

IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

WCC No. 9502-7246R1

ELIZABETH M. KUZARA

Petitioner

vs.

STATE COMPENSATION INSURANCE FUND

Respondent/Insurer for

SPRING CREEK COAL COMPANY

Employer.

FINDINGS OF FACT, CONCLUSIONS OF LAW AND JUDGMENT

Trial in this matter was held on November 14, 1995, before the Honorable Mike McCarter, and November 12, and 13, 1997, before the undersigned. Petitioner appeared and represented herself pro sé. Respondent, State Fund, was represented by Mr. Charles G. Adams. Based upon the testimony and exhibits, as well as the Montana Supreme Court Order in this case, the Court enters the following:

FINDINGS OF FACT

1. The Workers' Compensation Court granted a directed verdict in favor of the State Fund on November 14, 1995. The Montana Supreme Court reversed and remanded with instructions this court was to follow in the continuation of this hearing:

2. The Montana Supreme Court specifically held as follows:

We conclude that during her case-in-chief, Kuzara supplied sufficient evidence of notice of her work-related injury to her employer when she informed Izzard on August 8, 1993, that he should contact Bebee for more information. However, respondents should have the opportunity to present evidence to rebut Kuzara's claim that she gave Spring Creek sufficient notice of her injury.

Kuzara v. State Compensation Insurance Fund, Slip Op. No. 96-16 at 11.

3. The Montana Supreme Court also considered the principals of equitable estoppel and held that:

Based on the record before this Court and unless rebutted by substantial credible evidence, Spring Creek's representation and concealment of material facts lead Kuzara reasonably to believe that she did not have to file a claim with the State Fund. Equitable estoppel would therefore be proper to prevent Spring Creek and the State Fund from claiming that Kuzara supplied improper notice under Section 39-71-603, MCA (1993). Spring Creek encouraged Kuzara to file a non-work related injury claim with Aetna and also told Kuzara that it would "take care of everything." We hold that unless rebutted by Spring Creek and the state Fund they are estopped from claiming that Kuzara provided insufficient evidence of her work-related injury under Section 39-71-603, MCA, (1993).

Kuzara v. State Compensation Insurance Fund, Slip Op. No. 96-16 at 14.

4. In light of the Montana Supreme Court holding, and based upon the evidence presented during the hearing on November 12 and 13, 1997, this Court finds that Kuzara gave sufficient notice of her injury within thirty (30) days as required under section 39-71-603, MCA.

5. Kuzara suffered a work-related back injury on July 18, 1993, while employed at Spring Creek Coal Company as a dragline groundsman.

6. On the evening Kuzara injured her back, Kuzara mentioned to Ed Bebee, her other crew member, that she had hurt her back, but did not go into any detail.

7. Within a couple of days after the injury, Kuzara told Ed Bebee the circumstances of her back injury, how she had injured her back, and that she was in extreme pain.

8. On August 5, 1993, Kuzara had a myelogram performed by Dr. Robert Woods. At that time, Dr. Woods informed Kuzara that her condition necessitated surgery.

9. On August 8, 1993, Kuzara called Clark Izzard, her immediate supervisor, and told Izzard that her injury was work related. The Supreme Court has previously held that this notification was sufficient notice of her work-related injury to her employer. This ruling is the law of the case.

10. Specifically, Kuzara told Izzard that her injury was from a combination of things over the years, that she had been having a lot of back trouble the last month or so, and that it was primarily from lifting she had done several weeks earlier. Kuzara also told Izzard that her injury was work related. Finally, Kuzara told Izzard that she was feeling sick and that if he had any additional questions he could contact Bebee.

11. State Fund's witnesses contradicted Kuzara's testimony regarding her discussion with Izzard. However, the Court finds that State Fund's witnesses did not rebut, or show that Kuzara's testimony was ill-founded.

CONCLUSIONS OF LAW

1. Kuzara did report that a work injury occurred on July 18, 1993.
2. Kuzara did provide timely notice of her injury to the employer within the thirty (30) day notice requirements of section 39-71-603, MCA.
3. Kuzara is entitled to benefits under the Workers' Compensation Act.
4. The Court has not considered the claim of equitable estoppel, although the Montana Supreme Court held that Spring Creek's misrepresentation and concealment of material facts lead Kuzara to reasonably believe that she did not have to file a claim with the State Fund. The Court has not considered this theory, as notice issue discussed above is dispositive.
5. Kuzara is not entitled to attorney fees since an award of attorney fees requires a finding that the insurer unreasonably denied her claim. § 39-71-611(c), MCA. The insurer's actions were not unreasonable.

JUDGMENT

1. The Court has jurisdiction over the parties dispute. § 39-71-2905, MCA.
2. Kuzara sustained a work[-]related injury on July 18, 1993, and Kuzara notified her employer within thirty (30) days of her injury. Kuzara therefore met the notice requirements in section 39-71-603, MCA.
3. Kuzara is not entitled to attorney fees but is entitled to her costs. In accordance with ARM 24.25.342 she shall file and serve her memorandum of costs within 10 days. State Fund shall have 10 days thereafter in which to file and serve any objections it has to particular costs submitted by Kuzara.
4. The Court makes no determinations and enters no judgment concerning what benefits, if any, Kuzara is due as the issue is not presented in this case.
5. This JUDGMENT is certified as final for purposes of appeal.
6. Any party to this dispute may have 20 days in which to request a rehearing from these FINDINGS OF FACT, CONCLUSIONS OF LAW AND JUDGMENT.

DATED this 25th day of November, 1997.

\s\ Russell C. Fagg
District Court Judge

cc: Ms. Elizabeth M. Kuzara
Mr. Charles G. Adams