

IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

1996 MTWCC 11

WCC No. 9601-7468

KEVIN S. FOX

Petitioner

vs.

LIBERTY MUTUAL FIRE INSURANCE COMPANY

Respondent/Insurer for

UNITED PARCEL SERVICE

Employer.

ORDER DENYING MOTION FOR PARTIAL SUMMARY JUDGMENT

Summary: Citing *Haag v. Montana School Groups Ins. Authority*, 274 Mont. 109 (1995), claimant moved for summary judgment, arguing that insurer's failure to respond within thirty days to demand to pay impairment award entitles him, as a matter of law, to the impairment award he claims.

Held: *Haag* involves an insurer's failure to accept or deny liability of an initial claim within thirty days, and does not extend to subsequent "demands" made for specific benefits.

Topics:

Cases Discussed. *Haag v. MSGIA*. *Haag v. MSGIA*, 274 Mont. 109 (1995), which involves an insurer's failure to accept or deny liability of an initial claim within thirty days, does not extend to subsequent "demands" made for specific benefits. Insurer's alleged failure to respond within thirty days to "demand" for specific impairment award does not establish a right "as a matter of law" to that impairment.

Claims: Acceptance. *Haag v. MSGIA*, 274 Mont. 109 (1995), which involves an insurer's failure to accept or deny liability of an initial claim within thirty days, does not extend to subsequent "demands" made for specific benefits. Insurer's alleged failure to respond within thirty days to "demand" for specific impairment award does not establish a right "as a matter of law" to that impairment.

The claimant in this case filed a petition seeking payment of impairment-based permanent partial disability benefits. He alleges that he suffered two injuries while working for United Parcel Service, one on April 27, 1990 and the second on January 2, 1992. According to his petition, he sustained a 12% whole person impairment as a result of the first injury and a 4% whole person impairment as a result of the second injury. Based on those ratings, he seeks \$17,698.32 plus 10% interest, attorney fees, costs and a penalty.

On January 19, 1996, claimant filed a motion for partial summary judgment seeking a determination that he is entitled, as a matter of law, to \$17,698.32 because the insurer, Liberty Mutual Fire Insurance Company, failed to respond to his demand for that amount within 30 days. He cites section 39-71-606, MCA, and *Haag v. Montana School Groups Insurance Authority*, 52 St. Rptr. 1146 (November 21, 1995), as authority for his motion.

The motion is supported by an affidavit of claimant's attorney. According to the affidavit, on or about May 4, 1994, claimant's attorney sent Liberty Mutual a letter demanding payment of the \$17,698.32 but received no response to the demand within 30 days thereafter. That was all the information provided to the Court in conjunction with the motion.

In its brief opposing the motion, Liberty Mutual argues that section 39-71-606, MCA, and *Haag* apply only to the initial claim for compensation and not to subsequent demands for specific benefits. The Court agrees.

Section 39-71-606(1), MCA (1989-1991), provides:

Section 39-71-606. Insurer to accept or deny claim within thirty days of receipt - notice of denial- notice to employer. (1) Every insurer under any plan for the payment of workers' compensation benefits shall, within 30 days of receipt of a claim for compensation either accept or deny the claim, and if denied shall inform the claimant and the department in writing of such denial.

In *Haag* the Supreme Court held that when the insurer "fails to act on a claim for compensation within thirty days, either by accepting or denying liability . . . or by beginning payments with a reservation of rights . . . the claim is deemed accepted as a matter of law." 52 St. Rptr. at 1149. The reference to "the claim", however, is to the initial claim which section 39-71-601, MCA, requires be submitted within one year of the accident, § 39-71-601, MCA. "Claim" does not refer to subsequent "demands" made for specific benefits.

Claimant's motion, brief and affidavit do not assert or suggest that the May 1994 demand was the initial claim with respect to the two industrial accidents, and, indeed, had it been, both claims would be barred by the statute of limitations set forth in section 39-71-601, MCA. Rather, the affidavit refers to the May 1994 letter as a "demand for compensation." The Court has since received confirmation that, in fact, separate, earlier claims for compensation were submitted to Liberty on the standard claim forms. (January 30, 1996, letter of Larry Jones to Clarice V. Beck with attachments.)

Claimant's motion is without merit and is denied.

Dated in Helena, Montana, this 1st day of February, 1996.

(SEAL)

/s/ Mike McCarter

JUDGE

c: Mr. Alan J. Lerner

Mr. Larry W. Jones

Submitted: January 31, 1996