

IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

1997 MTWCC 63

WCC No. 9706-7764

BETTY M. TUCKER

Petitioner

vs.

STATE COMPENSATION INSURANCE FUND

Respondent/Insurer for

BOB WARD & SONS and ERIC R. REIMERS

Employer.

DECISION AND JUDGMENT

Summary: Claimant had settled two workers' compensation claims, one relating to a 1978 back injury. Her medical benefits remained open from that injury, but she and State Fund desired to settle her claim for medical benefits. They reached a settlement agreement, but the Department of Labor disapproved the settlement of medical benefits. Claimant filed a petition to challenge that disapproval.

Held: Having tried the matter informally with claimant representing herself, the Court satisfied itself that claimant understood and appreciated the risks involved with settling a claim for medical benefits. Under the circumstances of this case, the Court approved the settlement. Those circumstances included the facts that claimant has lived with back pain for many years, her physician opined that additional surgery was not likely, but that chiropractic might help, and State Fund denied chiropractic treatment on the ground it was maintenance care and not compensable.

Topics:

Settlements: Medical Benefits. Claimant and State Fund reached agreement to settle her entitlement to medical benefits, which had been left open following settlement of all other aspects of her claims, but the Department of Labor disapproved the settlement. Claimant petitioned the WCC to approve the settlement. Having tried the matter informally with claimant representing herself, the Court satisfied itself that claimant understood and appreciated the risks

involved with settling a claim for medical benefits. Under the circumstances of this case, the Court approved the settlement. Those circumstances included the facts that claimant had lived with back pain for many years, her physician opined that additional surgery was not likely, but that chiropractic might help, and State Fund denied chiropractic treatment on the ground it was maintenance care and not compensable.

This matter came on for trial on Monday, November 10, 1997. Petitioner, Betty M. Tucker (claimant), appeared on her own behalf. The State Compensation Insurance Fund (State Fund) was represented by Ms. Susan C. Witte. By agreement of the parties, the matter proceeded informally. In light of the informal nature of the proceedings, the decision of the Court will be in narrative form.

At issue is a compromise and release settlement agreement executed by claimant and the State Fund in 1995. A petition for approval of that settlement was presented to the Department of Labor and Industry (Department), which disapproved the petition on June 1, 1995. The Department then forwarded the petition to this Court for its review under section 39-71-2908, MCA. Noting that this Court's review under that section is limited to petitions "approved" by the Department, the Court returned the petition to the Department, indicating that the Court could not review the settlement under section 39-71-2908, MCA. However, the letter of the Court, which was dated June 8, 1995, advised the Department that the parties could file a petition with the Court if they wished to dispute the Department's action. Claimant did not learn of the Court's letter until much later.

Claimant filed her present petition on June 13, 1997, asking that the Court overrule the Department. The State Fund concurs in claimant's petition and joins in her request that the Court approve the settlement. The basic facts are not in dispute and are set forth in agreed exhibits submitted by the parties.

Claimant suffered a back injury in 1978 while working for Bob Ward & Sons, Incorporated. She underwent back surgery in 1984. In 1985, while working for Sun Mountain Sports, she experienced the onset of carpal tunnel syndrome. She underwent a carpal tunnel release on August 20, 1985.

Claimant has previously settled her claims for compensation benefits.

Since her surgeries, claimant has continued to experience symptoms, primarily with respect to her back. In 1995, claimant approached the State Fund with a request to settle her medical benefits. After negotiation, the State Fund agreed to pay claimant \$30,000 to close all medical liability with respect to the two injuries. However, as noted earlier, the Department disapproved the settlement.

After reviewing the exhibits submitted by the parties, and questioning the claimant, the Court is satisfied that the 1995 settlement is in the best interest of claimant. Claimant's

primary complaints relate to her back, and she has lived with back pain for almost two decades. Thirteen years have elapsed since her back surgery, and her treating physician has indicated that future surgical redress for her continuing complaints is unlikely. Her physician has recommended that she seek chiropractic adjustment on an as needed basis. The rub, however, is that the State Fund's consulting chiropractor has opined that further chiropractic care is palliative, or maintenance, in nature, thus putting the State Fund in the position of disputing payment for such care. A further rub results from the fact that claimant's treating physician no longer treats back conditions, a fact that would force claimant to seek a new treating physician and new evaluation in the event she chose to pursue her medical claim.

The amount of the settlement is substantial. The Court explained to claimant that in settling her entitlement to future medical benefits she takes the risk that her condition may deteriorate more significantly than she anticipates, causing her to incur greater than expected medical expenses. I also explained that despite assurances of her current health insurer that her conditions are covered, there is no guarantee that such assurances are enforceable or will continue in the future, and that it is possible that her regular health insurer might decline coverage based on its belief that her conditions are compensable under the Workers' Compensation Act. Claimant affirmatively stated that she is aware of and accepts those risks. The Court, on its part, finds that future workers' compensation coverage for claimant's medical care is not guaranteed and that there already exists a legitimate dispute concerning medical payments for her continued care. In view of the substantial amount of the settlement, I find that the risks claimant is willing to accept are reasonable and that her settlement should be, and is hereby, **approved**.

Therefore, it is hereby ordered and adjudged that the parties shall abide by all terms of their settlement agreement, which agreement is incorporated as a judgment of this Court.

DATED in Helena, Montana, this 14th day of November, 1997.

(SEAL)

\s\ Mike McCarter

JUDGE

c: Ms. Betty M. Tucker - Certified Mail

Ms. Susan C. Witte

Ms. Carol Gleed

Submitted: November 10, 1997