

IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

1988 MTWCC 23

WCC No. 9802-7928

JEREMY SHAUN VALANCE

Petitioner

vs.

STATE COMPENSATION INSURANCE FUND

Respondent/Insurer for

LOUIE D. O'BRIEN

Employer.

JUDGMENT

Summary: In 1992, claimant and State Fund settled his claim for indemnity benefits, reserving medical benefits. Subsequently, there were numerous disputes between claimant and the insurer relating to the nature and extent of authorized medical care, the identity of authorized medical providers, and payment of medical expenses. Evidence from claimant's physicians and a psychologist indicated that claimant had become obsessed and paranoid concerning the workers' compensation delivery "system" and that this interfered with his health. Medical care providers, the claimant, and State Fund were in agreement for settlement of medical benefits and had negotiated an agreement whereby State Fund would pay claimant \$50,000 in a lump sum and purchase an annuity paying him \$965 per month for ten years, with a clause that unpaid annuity amounts would revert to State Fund should claimant die before expiration of the ten years. The parties sought Court approval of the settlement so that the matter would be considered fully and finally resolved by all.

Held: The WCC has wide discretion to approve a settlement on the basis suggested where the parties are in agreement and settlement is in claimant's best interests. Where medical authority speaks firmly that claimant must have final resolution of workers' compensation issues to achieve maximum recovery and health, an appropriate basis for settlement exists. The settlement is approved.

Topics:

Settlements: Medical Benefits. Under its wide discretion to approve a settlement agreed to by the parties and in claimant's best interest, the WCC approves settlement of claimant's medical benefits where evidence indicates claimant and the insurer had numerous disputes relating to the nature and extent of authorized medical care. Medical evidence indicated claimant had become obsessed and paranoid regarding the workers' compensation delivery "system" and that this interfered with his health. Under the agreement, State Fund would pay claimant \$50,000 in a lump sum and purchase an annuity paying him \$965 per month for ten years, with any unpaid annuity amounts reverting to State Fund should claimant die before expiration of the ten years. The settlement was approved because its terms were reasonable and medical authority had spoken firmly that claimant must have final resolution of workers' compensation issues to achieve maximum recovery and health.

¶1 The Court assumed jurisdiction of this cause under section 39-71-2905, MCA, and ordered an evidentiary hearing on the question of whether to approve a tentative resolution of the controversy between the parties. The evidentiary hearing came before the Court on March 6, 1998, at 11:00 a. m. Mr. Tom L. Lewis represented the petitioner. Ms. Susan C. Witte represented the State Compensation Insurance Fund (State Fund). Ms. Carol Gleed appeared on behalf of the Department of Labor and Industry (Department). Jeremy Shawn Valance, the petitioner, and Henry P. Worsech, Jr., Senior Adjuster for the State Fund, were sworn and testified.

Relevant Facts

¶2 On September 26, 1989, while in the course and scope of his employment with Louie D. O'Brien in Libby, Lincoln County, Montana, the claimant injured his spine when he was on top of a load of logs chopping off limbs and slipped on wet logs falling on his tailbone.

¶3 The claimant settled his claim by compromise settlement in May 1992. By the settlement order, claimant reserved medical benefits under the Workers' Compensation Act. Subsequent to the settlement there were disputes between the claimant and the insurer relating to the nature and extent of authorized medical care, the identity of the medical professionals who were to provide medical services, and payment of medical expenses submitted to the insurer.

¶4 The mediation procedures set forth in the Workers' Compensation Act have been complied with by the parties. After mediation and extensive negotiations, the parties reached a tentative resolution of the controversy between the parties, whereby the insurer would pay the claimant \$50,000 in a lump sum and purchase an annuity paying him \$965 per month for ten years. The parties are unwilling to consummate this compromise agreement without an Order of the Court based upon full disclosure of the relevant facts, so that there can be no question that this matter is finally resolved.

¶15 The claimant suffered injury to his spine as a result of his industrial accident. He has undergone lumbar laminectomy and cervical fusion. He is still under treatment for his injuries and has undergone extensive evaluations, which objectively document a basis for ongoing treatment including medication (Lortab elixir) for chronic pain, surgery to accommodate a problem swallowing food diagnosed as pharyngeal phase dysphasia with epiglottic dysfunction, surgery on his tailbone, and possible repeat lumbar surgery.

¶16 Confounding treatment of these objective medical problems is a lack of trust in the workers' compensation delivery "system" reinforced by ongoing disputes with the insurer to the point that the claimant became obsessive and paranoid concerning workers' compensation. This lack of trust is dysfunctional and interferes with his treatment. The claimant's primary treating physician and psychological counselor have also documented the fact that claimant must have a complete financial settlement with State Fund so that he can manage his life-long medical and psychological care on his own. Based upon the testimony and medical documentation reviewed, the lack of closure of claimant's workers' compensation dispute exacerbates his extreme obsessiveness about his injuries and pain. Medical care providers recommend a "fair settlement" so that the claimant can achieve a treatment plan and appropriate therapy.

¶17 Medical care providers, the claimant, and the State Fund are in agreement that the best course of action is to settle all aspects of his workers' compensation case, so that claimant will have the funds to secure medical care and treatment from physicians with whom he has full confidence, without any interference from workers' compensation. Unless this matter is put behind claimant, it appears that he will continue to obsess over his condition and will never agree to appropriate treatment by physicians chosen by the State Fund.

Authority for Settlement

¶18 This Court has wide discretion to approve a settlement on the basis suggested, particularly where the parties are in agreement and settling the medical benefits issue is in the best interest of the claimant. Where there is a settlement that will finally put an end to the conflict between a claimant and a workers' compensation carrier and allow him to "put behind him" the conflict that has enhanced his disability, conversion to lump sum and settlement is the best course of action and a proper basis for settlement. *Utick v. Utick*, 181 Mont. 351, 593 P.2d 739, 742 (1979).

¶19 Where medical authority speaks firmly that the claimant must be relieved of his uncertainty in regard to litigation and the economic problems it presents with the underlying principle that he be completely divorced from the circumstances that have produced his psychosomatic illness, this is an appropriate basis for settlement. See, *Legowik v. Montgomery Ward & Co.*, 157 Mont. 436, 486 P.2d 867 (1971). Terminating the claimant's association with this case, which has induced or degenerated his condition, will produce a "final resolution" in order to effect the best recovery possible. This is an

appropriate basis for approval of settlement of the claim. See, *Legowik v. Montgomery Ward & Co.*, 157 Mont. 436, 486 P.2d 867, 870 (1971).

¶10 The claimant and the State Fund have been involved in protracted disputes over a period of years concerning the nature and extent of necessary treatment, and even concerning the identity of physicians who are to provide actual treatment. Regardless of whose fault this dispute may be, the claimant does not trust the workers' compensation delivery system and must put this matter behind him. A "final resolution" of this claim will allow the claimant to obtain the medical and surgical treatment he requires from physicians he selects, so that the doctor/patient relationship is not strained by interference from the compensation delivery system. This settlement is in the best interests of all concerned.

JUDGMENT

¶11 1. The proposed resolution of the medical benefits entitlement issue in this case is hereby approved by the Court.

¶12 2. IT IS HEREBY ORDERED that the insurer pay the claimant \$50,000 in a lump sum and purchase an annuity paying him \$965 per month for ten years. This will put this matter behind the claimant and the State Fund by a "final resolution" that is in the best interests of all concerned. The claim is now **fully and finally settled** and **closed**. It can never again be reopened for any purpose by the Department or by any court.

¶13 3. The Court further orders that the annuity to be purchased may include a clause permitting reversion of any unpaid amount to the State Fund in the event the claimant dies before the ten-year period of the annuity is concluded.

¶14 4. The State Fund seeks to reserve subrogation rights against damages recovered in any medical case that the claimant may bring. The claimant suggests that, as a matter of law, there are no subrogation rights. Without conceding that such rights exist relative to medical negligence cases, the petitioner agrees and the Court orders that this judgment shall not affect whatever subrogation rights the state Fund possess under the law.

DATED in Helena, Montana, this 10th day of March, 1998.

(SEAL)

\s\ Mike McCarter

JUDGE

c: Mr. Tom L. Lewis
Ms. Susan C. Witte

Ms. Carol Gleed

Submitted: March 9, 1998