

IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

1996 MTWCC 63

WCC No. 9609-7607

CLINTON LOSS

Petitioner

vs.

LUMBERMENS MUTUAL CASUALTY COMPANY

Respondent/Insurer for

NABISCO BRANDS, INCORPORATED

Employer.

SUMMARY JUDGMENT

Summary: Where petitioner's carpal tunnel syndrome was accepted by the insurer as an occupational disease, he sought rehabilitation benefits, which the insurer denied.

Held: Summary judgment granted to the insurer where rehabilitation benefits are not available under the Occupational Disease Act. (**Note:** although this decision was affirmed on appeal, *Loss v. Lumbermens Mutual Casualty Co.*, 282 Mont. 80, 936 P.2d 313 (1997) (No. 96-710), the Montana Supreme Court subsequently held that failure to grant rehabilitation benefits to occupational disease claimants is unconstitutional. See, *Henry v. State Compensation Insurance Fund*, 1999 MT 126, 294 Mont. 449, 982 P.2d 456.)

The petitioner herein, Clinton Loss (Loss), suffers from carpal tunnel syndrome. In November 1991 he became disabled on account of his carpal tunnel and filed an occupational disease claim. The claim was accepted and is the basis for his present petition seeking rehabilitation benefits. Respondent, Lumbermens Mutual Casualty Company (Lumbermens), moves for summary judgment, arguing that rehabilitation benefits are not available under the Occupational Disease Act (ODA).

Discussion

Summary judgment is appropriate when "there is no genuine issue as to any material fact and . . . the moving party is entitled to a judgment as a matter of law." ARM 24.5.329(2). In this case the only fact of consequence to Lumbermens' motion for summary judgment is

the fact that claimant is suffering from an occupational disease and is pursuing benefits on account of that disease. Since that fact is undisputed, summary judgment is appropriate.

Loss' request for rehabilitation benefits is based on section 39-71-2001, MCA (1991). (petition for hearing, ¶ 3 and prayer 1.) That section was enacted by the 1991 legislature, which directed that it be "codified as an integral part of Title 39, chapter 71, part 20 and the provisions of Title 39, chapter 71, apply to [the new section]." 1991 Montana Laws, ch. 574, § 13. Thus, it is clear that the legislature intended the section to be an integral part of the Workers' Compensation Act (WCA) and applicable to workers' compensation claims. Loss is simply wrong when he argues that the provision was enacted as a "stand alone section and [just] happens to be placed in Title 71." (petitioner's response to motion for summary judgment at 2.)

Loss further argues that the section should be read into the ODA since the legislature did not expressly preclude rehabilitation benefits in occupational disease cases. (petitioner's response to motion for summary judgment at 3.) His suggestion is without merit. Courts are prohibited from inserting provisions which the legislature omitted or omitting what the legislature has expressly provided. *Murer v. State Compensation Mut. Ins. Fund*, 267 Mont. 516, 520, 885 P.2d 428, 430 (1994). The ODA contains numerous provisions which expressly refer to and incorporate provisions of the WCA, thus demonstrating that the legislature knows how to incorporate WCA provisions into the ODA when it wishes to do so. §§ 39-72-102(5)-(11), (14)-(15), 39-72-305(2), 39-72-310(2), 39-72-402, 39-72-405(2), 39-72-704, 39-72-705, MCA. The ODA sets forth specific provisions as to the benefits payable under that Act. §§ 39-72-405, 39-72-509, 39-72-701, 39-72-704, 39-72-705, 39-72-706, 39-72-707, 39-72-709, 39-72-711, MCA; rehabilitation benefits are not among them.

Summary judgment for Lumbermens.

JUDGMENT

For the reasons set forth in the foregoing discussion, IT IS HEREBY ORDERED AND ADJUDGED that the petition for hearing in this matter be and is hereby dismissed with prejudice. This judgment is certified as final for purposes of appeal.

Any party to this dispute may have 20 days in which to request an amendment or reconsideration of this decision.

DATED in Helena, Montana, this 11th day of October, 1996.

(SEAL)

/s/ Mike McCarter
JUDGE

c: Mr. Norman H. Grosfield

Mr. Thomas A. Marra

Submitted Date: October 10, 1996