

IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

1994 MTWCC 36

WCC No. 9402-6996

VIVIAN OSTERMILLER,

Petitioner,

vs.

AMERICAN STORES,

Respondent/Insurer for

BUTTREY FOOD & DRUG,

Employer.

ORDER GRANTING MOTION FOR PARTIAL SUMMARY JUDGMENT;

ORDER DELIMITING ISSUES FOR TRIAL

The matter before the Court is respondent's motion for partial summary judgment. The petitioner, Vivian Ostermiller (Ostermiller), brought this petition against respondent, American Stores (American). American employed Ostermiller and is self-insured. The motion for summary judgment is supported by the pleadings and a March 23, 1994, affidavit of Jon W. Rogers, a claims' adjuster for Intermountain Claims of Montana, Inc. Intermountain was hired by American to adjust this claim.

Ostermiller suffered a work-related injury to her right wrist and hand on March 9, 1989. She subsequently developed carpal tunnel syndrome and underwent a carpal tunnel release. In March 1992, she and American entered into a full and final compromise settlement which was approved by the Montana Department of Labor and Industry.

In her present petition, Ostermiller alleges that her right-hand injury caused her to overuse her left hand, resulting in carpal tunnel syndrome of the left hand. She seeks payment for a carpal tunnel release performed on her left wrist; payment for psychological treatment which she says was necessitated by her industrial accident; **"payment for any permanent partial damage award, and any other related damages as a result of the injury to her left wrist;"** and a penalty. The request for **"any permanent partial damages award"** gives rise to American's motion for partial summary judgment. American argues that the settlement precludes any award of further compensation benefits and that Ostermiller has

not set forth sufficient grounds to reopen the agreement. In her reply, Ostermiller argues that the Court should first determine whether her carpal tunnel syndrome of the left hand is related to her original injury, and, if it rules in her favor, then consider reopening the settlement. She says:

Whether or not a separate Motion to set aside the previous Workers' Compensation settlement should be filed at this time or should be filed after the Court's ruling relates back to the cart and the horse. It would not behoove Petitioner to file a Motion to set aside the Workers' Compensation settlement of the right wrist injury if the medical proof does not support the Court's finding that the Petitioner's left wrist was caused by the right wrist injury. Under the current Petition, the Court can award payment of the medical bills as a result of the Petitioner's left wrist surgery. Should the Court rule in favor of the Petitioner, the Court may also rule that the Petitioner is entitled to file a Motion to set aside the settlement and proceed with a request for determination of disability of her left wrist..

(Petitioner's Response to Motion for Partial Summary Judgment at 2.)

Based on her response to the motion for partial summary judgment, it is clear that Ostermiller is not presently seeking to reopen the March 1992 settlement agreement, and that she defers her request for further compensation benefits until a later time.

In light of her response, IT IS HEREBY ORDERED that American's motion for partial summary judgment is **granted**. At trial, Ostermiller shall be limited to proof of her claims for medical benefits. Should she prevail on those claims, Ostermiller may file a new petition to reopen her settlement.

DATED in Helena, Montana, this 19th day of April, 1994.

(SEAL)

/S/ Mike McCarter

JUDGE

c: Mr. Dane C. Schofield

Mr. Steven S. Carey