

IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

1997 MTWCC 53

WCC No. 9707-7797

TIMOTHY LEWIS

Petitioner

vs.

STATE COMPENSATION INSURANCE FUND/

MONTANA SCHOOLS GROUP INSURANCE AUTHORITY

Respondent/Insurer for

SUPERIOR SCHOOL DISTRICT NO. 3

Employer.

ORDERS DENYING MOTION TO DISMISS, LIMITING ISSUES, AND
FOR A MORE DEFINITE STATEMENT

Summary: Claimant filed a petition seeking benefits from either State Fund or Montana Schools Group Insurance Authority based on a series of injuries allegedly occurring in 1986 through 1995. State Fund moved to dismiss the petition for failure to mediate disputes concerning post-1987 injuries. Claimant responded that he was not seeking benefits from State Fund based on any post-1987 injury.

Held: The motion to dismiss is denied based on claimant's limitation, to which he will be held. On its own initiative, the Court requires claimant to file an amended petition specifying what specific disability he is claiming and what benefits he is seeking.

Topics:

Mediation. Where claimant clarifies that he is not seeking benefits from an insurer based on any alleged post-1987 injury, the insurer's motion to dismiss for failure to mediate is denied.

Pleading: More Definite Statement. On its own initiative, the Court requires claimant to file an amended petition specifying what specific disability he is claiming and what benefits he is seeking.

The petitioner in this case alleges that between February 3, 1986 and January 28, 1995, he suffered various back injuries while working as a maintenance worker for Superior School District No. 3. (Petition for Hearing.) He alleges that the State Compensation Insurance Fund (State Fund) was the insurer at risk for some of the injuries, and that the Montana Schools Group Insurance Authority (MSGIA) was the insurer at risk for others. (*Id.*) He does not delineate his injuries. His cause of action against the two insurers is stated in paragraph 3 of his petition, and reads as follows:

3. A dispute exists between the parties. The nature of the dispute is as follows: Petitioner contends that he currently suffers disability as the result of the injury he suffered in February 1986, or another earlier injury for which the State Fund is liable. In addition, or in the alternative, he contends that he currently suffers disability as the result of an injury or injuries he suffered injuries at later dates for which Montana School Group Authority is liable. Each of the insurers contend that the other is liable for Petitioner's disability.

(*Id.*)

The State Fund moves to dismiss for petitioner's failure to comply with mediation requirements applicable to post-July 1, 1987 injuries. It asserts that one of claimant's injuries occurred in 1990, when the State Fund still insured the School District, and that claimant suffered several other injuries between 1993 and 1995, when MSGIA was at risk. State Fund asserts that claimant has not mediated the 1990 claim and that it has no knowledge whether the MSGIA claims have been mediated.

In his response, the petitioner says that he has no intention of pursuing the 1990 claim: "[T]o avoid any doubt, Petitioner hereby expressly limits the scope of his present Petition concerning the State Fund to those low back claims arising before the 1987 law change which required mediation." (Petitioner's Brief Opposing State Fund's Motion to Dismiss at 2.) He further represents that he has mediated all claims against MSGIA.

Based on petitioner's representations, the petition shall be limited to mediated claims against MSGIA and to claims against the State Fund which arose prior to July 1, 1987. Since mediation does not apply to cases arising prior to 1987, *Carmichael v. Workers' Compensation Court of State of Mont.*, 234 Mont. 410, 763 P.2d 1122 (1988), and the post-1987 claims asserted by claimant have been mediated, State Fund's motion to dismiss is **denied**. The denial of the motion does not preclude the State Fund from asserting that the 1990 injury extinguishes its liability with respect to the 1986 and earlier injuries, but such assertion is a matter *in avoidance* of the 1986 claim and need not be mediated.

II.

In reviewing the petition, the Court notes that the petitioner does not specify the nature of the benefits he is seeking. He merely asserts that he "currently suffers disability" and

requests the Court to determine "the nature and extent of Petitioner's disability and entitlement." (Petition for Hearing at 2-3.) The allegation and request for relief is insufficient. Whether or not the respondents can ascertain the exact benefits the claimant is seeking, the Court cannot. Therefore, the petitioner **shall file an amended petition** stating with particularity the nature of his disability and the specific benefits he is seeking. No further responses by respondents are necessary.

SO ORDERED.

DATED in Helena, Montana, this 25th day of September, 1997.

(SEAL)

\s\ Mike McCarter

JUDGE

c: Mr. Rex Palmer

Mr. Leo S. Ward

Ms. Susan C. Witte

Submitted: September 17, 1997