

IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

2004 MTWCC 40

WCC No. 2004-1009

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JACQUELINE AHEARN

Petitioner

vs.

MONTANA SCHOOLS GROUP

WORKERS' COMPENSATION RISK RETENTION PROGRAM

Respondent/Insurer.

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ORDER DENYING SUMMARY JUDGMENT

**Summary:** Claimant, who alleges she was injured at work on July 25, 2003, moves for summary judgment, urging that the insurer did not have cause to deny her claim.

**Held:** The motion is denied. Claimant's motion is based on the fact that the denial was in part based on her failure to give timely notice to her employer. She urges that the ground is baseless since the employer signed a First Report of Injury indicating it was timely notified of the injury. But the First Report of Injury is only a *piece* of the evidence; it is not *conclusive*, especially in the face of a sworn affidavit by the employer that the date was overlooked when the report was signed and the employer in fact was not notified of the alleged injury until thirty-one days after it allegedly occurred. Moreover, the motion must be denied because the insurer also denied the claim based on a determination that the petitioner was not in fact injured in the course and scope of her employment. The petitioner has offered *no* evidence which would establish, as an uncontroverted matter, that she was.

**Topics:**

**Summary Judgment: Briefs.** Court rules require the party moving for summary judgment to set out a statement of facts supported by citations to admissible evidence. The failure to do so is grounds for summarily denying the motion.

**Summary Judgment: Disputed Facts.** In the face of a denial of liability based on an assertion that the claimant did not in fact suffer a work-related injury, the failure of a petitioner to set out any facts which would establish, as an uncontroverted matter, that she was in fact injured at work is fatal to her motion for summary judgment concerning liability.

**Summary Judgment: Disputed Facts.** The affidavit of the employer stating that the claimant did not report her injury until thirty-one days after the alleged accident raises a factual issue as to the timeliness of the claimant's report and precludes a grant of summary judgment finding the insurer liable for the claim.

1 The claimant moves for summary judgment finding that she suffered a work-related injury on July 25, 2003, while working for the Alberton School District. The only evidence tendered in support of her motion are three documents, none of which is authenticated. The first is a First Report of Injury dated August 25, 2003, signed by both the claimant and the Superintendent of Schools for the Alberton School District. At the time he signed the First Report of Injury, the Superintendent did not question the injury. The second is a January 14, 2004 letter from a claims adjuster for the insurer stating that it had previously processed the claim under a reservation of rights pursuant to section 39-71-608, MCA, and that after further investigation it was denying the claim on two grounds; first, because the claimant did not notify her employer of her injury within thirty days, as required by section 39-71-603, MCA, and second because the claimant did not work the day on which she claims she was injured. The third document is a letter from the claimant's attorney in response to the adjuster's letter.

#### Discussion

2 The motion does not comply with the Court's rule governing summary judgment which requires that the moving party set out

a statement of uncontroverted facts, which shall set forth in full the specific facts on which the party relies in support of the motion. The specific facts shall be set forth in serial fashion and not in narrative form. As to each fact, the statement shall refer to a specific pleading, affidavit, or other document where the fact may be found.

Rule 24.5.329(3). The claimant has not complied with the rule, and that alone is a sufficient reason to deny the motion. However, even addressing the merits of the motion, it must be denied.

3 The claimant argues that she is entitled to summary judgment because the adjuster erred in denying her claim based on a failure to report her injury within thirty days. She cites the First Report of Injury. That report was signed by the Superintendent of Schools and which states that claimant notified the employer of her accident on the day of the accident. However, the respondent has submitted an affidavit of James A. Baldwin (Baldwin), the Superintendent of the Alberton School District. He signed the First Report of Injury on behalf of the employer. In his affidavit he states that the claimant did *not* report her injury until August 31, 2003, thirty-one days after the fact. He further explains that the claimant filled out most of the First Report of Injury and that he did not notice the date the claimant had filled in as to when she reported her injury to the employer.

4 Summary judgment is appropriate only if the claimant tenders evidence which establishes, as an uncontroverted matter and a matter of law, that she is entitled to benefits. Rule 29.5.329(2). Baldwin's affidavit raises a factual issue as to the date the claimant reported her injury. That in turn raises a notice issue under section 39-71-603, MCA, which requires the claimant to report her injury to her employer within thirty days. If in fact the claimant did not report her injury until August 31<sup>st</sup>, she was a day late and her claim is barred.

5 The fact that the First Report of Injury states that the claimant reported her injury on July 25<sup>th</sup> is a *only a piece of the evidence that the Court must consider at trial*. Even though Baldwin signed the First Report of Injury, his signature is not *conclusive* evidence as to the date the claimant reported her injury, especially in light of his affidavit stating he did not notice the date when he signed the report.

6 The claimant's argument also overlooks entirely the second ground for denying the claim, that ground being that the claimant was not in fact injured on July 25, 2003, in the course and scope of her employment. She has failed to establish, as an uncontroverted matter, that in fact she was.

ORDER

7 The claimant's motion for summary judgment is **denied**.

DATED in Helena, Montana, this 30<sup>th</sup> day of April, 2004.

(SEAL)

MIKE McCARTER

JUDGE

c: Mr. Steve M. Fletcher

Mr. Leo S. Ward

Submitted: April 28, 2004