

IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

1999 MTWCC 40

WCC No. 9902-8163

PAULA MAMETIEFF

Petitioner

vs.

LIBERTY NORTHWEST INSURANCE CORPORATION

Respondent/Insurer for

NATURE'S ENHANCEMENT, INCORPORATED

Employer.

FINDINGS OF FACT, CONCLUSIONS OF LAW AND JUDGMENT

Summary: Laborer employed with plant grower hurt her ring finger on first day of employment. Because she had just started work and feared losing her job, she did not immediately report her injury. She testified that about a month later, she asked a supervisor if the employer had any "insurance," but did not mention the injury. The supervisor testified claimant had asked about "compensation," which she understood as meaning "medical insurance." The supervisor responded, "No." In fact, the company had no medical insurance for employees, but did carry workers' compensation insurance. The supervisor denied knowledge of the accident within thirty days of its occurrence.

Held: While crediting claimant's testimony about the injury, the Court was not persuaded the conversation with the supervisor occurred within thirty days of the accident. Further, claimant's inquiry was ambiguous, not sufficient to give notice of a work injury.

Topics:

Constitutions, Statutes, Regulations and Rules: Montana Code: 39-71-603, MCA (1997). Claimant's inquiry to supervisor about whether employer had "compensation," which supervisor reasonably understood as inquiring about medical benefits, was not sufficient to give notice within section 39-71-603, MCA (1997). Claimant did not prove, in any event, that the inquiry came within thirty days of her accident.

Absent evidence the employer discouraged claim filing, claimant's subjective concern that reporting an injury would jeopardize her employment does not justify ignoring the thirty day notice requirement.

Claims: Notice to Employer or Insurer: Supervisor. Claimant's inquiry to supervisor about whether employer had "compensation," which supervisor reasonably understood as inquiring about medical benefits, was not sufficient to give notice within section 39-71-603, MCA (1997). Claimant did not prove, in any event, that the inquiry came within thirty days of her accident.

Absent evidence the employer discouraged claim filing, claimant's subjective concern that reporting an injury would jeopardize her employment does not justify ignoring the thirty day notice requirement.

Limitations Periods: Notice to Employer. Claimant's inquiry to supervisor about whether employer had "compensation," which supervisor reasonably understood as inquiring about medical benefits, was not sufficient to give notice within section 39-71-603, MCA (1997). Claimant did not prove, in any event, that the inquiry came within thirty days of her accident.

Absent evidence the employer discouraged claim filing, claimant's subjective concern that reporting an injury would jeopardize her employment does not justify ignoring the thirty day notice requirement.

¶1 The trial in this matter was held on June 21, 1999, in Hamilton, Montana. Petitioner, Paula Mametieff (claimant), was present and represented herself. Respondent, Liberty Northwest Insurance Corporation (Liberty Northwest), was represented by Mr. Larry W. Jones.

¶2 Witnesses: Claimant, Dasha Gostevskiyh, Julie Monk, and Ann Hatzenbuehler were sworn and testified. In addition, the depositions of claimant and Amy Busch were submitted to the Court for its consideration.

¶3 Exhibits: Exhibits 1 and 2 were admitted without objection.

¶4 As set forth in the Final Pretrial Order, the following issues are presented for decision:

- Whether the claimant was injured in the course and scope of her employment.
- If the claimant was injured in the course and scope of her employment, did she give the notice to her employer [as] required by the Montana Workers' Compensation Act?
- If the claimant was injured in the course and scope of her employment and if she gave appropriate notice, is she entitled to medical benefits under the Workers' Compensation Act?

¶15 Having considered the Final Pretrial Order, the testimony presented at trial, the demeanor and credibility of the witnesses, the depositions and exhibits, and the arguments of the parties, the Court makes the following:

FINDINGS OF FACT

¶16 The claimant began working for Nature's Enhancement, Incorporated on May 6, 1998. Nature's Enhancement is a grower and wholesaler of potted plants. Claimant was hired as a laborer to pot plants.

¶17 Claimant testified that on her first day of work she caught the ring finger of her left hand in a pot while pulling apart a pile of pots. She felt a sharp pain in her finger and the pain shot up into her elbow. Claimant's testimony was corroborated by her daughter, who was a coworker and witnessed the incident. Their testimony was credible and I find that claimant in fact suffered an industrial incident involving acute pain in her finger and arm.

¶18 At the time of the incident, Nature's Enhancement was insured by Liberty Northwest.

¶19 Since May 6th the claimant has continued to suffer pain in her left ring finger and lower arm. She has not sought medical care for her condition because she has no medical insurance and cannot otherwise afford medical care.

¶110 Claimant did not immediately report the incident to her employer because she had just started work and was concerned that she might lose her job. Her concern was not caused by any act or statement of her employer.

¶111 In her deposition, the claimant testified that approximately two or three weeks after the incident, she talked with Ann, whose last name she did not know. (Mametieff Dep. at 18-19.) According to claimant, the conversation occurred in a shed during a rain storm. (*Id.* at 19.) While her deposition testimony is somewhat contradictory, she ultimately testified that she asked Ann if Nature's Enhancement had "any kind of benefits" (*id.* at 20) and told Ann that she had hurt her finger at work.

¶112 At trial, claimant testified that the conversation occurred approximately a month after the incident and that she asked Ann if Nature's Enhancement had any "insurance." She further testified that she did not mention the May 6th injury.

¶113 Ann Hatzenbuehler was a crew leader/supervisor for Nature's Enhancement. She recalled conversing with claimant in the shed during the rain storm. Ann testified that claimant asked her whether Nature's Enhancement had any "compensation", which Ann interpreted as meaning "medical insurance." Both claimant and Ann agree that Ann replied, "No." In fact Nature's Enhancement had no medical insurance coverage for its employees but did have workers' compensation coverage. Ann denied any knowledge of the May 6th incident or any injury to claimant's ring finger prior to the week before claimant's termination of employment.

¶14 Ann recalled the conversation as occurring two to three weeks before claimant's employment was terminated.

¶15 Claimant was laid off the Friday before the 4th of July, 1998. That Friday was July 3rd. (See 1998 Calendar.) She was notified of her layoff on the prior Monday, which was June 29, 1998.

¶16 After being notified that she was to be laid off, claimant reported the May 6th incident to a supervisor. She reported that she had hurt her finger and wished to see a doctor. I find that this was the first report to her employer, or its supervisors, of the May 6th incident. While claimant testified in her deposition that she had reported it to Ann during an earlier conversation, claimant's and Ann's trial testimony did not support that earlier testimony.

¶17 On July 2, 1998, claimant filed a claim for compensation. (Ex. 1.)

¶18 Claimant failed to persuade me that the conversation with Ann occurred within 30 days of the May 6th incident. At trial, she put the time of the conversation at approximately a month after the incident. Ann recalled it as being two to three weeks prior to claimant's termination, which would date the conversation between June 12 and 19, 1998. While it is *possible* that the conversation occurred on or prior to June 5th, I am *not* persuaded that it is probable.

¶19 Even if the conversation with Ann occurred on or before June 5, 1998, I find that the claimant's inquiry was at best ambiguous. Ann's interpretation of the inquiry as referring to medical insurance, not workers' compensation insurance, was reasonable. I note that in testifying at trial the claimant said that her inquiry was about "insurance." I am unpersuaded that Ann intended to mislead the claimant with regard to workers' compensation coverage.

CONCLUSIONS OF LAW

¶20 Claimant's alleged injury, which occurred on May 6, 1998, is governed by the 1997 version of the Workers' Compensation Act. *Buckman v. Montana Deaconess Hospital*, 224 Mont. 318, 321, 730 P.2d 380, 382 (1986).

¶21 Notice of an industrial accident must be given to the employer within 30 days.

39-71-603. Notice of injuries other than death to be submitted within thirty days. (1) A claim to recover benefits under the Workers' Compensation Act for injuries not resulting in death may not be considered compensable unless, within 30 days after the occurrence of the accident that is claimed to have caused the injury, notice of the time and place where the accident occurred and the nature of the injury is given to the employer or the employer's insurer by the injured employee or someone on the employee's behalf. Actual knowledge of the accident and injury on the part of the employer or the employer's

managing agent or superintendent in charge of the work in which the injured employee was engaged at the time of the injury is equivalent to notice.

The claimant did not give her employer notice within the requisite 30 days. The evidence she presented also fails to persuade the Court that the employer or one of its supervisors was aware of her industrial incident within 30 days.

¶22 The Court is sympathetic to claimant's concern over her continued employment as justifying her failure to promptly report the May 6th incident. However, the 30-day reporting requirement is mandatory and a failure to strictly comply with the requirement precludes compensation. *Reil v. Billings Processors, Inc.*, 229 Mont. 305, 308, 746 P.2d 617, 619 (1987). There are some exceptions to the requirement but none are applicable here. Claimant was immediately aware that she suffered some sort of injury, thus she had enough information to fully report the incident and her condition. *Compare with Bodily v. John Jump Trucking, Inc.*, 250 Mont. 274, 819 P.2d 1262 (1991). She failed to provide rudimentary information which would have put the employer on inquiry notice. *Compare with Kuzara v. State Compensation Ins. Fund*, 279 Mont. 223, 928 P.2d 136 (1996). Finally, the employer did not act in a manner which discouraged her from filing a claim or led her to believe that she need not do so. See *Kuzara*, 279 Mont. at 231, 928 P.2d at 141.

JUDGMENT

¶23 The Court has jurisdiction over this matter.

¶24 The claimant failed to provide her employer with notice of an industrial accident or injury within the 30 days provided by section 39-71-603, MCA (1997), and is therefore not entitled to workers' compensation benefits. Her petition is **dismissed with prejudice**.

¶25 Claimant is not entitled to costs or other relief.

¶26 This JUDGMENT is certified as final for purposes of appeal.

¶27 Any party to this dispute has 20 days in which to request a rehearing from these Findings of Fact, Conclusions of Law and Judgment

DATED in Helena, Montana, this 14th day of July, 1999.

(SEAL)

\s\ Mike McCarter

JUDGE

c: Ms. Paula Mametieff - Certified Mail

Mr. Larry W. Jones

Date Submitted: June 21, 1999