

IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

2003 MTWCC 19

WCC No. 2002-0626

KATE J. OSWALD

Petitioner

vs.

HORIZON CMS HEALTHCARE CORPORATION

Respondent/Insurer.

ORDER DENYING CROSS-PETITIONS FOR REHEARING

Summary: Both parties moved for reconsideration from a decision of the Court finding that the claimant contracted hepatitis from a single exposure at work, which does not meet the occupational disease definition. 2002 MTWCC 63. Petitioner urges that her condition should be declared an occupational disease anyway since she cannot identify the specific time or incident. Respondent urges that because there are other possible, theoretical sources of infection, she failed to carry her burden of proof.

Held: Both motions are denied. The fact that claimant may not be able to identify the specific incident or time it occurred does not turn her condition into an occupational disease. As to the burden of proof contention, she need not prove certainty or eliminate all other possible causes; she need only prove it was more likely than not that she contracted the condition at work.

Topics:

Occupational Disease: Disease. Where the evidence indicates a single incident caused claimant's condition, the occupational disease definition is not met and that doesn't change even though claimant may not be able to identify the specific incident or time.

Proof: Burden of Proof: Generally. Claimant must not prove with certainty that her condition was caused by a work-related incident or eliminate all other possible causes, she need only prove that a work-related incident is more likely than not the cause of her condition.

Proof: Burden of Proof: Preponderance. Claimant must not prove with certainty that her condition was caused by a work-related incident or eliminate all other possible causes, she

need only prove that a work-related incident is more likely than not the cause of her condition.

¶1 Both claimant and respondent are unhappy with the Court's decision and have filed motions for rehearing which are really nothing more than requests for reconsideration.

¶2 Initially, claimant asks the Court to reconsider its finding that claimant did not suffer an occupational disease because she may be unable to prove the specific time and place she contracted hepatitis and may therefore be unable to satisfy the injury definition required to prove an industrial accident. While her concerns are legitimate ones, whether she must show a specific time and incident under the circumstances of this case is beyond the scope of the present proceeding. In any event it does not change the fact that she has not met the occupational disease definition since the Court is persuaded that she contracted hepatitis from a single exposure.

¶3 Respondent objects to the Court's finding that claimant contracted hepatitis at work. It notes that claimant did not file a responsive brief and urges that the Court rule in its favor for that reason alone. The Court declines to do so: it issued its findings and the request for rehearing is simply a rehash of arguments already made, therefore it presents no basis for a rehearing. With respect to respondent's argument that the claimant bears the burden of proof, the Court agrees, but points out to counsel that her burden does not require that she prove with certainty that she contracted hepatitis at work or that she eliminate all other possibilities. It requires here to only prove it more likely that she contracted it at work than elsewhere and she satisfied that burden.

¶4 The petitions for rehearing are **denied**.

DATED in Helena, Montana, this 10th day of March, 2003.

(SEAL)

\s\ Mike McCarter

JUDGE

c: Mr. Bernard J. Everett

Mr. Charles G. Adams

Submitted: January 13, 2003