

IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

2003 MTWCC 43

WCC No. 2003-0794

**TIM TAVES, Beneficiary and Personal
Representative of the estate of Diane M. Taves**

Petitioner

vs.

AIU

Respondent/Insurer.

DECISION AND JUDGMENT DISMISSING PETITION

Summary: Surviving spouse brought petition for death benefits alleging that his wife died as a result of an occupational disease which had been accepted as compensable while she was still alive. The insurer disputed any causal connection between the disease and death and denied death benefits. It now moves to dismiss because the death benefits dispute was not mediated.

Held: Mediation is mandatory. Prior cases, cited by petitioner, holding that mediation of a denial of a claim encompasses subjacent issues of the particular benefits due a claimant are inapposite.

Topics:

Jurisdiction: Mediation. A denial of death benefits must be mediated prior to petitioning the Workers' Compensation Court for such benefits. Mediation of temporary total disability and medical benefits during the decedent's lifetime does not satisfy the mediation requirements. *Burner v. Uninsured Employers' Fund*, 1998 MTWCC 81 and *Dunn v. Indemnity Insurance Company of North America*, 2002 MTWCC 38 are distinguished. Those cases involved denials of liability and merely held that mediation of the denial encompassed subjacent or subsumed issues regarding the benefits due on account of the claim. Where a claim has been accepted and benefits paid during the deceased's lifetime and the request for death benefits is denied for a lack of causal connection between death and the occupational disease, that denial is a separate and distinct issue which must be mediated.

Constitutions, Statutes, Rules, and Regulations: Montana Code Annotated: section 39-71-2401, MCA (2001). A denial of death benefits must be mediated prior to petitioning the Workers' Compensation Court for such benefits. Mediation of temporary total disability and medical benefits during the decedent's lifetime does not satisfy the mediation requirements. *Burner v. Uninsured Employers' Fund*, 1998 MTWCC 81 and *Dunn v. Indemnity Insurance Company of North America*, 2002 MTWCC 38 are distinguished. Those cases involved denials of liability and merely held that mediation of the denial encompassed subjacent or subsumed issues regarding the benefits due on account of the claim. Where a claim has been accepted and benefits paid during the deceased's lifetime and the request for death benefits is denied for a lack of causal connection between death and the occupational disease, that denial is a separate and distinct issue which must be mediated.

Jurisdiction: Mediation. Mediation is a jurisdictional prerequisite to filing a petition in the Workers' Compensation Court.

Constitutions, Statutes, Rules, and Regulations: Montana Code Annotated: section 39-71-2905, MCA (2001). Mediation is a jurisdictional prerequisite to filing a petition in the Workers' Compensation Court.

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¶1 AIU moves to dismiss the petition of Tim Taves (Tim) for death benefits on the ground that the Court lacks jurisdiction over the petition on account of Tim's failure to mediate the issues raised in the petition. The motion is well taken.

Factual Background

¶2 Tim Taves is the surviving husband of Diane M. Taves, who suffered from disabling pulmonary disease as a result of her employment. Her occupational disease claim was accepted by AIU and she was receiving temporary total disability benefits at the time of her death.

¶3 On February 2, 2001, Diane fell from a horse. She was hospitalized as a result of the fall and ultimately died on April 30, 2001. Tim, on his own behalf and the Taves' minor child, Heather Taves, alleges that Diane's occupational pulmonary disease caused or contributed to her death. AIU disputes the allegation and denies liability.

Discussion

¶4 Mediation of disputes is required by section 39-71-2401, MCA, which provides in relevant part:

39-71-2401. Disputes -- jurisdiction -- settlement requirements -- mediation. (1) A dispute concerning benefits arising under this chapter or chapter 72, other than the disputes described in subsection (2), must be brought before a department mediator as provided in this part. If a dispute still exists after the parties satisfy the mediation requirements in this part, either party may petition the workers' compensation court for a resolution.

(2) A dispute arising under this chapter that does not concern benefits or a dispute for which a specific provision of this chapter gives the department jurisdiction must be brought before the department.

Mediation of a dispute is a jurisdictional prerequisite to commencing any action in the Workers' Compensation Court. Section 39-71-2408(1), MCA, provides:

39-71-2408. Mandatory, nonbinding mediation. (1) Except as otherwise provided, in a dispute arising under chapter 71 or 72 of this title, the insurer and claimant shall mediate any issue concerning benefits and the mediator shall issue a report following the mediation process recommending a solution to the dispute before either party may file a petition in the workers' compensation court.

Section 39-71-2905, MCA, which is the general grant of jurisdiction to the Workers' Compensation Court, further provides in relevant part:

39-71-2905. Petition to workers' compensation judge -- time limit on filing. (1) A claimant or an insurer who has a dispute concerning any benefits under chapter 71 of this title may petition the workers' compensation judge for a determination of the dispute after satisfying dispute resolution requirements otherwise provided in this chapter.

¶15 Initially, Tim does not dispute that the claim for death benefits has not been mediated. While Diane previously mediated disputes concerning temporary total disability and medical benefits, (see Ex. C to Petitioner's Response to Respondent's Motion to Dismiss), those mediations occurred during her lifetime.

¶16 Tim argues that the mediation requirement has been met because of the prior mediations involving Diane. He cites this Court's prior decisions in *Burner v. Uninsured Employers' Fund*, 1998 MTWCC 81 and *Dunn v. Indemnity Insurance Company of North America*, 2002 MTWCC 38. Tim's reading of the holdings in the two cited cases is erroneous. Both of those cases involved denials of all liability. The denials were mediated. Since the denials of liability were total, I held that mediation of the denial encompassed all subjacent issues, including temporary total disability benefits (*Burner*) and permanent partial disability benefits (*Dunn*). This is not such a case. The issue of death benefits is not remotely connected to, subsumed in, or subjacent to the issues previously mediated by Diane during her lifetime. It is a distinct, new issue arising only upon her death. It should have been, and must be, mediated before petitioning the Court.

¶7 Finally, I note that Tim's attorney has filed an affidavit which indicates that the petition was filed because the limitations period may have been running short. Even if true, it is not grounds for waiving the mediation requirement. The mediation provisions do not contain any exception relieving a claimant of his or her failure to timely seek mediation.

JUDGMENT

¶8 The Workers' Compensation Court lacks jurisdiction over the dispute alleged in the petition since it was not mediated as required by section 39-71-2401, MCA. Therefore, the petition in this matter is **dismissed without prejudice**.

DATED in Helena, Montana, this 16th day of June, 2003.

(SEAL)

\s\ MIKE McCARTER

JUDGE

c: Ms. Sara R. Sexe

Ms. Melanie S. Pfeifer

Submitted: June 11, 2003