

IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

1997 MTWCC 58

WCC No. 9704-7742

DWIGHT "LARRY" BOULDIN

Petitioner

vs.

UNINSURED EMPLOYERS' FUND/

LARRY HURT OR ROGER LUCAS CONSTRUCTION

Respondents.

DECISION AND JUDGMENT

Summary: Petitioner alleged he was injured in the course and scope of employment as a carpenter. The parties stipulated that petitioner had executed a workers' compensation and unemployment insurance contractor exemption application affidavit and been granted an Independent Contractor Exemption which remained in effect on the date of alleged injury. They also stipulated that the individuals who hired petitioner checked on his independent contractor status and would not have hired him but for the exemption. (See [*Wild v. Montana State Compensation Fund*, 2003 MT 115](#) ; [*Mathews v. Liberty Northwest Ins. Corp.*, 2003 MT 116](#). **Section 39-71-401(3), MCA (1999)**, in which **Supreme Court held that the workers' compensation statutes, when read together, do not preclude factual inquiry into whether an employee/employer relationship exists even though the worker has been issued an independent contractor exemption.**)

Held: Under section 39-71-401(3), MCA (1995), the independent contractor exemption (based on an application approved by the Department) is conclusive as to the status of a independent contractor and precludes petitioner from obtaining benefits. The WCC rejects petitioner's argument that the Court must separately determine the existence of criteria set out in section 39-71-120, MCA (1995) and make an independent contractor determination. While section 39-71-120, MCA (1995) lays out the substantive criteria for making the independent contractor determination, section 39-71-401(3), MCA, provides that the Department of Labor is the forum for making that determination and once the determination is made, i.e., the exemption is issued, that determination is conclusive.

Topics:

Constitutions, Statutes, Regulations and Rules: Montana Code Annotated: section 39-71-120, MCA (1995). Under section 39-71-401(3), MCA (1995), the independent contractor exemption (based on an application approved by the Department) is conclusive and precludes petitioner from obtaining benefits. Where the parties stipulated an IC exemption was in effect governing the work of a carpenter, and that the parties hiring the petitioner checked on the existence of the exemption and relied on the exemption, the WCC rejects petitioner's argument that the Court must separately determine the existence of criteria set out in section 39-71-120, MCA (1995). While section 39-71-120, MCA (1995), lays out the substantive criteria for making the independent contractor determination, section 39-71-401(3), MCA, provides that the Department of Labor is the forum for making that determination and once the determination is made, i.e., the exemption is issued, that determination is conclusive.

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Independent Contractor: Independent Contractor Exemption. Under section 39-71-401(3), MCA (1995), the independent contractor exemption (based on an application approved by the Department) is conclusive and precludes petitioner from obtaining benefits. Where the parties stipulated an IC exemption was in effect governing the work of a carpenter, and that the parties hiring the petitioner checked on the existence of the exemption and relied on the exemption, the WCC rejects petitioner's argument that the Court must separately determine the existence of criteria set out in section 39-71-120, MCA (1995). While section 39-71-120, MCA (1995), lays out the substantive criteria for making the independent contractor determination, section 39-71-401(3), MCA, provides that the Department of Labor is the forum for making that determination and once the determination is made, i.e., the exemption is issued, that determination is conclusive.

This case comes to the Court on an agreed statement of facts and exhibits.

Petitioner herein, Dwight "Larry" Bouldin (Bouldin), alleges that he was injured in the course and scope of employment with Larry Hurt or Roger Lucas Construction (Hurt and Lucas).

Since Hurt and Lucas were uninsured, his claim was submitted to the Uninsured Employers' Fund (UEF). The UEF, Hurt and Lucas deny that Bouldin was an employee and affirmatively allege that Bouldin held an independent contractor exemption upon which Hurt and Lucas relied when they contracted with him. They argue that he cannot now seek workers' compensation benefits.

Citing section 39-71-401(2), MCA, the UEF and Hurt further allege that Bouldin was not hired for any business or trade in which Hurt was engaged and that Hurt was therefore exempt from workers' compensation coverage requirements and was not an uninsured employer within the meaning of section 39-71-501, MCA. This issue is not presented to the Court at the present time and in light of the resolution of the first issue it is unnecessary for the Court to address it at all.

Similarly, the estoppel defenses raised in the responses need not be addressed.

Facts and Exhibits

The agreed facts are set forth in the Stipulation of Facts executed by the parties' attorneys and filed with the Court on June 26, 1997. Those facts are as follows:

1. The Petitioner, Dwight Bouldin, was injured on December 19, 1996, while working as a carpenter on a construction job at the residence of Larry Hurt.
2. At the time of the accident, neither of the Additional Respondents, Larry Hurt or Roger Lucas, were insured for Workers' Compensation purposes.
3. On or about April 25, 1996, Mr. Bouldin executed a "Workers' Compensation and Unemployment Insurance Contractor Exemption Application Affidavit", in which he swore that he was an independent contractor in his occupation as a carpenter, and that he was entitled to the independent contractor exemption from the coverage requirements of the Montana Workers' Compensation Act. At the time of executing the document, all of the statements made by Mr. Bouldin were true.
4. At the time of the accident at issue in this proceeding, Mr. Bouldin held the Independent Contractor Exemption for his occupation as a carpenter, as provided for by Section 39-71-401, MCA (1995), and as of that date Mr. Bouldin had not notified the Department of Labor and Industry that he wished to revoke his status as an independent contractor exempt from the coverage requirements of the Workers' Compensation Act.
5. Dwight Bouldin was registered with the Missoula Job Service in December, 1996. He was referred to the Hurt project by the Job Service. When requested, Mr. Bouldin presented Mr. Lucas and Mr. Hurt with his Independent Contractor exemption. In addition, Mr. Lucas contacted the Department of Labor and Industry and confirmed that Mr. Bouldin was presently registered as an exempt Independent Contractor under the noted statute. The

Department sent Mr. Lucas a copy of the exemption by facsimile, verifying that the exemption was current.

6. Mr. Bouldin would not have been allowed to be working on the date of the accident had he not produced a currently valid independent contractor exemption for Mr. Hurt and Mr. Lucas or been able to secure employment with a temporary service contractor (as defined in Section 39-71-116 (32), MCA (1995)) and been assigned to the project as an employee of the temporary service contractor as a temporary worker (as defined in Section 39-71-116 (34).)

In addition to the foregoing agreed facts, the parties stipulated that the Court may consider the Exemption Application Affidavit (Application) submitted by Bouldin to the Montana Department of Labor and Industry (Department) and the Exemption Certificate issued by the Department. Both exhibits are attached to the Uninsured Employers' Fund's Brief Regarding Independent Contractor Affirmative Defenses filed July 11, 1997.

The Application was executed by Bouldin *under oath* on a Department form. In the application, he represented that he was engaged in "an independently established trade, occupation, profession or business" and typed in "carpenter -- independent contractor --" as his occupation. In signing and submitting the application, Bouldin also affirmed a series of statements critical to the Department's issuance of the exemption. In summary form, those statements were as follows:

Bouldin controls details of his work. (¶ 3.)

Bouldin pays or will pay self-employment taxes. (¶ 4.)

Bouldin had or will have a contract or accept bid showing he worked as an independent contract carpenter. (¶ 5.)

Bouldin is engaged in "an independently established business" and had documents, such as business cards and invoices, indicating he was engaged in an independent business. (¶ 6.)

Bouldin furnishes his own tools. (¶ 7.)

The application contained an express provision stating that Bouldin understood that he was not eligible for workers' compensation benefits. It further provided that the exemption, if granted, would remain in effect for a year unless Bouldin notified the Department that he wished to have the exemption revoked.

In signing the application, Bouldin expressly represented, "I understand that the Department is relying on the truth and accuracy of these statements when approving my independent contractor exemption application." (¶ 1.) In addition, the following paragraphs immediately preceded his signature:

Notice to Applicants: Montana Law Provides for a Civil Penalty of \$1,000 Fine for Each False Statement or Misrepresentation Made Concerning a Person's Status as an Independent Contractor. The Department May Require Additional Information or Perform Random Verifications in an Effort to Help Individuals Understand and Comply with the Requirements. If Further Investigation by the Department Determines You to Be an Employee, this Exemption Is Voided.

My Signature on this Application Indicates My Request for an Exemption from the Requirements of the Workers' Compensation Act and the Unemployment Insurance Law and That All the Information and Declarations I Have Supplied with this Application Are True.

The application was dated April 25, 1996. Thereafter, the Department issued a **Certificate of Independent Contractor Exemption** certifying that Bouldin was an independent contractor engaged in the occupation of carpenter. The Certificate provided that the exemption was effective from April 26, 1996 to April 26, 1997. It was therefore in effect at the time Bouldin was injured.

Issue

The parties have framed the issue as: "Whether Mr. Bouldin is precluded from receiving workers' compensation benefits for his injury as a result of the provisions of Section 39-71-401(3) MCA (1995)." I conclude he is.

Discussion

Section 39-71-401(3), MCA (1995), governs independent contractors. It provides:

(3)(a) A sole proprietor, a working member of a partnership, or a working member of a member-managed limited liability company who represents to the public that the person is an independent contractor shall elect to be bound personally and individually by the provisions of compensation plan No. 1, 2, or 3 but may apply to the department for an exemption from the Workers' Compensation Act.

(b) The application must be made in accordance with the rules adopted by the department. There is no fee for the initial application. Any subsequent application must be accompanied by a \$25 application fee. The application fee must be deposited in the administration fund established in 39-71-201 to offset the costs of administering the program.

(c) When an application is approved by the department, it is conclusive as to the status of an independent contractor and precludes the applicant from obtaining benefits under this chapter.

(d) The exemption, if approved, remains in effect for 1 year following the date of the department's approval. To maintain the independent contractor status, an independent contractor shall annually submit a renewal application. A renewal application must be submitted for all independent contractor exemptions approved as of July 1, 1995, or thereafter. The renewal application and the \$25 renewal application fee must be received by the department at least 30 days prior to the anniversary date of the previously approved exemption.

(e) A person who makes a false statement or misrepresentation concerning that person's status as an exempt independent contractor is subject to a civil penalty of \$1,000. The department may impose the penalty for each false statement or misrepresentation. The penalty must be paid to the uninsured employers' fund. The lien provisions of 39-71-506 apply to the penalty imposed by this section.

(f) If the department denies the application for exemption, the applicant may contest the denial by petitioning for review of the decision by an appeals referee in the manner provided for in 39-51-1109. An applicant dissatisfied with the decision of the appeals referee may appeal the decision in accordance with the procedure established in 39-51-2403 and 39-51-2404. [Emphasis added.]

The statute is clear on its face; it needs no interpretation. Resort to legislative history, which the parties have supplied, is unnecessary. Section 39-71-401(3)(c), MCA (1995), expressly and unequivocally states that where a person obtains an independent contractor exemption from the Department, he or she is precluded from obtaining benefits under the Workers' Compensation Act. Bouldin obtained an exemption, the exemption was in force at the time he worked on the Hurt home, and his claim is barred.

Bouldin argues that the Court should disregard the plain language of the statute because it conflicts with section 39-71-120, MCA (1995). That section sets out the criteria for determining whether an individual is an independent contractor, providing:

39-71-120. Independent contractor defined. (1) An "independent contractor" is one who renders service in the course of an occupation and:

(a) has been and will continue to be free from control or direction over the performance of the services, both under the contract and in fact;

(b) is engaged in an independently established trade, occupation, profession, or business; and

(c) has received an exemption granted under 39-71-401(3).

(2) An individual performing services for remuneration is considered to be an employee under this chapter unless the requirements of subsection (1) are met.

There is no conflict between the two statutes. Section 39-71-120, MCA, lays out the substantive criteria for determining when an individual is an independent contractor; section 39-71-401(3), MCA, provides the forum for making that determination and specifies that once the determination is made it is conclusive and bars any workers' compensation claim. Subsections (1)(a) and (1)(b) of section 39-71-120, MCA, provide the criteria upon which the Department must judge applications. Subsection (1)(c) of section 39-71-120, MCA, adds a requirement that an exemption must be obtained. Thus, unless the exemption is obtained the individual is deemed an employee even if he or she meets the other criteria for independent contractor status. Subsection (2) of section 39-71-120, MCA, merely provides that unless the worker satisfies the criteria of subsection (1), he or she is an employee. It does not specify the forum for determining whether the criteria are met. Section 39-71-401(3)(a), MCA, specifies that the Department is that forum and makes the determination of the Department conclusive.

Moreover, even if a conflict exists, it is a cardinal rule of statutory interpretation that where two statutes conflict and cannot be harmonized, the more specific statute is controlling. *State ex rel. Marlenee v. District Court*, 181 Mont. 59, 64, 592 P.2d 153, 156 (1979); *Gibson v. State Fund*, 255 Mont. 393, 396, 842 P.2d 338, 340 (1992). Section 39-71-401(3), MCA, sets forth the effect of a contractor exemption and is the more specific statute.

ORDER AND JUDGMENT

1. The petition is without merit. Judgment is hereby entered for respondents and certified as final for purposes of appeal. The petition is **dismissed with prejudice**.
2. The parties have not asked the Court to address Mr. Hurt's allegation that he was exempt from coverage requirements irrespective of Bouldin's independent contractor exemption. Since the Court answers the stated issue in the affirmative, it is unnecessary to consider that issue.
3. This JUDGMENT is certified as final for purposes of appeal pursuant to ARM 24.5.348.
4. Any party to this dispute may have 20 days in which to request a rehearing from this Decision and Judgment.

DATED in Helena, Montana, this 22nd day of October 1997.

(SEAL)

/s/ Mike McCarter

JUDGE

c: Mr. Andrew F. Scott
Mr. Mark E. Cadwallader

Mr. Bradley J. Luck

Date Submitted: July 23, 1997