

IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

1999 MTWCC 59

WCC No. 9908-8296

CHRIS MEYER

Petitioner

vs.

VALOR INSURANCE COMPANY, INCORPORATED

Respondent/Insurer for

FRONTIER CHEVROLET COMPANY, INCORPORATED

Employer.

ORDER DENYING MOTION TO DISMISS BUT LIMITING ISSUES

Summary: Respondent alleged that claim for injury or occupational disease was not meaningfully mediated as required by section 39-71-2401, MCA. Petitioner conceded one legal issue had not been mediated, but argued sufficient medical records had been exchanged to permit meaningful mediation of remaining issues.

Held: Claim not mediated is dismissed. Under 39-71-2401(4)(c), mediator has exclusive authority to determine whether the petitioner provided respondent with sufficient documentation to comply with the mediation requirement. The WCC has jurisdiction only to hear appeal of such issues after mediator's ruling. Because the mediator issued no ruling on that issue, the motion to dismiss on that ground is denied.

Topics:

Constitutions, Statutes, Regulations and Rules: 39-71-2401, MCA (1995). Claim not mediated is dismissed. Under 39-71-2401(4)(c), mediator has exclusive authority to determine whether the petitioner provided respondent with sufficient documentation to comply with the mediation requirement. The WCC has jurisdiction only to hear appeal of such issues after mediator's ruling. Because the mediator issued no ruling on that issue, the motion to dismiss on that ground is denied.

Mediation. Claim not mediated is dismissed. Under 39-71-2401(4)(c), mediator has exclusive authority to determine whether the petitioner provided respondent with

sufficient documentation to comply with the mediation requirement. The WCC has jurisdiction only to hear appeal of such issues after mediator's ruling. Because the mediator issued no ruling on that issue, the motion to dismiss on that ground is denied.

¶1 Petitioner alleges that he suffered an industrial accident or an occupational disease on May 18, 1997. Respondent denies liability and moves to dismiss the petition for failure to mediate some issues and a failure engage in meaningful mediation with respect to the rest.

¶2 Initially, petitioner concedes that one issue - the constitutional challenge - has not been mediated and should be dismissed. It shall be so.

¶3 With respect to mediation of the injury/occupational disease issue, petitioner has provided the Court with a copy of his mediation request. That request encompasses the issue.

¶4 Nonetheless, respondent argues that the mediation was a "farce" because medical records of petitioner's treatment since August 1998 have not been made available to it. In response, petitioner points out that respondent has the medical reports of the three medical panel doctors who evaluated claimant under the Occupational Disease Act, as well as reports of petitioner's initial treating physician and an independent medical evaluator who conducted a medical records review on behalf of the respondent. Petitioner further states that the post-August 1998 treatment involved removal of a subclavian stent inserted in 1987 (for which respondent has the records) and revascularization of the area to improve blood flow.

¶5 Section 39-71-2401, MCA, provides for mediation as a prerequisite to commencing an action in the Workers' Compensation Court. The section sets forth the obligations of the parties in the mediation process. As applicable here, it required the petitioner to provide respondent with "sufficient explanation **and documentary evidence to enable the other party to thoroughly evaluate the claim.**" § 39-71-2401(4)(a), MCA. It is not at all clear that the post-August 1998 records were necessary to enable respondent to evaluate the claim since the records apparently relate to a second surgery in the same bodily area for the same medical condition. In any event, a review of the records would be required to determine if they were material and necessary under section 39-71-2401(4)(a), MCA.

¶6 But a more fundamental problem exists. Section 39-71-2401, MCA, also provides in subsection (4)(c):

(c) Upon motion of a party or upon the mediator's own motion, the mediator has the authority to dismiss a petition if he finds that either party did not comply with this subsection. A decision dismissing a petition under this subsection must be in writing and must state in detail the grounds for dismissal. The mediator's decision may be reviewed by the workers' compensation court upon motion of a party.

This subsection expressly gives the mediator the authority to determine whether the petitioner provided respondent with sufficient documentation. The Court's jurisdiction is limited to appellate review of a mediator's decision dismissing a mediation petition. In this case, the mediator did not dismiss the mediation petition, thus there is nothing for the Court to review. Accordingly, the motion to dismiss must be denied.

ORDER

¶7 The motion to dismiss is **denied**.

¶8 The petitioner's constitutional challenge is **stricken**.

DATED in Helena, Montana, this 30th day of September, 1999.

(SEAL)

\s\ Mike McCarter

JUDGE

c: Mr. James G. Edmiston

Mr. Joe C. Maynard

Submitted: September 3, 1999