IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

2000 MTWCC 52

WCC No. 9912-8370

DAVID H. PETRY

Petitioner

vs.

NATIONAL UNION FIRE INSURANCE COMPANY OF PITTSBURGH

Respondent/Insurer for

ECODYNE - COOLING TOWER SERVICE

Employer.

SUMMARY JUDGMENT ORDER AND MEMORANDUM

Summary of Case: Claimant, who was injured May 10, 1989, seeks reimbursement for in-town mileage associated with visits to health care providers. The longest and most frequent round-trip mileage incurred by claimant is 11 miles.

Held: Unlike subsequent statutes, section 39-71-704(1), MCA (1987), does not expressly require compensation for travel expenses associated with treatment resulting from a workplace injury. Consistent with prior decisions of the Workers' Compensation Court, the Court finds that while reimbursement for out-of-town travel is required, in-town mileage is not compensable.

Topics:

> **Constitutions, Statutes, Regulations and Rules: 39-71-704(1)(1987). Unlike subseque**nt statutes, section 39-71-704(1), MCA (1987) does not expressly require compensation for travel expenses. Consistent with prior decisions of the WCC, the statute is interpreted to require reimbursement for out-of-town travel, but not for in-town mileage.
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> **Benefits: Medical Benefits: Mileage** Unlike subsequent statutes, section 39-71-704(1), MCA (1987) does not expressly require compensation for travel expenses. Consistent with prior decisions of the WCC, the statute is interpreted to require reimbursement for out-of-town travel, but not for in-town mileage.

¶1 The present matter is before the Court upon cross-motions for summary judgment. The following essential facts are uncontested:

> 1. Petitioner David H. Petry (claimant) suffered a compensable injury on May 10, 1989.
>
> 2. As a result of the injury, claimant received treatment from medical providers practicing in Kalispell, Montana.
>
> 3. Claimant is seeking reimbursement for in-town travel for such treatment.
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> 4. The claim is exemplified by 6 pages of "Mileage Reimbursement" forms completed by claimant. These pages reflect in-town mileage between August 1998 and November 1999 for round-trips to providers. 76 trips are listed. Of these, 61 trips involved mileage of 11 miles, 2 were 10 miles, 3 were 9 miles, and 10 were only 3 miles.

(See Petitioner's December 2, 1999, letter to Workers' Compensation Court and attachments; Petition for Hearing filed February 24, 2000; Respondent's Motion for Summary Judgment and Supporting Brief at 2, and Ex. 1; Petitioner's [Cross] Motion for Summary Judgment and Supporting Brief at 2.)[(1)]

¶2 The statutes in effect at the time of claimant's injury govern his entitlement to benefits. *Buckman v. Montana Deaconess Hospital,* 224 Mont. 318, 321, 730 P.2d 380, 382 (1986). Because claimant was injured on May 10, 1989, the 1987 statutes govern.

¶3 Section 39-71-704, MCA (1987) provides in relevant part:

> **Payment of medical, hospital, and related services -- fee schedule and hospital rates.** (1) In addition to the compensation provided by this chapter and as an additional benefit separate and apart from compensation, the following shall be furnished:
>
> (a) After the happening of the injury, the insurer shall furnish, without limitation as to length of time or dollar amount, reasonable services by a physician or surgeon, reasonable hospital services and medicines when needed, and such other treatment as may be approved by the division for the injuries sustained.

¶4 The statute itself makes no reference to reimbursement for travel expenses.[(2)] While the Supreme Court has not addressed travel expenses under section 39-71-704, MCA (1987), several decisions of this Court have found that reasonable travel expenses, including mileage reimbursement, for **out-of-town** treatment are compensable. In *Clark v. Coast Trading Co. Inc.*, WCC No. 1867 (March 24, 1984), the claimant traveled, round-trip, 66 miles to one chiropractor, 62 miles to another, 60 miles for examination by an orthopedic

surgeon, and 1008 miles for a CT scan. Having found the travel reasonable and necessary for claimant's health care, the Court concluded:

> [Section 39-71-704] authorizes payment of treatment and medication that are reasonably incurred. Logic dictates that authorization for medical treatment also includes reimbursement for travel expenses required to obtain such treatment. This is especially true in situations where a claimant located in a rural community needs specialized medical services found only in the more populated cities, or sometimes outside of Montana in population centers.
>
> Thus travel expenses would be warranted where "reasonably" incurred. In this context they would be limited to those "necessary," or those recommended by the claimant's treating physician. **A claimant who needs specialized treatment shall be recompensed for travel to the specialist only if similar medical services are not available locally.** However, a claimant shall not be limited to local or the nearest available specialist if his treating physician finds it necessary to recommend a specific treatment or specialist further away. [Emphasis added.]

Id. at 16.

¶5 In *Scyphers v. H & H Lumber*, WCC No. 8706-4420 (September 29, 1988), the claimant lived in Lockwood, Montana, approximately six miles outside the city limits of Billings. He sought mileage reimbursement for trips to Billings undertaken monthly for examination by his treating physician and daily for participation in a dietary program recommended by his doctor. The Workers' Compensation Court refused, again stating that reimbursement for travel expenses is proper when travel is necessitated by the lack of local treatment being available. *Id*. at 6. The Court found that "claimant's home, though not within the city limits of Billings, is not so distant as to warrant travel reimbursement." *Id*.

¶6 Similarly, in *Worts v. Hardy Construction Co.*, WCC No. 8701-4199 (January 26, 1989), the Court refused mileage reimbursement. Claimant, who lived in Belgrade, claimed mileage for travel to medical providers in Bozeman. The Court stated: "From [claimant's] home to Bozeman the distance is but nine miles, not sufficient to require the insurer to pay travel." *Id*. at 15.

¶7 Travel expenses were allowed in *Chambers v. Continental Keil, Inc.*, WCC No. 8808-4885 (June 28, 1990). Claimant lived in Shepherd, Montana, and was required to obtain medical treatment in Billings, Montana. Mileage from claimant's home to the offices of the various providers ranged from 33.8 to 38 miles round-trip. The Court found, as a matter of fact, that claimant and his family only occasionally drove to Billings, with such trips not required to provide for the necessities of life. *Id*. at 4. The Workers' Compensation Court concluded:

In the Clark case, reimbursement for travel expenses required to obtain medical treatment that was not located in the rural community was specifically awarded. While "locally" was

not defined, it cannot be so narrowly construed as to be defined by city limits but a fair and equitable determination can only be made on the basis of the particular facts of each individual case.

> In this case, the claimant's medical treatment was not available in Shepherd and he was required to travel to Billings. The fact that he and his family occasionally traveled to Billings for other purposes does not relieve the defendant from providing for reimbursement for the necessary costs of travel to obtain medical services.

Id. at 5.

¶8 The above cases suggest a standard appropriate for resolution of mileage claims arising under the 1987 Workers' Compensation Act. In the present case, the insurer does not contest the reasonableness of the medical care. The parties agree that the mileage at issue is **in-town** mileage. The longest, and most frequent, trip made by claimant is 11 miles round-trip. This means claimant lives less than 6 miles from the furthest provider, which is well within the in-town range established in prior decisions. Thus, under prior decisions of this Court, the claimant is **not** entitled to reimbursement for the mileage submitted.

¶9 In support of his claim, claimant has referenced ARM 24.29.1409, a rule adopted by the Department of Labor and Industry, effective August 17, 1990. The rule was adopted following the 1989 amendment to section 39-71-704, MCA, which required insurers to "reimburse a worker for reasonable travel expenses incurred in travel to a medical provider for treatment of an injury *pursuant to rules adopted by the department*." (Emphasis added.) In addition to establishing standards applicable to injuries occurring *after* the effective date of the statutory amendment, which was July 1, 1989, Rule 24.29.1409 purports to establish standards applicable to "travel expense reimbursement" for claims arising *before* that date. That portion of the rule states:

> (1) For claims arising before July 1, 1989, reimbursement for travel expenses shall be determined as follows:
>
> (a) Personal automobile and private airplane mileage expenses shall be reimbursed at the current rates specified for state employees. Prior authorization from the insurer is required for the use of a private airplane. Total reimbursable automobile miles shall be determined according to the most direct highway route between the injured worker's residence and the provider.

¶10 The insurer argues the rule has no relevance in this case where it was not in effect on the date of injury. The Court agrees. *See*, *Buckman, supra*. Moreover, ARM 24.29.1409, in any event, impliedly excludes in-town travel as a reimbursable expense. The rule provides that mileage "shall be determined according to the most direct **highway route** between the injured worker's residence and the provider." (Emphasis added.) The phrase "highway route" in common language implies travel between cities and towns, not in-town travel, a

position consistent with the standard developed in the Workers' Compensation Court decisions referenced above. The rule is of no assistance to claimant in this claim.

JUDGMENT

¶11 Based on the foregoing discussion,

¶12 IT IS HEREBY ORDERED AND ADJUDGED that claimant is not entitled to reimbursement from respondent for in-town travel associated with treatment by health-care providers. The petition is **dismissed with prejudice**.

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

¶14 Any party to this dispute may have 20 days in which to request a rehearing from this summary judgment order and memorandum.

DATED in Helena, Montana, this 28th day of August, 2000.

(SEAL)

/s/ Mike McCarter
JUDGE

c: Mr. David H. Petry - Certified Mail
Mr. Kelly M. Wills
Submitted: June 7, 2000.

1. In petitioner's motion for summary judgment and supporting brief, claimant, who is representing himself, states that "genuine issues of material fact do exist." (*Id*. at 1.) Nevertheless, he also lists as uncontested those facts noted above, stating, "The following facts are found in the Petition for Hearing and in documents by myself, petitioner. For purposes of this motion, petitioner agrees that these facts, statements 1 through 5, are correct and uncontested." (*Id*. at 2.) From the context of petitioner's motion for summary judgment and supporting brief, it appears that by stating "genuine issues of material fact do exist," claimant intended that he did not agree with the insurer's position in this case, not that particular facts were disputed. In any event, claimant has not set forth any specific facts which establish a genuine issue of material fact precluding summary judgment, as required by ARM section 24.5.329(3). More importantly, both parties have recited the same essential facts as uncontested.

2. The 1989 legislature amended section 39-71-704, MCA, to include the following provision:

> (c) The insurer shall reimburse a worker for reasonable travel expenses incurred in travel to a medical provider for treatment of an injury pursuant to rules adopted by

> the department. Reimbursement must be at the rates allowed for reimbursement of travel by state employees.

In 1993, the subsection, which then became (d) of section 704, was amended to read:

> The insurer shall reimburse a worker for reasonable travel expenses incurred in travel to a medical provider for treatment of an injury only if the travel is incurred at the request of the insurer. Reimbursement must be at the rates allowed for reimbursement of travel by state employees.

The 1999 Act continues the 1993 language. These provisions, of course, became effective after claimant's injury and do not govern the present matter.