

IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

1997 MTWCC 46

WCC No. 9701-7692

JEANNE WARD

Petitioner

vs.

PLUM CREEK MANUFACTURING

Respondent/Insurer/Employer.

ORDER DENYING RESPONDENT'S MOTION FOR SUMMARY RULING

Summary: The insurer refused to advance claimant \$10,000 on permanent partial disability benefits. The insurer argued claimant failed to provide justification for the advance, contending this was required during mediation and, more generally, as justification for her request.

Held: Where the insurer did not demand specification for the request during the mediation process, the Workers' Compensation Court does not have jurisdiction to entertain the present complaint about lack of specificity during mediation. While section 39-71-2401(4)(a), MCA (1993) references providing a specific demand prior to mediation, the remedy for that failure is provided in the mediation statute and requires decision by the mediator. Contrary to the insurer's argument, there is no statutory requirement that claimant provide justification to the insurer for a lump sum request for permanent partial disability benefits. The only criteria mentioned in section 39-71-741(2), MCA (1993) regarding approval is whether a settlement amount is inadequate. The insurer's request for dismissal is rejected; the WCC will review claimant's request for advance with regard to whether the amount is adequate.

Topics:

Constitutions, Statutes, Regulations and Rules: Montana Code Annotated: section 39-71-2401(1), MCA (1993). Where the insurer did not demand specification to support claimant's request for a lump-sum advance of PPD benefits during the mediation process, the insurer cannot complain to the WCC about inadequate specification during mediation. While section 39-71-2401(4)(a), MCA (1993) references providing a specific demand prior to mediation, the remedy for

that failure is provided in the mediation statute and requires decision by the mediator, which could then be reviewed by the WCC.

Benefits: Lump Sums: Generally. Contrary to the insurer's argument, there is no requirement in section 39-71-741(2), MCA (1993) that claimant provide justification to the insurer for a lump sum request for permanent partial disability benefits. The only criteria mentioned is whether a settlement amount is inadequate.

Benefits: Permanent Partial Benefits: Generally. Contrary to the insurer's argument, there is no requirement in section 39-71-741(2), MCA (1993) that claimant provide justification to the insurer for a lump sum request for permanent partial disability benefits. The only criteria mentioned is whether a settlement amount is inadequate.

Mediation. Where the insurer did not demand specification to support claimant's request for a lump-sum advance of PPD benefits during the mediation process, the insurer cannot complain to the WCC about inadequate specification during mediation. While section 39-71-2401(4)(a), MCA (1993) references providing a specific demand prior to mediation, the remedy for that failure is provided in the mediation statute and requires decision by the mediator, which could then be reviewed by the WCC.

The petitioner (claimant) in this matter seeks a \$10,000 partial lump-sum advance of the permanent partial disability benefits due her. A review of the voluminous filings in this case shows that the amount of the benefits due her are not in dispute, rather the respondent (insurer) resists any partial lump summing and requests that the matter be dismissed on account of claimant's failure to provide it with a detailed justification for her lump-sum request. (Defendant's Motion for Summary Ruling and Reply Brief in Support of Defendant's Motion for Summary Ruling.)

The insurer argues that even though the parties mediated the claimant's lump-sum request the petitioner nonetheless failed to comply with mediation requirements since she has never provided respondent with a detailed justification for her lump-sum request. It relies on section 39-71-2401(4)(a), MCA (1993), which provides that prior to mediation,

[t]he party making a demand shall present the other party with a specific written demand that contains sufficient explanation and documentary evidence to enable the other party to thoroughly evaluate the demand.

The insurer's argument is without merit. Initially, any objection to the sufficiency of the claimant's demand should have been presented in the first instance to the mediator. Section 39-71-2401(4)(c), MCA (1993), provides:

(c) Upon motion of a party or upon the mediator's own motion, the mediator has the authority to dismiss a petition if he finds that either party did not comply with this subsection [i.e., subsection (4), which includes the demand requirement quoted above]. A decision dismissing a petition under this subsection must be in writing and must state in detail the grounds for dismissal. The mediator's decision may be reviewed by the workers' compensation court upon motion of a party.

This Court does not have before it any dismissal by the mediator or any order of the mediator denying a request to dismiss. Thus, it lacks jurisdiction to entertain the insurer's challenge to the sufficiency of the demand.

Moreover, claimant is not required to provide a detailed justification for her lump-sum request. She was injured in 1993. Section 39-71-741(2), MCA (1993), governs her request. It provides:

(2) (a) If an insurer has accepted initial liability for an injury, permanent partial disability benefits may be converted in whole or in part to a lump-sum payment.

(b) The total of any lump-sum conversion in part that is awarded to a claimant prior to the claimant's final award may not exceed the anticipated award under 39-71-703 or \$20,000, whichever is less.

(c) An agreement is subject to department approval. The department may disapprove an agreement only if the department determines that the settlement amount is inadequate. If disapproved, the department shall set forth in detail the reasons for disapproval.

(d) Upon approval, the agreement constitutes a compromise and release settlement and may not be reopened by the department.

The section expressly provides for a partial lump-sum advance. Unlike the provision set out in subsection (3) of section 39-71-741, MCA, which pertains to lump summing of permanent **total** disability benefits, it does not require the claimant to justify her request.⁽¹⁾ In inserting specific justification requirements with respect to lump summing of permanent total disability benefits, and omitting any similar requirements with respect to lump summing of permanent partial disability benefits, the legislature has indicated that no justification is required. "It is a rule of statutory construction that the express mention of one matter excludes other similar matters not mentioned." *Helena Valley Irrigation District v. State Highway Commission*, 150 Mont. 192, 198, 433 P.2d 791 (1967).

The only ground for disapproving a partial lump summing of permanent partial disability benefits is where "the department determines that the settlement amount is inadequate." § 39-71-741(2)(c), MCA (1993). Claimant's lump-sum request has evaded Department review on account of the insurer's failure to agree to her request, however, the Court must apply

the same standard. Thus, the only issue presented is whether the requested amount is inadequate.

The insurer's motion requesting dismissal of the petition is **denied**. This matter shall be tried in Kalispell during the week of September 15, 1997. The only issues to be tried are whether the \$10,000 requested by claimant is inadequate and whether she is entitled to attorney fees and a penalty.

SO ORDERED.

DATED in Helena, Montana, this 13th day of August, 1997.

(SEAL)

\s\ Mike McCarter

JUDGE

c: Mr. J. David Slovak

Mr. Todd A. Hammer

Submitted: July 14, 1997

1. Section 39-71-741(3), MCA (1993), provides:

Permanent total disability benefits may be converted in whole or in part to a lump sum. The total of all lump-sum conversions in part that are awarded to a claimant may not exceed \$20,000. A conversion may be made only upon the written application of the injured worker with the concurrence of the insurer. Approval of the lump-sum payment rests in the discretion of the department. The approval or award of a lump-sum payment by the department or court must be the exception. It may be given only if the worker has demonstrated financial need that:

(a) relates to:

(i) the necessities of life;

(ii) an accumulation of debt incurred prior to the injury; or

(iii) a self-employment venture that is considered feasible under criteria set forth by the department; or

(b) arises subsequent to the date of injury or arises because of reduced income as a result of the injury.