

IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

1995 MTWCC 5

WCC No. 9411-7182

ANR FREIGHT SYSTEMS, INC.

Petitioner

vs.

GARRETT FREIGHT LINES/FARMERS INSURANCE GROUP

Employer/Insurer

and

ALLEN THORESON

Claimant.

ORDER DENYING MOTION FOR SUMMARY JUDGMENT

Summary: Self-insurer moved for summary judgment that claimant's current back disability is attributable to injury for which Farmers is responsible. Motion is based on one doctor's report, with other discovery outstanding.

Held: Where dispute involves a series of injuries and/or aggravations, surgery, and various medical opinions, it is better resolved by careful analysis of medical opinions and medical history following trial, not by summary judgment. Motion for summary judgment denied.

Topics:

Summary Judgment: Generally. In dispute over whether insurer or self-insurer is liable for claimant's present back condition, summary judgment would not be granted to self-insurer where its motion is based entirely on evidence from one doctor and discovery is not completed. Where dispute involves a series of injuries and/or aggravations, surgery, and various

medical opinions, it is better resolved by careful analysis of medical opinions and medical history following trial, not by summary judgment.

Injury and Accident: Subsequent Injury. In dispute over whether insurer or self-insurer is liable for claimant's present back condition, summary judgment would not be granted to self-insurer where its motion is based entirely on evidence from one doctor and discovery is not completed. Where dispute involves a series of injuries and/or aggravations, surgery, and various medical opinions, it is better resolved by careful analysis of medical opinions and medical history following trial, not by summary judgment.

This action involves a dispute between two insurers over benefits payable to Allen Thoreson, the claimant. ANR Freight Systems, Inc. (ANR), which is self-insured, seeks a determination that claimant's current disability is attributable to a low-back injury he suffered on November 26, 1979. Farmers Insurance Group insured ANR at the time of the injury. In 1981, the claimant underwent a laminectomy and discectomy at the L5-S1 level. He returned to his usual job as a local delivery truck driver and dock worker and continued to work. In 1989, he suffered an aggravation to his back condition when a forklift he was driving dropped a few inches, jarring him. ANR accepted liability. In 1993, claimant's back condition deteriorated to the point that he was no longer able to work. At that time ANR instituted temporary total disability benefits under a reservation of rights. ANR, however, maintains that claimant's current condition is due to his 1979 injury. It requests a judgment directing Farmers to indemnify it for wage and medical benefits paid to claimant since 1993.

Farmers has moved for summary judgment. It submitted no medical depositions nor the complete medical records for claimant's back condition. Moreover, discovery is incomplete. Nonetheless, it argues that it is entitled to summary judgment based upon a report of Dr. William Shaw in which Dr. Shaw opined that the 1989 incident permanently worsened claimant's low-back condition. He stated:

[T]o a reasonable degree of medical certainty, I believe that this man's present symptoms of lumbar instability are attributable to L4-5 motion segment instability which was the result of the injury sustained on approximately August 29, 1989.

(GARRETT FREIGHT LINES' MOTION FOR SUMMARY RULING AND SUPPORTING MEMORANDUM, Exhibit B at 5.) Claimant joins in the motion. (CLAIMANT'S RESPONSE TO GARRETT'S MOTION FOR SUMMARY RULING.)

In its response to the motion ANR notes that the deposition of Dr. John Dorr, an orthopedic surgeon who has treated claimant since the 1989 forklift incident, has yet to be taken. (His deposition has been noticed for January 30, 1995.) ANR also recites a lengthy history indicating that claimant has had continuous back problems since his 1979 injury and argues that he never reached maximum healing. It attaches a number of discovery documents to its opposition.

Summary judgment may be granted only where the evidence presented in support of and in opposition to the motion demonstrates that there is "no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Rule 56(c), MONT.R.CIV.P. Supplementation of affidavits and other discovery may be permitted. Rule 56(e), MONT.R.CIV.P.

While the Workers' Compensation Court has generally applied the summary judgment procedures specified by the Montana Rules of Civil Procedure, application of those procedures may in some cases be inappropriate. One of the primary purposes of summary judgment motions is to "encourage judicial economy through the elimination of any unnecessary trial." *Payne Realty v. First Security Bank*, 256 Mont. 19, 24, 844 P.2d 90 (1993). Cases in the Workers' Compensation Court are heard on an expedited basis. Discovery is conducted on an expedited basis. Ordinarily, trials are held within seventy-five days of the filing deadline and are completed in less than a day. Motions for summary judgment may delay trial without any corresponding economies. The time and effort involved in preparing briefs and resolving motions for summary judgment may be as great or greater than that expended in resolving the issues by trial. Therefore, the Court may decline to consider individual summary judgment motions where the issues may be resolved just as expeditiously by trial as by motion.

The Court declines to enter summary judgment based on the sparse and incomplete record presented to it. The motion filed in this case is premature in light of outstanding discovery. The physician treating the claimant following his 1989 injury has not yet been deposed, although his deposition has been noticed. The kind of issues raised in the case are typically resolved by a careful analysis of medical opinions and medical history. The motion is therefore **denied**. This case shall proceed to trial, as scheduled during the week of February 6, 1995.

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Dated in Helena, Montana, this 26th day of January, 1995.

(SEAL)

/S/ Mike McCarter
JUDGE

c: Mr. Michael P. Heringer
Mr. Brad H. Anderson
Mr. Geoffrey R. Keller