IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

2002 MTWCC 33

WCC No. 2001-0473

WILLIAMS INSULATION COMPANY, INCORPORATED

Appellant

vs.

DEPARTMENT OF LABOR AND INDUSTRY/

UNINSURED EMPLOYERS' FUND

Respondent.

DECISION ON APPEAL

AFFIRMED 4/08/03

Summary: Williams, an insulation company, appealed a decision of the Department of Labor and Industry assessing a $94,484.86 penalty against it on account of its failure to have Montana workers' compensation insurance coverage. That decision was made by a hearing officer after an opportunity for hearing. The decision below shows that Williams had Wyoming coverage but under section 39-71-402(5), MCA, was required to have Montana coverage because it was "engaged in the construction industry." Upon appeal, Williams contends that it was an error to impose the penalty because it was not provided an opportunity to participate in the proceedings leading up to the Department's preliminary determination regarding the penalty and because the penalty was contrary to law.

Held: The only citation to authority by Williams is section 39-71-402, MCA, which it cites as contrary to imposition of the penalty. However, it misconstrues the statute. Williams provides no other authority with respect to its argument that the penalty was unauthorized or its argument that the decision below should be reversed because it was not afforded an opportunity to be heard in proceedings leading up to the Department's initial determination, which was then subject to a contested case hearing. In light of the lack of citation of authority, the Court will not consider Williams' arguments.

Topics:

Constitutions, Statutes, Regulations and Rules: Montana Code Annotated: Section 39-71-402(5), MCA (1997). An employer engaged in the "construction

industry" is required to provide Montana workers' compensation insurance for workers employed in Montana even though the workers are from other states and the employer has insurance covering them in the other states.

Constitutions, Statutes, Regulations and Rules: Montana Code Annotated: Section 39-71-504(1)(a), MCA (1997). Employer engaged in construction industry which fails to procure Montana workers' compensation insurance coverage is subject to the statutory penalty provided in section39-71-504(1)(a), MCA (1997).

Attorneys: Conduct and Tactics. Attorneys have an obligation to accurately and completely state the facts of a case.

Appeals (To Workers' Compensation Court): Issues considered. Issues raised on appeal will not be considered where the appellant fails to cite any authority supporting the issue raised. *Garcia v. Uninsured Employer's Fund,* 1999 MT 35, ¶ 13, 996 P.2d 882.

Uninsured Employers' Fund: Assessment of Penalty. Employer engaged in construction industry which fails to procure Montana workers' compensation insurance coverage is subject to the statutory penalty provided in section39-71-504(1)(a), MCA (1997).

¶1 This case is on appeal from a decision of the Department of Labor and Industry (Department) assessing a penalty of $94,484.86 against the appellant, Williams Insulation Company, Incorporated (Williams). The penalty was levied pursuant to section 39-71-504(1)(a), MCA, which provides for penalties against uninsured employers:

(1) (a) The department may require that the uninsured employer pay to the fund a penalty of either up to double the premium amount the employer would have paid on the payroll of the employer's workers in this state if the employer had been enrolled with compensation plan No. 3 or $200, whichever is greater. In determining the premium amount for the calculation of the penalty under this subsection, the department shall make an assessment based on how much premium would have been paid on the employer's past 3-year payroll for periods within the 3 years when the employer was uninsured.

Although insured in Wyoming, Williams was not insured in Montana and was not entitled to reciprocity since it was engaged in the construction industry. Section 39-71-402(5), MCA, provides:

(5) Employers from another state that are engaged in the construction industry, as defined in 39-71-116, and that employ workers from another state shall obtain coverage for those workers under the provisions of this chapter.

¶2 Williams requested a contested case hearing before the Department. Rather than proceeding with an actual hearing, Williams and the Department agreed to submit the case to a Department hearing officer upon their briefs and documents on file with the

Department. On November 21, 2001, the hearing officer entered his decision assessing the $94,484.86 penalty.

¶3 Williams then filed an appeal with this Court.[(1)] The Notice of Appeal, filed December 5, 2001, set forth the following grounds:

The hearing examiner erred by ruling that Respondent, Williams Insulation Company, Inc. had not been denied its opportunity to be heard and participate in the agency's initial decision process. Further, the hearing examiner erred by determining that Respondent owed the Uninsured Employers Fund money and a penalty.

(Notice of Appeal at 1-2.) What you see is what you get: Williams provided no elaboration of the basis for appeal. The foregoing quoted paragraph constitutes the entire basis for the appeal.

¶4 After setting a briefing schedule, Williams filed its initial brief, styled "Plaintiff's Initial Brief." It found "no need to submit a reply brief" after the Department filed its answer brief. (April 1, 2002 letter of Mr. John C. Doubek.)

¶5 In its brief, Williams argues that it was denied an opportunity to participate in the process leading up to the Department's initial determination regarding the penalty, and that it was prejudiced by the failure even though it was later afforded an opportunity for a contested case hearing. Second, it argues that the assessment of the penalty was contrary to law since Williams was insured in Wyoming and the claimant was covered by Wyoming workers' compensation statutes.

¶6 Initially, I note Williams' assertion that the worker whose claim brought on this proceeding was turned down for Wyoming benefits because he "did not timely notify the Workers' Compensation division in Wyoming of this [his] claim." (Plaintiff's Initial Brief at 3.) Williams goes on to argue, "What has occurred here is that an employee is searching for some venue to achieve some remedy when his remedy is set forth in Wyoming law that his claim must be submitted to the Wyoming Workers' Compensation division." (*Id.* at 3-4.) These statements misrepresent the facts and counsel for Williams is admonished for making them. The hearing officer's decision (Findings of Fact, Conclusions of Law and Order at 3, ¶ 8), states that Wyoming rejected the claim not only on the basis of untimeliness, but also because "the employer had hired Fugare [the claimant] to work primarily in a state other than Wyoming and therefore Wyoming had no jurisdiction or coverage of the alleged injury." Not only does Williams fail to cite any evidence contrary to the finding, the finding is supported by an April 28, 2000 letter of the Department of Employment, Division of Workers' Safety and Compensation which is part of the record below. The second reason given in that letter for rejecting the claim was, "The employee was hired to work primarily in another state and therefore is not under Wyoming jurisdiction pursuant to Wyoming Statute 27-14-301." (Grady Prince's Final Determination letter of April 28, 2000, to Mr. Fugare.)

¶7 Not only has counsel for Williams misrepresented the facts below, but his sole citations of authority for his arguments are citations to "MCA 39-71-402(5)", which he argues "was passed to assure that out-of-state employers obtained Workers' Compensation insurance specifically on employees who are from a state other than that

of the employer" and "MCA 39-71-402(2)(a)", which he characterizes as "specifically provid[ing] that the employer and the employee are bound by the laws of another state's Workers' Compensation laws while they are in the State of Montana and that is precisely the case here." Claimant cites no case authority in support of his characterizations of these statutes and his interpretation of them flies in the face of the plain words of section 39-71-402(5), MCA, which I have quoted previously.

¶8 With respect to the Williams' other contentions, "it is not this Court's obligation to locate authorities or formulate arguments for the parties in support of their positions on appeal." *Garcia v. Uninsured Employer's Fund,* 1999 MT 35, ¶ 13, 996 P.2d 882. As in *Garcia,* Williams cites nary a single authority - either a statute, or a constitutional provision, or a case - for its arguments that it was denied an "opportunity to be heard and participate in the agency's initial decision process" or to further support its contention that the penalty was erroneous. The hearing officer's decision in this case, which I attach, was comprehensive and well reasoned. As in *Garcia,* I decline to further consider the contentions made by Williams.

ORDER

¶9 The decision below is affirmed. The appeal is **dismissed with prejudice**.

¶10 This JUDGMENT is certified as final for purposes of appeal.

¶11 Any party to this dispute may have 20 days in which to request a rehearing from this Decision on Appeal.

DATED in Helena, Montana, this 7th day of June, 2002.

(SEAL)

\s\ Mike McCarter
JUDGE

c: Mr. John C. Doubek
Mr. Charles K. Hail
Submitted: April 2, 2002

Attached: Department of Labor and Industry November 21, 2001 Findings of Fact, Conclusions of Law and Order

1. The appeal is pursuant to section 39-71-2401, MCA, which provides in relevant part:

(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.

(3) An appeal from a department order may be made to the workers' compensation court.