

IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

2003 MTWCC 37

WCC No. 2003-0761

LENNIE J. THOMPSON

Petitioner

vs.

LIBERTY NORTHWEST INSURANCE CORPORATION

Respondent/Insurer.

DECISION, ORDER AND JUDGMENT DISMISSING PETITION

Summary: Claimant brought a petition seeking an extension of the date he reached maximum medical improvement, an increase in his impairment rating, and a declaration that unspecified workers' compensation laws are unconstitutional. Respondent moved to dismiss on *res judicata* grounds and for failure to mediate some of the issues.

Held: The date of claimant's maximum medical improvement was determined in a previous action, thus, lacking any allegation that his medical condition subsequently deteriorated, his claim in that regard is barred by the doctrine or *res judicata*. His claim for additional impairment benefits is premature since it was not mediated and his constitutional claim is so vague as to fail to state a claim, and in any event, is tied to his other dismissed claims.

Topics:

Judgments: Res Judicata. A party may not relitigate a matter which has been specifically decided in a prior action.

Judgments: Res Judicata. The "opportunity to litigate" rule of *res judicata* in the context of workers' compensation litigation applies only to issues which are related to the actual issues raised and litigated in a prior proceeding.

Jurisdiction: Mediation. Mediation is a prerequisite to bringing a petition in the Workers' Compensation Court, therefore, unmediated issues must be dismissed or stayed pending mediation.

¶1 The matters before the Court are two motions to dismiss the claimant's present petition seeking an extension of the date claimant reached maximum medical improvement (MMI),

an increase in his impairment rating, and a declaration that unspecified workers' compensation laws are unconstitutional.⁽¹⁾ Claimant has not replied to either of the motions. Under Rule 24.5.316(4), that failure is deemed an admission that the motions are well taken:

(4) Failure to file briefs may subject the motion to summary ruling. Failure of the moving party to file a brief with the motion shall be deemed an admission that the motion is without merit. Failure of the adverse party to timely file an answer brief may be deemed an admission that the motion is well taken. Reply briefs are optional and failure to file a reply brief will not subject the motion to summary ruling.

¶2 Irrespective of the claimant's failure to respond to the motions, the motions set forth grounds requiring dismissal.

¶3 Initially, the claimant's request to extend the date of maximum medical healing is barred by the doctrine of *res judicata* since the Court expressly determined his MMI date in a prior proceeding. *Thompson v. Liberty Northwest Ins. Corp.*, 2002 MTWCC 34, ¶ 49. As between the parties, the doctrine bars relitigation of a matter which has already been litigated. *In re Raymond W. George Trust*, 1999 MT 223, ¶ 47, 296 Mont. 56, 986 P.2d 427 (1999).⁽²⁾

¶4 As to his second request for an increase in his impairment rating, the claimant does not challenge the respondent's assertion that the issue has not been mediated. Since mediation is a prerequisite to maintaining an action in this Court, § 39-71-2408(1), MCA, the claim is premature and must be dismissed.

¶5 Respondent, in the alternative, also moves to dismiss the impairment issue on *res judicata* grounds, citing the general rule that a party is barred "from relitigating a matter that the party had the opportunity to litigate in an [sic] prior case." *In re Raymond W. George Trust*, ¶ 47. The "opportunity to litigate" doctrine, however, has only limited applicability in workers' compensation proceedings since the Workers' Compensation Act provides an assortment of benefits, not all of which are available at the same time. Moreover, circumstances may change which may entitle a claimant to additional benefits. The "opportunity to litigate" doctrine must therefore be applied only in conjunction with the specific issues previously litigated. See *Cheetham v. Liberty Northwest Ins. Co.*, 2001 MTWCC 65, ¶¶ 28-32. Since none of the issues in the prior proceeding related the claimant's impairment, his claim for an additional impairment award is not barred by the doctrine of *res judicata*.

¶6 Finally, claimant's constitutional challenge is so vague as to fail to present any cognizable claim. Moreover, any constitutional attack must be related to other specific relief sought by the claimant. Since his substantive claims must be dismissed, there is no claim to which the constitutional challenge can attach, therefore, it also must be dismissed.

ORDER AND JUDGMENT

¶7 For the reasons set forth above, the petition is **dismissed**. That part of the petition seeking a redetermination of claimant's MMI date is **dismissed with prejudice** with the proviso that such dismissal does not bar any claim that the claimant's medical condition deteriorated and he reverted to a non-MMI status after the date this Court determined he was at MMI. The remaining claims are **dismissed without prejudice**.

DATED in Helena, Montana, this 29th day of May, 2003.

(SEAL)

\s\ Mike McCarter

JUDGE

c: Mr. Lennie J. Thompson

Mr. Larry W. Jones

May 12, 2003

1. In the dispute section of the petition, the claimant also lists "amount of disability payment" as a dispute. However, his requests for relief are limited to the impairment, MMI, and constitutional issues. I therefore read the "disability payment" issue as encompassing the impairment and MMI issues and not as a separate issue.

2. Claimant does not allege that his medical condition deteriorated after the date he was found to be at MMI, thus he has not presented any claim that he reverted to non-MMI status after the MMI date fixed by the Court. I therefore do not consider such a claim.