IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

1993 MTWCC 21

WCC No. 9310-6913

DARRELL HONEYCUTT

Petitioner

vs.

STATE COMPENSATION INSURANCE FUND

Respondent/Insurer for

CANYON RANCH

Employer.

ORDER GRANTING SUMMARY JUDGMENT; ORDER DISMISSING PETITION

The matter before the Court is a Motion to Dismiss and Request for Sanctions. Because certain factual matters were raised by the motion and an accompanying affidavit, the Court gave notice to the parties that it intended to treat the motion as one for summary judgment. It also notified petitioner that he had ten days in which to submit any responsive affidavits or other materials he wished the Court to consider in connection with the motion. The Court has received an affidavit entitled Counsel for Petitioner's Supplemental Affidavit. The time for further response has expired and the matter is ready for decision.

The petition in this matter is captioned as one for declaratory judgment. However, in the prayers for relief the petitioner requests injunctive relief, attorney fees and a 20 percent penalty.

The petition alleges that an offer of settlement tendered in a September 27, 1993 letter to petitioner's attorney was "inherently coercive and unfair." The letter notified petitioner's attorney of petitioner's entitlement pursuant to section 39-71-703, MCA to receive an additional seven weeks of permanent partial disability benefits at the rate of $168.00 per week. The letter stated that the benefits would be payable biweekly unless petitioner elected to take them in a lump sum. With respect to any lump sum, the letter further stated:

> If he [petitioner] elects payment in a lump sum, this would constitute settlement of his claim for any future temporary total, permanent total, or permanent partial and rehabilitation benefits.

> The petition acknowledges that the matter has not been mediated.
>
> The mediation requirements set forth in §39-71-2401, MCA are not applicable to this issue because only a ruling from the Court can resolve this legal dispute. The law neither does nor requires idle acts §1-3-223, MCA (1991).

Petition For Declaratory Judgment ¶ 4.

Respondent's motion to dismiss is based on two grounds. First, it alleges that the Court is without jurisdiction to hear this claim because petitioner failed to comply with mediation requirements. Second, it contends that petitioner lacks standing to maintain this action. The affidavit accompanying the motion was executed by David Miller, the claims examiner responsible for administering the petitioner's file. It verifies that mediation was never requested and never held. It further states that all benefits described in the September 27, 1993 letter have been paid and that no settlement agreement was ever executed. Finally, it states that there has been no further correspondence regarding the benefits.

In his response, counsel for petitioner does not contest any of the facts set out in Mr. Miller's affidavit. Rather he attaches certain internal memoranda and form letters of the State Fund which pertain to permanent partial and rehabilitation benefits and lump sum advances. He states that the policies reflected in these documents "rely on an inherently flawed interpretation of the Workers' Compensation Act." He further states, "Mediation of such a policy is futile because the underlying legal analysis upon which the policy is based has remained unchanged."

After reviewing the pleadings, affidavits, legal argument, statutes and cases, the Court finds that summary judgment should be granted the respondent.

Mediation is not optional. It cannot be ignored because a party's counsel believes it to be an "idle act." Section 39-71-2905, MCA governs the Court's original jurisdiction. It provides in relevant part:

> A claimant or an insurer who has a dispute concerning any benefits under chapter 71 of this title may petition the workers' compensation judge for a determination of the dispute <u>after satisfying dispute resolution requirements otherwise provided in this chapter.</u> [Emphasis added.]

The Montana Supreme Court has interpreted this grant of jurisdiction as going beyond disputes purely involving benefits. It extends "beyond that minimum whenever the dispute is **related** to benefits payable to a claimant" and allows the Court to issue declaratory rulings in appropriate cases. ***State ex rel. Uninsured Employers' Fund v. Hunt,*** *191 Mont. 514, 625 P.2d 539 (1981)* (Emphasis added.) Since the quoted statute is the source of the Court's original jurisdiction, the jurisdictional conditions attached by the statute must be followed. The mediation prerequisite is one of those conditions and on its face attaches to **all** disputes within the Court's original jurisdiction.

The comprehensiveness of the mediation requirement is confirmed by the mediation provisions found in Part 24 or Chapter 71, Title 39. In a statement of purpose, section

39-71-2406, MCA, says "this part provides for a procedure for **mandatory,** nonbinding mediation." (Emphasis added.) Further, section 39-71-2401(1) provides in relevant part:

> (1) A dispute concerning benefits arising under this chapter or chapter 72, other than the disputes described in subsection (2), **must be** brought before a department mediator as provided in this part. [Emphasis added.]

The reference to "[a] dispute concerning benefits" is the same terminology used in the Court's jurisdictional statute.

Petitioner cites an order issued in ***Laterell v. State Fund,*** *WCC No. 9202-6387 (April 14, 1992)* as precedent for his contention that the mediation requirements do not apply to this proceeding because of the legal nature of the issues raised. In ***Laterell*** the Court's hearing examiner found that a petition to reopen a settlement is not subject to the mediation requirement in part because the mediation process is not equipped to resolve questions of fraud, mutual mistake, legal capacity and similar issues arising in reopening cases. But the mediation statutes do not make any exceptions and many cases may involve complex questions of law which may ultimately require resort to the Court for resolution. ***Laterell*** is overruled.

Since petitioner has not complied with the mediation requirements his petition is premature and must be dismissed.

It must also be dismissed because he lacks standing. In ***Stewart v. Board of County Commissioners****, 175 Mont. 197, 201, 573 P.2d 184 (1977)*, the Supreme Court laid out the elements of standing in the following terms:

> Additionally, the following minimum criteria are necessary to establish standing to sue a governmental entity: (1) The complaining party must clearly allege past, present or threatened injury to a property or civil right; and (2) the alleged injury must be distinguishable from the injury to the public generally, but the injury need not be exclusive to the complaining party.

While the ***Stewart*** decision applies the doctrine in the context of a suit against a governmental entity there is no reason why it should not be applied in litigation which is solely between private litigants.[(1)] In its research the Court was unable to identify a Montana Supreme Court decision applying the standing doctrine to litigation not involving a governmental entity. However, its cursory review of cases reported in the Pacific Digest shows that other jurisdictions apply the doctrine to litigation between private parties. *E.g.,* ***Armory Park Neighborhood Assoc. v. Episcopal Community Services,*** *712 P.2d 914 (Ariz. 1985);* ***Caley Investments v. Lowe Family Assoc.****, 754 P.2d 793 (Colo. Ct. App.);* ***Szilagyi v. Testa,*** *673 P.2d 495 (Nev. 1983);* ***Spratt v. Security Bank of Buffalo, Wyoming,*** *654 P.2d 130 (1982).* In ***1A CJS 2d, Actions § 59***, the standing requirement is stated as a general proposition applicable to all actions. The section states:

> To be entitled to bring an action, a party must have both the capacity to sue and standing.

Petitioner has failed to satisfy either of the elements published in ***Stewart.*** He has shown no past, present or threatened injury which would distinguish him from claimants generally, and he concedes as much in his responsive brief:

> Contrary to the Respondent's belief that the requested Declaratory Judgement relates to the Petitioner's specific benefit entitlement, the Petition actually requests a declaration of the validity of the State Fund's statutory interpretations and practices. Mr. Honeycutt, as an injured worker who has received the State Fund's form letter, has standing to act as a member of the larger group of individual claimants who have also received similar letters. [Emphasis added.]

Petitioner's Brief in Opposition at 5-6.

The gravamen of his petition is that the settlement offer made in the September 27, 1993 letter sent to his attorney was "inherently coercive and unfair" and contrary to the insurer's statutory and fiduciary responsibilities. However, the sending of the letter caused no injury. An injury would occur only if the petitioner had acted on the offer. In fact he did not and he has been paid the full amount of the biweekly benefits due him without waiving his entitlement to any other benefits which might also be due him. The Miller affidavit also establishes that there is no further threat of a similar offer. To satisfy the standing requirement, the petitioner must show that he has a personal stake in the outcome of the case. ***City and County of Honolulu v. F. E. Trotter, Inc.,*** *757 P.2d 647, 649 (Hawaii 1988);* ***Harrison v. Long,*** *734 P.2d 1155, 1158 (Kan. 1987);* ***Society of Professional Journalists v. Bullock,*** *743 P.2d 1166, 1170 (Utah 1987).* He has failed to do so.

We reach the same result if the petition is treated strictly as one for declaratory judgment. An action for declaratory judgment must involve a "justiciable controversy." ***Chovanak v. Matthews,*** *120 Mont. 520, 527-528, 188 P.2d 582 (1948) and see* ***Lee v. State,*** *195 Mont. 1, 6, 635 P.2d 1282 (1981)*. The test of justiciability has similarities to standing requirements. It is set forth in ***Matter of Secret Grand Jury Inquiry,*** *170 Mont. 354, 357, 553 P.2d 987 (1976)*, and repeated in ***Lee v. State,*** *195 Mont. at 6:*

"First, a justiciable controversy requires that parties have existing and genuine, as distinguished from theoretical, rights or interest. Second, the controversy must be one upon which the judgement of the court may effectively operate, as distinguished from a debate or argument invoking a purely political, administrative, philosophical or academic conclusion. Third, must be a controversy the judicial determination of which will have the effect of a final judgment in law or decree in equity upon the rights, status or legal relationships of one or more of the real parties in interest, or lacking these qualities be of such overriding public moment as to constitute the legal equivalent of all of them."

The controversy tendered to the Court in this case does not satisfy the quoted requirements. Petitioner has suffered no injury and is not threatened with one. He has no greater interest in answers to the questions he poses than any other claimant injured during the time frame of the applicable statutes. Thus, he is similarly situated to the plaintiff in ***Chovanak***, who brought an action as a resident, citizen and elector for a declaratory judgment voiding a statue for the licensing of certain slot machines. The case in ***Chovanak*** was dismissed because plaintiff was suing against gambling in

general; there was no particular controversy between the plaintiff; the defendant's and plaintiff's interests were no different from other taxpayers, residents and citizens. On the other hand, the claim in ***Lee v. State*** was held to be justiciable. The plaintiff in that case sought a declaratory judgment voiding the 55 miles per hour speed limit proclamation. The Court determined that there was a genuine controversy since plaintiff regularly plied the roads and was directly affected by the threatened enforcement of the law. The Court summarized his interest as follows: "He wants to drive his motor vehicle as fast as the basic rule allows." Petitioner has not demonstrated any similar impact on his behavior or rights.

In addition to its request for dismissal, the respondent requests the Court to sanction petitioner's attorney for his failure to comply with mediation requirements. It cites numerous instances where the attorney has filed petitions on behalf of his clients without first mediating the issues raised. However, since petitioner's counsel was apparently relying on a previous decision of the Court (***Laterell***) as supporting his theory that this case is an exception to the general rule, the Court declines to impose sanctions. However, this Order puts counsel on clear notice of the comprehensiveness of the mediation requirements. Further willful failures to comply with mediation requirements will subject counsel to sanctions.

The Court makes one further note concerning the conduct of petitioner's counsel in this case. In the prayers for relief the petition asks for "a 20% penalty on all past-due benefits." This request was utterly without any factual basis since there is no claim for past-due benefits. Counsel have an obligation to assure that their pleadings are accurate and factually supported. *Section 39-71-2914, MCA.*

For the reasons set forth in the preceding discussion,

IT IS HEREBY ORDERED that respondent's request for sanctions is **denied.**

IT IS FURTHER ORDERED that the petition in this matter is **dismissed with prejudice.**

DATED in Helena, Montana, the 13th day of December, 1993.

(SEAL)

/s/ Mike McCarter
JUDGE

c: Mr. Thomas C. Bulman
Mr. Charles G. Adams
Ms. Nikki Noland - Courtesy Copy

1. It is therefore unnecessary to determine whether the respondent is a governmental entity.