

IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

WCC No. 9302-6703

BRUCE W. MORGAN

Petitioner

vs.

STATE COMPENSATION INSURANCE

FUND/UNITED MATERIALS

Defendant/Employer.

**ORDER ADOPTING FINDINGS OF FACT AND CONCLUSIONS OF LAW OF HEARING
EXAMINER AND ENTERING JUDGMENT**

* * * * *

The above-entitled matter was duly heard by Court-appointed Hearing Examiner, ROBERT J. CAMPBELL who conducted the hearing, considered the evidence and prepared and submitted Findings of Fact and Conclusions of Law and Proposed Judgment for consideration by the Court.

Thereupon, the Court considered the record in the above- captioned matter, considered the Findings of Fact and Conclusions of Law and Proposed Judgment of the Hearing Examiner and does hereby make and enter the following Order and Judgment.

IT IS HEREBY ORDERED the Findings of Fact and Conclusions of Law and Proposed Judgment of the Hearing Examiner are adopted.

IT IS FURTHER ORDERED the Judgment is to be entered as follows:

JUDGMENT

1. This Court has jurisdiction over this matter pursuant to section 39-71-2905, MCA.
2. Defendant is not responsible for the medical expenses claimant incurred August 2, 1991.
3. Claimant is not entitled to attorney fees, costs or penalty.
4. Any party to this dispute may have 20 days in which to request a rehearing from these Findings of Fact and Conclusions of Law and Proposed Judgment.

5. The JUDGMENT herein is certified as final for purposes of appeal pursuant to ARM 24.5.348.

DATED in Helena, Montana, this 30th day of September, 1993.

(SEAL)

/s/ Mike McCarter

JUDGE

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WCC No. 9302-6703

BRUCE W. MORGAN

Petitioner

vs.

STATE COMPENSATION INSURANCE FUND/

UNITED MATERIALS

Defendant/Employer.

Presiding Hearing Examiner: ROBERT J. CAMPBELL

Counsel of Record:

Mr. J. David Slovak

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ON BEHALF OF THE PETITIONER

Mr. Thomas E. Martello

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State Compensation Insurance Fund

P.O. Box 4759

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ON BEHALF OF THE DEFENDANT/EMPLOYER

FINDINGS OF FACT AND
CONCLUSIONS OF LAW
AND PROPOSED JUDGMENT

1. Claimant filed a petition to resolve a dispute between himself and the insurer under Title 39, Chapter 71, Part 29, MCA.

2. The Clerk of Court gave notice to interested parties of (a) the time, place and nature of the trial; (b) the legal authority and jurisdiction under which the trial was to be held; (c) the particular sections of the statutes and rules involved; and (d) the matters asserted by notifying all parties who appeared of record to have an interest by mailing to them a copy of the ORDER SETTING TRIAL AND PRETRIAL CONFERENCE with a copy of the PETITION FOR HEARING attached and a copy of the Clerk's Certificate of Mailing the Order and Petition. Section 2-4-601, MCA.

3. A pretrial conference was conducted on March 24, 1993, before Clarice V. Beck, Hearing Examiner. The Pretrial Order was docketed on April 22, 1993. Pertinent parts of the Pretrial Order are as follows:

A. STATEMENT OF JURISDICTION

The Workers' Compensation Court has jurisdiction in the above-entitled matter pursuant to Mont. Code Ann. § 39-71-2905 and by stipulation of the parties.

....

C. STATEMENT OF UNCONTESTED FACTS

1. Claimant was injured on December 14, 1984, and July 26, 1989, while in the course and scope of his employment as a truck driver for employers enrolled under Compensation Plan III of the Montana Workers' Compensation Act. The Insurer for each injury is the Defendant State Compensation Mutual Insurance Fund.

2. The Defendant State Compensation Mutual Insurance Fund has accepted liability for the injuries of December 14, 1984 and July 26, 1989.

3. The mediation provisions of the Montana Workers' Compensation Act applicable herein, have been satisfied.

4. The parties have proposed and the Court adopts the following issues to be decided by the Court:

1. Is the Defendant responsible for the medical expenses incurred by the Claimant for emergency transport and hospitalization at the Montana Deaconess Medical Center in Great Falls, Montana, on August 2, 1991.

2. Is Claimant entitled to recover his costs and attorneys fees.3. Should the penalty provisions of the Montana Workers' Compensation Act be imposed against the Defendant.

5. The trial in this matter came on April 28, 1993, in Great Falls, Montana, before Hearing Examiner Robert J. Campbell. Claimant Bruce W. Morgan, Sheila Morgan, Paul Smith and Charles E. Edquest were sworn and testified. No depositions were submitted to the Court. Exhibit Nos. 1 through 7 were admitted into evidence by stipulation of the parties. Exhibit Nos. 8 and 9 were admitted. Upon filing of the Proposed Findings of Fact, Conclusions of Law and Reply Briefs, this matter was deemed submitted.

6. The undersigned, having reviewed the pleadings, considered the Pretrial Order and the exhibits admitted into evidence, heard the testimony and observed the demeanor of the witnesses at trial and being fully advised in the premises, now makes the following Findings of Fact and Conclusions of Law and Proposed Judgment:

FINDINGS OF FACT

1. The uncontested facts are found as fact and adopted herein.

Claimant

2. At the time of trial, claimant was 37 years old and works full-time as a truck driver for Great Falls Ready Mix, Inc. (Tr. at 36.)

Injuries

3. On December 14, 1984, claimant injured his low back while driving a truck for his employer Great Falls Ready Mix. Defendant State Fund accepted liability for the injury and paid temporary total disability benefits through February 14, 1985. (Ex. No. 8 at 2.)

Claimant was treated by chiropractor N.S. Trosper who released him to return to work on January 21, 1985. (Ex. No. 8 at 8 and 15-17.)

4. Claimant returned to work as a truck driver for United Materials of Great Falls and continued working without interruption until he suffered a second industrial injury on July 26, 1989. At that time, he injured his knee while stepping out of a cement truck and it also aggravated his back injury. (Tr. at 30, 44.) Claimant's employer was enrolled under Compensation Plan III of the Montana Workers' Compensation Act and the State Compensation Insurance Fund accepted the claim.

5. Surgery on the claimant's knee was performed by Dr. Paul Suarez of the Great Falls Clinic.

6. In November 1991, claimant, represented by his counsel herein, settled both his 1984 and 1989 claims by entering into a PETITION FOR FULL AND FINAL COMPROMISE AND/OR COMPROMISE AND RELEASE SETTLEMENT with the State Fund, with medical benefits remaining open. (Ex. No. 8 at 50, 69-71.)

Incident of August 2, 1991

7. The evening of August 1, 1991, claimant, his wife Sheila, and a friend Steve Skites went to a concert at the state fairgrounds in Great Falls. (Tr. at 23, 33.) At the concert, claimant consumed at least seven beers by the time the concert ended at 1:00 a.m. (Tr. at 33-34.) Returning to his home, claimant opened another beer and left the house. His wife then heard the claimant hitting their chain link fence with a steel pipe. (Tr. at 23.) Angry and upset, claimant entered the house and pulled a knife from a scabbard on his belt and began shouting incoherently. (Tr. at 24-25.) Claimant was wrestled to the floor by Steve Skites and claimant's wife immediately called the police since claimant was a danger to himself and other individuals at the home. (Tr. at 25.) Claimant testified that he has no recollection of the event and admits he was intoxicated. (Tr. at 54.)

8. Officer Paul Smith of the Great Falls Police Department arrived at claimant's home at approximately 2:30 a.m. and after consulting with claimant's wife, he called for an ambulance. Officer Smith noted the claimant was intoxicated with a very strong odor of alcohol on his breath. (Tr. at 80.) Claimant complained to Officer Smith about being out of work, depressed and if he had a gun he would end all of his problems. (Tr. at 82.) The officer determined that claimant should see a psychiatrist, since alcohol is a depressant and claimant was a potential suicide candidate. (Tr. at 78-79.)

9. Claimant was taken by ambulance to Montana Deaconess Medical Center where he was examined by psychiatrist Dr. D.E. Engstrom. The emergency room record diagnosis was "suicidal ideation and ethyl alcohol intoxication." (Ex. No. 1 at 78.) At 3:40 a.m., claimant's blood level was .163. (Ex. No. 1 at 74, 78, 83; Tr. at 34.) Upon claimant's discharge the morning of August 2, 1991, Dr. Engstrom noted:

IMPRESSION:

1. Acute Alcohol Intoxication.
2. Adjustment Disorder with Mixed Disturbance of Emotions and Conduct.
3. Rule out Personality Disorder, Mixed, with Passive-Aggressive and Possibly Anti-Social Features.
4. Chronic Low Back Pain.
5. Left Knee Injury, Remote.

Ex. No. 1 at 75.

10. Dr. Engstrom did not see any indication that claimant needed any outpatient psychiatric follow-up. (Ex. No. 1 at 76.)

11. Claimant contends that his industrial injuries in 1984 and 1989 set in motion certain events that gave rise to psychiatric problems which are compensable medical benefits. In support of his position he cites his previous violent outbursts predating his injuries as being consistent with his August 2, 1991 behavior. He attributes his alcohol consumption, then violent behavior to his frustration of dealing with "workman's comp."

12. On August 1, 1991, claimant had not yet returned to work and he was negotiating his workers' compensation settlement. Claimant had no identifiable stress from workers' compensation which can be related to stress or causing claimant's intoxication or subsequent violent behavior. Claimant was enjoying the Fair with his wife and friend before he started drinking at the concert. (Tr. at 67.)

13. Claimant settled both claims in November, 1991 reserving medical benefits and returned to full-time work as a truck driver.

CONCLUSIONS OF LAW

1. This Court has jurisdiction over this proceeding pursuant to section 39-71-2905, MCA.

2. Defendant is not responsible for the medical expenses claimant incurred August 2, 1991.

Claimant has the burden of proving his case by a preponderance of the credible medical evidence. *Dumont v. Aetna Fire Underwriters*, 183 Mont. 190, 598 P.2d 1099 (1979); *Ricks v. Teslow Consolidated*, 162 Mont. 469, 512 P.2d 1304 (1973). To discharge this burden the claimant must, by a preponderance of the probative credible evidence, make the truth of the proposition more probable than not. *Hackney v. Liberty Mutual Fire Insurance Company*, WCC No. 8405-2445 (March 11, 1985).

To prevail in this petition, claimant must present medical proof that the medical expenses he incurred on August 2, 1991, were caused or aggravated by his prior workers' compensation injuries. Causation is an essential element to any entitlement to compensation or medical benefits under the Workers' Compensation Act. *Grenz v. Fire & Casualty of Connecticut*, 250 Mont. 373, 820 P.2d 742, 48 St. Rptr. 967 (1991). Mere medical possibility, without proof of causation by a preponderance of the evidence, is insufficient to establish liability. (*Id.* at 380.)

In the case at bar, claimant testified that at the State Fair with his wife and friend the evening of August 1, 1991, he was not upset with workers' compensation. After drinking seven beers at the concert he walked home and opened another beer. He then went outside and beat their chain link fence with a pipe. He admits he was intoxicated and has

no memory of returning inside and pulling a knife in a threatening manner. Claimant's wife was alarmed at his behavior and called the police.

Officer Paul Smith arrived and determined that claimant was intoxicated and possibly suicidal so an ambulance was called. He was taken to Montana Deaconess Medical Center where he was examined by psychiatrist Dr. D.E. Engstrom. Dr. Engstrom diagnosed acute alcohol intoxication, adjustment disorder with mixed disturbance of emotions and conduct. Chronic low back pain was considered less serious and his left knee injury was described as remote.

Claimant argues that the low back and left knee pain from his 1984 and 1989 industrial injuries, combined with long term problems of anger and frustration over administration of his workers' compensation claim resulted in the August 2, 1991 incident. The evidence does not support claimant's position.

Claimant has not proven by a preponderance of the credible evidence that his acute alcohol intoxication and subsequent behavior in his home on August 2, 1991 resulted from his two industrial injuries. The ambulance, hospital and psychiatric examination expenses are not medical benefits compensable under the Workers' Compensation Act.

3. Claimant is not entitled to attorney fees, costs or penalty.

Claimant has not prevailed on the issue presented and therefore is not entitled to attorney fees or costs. Having no liability to pay for the requested medical treatment, there is no basis for a penalty against the defendant pursuant to Section 39-71-2907, MCA.

PROPOSED JUDGMENT

1. This Court has jurisdiction over this matter pursuant to section 39-71-2905, MCA.
2. Defendant is not responsible for the medical expenses claimant incurred August 2, 1991.
3. Claimant is not entitled to attorney fees, costs or penalty.
4. Any party to this dispute may have 20 days in which to request a rehearing from these Findings of Fact and Conclusions of Law and Proposed Judgment.

DATED in Helena, Montana, this 30th day of September, 1993.

(SEAL)

\s\ ROBERT J. CAMPBELL

Hearing Examiner

c: Mr. J. David Slovak

Mr. Thomas E. Martello