**IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA**

**2004 MTWCC 57**

**WCC No. 2004-1059**

---

**JAMES LOVERIDGE**

**Petitioner**

**vs.**

**MONTANA STATE FUND**

**Respondent/Insurer.**

---

ORDER GRANTING MOTION FOR STAY

**Summary:** The claimant filed a petition for permanent partial disability benefits. The respondent moved to stay the proceedings pending resolution of a criminal information charging the claimant with fraudulently obtaining temporary total disability benefits with respect to the same claim.

**Held:** The motion for stay is granted since the ultimate disposition of the criminal prosecution may affect the claimant's entitlement to benefits in the present case.

**Topics:**

> **Procedure: Stay of Proceedings.** Where the claimant seeks benefits in a case in which he is being prosecuted for criminal fraud, and the criminal charges involve issues which affect his entitlement to benefits in the Workers' Compensation Court case, a stay of the workers' compensation case pending resolution of the criminal case is appropriate. § 39-71-2911, MCA (1995-2003).
>
> **Constitutions, Statutes, Rules, and Regulations: Montana Code Annotated: 39-71-2911, MCA (1995-2003).** Where the claimant seeks benefits in a case in which he is being prosecuted for criminal fraud, and the criminal charges involve issues which affect his entitlement to benefits in the Workers' Compensation Court case, a stay of the workers' compensation case pending resolution of the criminal case is appropriate.

¶1 Through his present petition, the claimant seeks permanent partial disability (PPD) benefits. The respondent, Montana State Fund (State Fund), moves to stay the proceeding because of a pending criminal prosecution involving alleged fraud with respect to

temporary total disability (TTD) benefits received by the claimant in conjunction with his present claim. The criminal information, which has been provided to the Court, alleges that the claimant was working in his time-of-injury occupation while collecting TTD benefits. The information was filed December 23, 2003, in the District Court for the First Judicial District for Lewis and Clark County and the claimant was apparently arraigned a couple of months ago.

Statute Involved

¶2 The motion for a stay is made pursuant to section 39-71-2911, MCA, which provides:

Upon a motion and filing of an affidavit by either party and after a hearing, the workers' compensation judge may grant a stay of proceedings in the workers' compensation court if a criminal action involving workers' compensation insurance fraud by a claimant has been filed in district court.

Pursuant to the section, a hearing was conducted on July 22, 2004. Mr. David A. Hawkins, counsel for the State Fund, appeared personally at the Court's chambers. Mr. Paul E. Toennis, at his request, participated by telephone.

Facts

¶3 Through discussion with counsel, the following facts were established:

> ¶3a The amount of benefits allegedly obtained through fraud amounts to approximately $8,750.
>
> ¶3b The claimant is seeking a PPD award of between 10% and 20% which in turn amounts to between $8,000 and $16,000.
>
> ¶3c The PPD claim is based on physical restrictions the claimant's physician has placed upon him. At the time the physician imposed the restrictions, the physician was unaware of the accusations that the claimant was working.

Discussion

¶4 Section 39-71-2911, MCA, allows this Court to stay proceedings in cases in which pending criminal proceedings involve overlapping issues. In this case, the issues overlap in two respects.

¶5 First, if convicted of fraud the claimant may be required to pay restitution to the State Fund of up to $8,750. Such restitution would obviously offset any entitlement to PPD benefits. It makes little sense to require the State Fund to pay out PPD benefits and to then rely on the claimant to make restitution if he is convicted in the criminal proceeding.

¶6 Second, a determination in the criminal proceeding as to whether the claimant was gainfully employed in his time-of-injury occupation while collecting TTD benefits may affect

an ultimate determination as to his entitlement to PPD benefits. Section 39-71-703, MCA (1997-2002), provides for PPD benefits only if the claimant can demonstrate a wage loss. His ability to work at his time-of-injury job is obviously relevant to whether he suffered a wage loss. It is also relevant to the physical restrictions placed upon him by his physician.

¶7 Criminal cases in Lewis and Clark County are usually tried in prompt fashion. I was furnished with no information indicating any institutional delay which would preclude the claimant from receiving a prompt trial on the criminal charges. I therefore conclude that the motion to stay the present proceedings pending resolution of the criminal charges should be granted.

ORDER

¶8 The motion for a stay of proceedings is **granted** and the proceedings in this case are therefore **stayed** pending further order of this Court.

DATED in Helena, Montana, this 23rd day of July, 2004.

(SEAL)

\s\ Mike McCarter
JUDGE

c: Mr. Paul E. Toennis
Mr. David A. Hawkins
Submitted: July 12, 2004