

IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

1996 MTWC 10

WCC No. 9505-7304

STEVE WILLIAMS

Petitioner

vs.

STATE COMPENSATION INSURANCE FUND

Respondent/Insurer for

HELENA YOUTH RESOURCES

Employer.

DECISION AND JUDGMENT

Summary: After an industrial injury, claimant was paid for 100 hours of sick leave donated to him by co-workers. The insurer argues he is not entitled to TTD benefits during the period he received this sick leave.

Held: Under section 39-71-116(19), MCA (1985), temporary total disability means a condition resulting in total loss of wages. In discussing gross wages, the statute refers to "earnings received by the employee at the time of the injury." "Wages" encompasses sick leave accrued by the injured employee but not sick leave donated by co-workers. Donated sick leave amounts to a gift and is not part of the claimant's wages. Cf. Milender v. John Carpenter, 230 Mont. 1, 748 P.2d 932 (1987) (wages paid by an employer to an injured worker who is not able to work are deemed gratuitous payments and not wages within the WCA.) Claimant is entitled to the TTD at issue.

Topics:

Constitutions, Statutes, Regulations and Rules: Montana Code Annotated: Section 39-71-116(19), MCA (1985). For purposes of determining whether an injured worker can receive TTD while also receiving sick leave donated by co-workers, the WCC begins with section 39-71-116(19), MCA (1985). "Wages" encompasses sick leave earned by the injured employee but not sick leave donated by co-workers. Donated sick leave amounts to a gift and does not prevent the employee from simultaneously receiving TTD benefits. Cf. Milender v. John

Carpenter, 230 Mont. 1, 748 P.2d 932 (1987) (wages paid by an employer to an injured worker who is not able to work are deemed gratuitous payments and not wages within the WCA.)

Wages: Vacation and Sick Leave. For purposes of determining whether an injured worker can receive TTD while also receiving sick leave donated by co-workers, the WCC begins with section 39-71-116(19), MCA (1985). Wages" encompasses sick leave earned by the injured employee but not sick leave donated by co-workers. Donated sick leave amounts to a gift and does not prevent the employee from simultaneously receiving TTD benefits. Cf. Milender v. John Carpenter, 230 Mont. 1, 748 P.2d 932 (1987) (wages paid by an employer to an injured worker who is not able to work are deemed gratuitous payments and not wages within the WCA.)

Petitioner, Steve Williams (claimant), commenced this action seeking an adjustment in his benefit rate, payment of medical bills, and other relief. Following negotiations the parties entered into a settlement of all issues except one. Their settlement agreement is set forth in a Stipulation and Order for Dismissal Without Prejudice filed November 7, 1995. Pursuant to paragraph 2 of the stipulation, the parties agree to reserve for the Court's decision the following issue:

[W]hether the claimant is disqualified from receiving TTD benefits for the period claimant received 100 hours of other employees' sick leave in May of 1994.

Since the settlement agreement does not dispose of all issues, the Court did not enter an order of dismissal and will now address the above issue.

Facts

The issue at hand is presented upon the pleadings and briefs of the parties. The parties agree that claimant was injured in an industrial accident on August 2, 1986, and that the respondent, State Compensation Insurance Fund, is liable for the accident. (Petition for Hearing, ¶s 1 and 2; Response to Petition for Hearing, ¶s 1 and 2; Stipulation and Order for Dismissal Without Prejudice (generally).) In their briefs they further agree that in May 1994 the claimant was paid 100 hours of sick leave by his employer and that the paid sick leave was donated to him by fellow employees rather than earned by claimant. Finally, at least by implication, they agree that claimant's employer is a public corporation within the meaning of section 39-71-116(20), MCA (1985).

Discussion

The issue presented is one of statutory interpretation involving section 39-71-116(20), MCA (1985). The section provides:

Wages means the average gross earnings received by the employee at the time of the injury for the usual hours of employment in a week, and overtime is not to be

considered. Sick leave benefits accrued by employees of public corporations, as defined by (16) of this section, are considered wages.

The State Fund argues that claimant is not entitled to temporary total disability benefits for the 100 hours during which he received sick leave benefits because those benefits constitute wages and he therefore suffered no wage loss as required by section 39-71-116(19), MCA (1985), which defines temporary total disability. The claimant interprets section 39-71-116(20), MCA, differently, arguing that the sick leave benefits specified in the second sentence are only those sick leave benefits which the *claimant* has accrued.

Section 39-71-116(19), MCA (1985), is the starting point of the Court's analysis since it defines temporary total disability. The section provides:

(19) "Temporary total disability" means a condition resulting from an injury as defined in this chapter that results in **total loss of wages** and exists until the injured worker is as far restored as the permanent character of the injuries will permit. A worker shall be paid total disability benefits during a reasonable period of retraining. Disability shall be supported by a preponderance of medical evidence. [Emphasis added.]

As applied in this case, if the donated sick leave benefits count as wages, then claimant does not meet the temporary total disability definition during the 100 hours he received those benefits.

In resolving the present dispute, I find that three related principles of statutory interpretation are applicable. First, a statute must be read as a whole. *State v. Ross*, 269 Mont. 347, 352, 889 P.2d 161, 164 (1994). Second, "[a] statute derives its meaning from **entire** body of words taken together." *Wyse v. District Court*, 195 Mont. 434, 437, 636 P.2d 865, 866 (1981) (emphasis added). Finally, "[t]he **context** in which the word is used must be considered, and **the word, together with the context, then gives the meaning sought to be conveyed.**" *Blythe v. Radiometer America*, 262 Mont. 464, 475, 866 P.2d 218, 225 (1993) (emphasis added).

Applying the foregoing principles, I find that, properly construed, "wages" encompasses sick leave accrued by the injured employee but not sick leave donated to the injured employee by co-employees. In the context of section 39-71-116(19), MCA, the second sentence modifies or clarifies the first sentence by elaborating on what is to be included in the gross wages specified by the first sentence. The gross wages specified in the first sentence are plainly the wages of the **injured** employee. The sentence expressly refers to the "earnings received **by the employee at the time of the injury.**" Thus, the concept of gross earnings encompass the earnings of the injured worker only, and not the earnings of any of the worker's co-employees. Accordingly, the second sentence refers only to sick leave benefits accrued by the injured employee.

In this case the sick leave benefits received by the claimant were not accrued by him. They amounted to a gift from other employees and are not part of the claimant's wages. Cf. *Milender v. John Carpenter*, 230 Mont. 1, 748 P.2d 932 (1987) (wages paid by employer to an injured worker who is unable to work are deemed gratuitous payments on the part of the employer and are not wages within the meaning of the Workers' Compensation Act).

JUDGMENT

1. Petitioner is entitled to temporary total disability benefits for the 100 hours in May 1994 for which he received donated sick leave.
2. All other issues raised by the petition have been resolved by agreement of the parties. Their agreement is set forth in their Stipulation and Order for Dismissal Without Prejudice filed November 7, 1995.
3. This JUDGMENT is certified as final for purposes of appeal pursuant to ARM 24.5.348.
4. Any party to this dispute may have 20 days in which to request a rehearing or amendment of this Decision and Judgment.

Dated in Helena, Montana, this 1st day of February, 1996.

(SEAL)

/s/ Mike McCarter

JUDGE

c: Mr. Patrick R. Sheehy

Mr. Thomas E. Martello

Submitted: December 18, 1995