

IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

2003 MTWCC 17

WCC No. 2002-0695

BRAD STECK

Petitioner

vs.

LIBERTY MUTUAL NORTHWEST

Respondent/Insurer.

ORDER DENYING MOTION TO DISMISS BUT LIMITING ISSUES

Summary: Claimant suffered a foot and ankle injury on February 7, 2000, but reached maximum medical improvement from that injury on May 25, 2000, without impairment or physical restrictions. In September 2000, he reinjured his ankle. In a November 17, 2000 letter to claimant, the insurer denied liability for medical treatment for the reinjury. On November 21, 2002, more than 2 years after the denial, the claimant petitioned the Court for medical and compensation benefits. The insurer moved to dismiss, arguing that the petition is time barred by section 39-71-2905(2), MCA (1999).

Held: Any claim for medical care attributable to the September 2000 reinjury is time barred under section 39-71-2905(2), MCA (1999), which provides, "A petition for hearing before the workers' compensation judge must be filed within 2 years after benefits are denied." However, the evidence tendered by claimant arguably shows that some treatment subsequent to September 2000 is attributable solely to the industrial injury and not the reinjury. A claim with respect to such treatment is not time barred since the denial of liability extended only to treatment of the reinjury. Moreover, the claim for compensation benefits was not subject to the denial and is therefore not time barred.

Topics:

Constitutions, Statutes, Rules, and Regulations: Montana Code Annotated: 39-71-2905(2), MCA (1999). Petition seeking medical benefits is time barred under section 39-71-2905(2), MCA, where commenced more than 2 years after the denial of the benefits. However, the bar does not extend to medical benefits which were not within the scope of the denial.

Limitations Periods: Petition Filing. Petition seeking medical benefits is time barred under section 39-71-2905(2), MCA, where commenced more than 2 years after the denial of the benefits. However, the bar does not extend to medical benefits which were not within the scope of the denial.

Procedure: Motion to Dismiss. Motion to dismiss based on statute of limitation is appropriate where the petition demonstrates on its face that it is time barred.

¶1 Petitioner, Brad Steck (claimant), petitions this Court for medical benefits and "appropriate compensation benefits including the payment of permanent partial disability if so warranted." (Petition for Hearing at 3.) Liberty Mutual Northwest (Liberty) moves to dismiss the claimant's petition as barred by the 2-year statute of limitations found in section 39-71-2905(2), MCA (1999), which provides:

(2) A petition for hearing before the workers' compensation judge must be filed within 2 years after benefits are denied.

I. Procedural Matters

¶2 A motion to dismiss lies on statute of limitations grounds if it appears from the petition that the action is time barred. *Beckman v. Chamberlain*, 673 P.2d 480, 482 (1983). In the present case, the bar does not appear from the face of the petition. The motion is based upon affidavits and documents. Thus, it is better characterized as a motion for summary judgment. The facts submitted to the Court appear largely undisputed and the parties have indicated a need for a quick decision because of scheduled depositions. If the motion is granted, the depositions will be unnecessary. Therefore, I will treat the motion as one for summary judgment. I recognize that the parties are ordinarily entitled to prior notice that the Court intends to convert a motion to dismiss to one for summary judgment, however, the failure to do so in this case should be harmless in light of the disposition of the motion. If either party believes that the lack of prior notice in this regard is prejudicial, the party should notify the Court within ten days of the Order of its belief and the Court will consider reopening and reconsidering the matter.

II. Facts

¶3 The following facts appear to be undisputed:

¶3a On February 7, 2000, claimant injured his right ankle or foot while working for Mostad Construction in Missoula, Montana. (Pleadings.)

¶3b At the time of the injury, Mostad was insured by Liberty and Liberty accepted liability for the claim. (Pleadings.)

¶3c On May 25, 2000, claimant's treating physician - Dr. Glenn J. Jarrett reported that claimant had reached maximum medical improvement (MMI) without permanent

impairment and that he could return to his time-of-injury job without restrictions. (Ex. C to 12/17/02 Affidavit of Vicky Vandeburgh.)

¶13d On September 20, 2000, Liberty's claims adjuster received a medical report dated September 6, 2000, indicating that claimant had reinjured his right ankle while dancing. (12/17/02 Affidavit of Vicky Vandeburgh at 2.) The adjuster denied payment for the medical bill for treatment. (*Id.*)

¶13e On November 17, 2000, Liberty gave claimant written notice that it was denying liability for treatment related to his reinjury. (Ex. D to 12/17/02 Vandeburgh Affidavit.)

¶13f On May 11, 2001, Liberty's claims adjuster wrote to Dr. Michael Schutte regarding his treatment of claimant's ankle. Referring to claimant's subsequent injury while dancing, the letter stated that Liberty was not responsible for medical treatment caused by subsequent non work-related injuries. (Ex. 3 to Petitioner's Response in Opposition to Respondent's Motion to Dismiss.)

¶13g On October 30, 2001, Dr. Jarrett wrote to Liberty's adjuster. (Ex. E to 1/8/03 Affidavit of Vicky Vandeburgh.) In that letter he acknowledged that claimant suffered "some re-injury to the ankle while dancing," however, he went on to state that "he has had persistence of symptoms that I think, in all fairness to the patient, have to be related back to his initial injury." (*Id.*)

¶14 The present petition was filed November 21, 2002. (Court File.)

Discussion

¶15 Section 39-71-2905(2), MCA (1999), on its face requires that any petition for benefits be filed within two years following the insurer's denial of the requested benefits. The statute of limitations is not tolled by a request for mediation. The trigger is the denial of benefits and the limitations period commences running at that time. While a claimant must satisfy the mediation requirements, those requirements can easily be satisfied within the two-year period. The Court need not consider whether the statute might be tolled by a request for mediation filed within the limitations period but the mediation is not completed within the two years since there are no facts presented showing that occurred in the present case. Indeed, Petitioner's Response in Opposition to Respondent's Motion to Dismiss, page 2, ¶ 1, indicates that a mediation conference occurred on April 3, 2002, well within the two-year limitation.

¶16 I, therefore, conclude that the medical benefits sought by claimant for treatment in September 2000 are barred by the two-year limitation period set out in section 39-71-2905, MCA (1999). The claimant, however, has indicated that he seeks other medical benefits which are unrelated to his September 2000 reinjury. That contention raises factual issues

¶17 The benefits requested by claimant in September 2000, and denied by Liberty, were medical benefits for treatment of his ankle following a reinjury of the ankle while dancing. Liberty's denial of liability was limited to treatment for the reinjury. The adjuster's letter of November 17, 2000, states in full:

Dear Mr. Steck:

This letter is to inform you that your claim as listed above was closed in May of this year. Dr. Jarrett reported on May 25, 2000, that you were at maximum medical healing from your work related ankle injury of February 7, 2000.

On Monday September 18, 2000, we received a medical report of September 6, 2000, from Dr. Jarrett which indicated that you re-sprained your right ankle two days ago while dancing.

The workers compensation statute 39-71-407(5) indicates:

"If a claimant who has reached maximum healing suffers a subsequent nonwork-related injury to the same part of the body, the workers compensation insurer is not liable for any compensation or medical benefits caused by the subsequent nonwork-related injury."

We have denied liability for any medical treatment related to your re-injury of the right ankle of September 2000 while dancing.

Please feel free to call our office if you would like to discuss this matter further

Sincerely,

(Ex. D to 12/17/02 Affidavit of Vicky Vandeburgh, emphasis added.)

¶18 The scope of Liberty's denial is delimited by section 39-71-407(5), MCA (1999), which provides:

(5) If a claimant who has reached maximum healing suffers a subsequent nonwork-related injury to the same part of the body, the workers' compensation insurer is not liable for any compensation or medical benefits caused by the subsequent nonwork-related injury.

The limitation on liability does not relieve an insurer from liability for conditions that are unrelated to the subsequent injury or for continuing liability where there is an aggravation which is temporary or immaterial. See *Romero V. Liberty Mutual and State Fund*, 2001 MTWCC 5; *Montana Contractor Ins. Fund v. Liberty Northwest Ins. Corp*, 2003 MTWCC 10.

¶19 In the present case, the claimant has tendered a letter from his treating physician indicating that some medical treatment subsequent to September 2000, is attributable to the claimant's industrial injury and not to any aggravation or injury he suffered in September 2000. Dr. Jarrett's letter of October 30, 2001, at least raises a factual issue in that regard.

¶10 Moreover, the petition contains a request for compensation benefits, including permanent partial disability benefits (PPD). The motion to dismiss does not address that request.

¶11 I therefore conclude that any claim for medical benefits with respect to treatment for claimant's reinjury in September 2000 is time barred. However, any claim for treatment related only to the claimant's original industrial accident is not barred. Also, the claim for PPD compensation benefits has not been shown to be time barred.

ORDER

¶12 The motion to dismiss is **denied**, however, any claim for medical benefits with respect to treatment for claimant's reinjury in September 2000, is time barred.

¶13 If either party believes that the lack of prior notice in this regard is prejudicial, the party should notify the Court within ten days of this Order of its belief and the Court will consider reopening and reconsidering the matter.

DATED in Helena, Montana, this 10th day of March, 2003.

(SEAL)

\s\ Mike McCarter

JUDGE

c: Mr. James P. O'Brien

Mr. Larry W. Jones

Submitted: January 8, 2003