

IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

1994 MTWCC 109

WCC No. 9408-7104

BRUCE MARCOTT

Petitioner

vs.

LOUISIANA PACIFIC CORPORATION

Respondent/Employer

FINDINGS OF FACT, CONCLUSIONS OF LAW AND JUDGMENT

Affirmed after remand at 1996 MTWCC 33

Summary: While mechanic was rushing to fix a forklift, he turned sharply on his left foot, and an unusual amount of force caused his left calf muscle to rupture. Employer contended the injury was not compensable because claimant was merely walking, which did not amount to an unexpected, traumatic incident or an unusual strain.

Held: Crediting claimant's testimony that he was rushing and turned sharply, the Court finds an unusual strain making the injury compensable. Where a legitimate factual dispute existed over whether claimant was merely walking or walking rapidly and turning, the employer's denial of compensability was not unreasonable. Attorneys fees and penalty were denied.

Topics:

Constitutions, Statutes, Regulations, and Rules: Montana Code Annotated: section 39-71-2907, MCA (1993). Crediting mechanic's testimony that he was rushing and turned sharply, placing unusual strain on his calf muscle, the Court finds ruptured calf muscle compensable. Where a legitimate factual dispute existed over whether claimant was merely walking

or walking rapidly and turning, the employer's denial of compensability was not unreasonable. Attorneys fees and penalty were denied.

Penalty: Insurers. Crediting mechanic's testimony that he was rushing and turned sharply, placing unusual strain on his calf muscle, the Court finds ruptured calf muscle compensable. Where a legitimate factual dispute existed over whether claimant was merely walking or walking rapidly and turning, the employer's denial of compensability was not unreasonable. Attorneys fees and penalty were denied.

Injury and Accident: Unexpected Strain or Injury. Crediting mechanic's testimony that he was rushing and turned sharply, placing unusual strain on his calf muscle, the Court finds ruptured calf muscle compensable.

The trial in this matter was held on November 21, 1994, in Missoula, Montana. Petitioner, Bruce Marcott (claimant), was present and represented by Mr. Chris J. Ragar. Respondent, Louisiana Pacific Corporation (LP), was represented by Mr. Kelly M. Wills. Claimant testified on his own behalf. Gene Quillen, Donald Harrell, M.D., Steve Golden, Bart Davis, Bill Fleming and John Mikkelson also testified. The depositions of Bruce Marcott, Kim Marcott, John Mikkelson, John Campbell, M.D., David King, M.D., Bill Fleming, Matt Harris, and records custodians for various health care providers were submitted for the Court's consideration. Exhibits 1, 2 and 4 through 8 were admitted. Exhibit 3, pages 10, 16, 18 and 20 were admitted for consideration of the penalty issue only. The remainder of Exhibit 3 was admitted for all purposes.

Bench Ruling

At the close of trial Judge McCarter entered a bench ruling that claimant suffered a compensable injury under the Workers' Compensation Act, and that he is entitled to costs but not to a penalty or attorney fees.

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

FINDINGS OF FACT

1. At the time of claimant's injury he was the head mechanic for LP and had been in that position for over eight years.
2. On February 17, 1994, claimant was rushing to fix a forklift. At the time of the injury, he was walking rapidly and turning sharply to the left on his left foot. This activity placed

an unusual amount of force on claimant's leg. The unusual amount of force caused the gastrocnemius muscle in his left calf to rupture.

3. Claimant called Matt Harris, green-end superintendent for LP, and told him that he injured his leg and that he was just walking when it happened. When Bart Davis, the plant and maintenance superintendent at LP asked claimant what happened, claimant responded that he was just walking and his leg gave out. Claimant reported to Dr. Jackson on the day of the injury that he was just walking and felt something snap. (Ex.1E at 2.) Prior to April 29, 1994, claimant did not tell any LP officials that he was walking rapidly and turning sharply.

4. Dr. Harrell opined to LP and at trial that it was just coincidence that this injury happened when claimant was at work and that the injury was not work-related. However, upon cross-examination, Dr. Harrell testified that this injury most likely would not have occurred without some unusual strain or stress on the muscle. He further testified that this type of injury is typically a sports injury.

5. Claimant made a timely report to LP on the day of the accident. (Ex. 3 at 52.)

6. Claimant filed his claim in a timely manner. (Ex. 3 at 53)

7. LP is self-insured.

8. LP denied liability on March 21, 1994. (Ex. 3 at 12.)

9. Claimant was a credible witness.

10. In light of claimant's original reports that the injury occurred while he was walking, his failure to report in more detail how the injury happened, and Dr. Harrell's pretrial opinions, LP's decision to deny the claim was reasonable.

CONCLUSIONS OF LAW

1. The law in effect at the time of the injury governs the claimant's entitlement to benefits. ***Buckman v. Montana Deaconess Hospital***, 224 Mont. 318, 730 P.2d 380 (1986). Thus, the 1993 version of the Workers' Compensation Act governs this case.

2. Claimant has the burden of proving by a preponderance of the evidence that he is entitled to compensation. ***Ricks v. Teslow Consolidated***, 162 Mont. 469, 483-484, 512 P.2d 1304 (1973); ***Dumont v. Aetna Fire Underwriters***, 183 Mont. 190, 598 P.2d 1099 (1979).

3. Claimant suffered a compensable industrial injury pursuant to section 39-71-119(2), MCA, which states:

- (2) An injury is caused by an accident. An accident is:
 - (a) an unexpected, traumatic incident or unusual strain;
 - (b) identifiable by time and place of occurrence;
 - (c) identifiable by member or part of the body affected;
 - (d) caused by a specific event on a single day or during a single work shift.

LP does not dispute that requirements (b) through (d) were met. However, it disputes that claimant suffered "an unexpected, traumatic incident or an unusual strain."

Dr. Harrell testified that an unusual strain was required to cause an injury of this magnitude. The Court also found claimant's description of events leading up to the injury to be credible. That description shows that claimant was doing more than mere walking. He was walking rapidly and turning sharply when his muscle ruptured. Consequently, claimant's injury satisfies the "unexpected traumatic incident or unusual strain" requirement of the Act and is compensable.

4. LP's denial of claimant's claim was reasonable based on several factors. A legitimate factual dispute existed as to whether claimant was simply walking or walking rapidly and turning sharply to his left. In addition, Dr. Harrell provided LP with his opinion that claimant's injury was not caused by his work and that the occurrence of the rupture at work was coincidental. LP was entitled to rely on Dr. Harrell's opinion in assessing the claim. Dr. Harrell's trial testimony supporting claimant was the product of skillful cross-examination by claimant's counsel and does not indicate unreasonableness by LP.

LP also resisted the claim based on its interpretation of the definition of injury and accident. Relying on heart attack and similar cases, it argued that section 39-71-119(2), MCA, does not encompass a condition that arises spontaneously as a result of an ordinary activity that people do on a daily basis irrespective of work. The Court need not address LP's contention in this case because, as a matter of fact, the activity causing the muscle rupture was unusual and resulted in abnormal force on the muscle. However, the Court does not consider LP's proffered interpretation of the statute to be absurd or reckless. The argument raised a colorable issue and was within the bounds of legitimate legal advocacy.

Finally, while several of claimant's doctors noted in his medical records that his injury was work-related, these notes are not conclusive. The adjuster in the case testified that some doctors believe that an incident occurring at work is automatically work-related.

Based on its own review of many, many medical depositions, the Court can validate the adjuster's observation.

5. At trial the Court suggested that counsel determine if they can agree on claimant's benefit rate. Respondent's counsel has since informed the Court that claimant is entitled to the maximum rate.
6. Claimant is not entitled to attorney fees or a penalty.
7. Claimant is entitled to costs.

JUDGMENT

1. On February 17, 1994, claimant suffered a compensable injury. He is entitled to temporary total disability benefits commencing on the day after the waiting period elapsed.
2. Claimant is entitled to reasonable medical expenses related to his injury.
3. Claimant is not entitled to imposition of a penalty or an award of attorney fees.
4. Claimant is entitled to costs. He shall have fourteen (14) days in which to submit his affidavit of costs. LP shall then have ten (10) days in which to file an objection.
5. This JUDGMENT is certified as final for purposes of appeal pursuant to ARM 24.5.348.
6. Any party to this dispute may have twenty (20) days in which to request a rehearing from these Findings of Fact, Conclusions of Law and Judgment.

Dated in Helena, Montana, this 7th day of December, 1994.

(SEAL)

/s/ Mike McCarter

JUDGE

c: Mr. Chris J. Ragar
Mr. Kelly M. Wills