IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

2004 MTWCC 7

WCC No. 2003-0893

LINDA SCOZZARI

Petitioner

vs.

MONTANA SCHOOLS GROUP INSURANCE AUTHORITY

Respondent/Insurer.

FINDINGS OF FACT, CONCLUSIONS OF LAW AND JUDGMENT

Summary: Claimant fell on ice at her place of employment, injuring her knees. Her supervisor told her to file a written claim but she failed to do so until more than two and a half years later even though she sought medical treatment for one of her knees within ten months of her injury.

Held: The claim is time-barred.

Topics:

Proof: Conflicting Evidence: Generally. Based on the Court's observation of the claimant's demeanor, claimant's expressed antipathy towards pursuing a workers' compensation claim, and her subsequent actions, the Court finds claimant's assertion that she dropped a claim off at her employer's office the day after the accident is **not** credible.

Limitations Periods: Claim Filing: Generally. Failure to file a claim within one year, as required by section 39-71-601(1), MCA (1999), is an absolute defense to a claim for benefits unless the one-year period is waived.

Limitations Periods: Claim Filing: Waiver of Time. Where a claimant is aware she was injured and in fact seeks medical care for her injuries within the one-year filing period prescribed by section 39-71-601(1), MCA (1999), and where immediately after the industrial accident she was specifically requested by her employer to file a written workers' compensation claim, but she refused or failed to do so, claimant is not entitled to a waiver of the one-year limitations period. § 39-71-601(2), MCA (1999).

Constitutions, Statutes, Rules, and Regulations: Montana Code Annotated: 39-71-601, MCA (1999). Failure to file a claim within one year, as required by section 39-71-601(1), MCA (1999), is an absolute defense to a claim for benefits unless the one-year period is waived.

Constitutions, Statutes, Rules, and Regulations: Montana Code Annotated: 39-71-601, MCA(1999). Where a claimant is aware she was injured and in fact seeks medical care for her injuries within the one-year filing period prescribed by section 39-71-601(1), MCA (1999), and where immediately after the industrial accident she was specifically requested by her employer to file a written workers' compensation claim, but she refused or failed to do so, claimant is not entitled to a waiver of the one-year limitations period. § 39-71-601(2), MCA (1999).

¶1 The trial in this matter was held on January 29, 2004, in Billings, Montana. Petitioner, Linda Scozzari (claimant), was present and represented by Mr. R. Russell Plath. Respondent, Montana Schools Group Insurance Authority (MSGIA), was represented by Mr. Leo S. Ward.

¶2 Exhibits: Exhibits 1 through 4 were admitted without objection.

¶3 Witnesses and Depositions: Linda Scozzari, Michael Sullivan, and Deborah Strizich testified. No depositions were taken or submitted.

¶4 Issues Presented: The Court restates the issues as follows:

¶4a Did the claimant submit a written claim with respect to a November 17, 2000 fall at work to her employer within the one year required by section 39-71-601(1), MCA (1999)?

¶4b If not, should the one-year filing requirement be waived?

¶5 Having considered the Pretrial Order, the testimony presented at trial, the demeanor and credibility of the witnesses, exhibits, and the arguments of the parties, the Court makes the following:

FINDINGS OF FACT

¶6 At the times material to this petition, the claimant was a teacher at Lockwood Middle School in Billings, Montana. She teaches Spanish.

¶7 On November 17, 2000, claimant fell on ice at work. Her fall occurred outside the school pod where her classroom was located. The fact of her fall is undisputed.

¶8 Claimant landed on her knees. She suffered a laceration of the left knee, which bled. Claimant was shaken up and required assistance in getting up and going to her classroom.

¶9 Michael Sullivan (Sullivan), the school's principal, was notified of the fall, went to the claimant's classroom, and visited with her. He urged the claimant to go to the emergency room at the hospital; she declined. At trial she testified she did not want medical care or workers' compensation because of a prior bad experience with workers' compensation. The details of the prior claim were not provided to the Court and are not material to the present case. The important fact is that on account of her prior experience with workers' compensation the claimant did not want to seek medical care or pursue a workers' compensation claim.

¶10 On November 18, 2000, Sullivan had a further conversation with the claimant and told her she should fill out a report even if she declined medical care. He gave her a First Report of Injury to fill out. Claimant admitted at trial that she still did not want to file a report.

¶11 On April 25, 2003, the claimant underwent arthroscopic surgery on her left knee for a medial meniscus tear and osteoarthritis. (Ex. 4 at 73.)

¶12 The Lockwood School District has no record of receiving a written claim from the claimant. A First Report of Injury **was** filed on July 8, 2003, by the School District **after** the claimant had surgery on her left knee and the claimant had notified Deborah Strizich (Strizich), the administrative secretary for the school district, of her surgery and asked for a claim number.

¶13 Claimant testified that on November 18, 2000, she filled out the form and left it in Sullivan's in-box in the middle school's administration office. According to claimant, neither Sullivan, his secretary, nor anyone else was in the office when she left off the claim. Claimant testified that Sullivan's in-box was just inside and next to the door of his secretary's office.

¶14 Sullivan testified credibly that his in-box was never inside the door of his secretary's office but was always behind her desk, and that a written claim from claimant was never left in his box. He also testified that under no circumstances would his office been left unstaffed and unlocked.

¶15 The initial factual question presented in this case is therefore whether the claimant in fact left a written claim for compensation in Sullivan's box as she claims. Based on my evaluation of claimant's credibility and the credibility of both Sullivan and Strizich, I find that claimant did **not** leave a written claim in Sullivan's box on November 18, 2000, or at any other time, and that she in fact never filled out the form despite Sullivan's urging that she do so. I also do not believe her testimony concerning statements by Sullivan and Strizich in 2003 that could be viewed as indicating their knowledge that she had previously filed a claim. Sullivan and Strizich denied making the statements and they were the more credible witnesses.

¶16 In reaching these findings, I have not only relied on my own perception of the claimant and her testimony at trial but also on other facts and circumstances which lend support to my perception. I note initially that claimant admits she did not want to pursue a workers' compensation claim. As outlined below, other evidence fails to support her claim that she had a change of heart.

¶17 Claimant saw her family practitioner, Dr. Shelly Castles, on November 30, 2000, less than two weeks after her fall. The visit was unrelated to claimant's fall and Dr. Castles' office note does not mention any fall. (Ex. 6 at 37.) But claimant testified at trial that she told Dr. Castles about the fall, thus suggesting that Dr. Castle's notes were inaccurate or at least incomplete. This is just one of several inconsistencies between what she claims she told her physicians and what is recorded in her medical records.

¶18 Claimant elaborated on her alleged conversation with Dr. Castles on November 30, 2000, testifying that she told Dr. Castles that she was hopeful that she suffered no serious injury to her knees and that she did not want to get workers' compensation involved. Her testimony was consistent with her admission that she told Sullivan she did not want to involve workers' compensation, and with her obvious opposition to involving workers' compensation. It is inconsistent with her contention that she filled out a claim and left it in Sullivan's office.

¶19 On August 7, 2001, claimant went to Same Day Care in Billings complaining of **right** knee and hip pain. (Ex. 4 at 5, emphasis added.) She told the physician who saw her that "her right knee has been hurting ever since she slipped on the ice **last October**.[(1)] She fell again in November." (*Id.*, emphasis added) This medical record shows that claimant by that time was seeking medical care for injuries she thought were related to her November 2000 industrial accident.

¶20 Claimant paid for the August 7, 2001 visit concerning her right knee complaints; she did not submit it to workers' compensation. Her payment was consistent with her admitted aversion to pursuing a workers' compensation claim.

¶21 Claimant continued to experience **right** knee pain after August 7, 2001. A month later, on September 9, 2001, she went to Dr. Robert S. Schultz, an orthopedic surgeon. She reported, "Right hip and leg pain." Dr. Schultz recorded:

> This is a 51-year-old school teacher who lives in Billings and teaches in Lockwood. She has had a history of some intermittent problems with her right leg. These have become more acute in the last several months. **She denies any specific injury.** . . .

(Ex. 4 at 56, emphasis added.) Dr. Schultz's office note is significant for the statement that claimant denied any specific injury. The statement is consistent with her aversion to seeking workers' compensation and inconsistent with her present assertion that she submitted a claim for compensation the day after her November 2000 fall.

¶22 The present case involves claimant's **left** knee. The first medical record of any complaint regarding her left knee was on December 27, 2002 (Ex. 4 at 13), more than two years after her fall. On that visit she was seen by her family physician for unrelated medical problems. The doctor's note, however, records her left knee complaints:

> [S]he is also complaining of some left-sided knee pain, as knee pain has been present for approximately two months. It is causing her to limp at times. . . .

(*Id.*)

¶23 On April 7, 2003, claimant was diagnosed as suffering from a torn medial meniscus of the left knee. (*Id.* at 53, 76.) On April 25, 2003, she underwent arthroscopic surgery to repair the meniscus. (*Id.* at 73.) It is the left knee condition and surgery which caused claimant to pursue and litigate a claim for compensation with respect to her November 2000 fall.

¶24 In light of the history outlined above, I have grave doubt as to whether claimant's left knee condition, for which she underwent surgery on April 25, 2003, was in fact due to her fall on November 17, 2000. There are no medical opinions addressing the causation question and the lapse of time from her fall until her first complaints of left knee pain certainly raise a significant causation issue. MSGIA denies there is any causal relationship between the claimant's November 2000 fall and her left knee surgery, however, the only issue presented at trial is whether the claimant filed a timely workers' compensation claim. I therefore do not consider causation.

CONCLUSIONS OF LAW

¶25 This case is governed by the 1999 version of the Montana Workers' Compensation Act since that was the law in effect at the time of the claimant's industrial accident. *Buckman v. Montana Deaconess Hospital,* 224 Mont. 318, 321, 730 P.2d 380, 382 (1986).

¶26 Claimant bears the burden of proving by a preponderance of the evidence that she is entitled to the benefits she seeks. *Ricks v. Teslow Consolidated,* 162 Mont. 469, 512 P.2d 1304 (1973); *Dumont v. Wicken Bros. Construction Co.*, 183 Mont. 190, 598 P.2d 1099 (1979).

¶27 Section 39-71-601, MCA (1999), provides as follows:

> **39-71-601. Statute of limitation on presentment of claim -- waiver.** (1) In case of personal injury or death, all claims must be forever barred unless signed by the claimant or the claimant's representative and presented in writing to the employer, the insurer, or the department, as the case may be, within 12 months from the date of the happening of the accident, either by the claimant or someone legally authorized to act on the claimant's behalf.

(2) The insurer may waive the time requirement up to an additional 24 months upon a reasonable showing by the claimant of:

(a) lack of knowledge of disability;

(b) latent injury; or

(c) equitable estoppel.

(3) Any dispute regarding the statute of limitations for filing time is considered a dispute that, after mediation pursuant to department rules, is subject to jurisdiction of the workers' compensation court.

The statute required claimant to submit her written claim for compensation within twelve months unless the Court finds grounds under section 39-71-601(2), MCA, for waiving the requirement.

¶28 I have found as a matter of fact that the claimant did not submit a written claim within one year of her injury. I also find no basis for extending the period for filing a claim. There is no estoppel since the employer specifically asked her to file a claim; she simply refused to do so. Her injury was not latent: she testified that one of her knees was bleeding following the fall and in August 2001. Moreover, ten months following her industrial accident, and almost two years prior to her actually filing a claim, she sought medical care with respect to one of her knees, making a deliberate choice to pay for her own care rather than submit it to workers' compensation. For the same reason, it should have been apparent to her as early as August 2001, that she might have suffered some sort of disability; at least she was aware that she needed medical care. I therefore find that her claim is time-barred.

JUDGMENT

¶29 The claim is time-barred.

¶30 This JUDGMENT is certified as final for purposes of appeal.

¶31 Any party to this dispute may have twenty days in which to request a rehearing from these Findings of Fact, Conclusions of Law and Judgment.

DATED in Helena, Montana, this 17th day of February, 2004.

(SEAL)

\s\ Mike McCarter
JUDGE

c: Mr. R. Russell Plath
Mr. Leo S. Ward
Submitted: January 29, 2004

1. Claimant testified at trial that she had also fallen in October 2000. She did not file a claim with the school district with respect to that fall.