IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

2001 MTWCC 55

WCC No. 2001-0386

LONNIE LINDSTROM

Petitioner

vs.

STATE COMPENSATION INSURANCE FUND

Respondent/Insurer for

AMERICAN LEGION CLUB, POST NO. 35

Employer

and

UNINSURED EMPLOYERS' FUND

Respondent for

JEANETTE ELMORE d/b/a STEAKHOUSE.

ORDER DENYING UEF'S MOTION TO DISMISS

Summary: Respondent Uninsured Employers' fund moves to dismiss a request for waiver of one-year limitation period on account of claimant's failure to appeal a Department determination denying a waiver within 30 days.

Held: The motion is denied. The Court, not the Department, has original jurisdiction over a request for a waiver and time limits for judicial review are inapplicable.

Topics:

Limitations Periods: Claim Filing: Waiver of Time: Jurisdiction. Under the 1999 and 2001 versions of the Workers' Compensation Act, the Workers' Compensation Court has original jurisdiction over requests to waive the one- year limitation period for filing a written claim. § 39-71-601(3) (1999-2001). Therefore, the time limitation for filing a petition for judicial review from a Department action is inapplicable.**Jurisdiction: Original Jurisdiction.** Under the 1999 and 2001 versions of the Workers' Compensation Act, the Workers' Compensation Court has original

jurisdiction over requests to waive the one-year limitation period for filing a written claim. § 39-71-601(3) (1999-2001).

Judicial Review: Time for Judicial Review. Under the 1999 and 2001 versions of the Workers' Compensation Act, the Workers' Compensation Court has original jurisdiction over requests to waive the one-year limitation period for filing a written claim. § 39-71-601(3) (1999-2001). Therefore, the time limitation for filing a petition for judicial review from a Department action is inapplicable.

¶1 The Uninsured Employers' Fund (UEF) has moved to dismiss the claims against it on the ground that the written claim in this case is untimely. The petition affirmatively shows that the written claim for compensation was not filed within 12 months of the May 8, 1998 alleged accident, as required by section 39-71-601, MCA (1997). However, claimant further alleges that she filed her claim within three years of the accident and requests that the time for filing be extended so as to allow her claim. Her request for waiver of the one-year limitation period was previously presented to the Department of Labor and Industry (Department), which denied a waiver, and the UEF now alleges that her appeal from the Department decision is untimely.

Discussion

¶2 The claim for compensation was filed sometime prior to April 26, 2001 (See Ex. A to Uninsured Employers' Fund's Motion to Dismiss and Brief in Support), and therefore within 3 years of the alleged accident. The claim was denied by the UEF and thereafter the claimant submitted a formal request for an extension to the Department on May 3, 2001, which denied the request on May 11, 2001. (UEF Brief at 2.) According to the UEF, the claimant should then have filed a petition for judicial review with this Court within 30 days but failed to do so.

¶3 The UEF is mistaken in its view that the request for waiver is simply a matter for judicial review. Section 39-71-601(3), MCA (1999-2001), expressly vests original jurisdiction over the dispute in this Court. It says, "(3) Any dispute regarding the statute of limitations for filing time is considered a dispute that, after mediation pursuant to department rules, is subject to jurisdiction of the workers' compensation court." The Department never had jurisdiction to resolve the controversy in the first place and time limits for judicial review are inapplicable.

ORDER

¶4 The motion is **denied**.

DATED in Helena, Montana, this 11th day of October, 2001.

(SEAL)

\s\ Mike McCarter
JUDGE

c: Mr. Marvin L. Howe
Ms. Ann E. Clark
Mr. Daniel B. McGregor
Submitted: October 9, 2001