IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

1994 MTWCC 85

WCC No. 9403-7018

JOHN SMART

Petitioner

vs.

STATE COMPENSATION INSURANCE FUND

Respondent/Insurer for

THE MONTANA HISTORICAL SOCIETY

Employer.

ORDER DENYING MOTION FOR SUMMARY JUDGMENT

This matter arises under the Occupational Disease Act, Title 39, ch. 72, MCA, and involves a question of statutory interpretation. The matter is presented by way of a Motion for Summary Judgment filed by petitioner, John Smart (Smart).

Factual Background

The following facts are set forth in the Petition for Hearing and admitted by the Response:

1. On October 29, 1992, a claim was filed by Petitioner for an injury arising out of and in the course of employment as an archival photographer with The Montana Historical Society. Petitioner is 46 years old and was employed by the Society for eleven years. Petitioner suffered numerous injuries that had been building up over the years, due to the toxicity of the dark room. He experienced nausea, headaches, chronic respiratory irritation, disorientation, memory loss and depression.

2. Petitioner suffered these injuries in the County of Lewis and Clark.

3. The Division of Worker's Compensation Fund accepted the claim under the Occupational Disease Act.[(1)]

Smart also alleges that he is "disabled" within the meaning of the Occupational Disease Act, a contention that the State Fund denies. However, in its brief the State Fund states: "Respondent agrees that the Petitioner is unable to return to his previous position as an

archival photographer for the Montana Historical Society." (Reply Brief to Petitioner's Motion for Summary Judgment at 1.)

Smart, further contends that he is not only disabled from returning to his time-of-job injury but "that he cannot perform any job within his profession as he cannot be exposed to photographic chemicals." (Motion for Summary Judgment at 3.) The State Fund apparently does not dispute this contention since it responds, "Petitioner is capable of regular employment *even though* it is outside of his previous employment in photography." (Reply Brief to Petitioner's Motion for Summary Judgment at 3; italics added.)

Discussion

In seeking summary judgment Smart does **not** contend that he is incapable of returning to any sort of employment. Rather, he argues that his entitlement to benefits is not limited to the $10,000 maximum benefit amount available under section 39-72-405 (2), MCA, because his inability to return to his time-of-injury profession satisfies the definition of "disablement," section 39-72-102 (4), MCA (1991), and entitles him to total disability benefits. His argument is premised on the words "worker's job pool" found in section 39-72-102 (4), MCA (1989). The section provides:

(4) "Disablement" means the event of becoming physically incapacitated by reason of an occupational disease from performing work in the worker's job pool. Silicosis, when complicated by active pulmonary tuberculosis, is presumed to be total disablement. "Disability", "total disability", and "totally disabled" are synonymous with "disablement", but they have no reference to "permanent partial disability".

Smart argues that "worker's job pool," which is not otherwise defined within the Occupational Disease Act, refers to the worker's usual profession at the time of his injury and does not encompass other jobs for which the worker may be qualified and capable of performing. He argues that since he cannot return to photography he meets the definition of disablement and is entitled to total disability benefits, presumably under section 39-72-701 (1), MCA, although he does not identify a specific section.

The State Fund disagrees. It urges the Court to a construe the term "worker's job pool" consistently with the definition of that term found in the Workers' Compensation Act, section 39-71-1011 (7) (a), MCA (1987), a definition which was repealed in 1991, 1991 Montana Laws, ch. 574, § 8.

The touchstone in interpreting statutes is legislative intent. In construing a statute the function of a court is to "effectuate the intent of the legislature." ***Minervino v. University of Montana,*** *258 Mont. 493, 496, 853 P.2d 1242 (1993).* However, legislative intent is ordinarily gleaned from the plain meaning of the statute, ***Holly Sugar v. Department of Revenue,*** *252 Mont. 407, 412, 830 P.2d 76 (1992);* and, where legislative intent can be determined from the plain meaning of the words used in the statute, a court can go no further, ***State ex rel. Neuhausen v. Nachtsheim,*** *253 Mont. 296, 299, 833 P.2d 201 (1991).*

Thus, the Court must initially determine whether the meaning of "worker's job pool" is plain. If it is, then the words speak for themselves and must be applied as written.

In support of his plain meaning argument, Mr. Smart invokes Black's Law Dictionary (5th ed.):

The plain meaning of the term "pool" is defined in Black's Law Dictionary as, "a combination of ...engaging in a particular business . . ." Black's Fifth Edition. A job is an individual's profession and thus, the plain meaning of "worker's job pool" is engaging in a particular profession. The interpretation suggested by the State Fund, "goes further" than the plain meaning, of the phrase and should not be upheld.

Response to Respondent's Reply to Petitioners [Sic] Motion for Summary Judgment at 4 (ellipses and punctuation as in the original). The definition supplied by Smart is incomplete. The complete definition is as follows:

Pool. A combination of persons or corporations engaged in the same business, or for the purpose of engaging in a particular business or commercial or speculative venture, where all contribute to a common fund, or place their holdings of a given stock or other security in the hands and control of a managing member or committee, with the object of eliminating competition as between the several members of the pool, or of establishing a monopoly or controlling prices or rates by the weight and power of their combined capital, or of raising or depressing prices on the stock market, or simply with a view to the successful conduct of an enterprise too great for the capital of any member individually, and on an agreement for the division of profits or losses among the members, either equally or pro rata. Also, a similar combination not embracing the idea of a pooled or contributed capital, but simply the elimination of destructive competition between the members by an agreement to share or divide the profits of a given business or venture, as, for example, a contract between two or more competing railroads to abstain from "rate wars" and (usually) to maintain fixed rates, and to divide their earnings from the transportation of freight in fixed proportions. Such type pooling arrangements are illegal under the Sherman Antitrust Act. *See also* **Cartel; Trust.**

In various methods of gambling, a "pool" is a sum of money made up of the stakes contributed by various persons, the whole of which is then wagered as a stake on the event of a race, game, or other contest, and the winnings (if any) are divided among the contributors to the pool pro rata. Or it is a sum similarly made up by the contributions of several persons, each of whom then makes his guess or prediction as to the event of a future contest or hazard, the successful bettor taking the entire pool. Such pools are distinct from the practice of bookmaking. U.S. v. Berent, C.A.Nev., 523 F.2d 1360, 1361.

A body of standing water, without a current or issue, accumulated in a natural basin or depression in the earth, and not artificially formed. *See* **Pond.**

A complete reading of that part of the definition which is selectively quoted by Smart shows that the definition is referring to business ventures, not the labor markets of employees.

Smart provides no other citation for his contention that "worker's job pool" is plain on its face, and, outside of the Montana Workers' Compensation Act, in its own research the Court has found no definition of that term, or even a definition of "job pool." A review of Words and Phrases does not disclose any decision defining either of those terms. Similarly, those terms are not defined in Roberts' Dictionary Of Industrial Relations (Rev. Ed. 1971), a volume which is available at the Montana State Law Library. (Robert's is the only occupational dictionary available at the State Law Library and State Library.)

On its part, the State Fund argues that OD provisions concerning permanent partial disability require an expansive interpretation of "worker's job pool." Section 39-72-703, MCA, provides: "No compensation as provided in 39-72-701 is payable to an employee who is partially disabled from an occupational disease." However, section 39-72-405 (2), MCA (1991), provides

(2) When any employee in employment on or after January 1, 1959, because he has an occupational disease incurred in and caused by such employment which is not yet disabling, is discharged or transferred from the employment in which he is engaged or when he ceases his employment and it is in fact, as determined by the medical panel, inadvisable for him on account of a nondisabling occupational disease to continue in employment and he suffers wage loss by reason of the discharge, transfer, or cessation, the department may allow compensation on account thereof as it considers just, not exceeding $10,000.00.

This section clearly contemplates situations where a claimant can no longer work at his or her time-of-injury job but is still capable of working at some sort of gainful employment. The State Fund notes that under the Workers' Compensation Act, the ability to work at any sort of employment means that at most the worker is permanently partially disabled, and argues that the same standard applies under the Occupational Disease Act. An examination of the cases cited by the State Fund, however, shows that the cited decisions involve an application of a pre-1987 Workers' Compensation Act provision which defines permanent total disability in terms of "*no reasonable prospect of finding regular employment of any kind in the normal labor market*." ***Keene v. The Anaconda Co.,*** *201 Mont. 102, 106, 652 P.2d 216 (1982);* ***Daniels v. Kalispell Regional Hospital,*** *230 Mont. 407, 412, 750 P.2d 455 (1988).* Section 39-72-405 does not on its face require a conclusion that the ability to perform any sort of employment means that the worker is not disabled within the meaning of section 39-72-102 (4), MCA. By using the language "not yet disabling," the section by implication refers back to section 39-72-102 (4), MCA, for a definition of disabling and disability.

I therefore conclude that the words "worker's job pool" do not on their face have a plain, commonly understood meaning. The words are not further defined by the Occupational Disease Act and are ambiguous. Therefore, resort to other aids to statutory construction is required to determine the legislature's intended meaning of the words. ***See Shannon v. Keller,*** *188 Mont. 224, 612 P.2d 1293 (1980).*

Smart argues that the liberal construction rule requires that the statute be interpreted in his favor. That rule, previously found at section 39-72-104, MCA, was repealed in 1987. 1987 Montana Laws, ch. 464, § 68.

In determining legislative intent it is appropriate to "resort to the history of the statute." ***Department of Revenue v. Puget Sound Power & Light Co.,*** *179 Mont. 255, 263, 587 P.2d 1282 (1978).* Resort to legislative history in this case clears up the ambiguity at issue.

The words "worker's job pool" were inserted into the Occupational Disease Act by the 1987 Montana legislature. The amendment is found at section 64 of chapter 464, 1987 Montana Laws. Chapter 464 extensively revised the Workers' Compensation Act, as well as amending the Occupational Disease Act. Among the revisions to the Workers' Compensation Act were new provisions governing rehabilitation and the return to work of injured workers, including establishment of rehabilitation panels. Those provisions, which were codified in part 10 of chapter 71, Title 39 (1987), use the term "worker's job pool" and specifically define that term as follows:

(7) (a) "Worker's job pool" means those jobs typically available for which a worker is qualified, consistent with the worker's age, education, vocational experience and aptitude and compatible with the worker's physical capacities and limitations as the result of the worker's injury. Lack of immediate job openings is not a factor to be considered.

(b) A worker's job pool may be either local or statewide, as follows:

(i) a local job is one either in a central city that has within its economically integrated geographical area a population of less than 50,000 or in a city with a population of more than 50,000 as determined by the division; or

(ii) a statewide job is one anywhere in the state of Montana.

1987 Montana Laws, ch. 464, § 34 (7); codified at § 39-71-1011 (7), MCA (1987).

In amending the Occupational Disease Act "[t]he legislature is presumed to have full knowledge of existing laws." ***Thiel v. Taurus Drilliing Ltd. 198-II,*** *218 Mont. 201, 207, 710 P.2d 33 (1985).* Just as surely, the legislature must be presumed to have full knowledge of the other provisions of a legislative bill it enacts during the legislative session. In inserting "worker's job pool" the 1987 legislature must therefore be presumed to have been aware of the definition it was inserting into the Workers' Compensation Act. Failing to set forth any further or different definition when amending the Occupational Disease Act, it must be further presumed that the legislature intended the words "worker's job pool" to have the same meaning as in the Workers' Compensation Act.

Therefore, as used in section 39-72-102 (4), MCA (1991), "worker's job pool" means "those jobs typically available for which a worker is qualified, consistent with the worker's age, education, vocational experience and aptitude and compatible with the worker's physical capacities and limitations as a result of the worker's injury" § 39-71-1011 (7), MCA (1987).

ORDER

The motion of summary judgment is **denied.** Within twenty (20) days of this Order the petitioner shall notify the Court whether he wishes to continue to prosecute his petition for disability benefits. If he does, then this matter will be set for trial to determine whether petitioner is disabled within the meaning of section 39-72-102 (4), MCA (1991).

DATED in Helena, Montana, this 19th day of September, 1994.

(SEAL)

/s/ Mike McCarter
JUDGE

c: Ms. Linda J. Garofola Mr. Daniel J. Whyte

1. Smart's reference to the "Division" appears to be in error. The respondent herein is the State Fund, which states in its brief regarding summary judgment that it has "accepted liability pursuant to the Occupational Disease Act." (Reply Brief to Petitioner's Motion for Summary Judgment.)