the denial of judicial review, not to invalidate the statute in its entirety. As shown by prior decisions of the WCC, this Court has entertained and decided rehabilitation questions.

Topics:

Constitutions, Statutes, Regulations and Rules: Montana Code Annotated: section 39-71-1006, MCA (1995). Claimant argued section 39-71-1006, MCA (1995) was unconstitutional in that it denied him due process through judicial review of a rehabilitation decision and represented an unconstitutional delegation of authority to a private party. WCC rejected the constitutional challenge. On its face, the statute does not prohibit the parties from petitioning the WCC when a dispute arises over a

rehabilitation decision. Even if the section did prohibit review, the remedy would be to strike down the denial of judicial review, not to invalidate the statute in its entirety. As shown by prior decisions of the WCC, this Court has entertained and decided rehabilitation questions.

Benefits: Rehabilitation Benefits: Generally. Claimant argued section 39-71-1006, MCA (1995) was unconstitutional in that it denied him due process through judicial review of a rehabilitation decision and represented an unconstitutional delegation of authority to a private party. WCC rejected the constitutional challenge. On its face, the statute does not prohibit the parties from petitioning the WCC when a dispute arises over a rehabilitation decision. Even if the section did prohibit review, the remedy would be to strike down the denial of judicial review, not to invalidate the statute in its entirety. As shown by prior decisions of the WCC, this Court has entertained and decided rehabilitation questions.

Constitutional Law: Due Process. Claimant argued section 39-71-1006, MCA (1995) was unconstitutional in that it denied him due process through judicial review of a rehabilitation decision and represented an unconstitutional delegation of authority to a private party. WCC rejected the constitutional challenge. On its face, the statute does not prohibit the parties from petitioning the WCC when a dispute arises over a rehabilitation decision. Even if the section did prohibit review, the remedy would be to strike down the denial of judicial review, not to invalidate the statute in its entirety. As shown by prior decisions of the WCC, this Court has entertained and decided rehabilitation questions.

Constitutional Law: Separation of Powers: Delegation of Powers. Claimant argued section 39-71-1006, MCA (1995) was unconstitutional in that it denied him due process through judicial review of a rehabilitation decision and represented an unconstitutional delegation of authority to a private party. WCC rejected the constitutional challenge. On its face, the statute does not prohibit the parties from petitioning the WCC when a dispute arises over a rehabilitation decision. Even if the section did prohibit review, the remedy would be to strike down the denial of judicial review, not to invalidate the statute in its entirety. As shown by prior decisions of the WCC, this Court has entertained and decided rehabilitation questions.

¶11 In his petition the claimant asserts that subsections(1) (a), (b), (c) and (5) of section 39-71-1006, MCA (1995), are unconstitutional. Specifically, he argues:

That Section 39-71-1006(1)(a), (b), and (c), and Section 39-71-1006(5) (M.C.A. 1995), be declared unconstitutional because it denies the Claimant access to the Court pursuant to Article II, Section 16, Mont. Const., and it strips the rehabilitation decision from the Workers' Compensation Court and places it into the hands of a rehabilitation provider. This violates the Claimant's due process rights, and is an

unconstitutionally delegated legislative authority to a private party as to what circumstances will allow 104 weeks of retraining.

(Petition for Hearing at 3.)

¶2 Respondent seeks a partial summary judgment rejecting the constitutional challenge. The matter has been fully briefed. It does not involve any facts, rather it is simply a question of law.

Discussion

¶3 The statute in question provides as follows:

39-71-1006. Rehabilitation benefits. (1) A disabled worker as defined in 39-71-1011 is eligible for rehabilitation benefits if:

- (a) the worker has an actual wage loss as a result of the injury;
- (b) a rehabilitation provider, as designated by the insurer, certifies that the injured worker has reasonable vocational goals and reemployment opportunity and will have a reasonable reduction in the worker's actual wage loss with rehabilitation; and
- (c) a rehabilitation plan agreed upon by the injured worker and the insurer is filed with the department. The plan must take into consideration the worker's age, education, training, work history, residual physical capacities, and vocational interests. The plan must specify a beginning and completion date. If the plan calls for the expenditure of funds under 39-71-1004, the department shall authorize the department of public health and human services to use the funds.

. . . .

- (5) To be eligible for benefits under this section, a worker is required to begin the rehabilitation plan within 78 weeks of reaching maximum medical healing.

¶4 In challenging the statute, the claimant bears a heavy burden. Statutes are presumed to be constitutional. *State v. Martel*, 273 Mont. 143, 148, 902 P.2d 14, 17 (1995). Only if the Court is persuaded beyond a reasonable doubt that it is unconstitutional can it strike the statute down. *State v. Davidson*, 266 Mont. 404, 407, 880 P.2d 1331, 1334 (1994).

¶5 In addressing claimant's constitutional challenge, the Court is also guided by the principle that the statute should be construed, if possible, in a manner which renders the statute valid. *Martel*, 273 Mont. at 148, 902 P.2d at 17. That guiding principle resolves claimant's challenge.

¶6 On its face, section 39-71-1006, MCA (1995), does not prohibit the parties from petitioning the Workers' Compensation Court in the event a dispute arises in applying the

statute to any particular case. Respondent agrees that the Court has jurisdiction over disputes arising in the application of the section.

¶17 Even if section 39-71-1006, MCA (1995), prohibits court review, the remedy is to strike down that prohibition, thereby vesting the Court with jurisdiction over the dispute. *Ingraham v. Champion Intern.*, 243 Mont. 42, 50, 793 P.2d 769, 774 (1990). *Ingraham*, upon which claimant relies, struck down a workers' compensation statute that gave the insurer an absolute veto over any lump-sum application. Lump summing was allowed by the statute, but the insurer could arbitrarily refuse a lump sum. The Court held that the statute was unconstitutional because it unlawfully delegated legislative power to private parties and stripped the courts of their judicial power. However, the relief granted as a result of the declaration of unconstitutionality was not a right, upon demand, to a lump sum. Rather it was the vesting of judicial power in the Workers' Compensation Court to consider any case in which lump-sum requests are denied and decide whether the lump-sum request should be granted.

¶18 Claimant's contention that section 39-71-1006, MCA (1995), precludes this Court from making an independent determination concerning his entitlement to rehabilitation benefits is refuted by previous cases in which this Court has entertained and decided petitions for rehabilitation benefits.

¶19 In *Gjerde v. Employers Ins. of Wausau*, WCC No. 9408-7134, Findings of Fact and Conclusions of Law and Judgment (December 9, 1994), the claimant sought two years of rehabilitation benefits to enable him to attend technical college. A vocational consultant designated by the insurer disapproved his plan. Claimant then petitioned this Court. After hearing the evidence, I determined that claimant's vocational plan was not reasonable and denied his request. I did not consider the insurer's decision denying the plan conclusive, nor did I not give it any presumptive weight. I considered the plan on its merits.

¶110 In *Reeves v. Liberty Mutual Ins. Co.*, WCC No. 9502-7242, Judgment (June 9, 1995), *affirmed on appeal*, 275 Mont. 152, 911 P.2d 839 (1996), the insurer refused to authorize a rehabilitation provider to develop a plan for claimant to obtain a master's degree in counseling and directed its provider to provide only job placement assistance. Claimant petitioned the Court, requesting that I order the insurer to pay for her schooling. While I ultimately rejected her request, I considered the request on its merits and independently weighed the evidence supporting and opposing her request. The Supreme Court affirmed. Three justices dissented, finding that I should have approved her plan.

¶111 In *Gates v. Liberty Northwest Ins. Co.*, WCC No. 9508-7862, Findings of Fact and Conclusions of Law and Judgment (December 29, 1995), I again considered a petition involving rehabilitation benefits. In that case I found that if the criteria for rehabilitation services are satisfied, then the insurer is required to designate a rehabilitation provider to prepare a rehabilitation plan.

¶12 Section 39-71-1006, MCA (1995), the holdings of the Supreme Court and the holdings of this Court, do not give the insurer the right or power to unilaterally determine a rehabilitation plan. In *Gates* I found that if the statutory criteria of section 39-71-1006, MCA, are met, "the rehabilitation process prescribed by the section must be commenced immediately upon the insurer's receipt of notice stating that a claimant has reached MMI." *Gates*, Findings at p. 11 (emphasis in original). Section 39-71-1006, MCA (1995), requires insurers to appoint rehabilitation providers for claimants who meet the rehabilitation criteria. It does not permit the insurer to dictate rehabilitation plans or what plans the provider may consider. It does not prevent plenary review by this Court of a plan proposed by the provider and rejected by the insurer or a plan proposed by the claimant and rejected by the provider and/or the insurer.

¶13 Section 39-71-1006, MCA (1995), is not unconstitutional.

ORDER

¶14 Claimant has failed to persuade the Court that section 39-71-1006, MCA (1995), is unconstitutional. Therefore, respondent's motion for partial summary judgment requesting the Court to find the statute constitutional is **granted**.

DATED in Helena, Montana, this 4th day of June, 1998.

(SEAL)

\s\ Mike McCarter
JUDGE

c: Mr. Thomas J. Murphy
Mr. Kelly M. Wills
Submitted: April 9, 1998