

IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

1995 MTWCC 99

WCC No. 9502-7246

ELIZABETH KUZARA

Petitioner

vs.

STATE COMPENSATION INSURANCE FUND

Respondent/Insurer for

SPRING CREEK COAL COMPANY

Employer.

JUDGMENT

REVERSED

[See, Kuzara v. State Compensation Ins. Fund, 279 Mont. 223, 928 P.2d 136 \(1996\) \(No. 96-016\).](#)

Summary: Coal company worker testified she told employer she had back problems that would require surgery, and she believed they were work-related, but identified no specific incident or date of injury.

Held: Workers' Compensation Court granted directed verdict for insurer, finding notice legally insufficient. Note: Supreme Court reversed this decision in [Kuzara v. State Compensation Ins. Fund, 279 Mont. 223, 928 P.2d 136 \(1996\) \(No. 96-016\)](#). On remand, Worker's Compensation Court followed higher court's instruction to take additional testimony and found that claimant provided notice of the injury.

This matter came on for trial on Tuesday, November 14, 1995, in Billings, Montana. Petitioner was present and represented by Mr. Patrick R. Sheehy. Respondent was represented by Mr. Charles G. Adams.

Exhibits 1 through 8, 10 through 13, and 15 through 26 were admitted by stipulation of the parties. Pages 12 through 27, 31, 32 and 37 through 51 of Exhibit 14 were also admitted by stipulation; the remaining pages of Exhibit 14 were refused. The Court reserved ruling on Exhibit 9. The deposition of Dr. Robert Wood was submitted for the Court's consideration. Petitioner and Charles D. Helvey were sworn and testified.

After the testimony of petitioner and Mr. Helvey, and before completion of the trial, Mr. Adams moved for a directed verdict on the ground that the notice claimant testified she gave her employer was insufficient under section 39-71-603, MCA. Petitioner's attorney stipulated that the additional testimony which might be presented at trial would not improve petitioner's case regarding the notice. He agreed that before proceeding with any further evidence it was appropriate for the Court to determine whether the notice petitioner testified she gave her employer was sufficient.

The Court then granted the motion for directed verdict, holding that the notice was insufficient because it was too vague. According to her testimony, petitioner told her employer that she had back problems which would require surgery and that she believed her problems were work-related, however, she identified no specific incident and no specific date on which her problems arose. She had had prior back problems and told the employer that her latest problems arose "several weeks" previously. She conceded in her testimony that at the time of the conversations she herself had not identified any specific incident or series of incidents, and did not do so until after the 30-day period had expired. For purposes of the motion, the Court deemed petitioner's testimony true and determined that the notice was too nonspecific to put the employer on notice that she had suffered an industrial accident. The Court noted that her conversation with the employer sounded more like a notice of an occupational disease rather than an injury. Moreover, her description of the onset of her acute back pain makes it doubtful that an industrial accident within the meaning of the Workers' Compensation Act occurred. *See Moore v. State Fund*, WCC No. 9405-7079 (April 17, 1995), *aff'd on appeal*, slip op. 95-218 (November 21, 1995).

In accordance with the Court's directed verdict, **Judgment** is entered for respondent, determining and finding that the petitioner failed to notify her employer within 30 days of her injury. Her claim is therefore barred by section 39-71-603, MCA.

This JUDGMENT is certified as final for purposes of appeal.

Dated in Helena, Montana, this 27th day of November, 1995.

(SEAL)

/s/ Mike McCarter

JUDGE

c: Mr. Patrick R. Sheehy

Mr. Charles G. Adams

Submitted: November 14, 1995