IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

1999 MTWCC 13

WCC No. 9811-8090

RICHARD LEE MATTHEWS

Petitioner

vs.

STATE COMPENSATION INSURANCE FUND

Respondent/Insurer for

S E A TRUCKING, INCORPORATED

Employer.

FINDINGS OF FACT, CONCLUSIONS OF LAW AND JUDGMENT

Summary: Long haul truck driver slipped and hit his head when examining lights on his truck. The next day, he passed out while calling his fleet manager, was taken for emergency treatment, and was hospitalized for several days, with the diagnosis of cerebral vascular accident, commonly known as stroke. He alleged he did not have a stroke, but suffered from a compensable conversion disorder resulting from the fall.

Held: No medical evidence supports claimant's theory of conversion disorder. His arguments are based on references within some medical records to possibilities for consideration, not upon objective medical conclusions. Claim denied.

Topics:

Evidence: Generally. No medical evidence supports claimant's theory of conversion disorder. His arguments are based on references within some medical records to possibilities for consideration, not upon objective medical conclusions. Claim denied.

Injury and Accident: Objective Medical Evidence of. No medical evidence supports claimant's theory of conversion disorder resulting from fall at work. Claimant's arguments are based on references within some medical records to possibilities for consideration, not upon objective medical conclusions. Claim denied.

Medical Condition: Conversion Disorder. No medical evidence supports claimant's theory of conversion disorder resulting from fall at work. Claimant's arguments are based on references within some medical records to possibilities for consideration, not upon objective medical conclusions. Claim denied.

Medical Evidence: Objective Medical Findings. No medical evidence supports claimant's theory of conversion disorder resulting from fall at work. Claimant's arguments are based on references within some medical records to possibilities for consideration, not upon objective medical conclusions. Claim denied.

¶1 The trial in this matter was held on January 20, 1999, in Missoula, Montana. Petitioner, Richard Lee Matthews (claimant), was present and represented by Mr. Andrew F. Scott. Respondent, State Compensation Insurance Fund (State Fund), was represented by Ms. Carrie L. Garber. No transcript of the proceeding has been prepared.

¶2 Exhibits: Exhibits 1 through 3 were admitted without objection.

¶3 Witness: Claimant was sworn and testified. No depositions were taken or submitted.

¶4 Issue Presented: As set forth in the Pretrial Order, the sole issue presented for decision is:

Whether the Petitioner's stroke-like symptoms are the result of a compensable injury.

¶5 Having considered the Pretrial Order, the claimant's testimony, the exhibits, and the arguments of the parties, the Court makes the following:

FINDINGS OF FACT

¶6 Claimant is a long-haul truck driver for S E A Trucking.

¶7 On April 7, 1996, while driving through Ohio, claimant experienced a problem with the lights on the top of his truck. He stopped at a rest stop to check them and while on the truck slipped and fell to the ground, hitting his head. Claimant testified that he must have lost consciousness because the next thing he remembers is a friend with whom he was convoying was standing over him and asking if he was alright.

¶8 Following his fall, claimant had a headache. He took Advil and rested for awhile in the cab of his truck. He then returned to the road, driving on to Geneva, Ohio. He testified that he was worried about delivering his load on time since he would be penalized for a late delivery. He also testified that while driving on to Geneva he worried that he might be badly hurt from his fall and might have to see a doctor.

¶9 Claimant arrived in Geneva, Ohio, on the morning of April 8, 1996, and stopped to refuel. From the truck stop he telephoned his fleet manager, Bob Christianson (Christianson). He told Christianson that he had fallen off his truck, that he was hurt and that he was going to

be late with his load. Claimant passed out while he was on the phone. Bystanders at the gas station noticed him and called for help.

¶10 Claimant was taken by ambulance to Memorial Hospital of Geneva. He was then transferred by helicopter to University Hospital in Cleveland, Ohio, where he was hospitalized from April 12 to 17, 1996.

¶11 He testified that he lost his ability to speak and couldn't move the right side of his body. He communicated in writing until he gradually regained his ability to speak. Claimant was in a wheelchair from the time he left the hospital in April 1996 until October 1997. (Trial Test.) Although he has returned to work driving, he still walks with a pronounced limp and speaks in an abnormally slow and deliberate manner.

¶12 Upon admission to Memorial Hospital of Geneva, claimant was diagnosed as suffering a CVA (cerebral vascular accident, hereinafter "stroke"). Despite the lack of objective evidence obtained during CT scans, MRIs, angiography, EEG and other medical testing, that diagnosis was maintained throughout his hospitalization at University Hospital, and was the diagnosis at the time of his discharge. (Ex. 3 at 46-48.)

¶13 At the time he fell and hit his head, S E A was insured by the State Fund.

¶14 The State Fund denies liability for claimant's condition, his medical treatment, and lost work.

¶15 The State Fund obtained a medical panel review of the claim on August 16, 1996. The three reviewing physicians concluded that claimant suffered a stroke on April 8th and that the stroke was unrelated to his hitting his head the day before. (Ex. 3 at 109-10.)

¶16 Through his present petition, the claimant asks the Court to find that his condition, his treatment and his lost work were caused by his hitting his head on April 7, 1996. He presents no medical testimony and asks that the Court make its determination on the basis of medical records. He argues that the Court can and should find that he did not suffer a stroke but rather that his hitting his head caused a conversion disorder which mimicked a stroke.

¶17 Initially, the hospital records from claimant's Ohio hospitalization (Ex. 1 at 1-48), as well as the medical panel (Ex. 1 at 109-10), reflect a consistent diagnosis of stroke despite a lack of objective imaging and other objective medical testing to support the diagnosis.

¶18 Claimant argues, however, that medical reports for his treatment at a Veterans Administration medical center in Hot Springs, South Dakota, establish that the stroke diagnosis was in error and that claimant suffers from a conversion disorder. Claimant has been treated at the Hot Springs VA since April 22, 1996, and the records for his treatment are found at Exhibit 3, pages 49-108. I have reviewed the records and am unpersuaded that they support his arguments.

¶19 The records show that claimant received physical therapy and speech therapy from April 23, 1996 to June 1996. (Ex. 3, 49-108.) They also contain notes and reports of physicians and psychologists who examined the claimant.

¶20 Claimant relies on one particular VA record as supporting his argument. The record is a dictated progress note of a September 24, 1996 examination of claimant, by Dr. Steven K. Hata, a neurologist. (Ex. 3 at 85.) In a prior, July 23, 1996 evaluation, Dr. Hata examined claimant and reviewed his medical history. His assessment was "post cerebrovascular accident, etiology undetermined." Noting prior normal MRIs, he suggested another MRI. That MRI was apparently done and in his subsequent September 24th note, Dr. Hata noted that it too was normal. In his assessment he commented:

> ASSESSMENT: This patient shows no objective evidence of having had a left middle cerebral stroke nor a subcortical thalamic stroke in the left hemisphere which would account for his right hemiparesis and aphasia. On examination, the patient does have a hemiparetic gait disturbance and a right footdrop; however, on manual muscle testing, he has breakaway weakness. He has both physiologic and nonphysiologic features, and on arm extension, he has a conversion type of drift where his right arm drops without pronation. His speech is not really aphasic but is more halting. With the negative MRI scan as well as no evidence of stroke risk and acute stroke during his acute hospitalization in Cleveland, this raises the possibility that some of these symptoms are nonphysiologic and that the patient's symptoms are perpetuated, if not caused by, a conversion type of symptomatology.

(Ex. 3 at 85.) Dr. Hata went on to note that claimant was probably depressed and that a "[p]sychiatric/psychological evaluation might uncover conversion tendencies." (*Id*.) From this note, the claimant urges the Court to find that he has a conversion disorder caused by his fall.

¶21 I find Dr. Hata's September 24, 1996 note, insufficient to so find as claimant requests.

- First, the note only raises the "possibility" of a conversion disorder. Moreover, a psychological evaluation done earlier had ruled out a "hysteric conversion reaction." (Ex. 3 at 62.) Claimant was also seen thereafter by Dr. Phillips, a psychiatrist (*see* Ex. 3 at 86 and 88), whose notes are found at Exhibit 3, page 88. Phillips does not mention any conversion disorder.

- Second, the note does not state that claimant did *not* suffer a stroke, only that there is no objective evidence of two types of stroke which might account for claimant's symptoms. Perhaps the lack of objective evidence permits or even requires a medical conclusion that no stroke occurred, but claimant has presented no medical evidence that such is the case. Despite the lack of any objective evidence of stroke, the medical panel which reviewed the claim on August 16, 1996, concluded that

claimant had in fact suffered one. Dr. Phillips' notes also indicate that some of claimant's symptoms are physiologic, raising the possibility that at least some of the symptoms are due to stroke.

- Third, Dr. Hata does not express any opinion connecting claimant's condition to his April 10th fall.

¶22 At trial claimant's attorney suggested that the Court can find that claimant suffers from a conversion disorder based on its own review of the DSM-IV criteria for conversion disorders. I decline that invitation. While the Court may rely on medical opinions, it may not make its own diagnosis or form its own medical opinions.

¶23 Claimant also suggested that treatment for a stroke ceased following Dr. Hata's opinion, therefore confirming that it was indeed Dr. Hata's opinion that claimant suffered a conversion reaction to his fall. The medical records do not support the suggestion. The physical therapy and speech therapy claimant received had ceased prior to Dr. Hata's September 24th note and there is no record of Dr. Hata altering claimant's medications on account of the September 24th evaluation.

¶24 If, as claimant argues, there is sufficient information in the medical records to provide a connection between claimant's hemiparesis and aphasia [or dysphasia], then he could and should have provided that connection through medical testimony. He could have obtained a medical review of the records by a Montana neurologist and/or psychiatrist.

¶25 In absence of further medical opinions, the medical records furnished the Court do not support claimant's arguments. In light of the uncontradicted medical panel opinion of August 16, 1996, claimant has failed to persuade the Court that his hemiparesis and aphasia were caused by his April 7, 1996 fall.

CONCLUSIONS OF LAW

¶26 This claim is governed by the 1995 version of the Montana Workers' Compensation Act. *Buckman v. Montana Deaconess Hospital,* 224 Mont. 318, 321, 730 P.2d 380, 382 (1986).

¶27 The claimant has the burden of proving that he is entitled to workers' compensation benefits by a preponderance of the probative, credible evidence. *Ricks v. Teslow Consolidated,* 162 Mont. 469, 512 P.2d 1304 (1973); *Dumont v. Wicken Bros. Construction Co.,* 183 Mont. 190, 598 P.2d 1099 (1979).

¶28 Claimant has failed to carry his burden. While the close proximity in time of the onset of symptoms following his April 7, 1996 fall at work are suggestive of a relationship between the symptoms and his fall, the onset of symptoms may be coincidental, and in fact was found to be coincidental by a panel of physicians who reviewed this claim. The Court must rely on the medical opinions presented to it. While Dr. Hata's September 24, 1996 note

raises questions about those opinions, it does not contradict them nor does it provide an affirmative opinion relating claimant's symptoms to his fall.

JUDGMENT

¶29 1. Claimant has failed to carry his burden of proof and his petition is **dismissed with prejudice**.

¶30 2. The parties shall bear their own costs.

¶31 3. This JUDGMENT is certified as final for purposes of appeal pursuant to ARM 24.5.348.

¶32 4. Any party to this dispute may have 20 days in which to request a rehearing from these Findings of Fact, Conclusions of Law and Judgment.

DATED in Helena, Montana, this 4th day of February, 1999.

(SEAL)

\s\ Mike McCarter
JUDGE

c: Mr. Andrew F. Scott
Mr. Carrie L. Garber
Date Submitted: January 28, 1999