

IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

1999 MTWCC 68

WCC No. 9907-8272

ROBERT J. WEATHERWAX

Petitioner

vs.

STATE COMPENSATION INSURANCE FUND

Respondent/Insurer for

FINAL PHASE COMPANY

Employer.

ORDER DENYING MOTION FOR SUMMARY JUDGMENT AS PREMATURE

Summary: Injured worker filed motion for summary judgment asking the WCC to declare the Occupational Disease Act unconstitutional insofar as it fails to provide permanent partial disability benefits equivalent to those in the Workers' Compensation Act. Claimant also alleged that he suffered from an injury not an OD.

Held: WCC refuses to reach constitutional issue on summary judgement where trial could find claimant suffering from an injury, not an occupational disease, and thus avoid a constitution determination. Summary judgment denied.

Topics:

Constitutional Law: Non-constitutional Ground for Decision. Injured worker filed motion for summary judgment asking the WCC to declare the Occupational Disease Act unconstitutional insofar as it fails to provide permanent partial disability benefits equivalent to those in the Workers' Compensation Act. WCC refuses to reach constitutional issue on summary judgement where trial could find claimant suffering from an injury, not an occupational disease, and thus avoid a constitution determination.

Summary Judgment: Constitutional Issues. Injured worker filed motion for summary judgment asking the WCC to declare the Occupational Disease Act unconstitutional insofar as it fails to provide permanent partial disability benefits equivalent to those in the Workers' Compensation Act. WCC refuses to reach

constitutional issue on summary judgement where trial could find claimant suffering from an injury, not an occupational disease, and thus avoid a constitution determination.

¶1 Claimant herein filed a petition seeking a determination that he suffered an industrial injury on July 10, 1991. In the alternative, if his condition is treated as an occupational disease he asks the Court to declare the Occupational Disease Act (ODA) unconstitutional insofar as it fails to provide permanent partial disability benefits equivalent to those provided under the Workers' Compensation Act (WCA). He now makes a pretrial motion for summary judgment asking that the Court rule on the constitutional issue.

Discussion

¶2 Courts consistently refuse to consider constitutional issues where there is an independent, non-constitutional ground to grant the relief requested by the party raising the constitutional challenge. In the case of *In re Gildersleeve*, 283 Mont. 479, 485, 942 P.2d 705, 709 (1997), the Montana Supreme Court stated the rule as follows:

Certain constraints govern the Court's power to determine the constitutionality of statutes. Among those constraints is the principle that we will not rule on the constitutionality of a legislative act if we are able to decide the case without reaching constitutional considerations.

¶3 In this case, the claimant pleads his case in the alternative. Initially, he alleges that he suffered an occupational disease on July 10, 1991. Secondarily, he alleges that if he did not suffer an injury then his condition is an occupational disease and he should be entitled, on constitutional grounds, to the same permanent partial disability benefits he would receive under the WCA had his condition been determined to be the result of an injury. It is clear from his petition, the briefs supporting and opposing the motion for summary judgment, and the evidence presented in connection with the briefs, that the insurer has accepted his claim as an occupational disease and that only a single injury or disease is at issue. Thus, if he prevails on his injury claim it will be unnecessary to consider his constitutional challenge.

¶4 The motion for summary judgment is **denied** as premature. If after trial the Court determines that claimant did not suffer an injury, he may renew his constitutional challenge.

¶5 SO ORDERED.

DATED in Helena, Montana, this 29th day of October, 1999.

(SEAL)

\s\Mike McCarter

JUDGE

c: Mr. Thomas A. Budewitz

Mr. Carrie L. Garber

Mr. Joseph P. Mazurek (Courtesy Copy)

Date Submitted: October 27, 1999