

IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

1996 MTWCC 20

WCC No. 9502-7230

CATHERINE E. SATTERLEE

Petitioner

vs.

LUMBERMEN'S MUTUAL CASUALTY COMPANY

Respondent/Insurer for

BUTTREY FOOD & DRUG

Employer.

ORDER DENYING POST-TRIAL MOTIONS

On January 25, 1996, this Court entered its Findings of Fact, Conclusions of Law and Judgment, finding that petitioner is not permanently totally disabled on account of an industrial injury to her neck. Petitioner (claimant) has now moved in the alternative for rehearing or to amend the decision.

Specifically, claimant asserts that she has proven that she suffers from disabling pain and that she should be determined to be permanently totally disabled. She argues that the Court has disregarded her testimony concerning her pain and substituted its own "personal belief as to what level of pain CATHERINE SATTERLEE can endure without any evidence to support its conclusion." (Catherine Satterlee's Combined Post-Trial Motions at 4.)

The claimant misapprehends the Court's decision. I did not find that her pain is other than she claims. Indeed, I believe that she truthfully reported her pain.

However, there are two other factors I was required to consider. First, I had to consider the relationship of the pain to the injury. Second, I was required to apply the rule that a "determination of permanent total disability must be supported by a preponderance of medical evidence." § 39-71-703(2), MCA (1991).

With regard to the relationship of the pain to the injury, Dr. Dana Headapohl, the only physician who testified in this proceeding, said that claimant's underlying psychological condition is amplifying her pain. The psychological condition to which Dr. Headapohl referred is claimant's severe depression and grief arising from the deaths of close family

members. There was other evidence, principally from medical records, indicating that claimant had experienced depression and grief prior to her industrial accident. However, she required only short term treatment and had been able to continue to work for two years without medical or psychological assistance. Then following her industrial accident, she experienced a series of additional personal losses which led to major, chronic depression.

Pain has both physiological and psychological components. It is physiological in that pain receptors are involved and trigger a physical sensation. It is psychological in the sense that individuals vary in their perception and response to pain; their perception and response may be affected by psychological factors, including, as in this case, depression. There was unrefuted medical testimony that claimant's pain has a psychological component. (The evidence also showed that claimant's psychological condition is in itself disabling.) Dr. Headapohl testified that resolution of emotional stressors may reduce claimant's pain, although she was of the opinion that claimant would still suffer from pain. On the other hand, she opined that if motivated claimant can overcome her pain and return to work.

Under the general rule that the employer takes the worker as it finds her, the insurer is liable for a psychological condition caused or aggravated by a work-related physical injury. See *O'Neil v. Industrial Accident Board*, 107 Mont. 176, 183, 81 P.2d 688 (1938); *Schumacher v. Empire Steel Manufacturing*, 175 Mont. 411, 574 P.2d 987 (1977). Thus, pain which results from the injury but which is amplified by a preexisting psychological condition is compensable.

In this case I concluded that the principal psychological factors amplifying claimant's pain were unrelated to and arose subsequent to her injury. Therefore, I reasoned that claimant's amplified pain should be segregated from the base-line pain which is attributable to the injury itself. Claimant did not persuade me that but for the subsequent deaths of family members she would be unable to work.

The original decision in this case was premised on a second, independent ground which claimant has not addressed in her motion. As enacted by the 1987 legislature, section 39-71-703(2), MCA (1991), requires that any "determination of permanent total disability must be supported by a preponderance of medical evidence." Under the definition of permanent total disability, that medical evidence must establish that claimant "has no reasonable prospect of physically performing regular employment." § 39-71-116(16), MCA (1991). The medical evidence presented in this case does not support a finding of total disability.

ORDER

The post-trial motions are **denied**.

Dated in Helena, Montana, this 23rd day of February, 1996.

(SEAL)

/s/ Mike McCarter

JUDGE

c: Mr. Bernard J. Everett

Mr. Thomas A. Marra

Submitted: February 16, 1996