

IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA
1999 MTWCC 75

WCC No. 9804-7971

FRANCIS D. LaPLANT

Petitioner

vs.

STATE COMPENSATION INSURANCE FUND

Respondent/Insurer for

JAMES TALCOTT CONSTRUCTION

Employer.

ORDER DENYING MOTION FOR SUMMARY JUDGMENT

Summary: In 1987, claimant submitted a claim for compensation to State Fund for an elbow injury occurring in July 1986. State Fund failed to accept or deny the claim within 30 days. The claim then languished for 12 years until claimant filed the present petition. On motion for summary judgment, citing section 39-71-606, MCA (1985) and *Haag v. Montana Schools Group Ins. Authority*, 274 Mont. 109, 906 P.2d 693 (1995), claimant argues State Fund is liable, without proof of disability or causal relationship, for medical benefits for a wide range of conditions (medical bills submitted relate to ribs, knees, lumbar, cervical, neck, hands, low back, wrists, and chest) and for compensation benefits for all periods of unemployment since the elbow injury.

Held: Motion denied. Section 39-71-606, MCA (1985) and *Haag* put State Fund in the position of having accepted the elbow injury claim. This does not mean State Fund is liable for compensation benefits without proof of disability and a causal relationship to the accident, or for all medical bills without proof of a causal relationship to the elbow injury.

Topics:

Constitutions, Statutes, Regulations and Rules: Montana Code: 39-71-606, MCA (1985). Where State Fund failed to accept or deny a 1987 claim within thirty days, under section 39-71-606, MCA (1985) and *Haag v. Montana Schools Group Ins. Authority*, 274 Mont. 109, 906 P.2d 693 (1995), it is in the same position as though it had accepted the claim. State Fund is not, however, liable for a wide range of medical bills without proof of a causal relationship to the claimed elbow injury, nor for compensation benefits during all periods of

unemployment without proof of disability and causal relationship of disability to the "accepted" claim.

Cases Discussed: *Haig v. Montana Schools Group Ins. Authority*, 274 Mont. 109, 906 P.2d 693 (1995). Where State Fund failed to accept or deny a 1987 claim within thirty days, under section 39-71-606, MCA (1985) and *Haag v. Montana Schools Group Ins. Authority*, 274 Mont. 109, 906 P.2d 693 (1995), it is in the same position as though it had accepted the claim. State Fund is not, however, liable for a wide range of medical bills without proof of a causal relationship to the claimed elbow injury, nor for compensation benefits during all periods of unemployment without proof of disability and causal relationship of disability to the "accepted" claim.

Causation: Medical Condition. Where State Fund failed to accept or deny a 1987 claim within thirty days, under section 39-71-606, MCA (1985) and *Haag v. Montana Schools Group Ins. Authority*, 274 Mont. 109, 906 P.2d 693 (1995), it is in the same position as though it had accepted the claim. State Fund is not, however, liable for a wide range of medical bills without proof of a causal relationship to the claimed elbow injury.

Claims: Acceptance. Where State Fund failed to accept or deny a 1987 claim within thirty days, under section 39-71-606, MCA (1985) and *Haag v. Montana Schools Group Ins. Authority*, 274 Mont. 109, 906 P.2d 693 (1995), it is in the same position as though it had accepted the claim. State Fund is not, however, liable for a wide range of medical bills without proof of a causal relationship to the claimed elbow injury, nor for compensation benefits during all periods of unemployment without proof of disability and causal relationship of disability to the "accepted" claim.

¶1 The matter before the Court is the petitioner's motion for summary judgment. The motion has been briefed and orally argued.

Introduction

¶2 Petitioner (claimant) seeks benefits with respect to an injury he suffered on July 1, 1986. He submitted a claim for compensation to the insurer, State Compensation Insurance Fund, in January 1997. (Ex. 1 of Exhibits to State Compensation Insurance Fund's Brief in Opposition to Petitioner's Motion for Summary Judgment.) In that claim he described his industrial accident as follows:

I feel [sic] off a cement wall about 8-9 feet high backwards and landed on my elbows. About a week later I reinjured by [sic] elbows when I was pounding posts and hit my elbows on the steel bar of the post driver.

(Id.) He described his injuries as "broke elbow, chipped elbow." (Id.)

¶3 The State Fund failed to either accept or deny the claim within 30 days of its receipt of the claim. The claim thereafter languished for 12 years until claimant brought his present petition.

¶4 Based upon the failure of the State Fund's failure to respond to his claim within 30 days, as required by section 39-71-606, MCA (1985), the claimant now contends that the State Fund is liable, **without further proof**, for total disability benefits during all periods of unemployment since the injury. He further contends that the State Fund is liable, **without further proof**, for all medical bills he has submitted, including bills which do not obviously relate to his elbows.

Facts

¶5 Claimant sets out the following facts as uncontested and the State Fund does not dispute them:

1. Petitioner's claim for compensation was received by the State Fund on January 27, 1987. (Gneckow depo., p. 8; Herrera depo., p. 17).
2. There is no evidence that State Fund ever accepted or denied the claim within 30 days. (Gneckow depo., p. 8; Heigh depo., p. 11; Herrera depo., p. 17).
3. No one from the State Fund ever attempted to interview the petitioner concerning the claim. (Heigh depo., p. 9).
4. For more than twelve (12) years following receipt of the claim for compensation by the State Fund, no one from the State Fund ever contacted any of the physicians to determine whether the petitioners medical problems were or are related to the industrial accident in question. (Heigh depo., pp. 9-10).
5. There is no evidence in the State Fund file that any significant investigation of the claim was done by the State Fund during the 12 + years it has been pending. (Heigh depo., pp. 14-16).
6. Kathleen Herrera, one of the claims examiners on this claim, denied medical bills for treatment without seeking the opinion of the physicians who submitted the bills for payment, concerning the relationship between the injury and the subject medical treatment. Ms. Herrera did not obtain an in-house evaluation of the bills and treatment from the State Fund's retained medical expert before denying the bills. (Herrera depo., p. 37).
7. The State Fund has never paid any compensation or medical benefits on the claim in question. (Herrera depo., p. 43; State Fund file).

(Brief in Support of Motion for Summary Judgment.)

¶6 In his supporting briefs, claimant refers to additional facts. These facts are not set out as uncontroverted as required by Rule 24.5.329(3), therefore they are not deemed admitted. However, they are helpful in discussing claimant's contentions.

¶7 First, claimant states that since July 17, 1986, his only employment was from May 26, 1987 to September 6, 1987, for Glacier Park, Incorporated (Glacier). (Brief in

Support of Motion for Summary Judgment at 3.) Based on that statement, he contends he is entitled to \$219,910.22 in total disability benefits.

¶8 Second, he acknowledges that he was injured while working for Glacier in 1987. He settled his claim against Glacier for \$62,600, however, he urges that the Glacier claim should be ignored because it was settled on a disputed liability basis. (*Id.*)

¶9 Third, he submits a summary of medical bills as of September 30, 1999. (*Id.*, Ex. "A.") Some of those bills are characterized as relating to claimant's elbows, but others relate to claimant's ribs, knees, lumbar, cervical, neck, hands, low back, wrists, and chest. (*Id.*) The bills total \$41,896.20 and claimant asks the Court to order the State Fund to pay all of them.

Summary Judgment Standard

¶10 Summary judgment may be granted only if uncontroverted facts establish that claimant is entitled, as a matter of law, to the relief he requests. ARM 24.5.329(2); *Schelske v. Creative Nail Design, Inc.*, 280 Mont. 476, 482, 933 P.2d 799, 802 (1997).

Discussion

¶11 At the time of the claimant's injury, section 39-71-606(1), MCA (1985), provided:

39-71-606. Insurer to accept or deny claim within thirty days of receipt -- notice of denial -- notice to employer. (1) Every insurer under any plan for the payment of workers' compensation benefits shall, within 30 days of receipt of a claim for compensation, either accept or deny the claim, and if denied shall inform the claimant and the division in writing of such denial.

In *Haag v. Montana Schools Group Ins. Authority*, 274 Mont. 109, 906 P.2d 693 (1995), the Montana Supreme Court held that the failure of an insurer to accept or deny a claim within 30 days constitutes an acceptance of the claim:

[W]e hold that when an insurer fails to act on a claim for compensation within thirty days, either by accepting or denying liability pursuant to § 39-71-606(1), MCA, or by beginning payments with a reservation of rights under § 39-71-608, MCA, the claim is deemed accepted as a matter of law.

¶12 The 1997 Legislature amended section 39-71-606, MCA, by adding a new subsection (5), as follows:

(5) Failure of an insurer to comply with the time limitations required in this section does not constitute an acceptance of a claim as a matter of law. However, an insurer who fails to comply with 39-71-608 or this section may be assessed a penalty under 39-71-2907 if a claim is determined to be compensable by the workers' compensation court.

For purposes of the present case, the State Fund does rely upon the amendment and agrees that *Haag* applies.

¶13 Claimant urges that *Haag* entitles him to total disability benefits for all periods of unemployment since his injury. He further urges that the decision requires the Court to disregard any subsequent aggravation which might otherwise relieve the State Fund of liability, *EBI/Orion Group v. State Compensation Mut. Ins. Fund*, 249 Mont. 449, 453, 816 P.2d 1070, 1072 (1991). Finally, he contends that the State Fund must pay all the medical bills he has submitted irrespective of whether the bills are in fact for treatment of his injury.

¶14 The claimant's contentions are without merit. *Haag* **does not** expand the liability of an insurer beyond its statutory liability. It simply holds that the failure of the insurer to deny a claim within 30 days constitutes its acceptance of the claim.

¶15 Workers' compensation statutes and Court decisions **do not** entitle a claimant to compensation benefits **without proof of disability**. Workers' compensation statutes and Court decisions **do not** entitle a claimant to compensation benefits **without proof of a causal relationship** between an industrial accident and the disability. Workers' compensation statutes and Court decisions **do not** entitle a claimant to medical benefits for conditions **unrelated** to an industrial injury. The law concerning subsequent injuries **remains** the law. Claimant has not cited a single case challenging these propositions and *Haag* does not nullify them.

¶16 During oral argument the claimant's attorney asserted that *Haag* is meaningless unless this Court adopts his arguments. The argument is meritless. In the context of the present case, *Haag* precludes the State Fund from disputing liability for the accident, for the condition described in the claim, and for any disability arising therefrom. Thus, the State Fund is liable for medical treatment for claimant's elbow and for conditions arising as a result of the accident described in the claim. It is liable for compensation benefits arising from any disability attributable to the described injury and condition. In summary, it is liable for benefits to the same extent it would have been liable had it expressly accepted the claim.

¶17 The Court is unimpressed by the ferocity of the claimant's attorney's oral arguments concerning the prejudice claimant will suffer if the Court denies his motion. He could have petitioned this Court at any time during the past 12 years. He has presented no evidence that he was prevented from doing so.

¶18 The uncontroverted facts are insufficient for me to conclude, as a matter of law, that claimant's July 1, 1986 injury caused total disability during the periods he asserts, that all of the medical expenses he submits are related to his industrial injury, or that his subsequent injury did not materially aggravate his 1986 injury.

ORDER

¶19 **Motion denied.**

DATED in Helena, Montana, this 24th day of November, 1999.

(SEAL)

\s\ Mike McCarter
JUDGE

c: Mr. Tom L. Lewis

Mr. William O. Bronson

Date Submitted: November 16, 1999