

IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

2022 MTWCC 6

WCC No. 2022-5873

ROBERT L. ALLUM

Petitioner

vs.

MONTANA STATE FUND and STATE OF MONTANA, ON BEHALF OF GREG GIANFORTE, GOVERNOR, AUSTEN [sic] KNUDSON [sic], A.G., AND CHRISTI SORENSON [sic], SECRETARY OF STATE

Respondents.

ORDER DISMISSING RESPONDENTS STATE OF MONTANA, GOVERNOR GREG GIANFORTE, ATTORNEY GENERAL AUSTIN KNUDSEN, AND SECRETARY OF STATE CHRISTI JACOBSEN FOR LACK OF SUBJECT MATTER JURISDICTION

Summary: In addition to his claim for benefits against the workers' compensation insurer, Petitioner brings claims against the State of Montana, its Governor, its Attorney General, and its Secretary of State, alleging that they have violated his rights by failing to perform their official duties.

Held: This Court dismissed Petitioner's claims against the State of Montana, its Governor, its Attorney General, and its Secretary of State because this Court does not have subject matter jurisdiction over Petitioner's claims against them. The only claim over which this Court has subject matter jurisdiction is Petitioner's claim for benefits against the workers' compensation insurer.

¶ 1 In addition to Petitioner Robert L. Allum's claim for workers' compensation benefits against Respondent Montana State Fund (State Fund), he alleges that the entity in which the workers' compensation judge presides is not an actual court and that the State of Montana is violating his rights because Governor Greg Gianforte, Attorney General Austin Knudsen, and Secretary of State Christi Jacobsen "have either through malfeasance, misfeasance, or nonfeasance failed, and are failing, to require David M. Sandler

(Sandler), appointed ‘workers’ compensation judge,’ and ‘self-proclaimed, WCC Judge,’ to comply with the applicable Montana statutes.” Allum also alleges that the undersigned is not the current workers’ compensation judge on the grounds that his term expired in 2020 and that Governor Gianforte, Attorney General Knudsen, and Secretary of State Jacobsen have not complied with their duties to have a duly appointed and confirmed workers’ compensation judge preside over workers’ compensation cases.

¶ 2 Before discussing this Court’s subject matter jurisdiction, two points need to be made. *First*, Allum’s claim that there is no judicial court in Montana to decide disputes over workers’ compensation benefits is entirely without merit. The Montana Constitution specifically allows the Legislature to create courts.¹ It has long been recognized that in 1975, when the Legislature established the Office of the Workers’ Compensation Judge,² it intended to create a judicial court to decide disputes over workers’ compensation benefits.³ Indeed, the Legislature itself calls the entity in which the workers’ compensation judge presides the “workers’ compensation court”⁴ and has expressly made it a court of record.⁵ The Legislature has also decreed that, unlike appeals from administrative contested cases, which initially go to Montana’s district courts,⁶ “an appeal from a final decision of the workers’ compensation judge shall be filed directly with the supreme court of Montana in the manner provided by law for appeals from the district court in civil cases.”⁷ Thus, “[a] full reading of the Workers’ Compensation Act reveals that the Court is not simply an administrative law court functioning under the executive branch of government but is a special court created pursuant to Article 7, section 1 of the 1972 Montana Constitution.”⁸

¶ 3 *Second*, Allum’s allegation that the undersigned is not currently the workers’ compensation judge is demonstrably false. In 2014, then-Governor Steve Bullock appointed the undersigned to serve the remainder of then-Judge James Jeremiah Shea’s term as workers’ compensation judge, which ran until September 8, 2017. On March 10, 2015, the Senate confirmed the undersigned.⁹ In 2017, then-Governor Bullock appointed the undersigned to a full six-year term as workers’ compensation judge. On

¹ Article VII, section 1 of the Montana Constitution states, “The judicial power of the state is vested in one supreme court, district courts, justice courts, and such other courts as may be provided by law.” (Emphasis added).

² 1975 Mont. Laws ch. 537.

³ See, e.g., 38 Op. Att’y Gen. No 27 (1979) (stating, in relevant part, that based on several factors: “It is my opinion the Legislature intended to create a new court of special limited jurisdiction in enacting the Office of Workers’ Compensation Judge . . .”).

⁴ See, e.g., § 39-71-2901, MCA (setting forth the powers that the “workers’ compensation court” has).

⁵ § 3-1-102, MCA.

⁶ § 2-4-702(2), MCA.

⁷ § 39-71-2904, MCA.

⁸ *Seeger v. Magnum Oil, Inc.*, 1999 MTWCC 67, ¶ 8.

⁹ 64th Legislature, SR0015.

November 14, 2017, during the November 2017 Special Session, the Senate confirmed the undersigned.¹⁰ Thus, the undersigned is currently the workers' compensation judge.

¶ 4 Turning to the issue of subject matter jurisdiction, the Montana Supreme Court has explained, "Jurisdiction involves the fundamental power and authority of a court to determine and hear an issue. Accordingly, subject-matter jurisdiction can never be forfeited or waived."¹¹ "The issue of subject matter jurisdiction may be raised by a party, or by the court itself, at any stage of a judicial proceeding."¹²

¶ 5 As stated by the Montana Supreme Court, "The Workers' Compensation Court is a court with limited but exclusive jurisdiction to hear and determine disputes concerning workers' compensation benefits."¹³ Although this Court's subject matter jurisdiction is broader than determining the amount of benefits due to an injured employee,¹⁴ it is a court of limited jurisdiction and, as such, its jurisdiction must be conferred by statute.¹⁵ Based on Allum's claim against State Fund, this case falls under the grant of jurisdiction in § 39-71-2905(1), MCA, which states, in relevant part:

If a claimant, an insurer, an employer alleged to be an uninsured employer, or the uninsured employers' fund has a dispute concerning any benefits under this chapter, it may petition the workers' compensation judge for a determination of the dispute after satisfying dispute resolution requirements otherwise provided in this chapter.

¶ 6 This Court is raising the issue of subject matter jurisdiction on its own because it is evident that this Court does not have subject matter jurisdiction over Allum's claims against the State of Montana, Governor Gianforte, Attorney General Knudsen, and Secretary of State Jacobsen. Under § 39-71-2905(1), MCA, this Court has exclusive

¹⁰ 65th Legislature, Special Session, SR0001.

¹¹ *Thompson v. State of Mont.*, 2007 MT 185, ¶ 28, 338 Mont. 511, 167 P.3d 867 (citations omitted).

¹² *In re Workers' Comp. Benefits of Noonkester*, 2006 MT 169, ¶ 29, 332 Mont. 528, 140 P.3d 466 (citation omitted) (alteration in original).

¹³ *Moreau v. Transp. Ins. Co.*, 2015 MT 5, ¶ 10, 378 Mont. 10, 342 P.3d 3 (citations omitted).

¹⁴ See *Dildine v. Liberty Nw. Ins. Corp.*, 2009 MT 87, ¶¶ 11-17, 350 Mont. 1, 204 P.3d 729 (holding that Workers' Compensation Court had jurisdiction to decide whether a claimant's attorney was entitled to fees); *Kelleher Law Office v. State Comp. Ins. Fund*, 213 Mont. 412, 415, 691 P.2d 823, 825 (1984) (holding that the Workers' Compensation Court has jurisdiction to decide whether a claimant's attorney's lien was valid.); *State ex rel. Uninsured Emp'rs Fund, Div. of Workers' Comp. v. Hunt*, 191 Mont. 514, 519, 625 P.2d 539, 542 (1981) ("Although the Workers' Compensation Court is not vested with the full powers of a District Court, it nevertheless has been given broad powers concerning benefits due and payable to claimants under the Act. It has the power to determine which of several parties is liable to pay the Workers' Compensation benefits, or if subrogation is allowable, what apportionment of liability may be made between insurers, and other matters that go beyond the minimum determination of the benefits payable to an employee.").

¹⁵ *Thompson*, ¶ 24 (citations omitted). See also *Liberty Nw. Ins. Corp. v. State Comp. Ins. Fund*, 1998 MT 169, ¶ 11, 289 Mont. 475, 962 P.2d 1167 (stating, "The jurisdictional parameters of the Workers' Compensation Court are defined by statute as interpreted, from time to time, by the decisions of this Court.").

jurisdiction to decide the disputes between Allum and State Fund over Allum's claim for benefits for his alleged low-back injury, including the jurisdiction to decide whether statutes in the Workers' Compensation Act are constitutional when deciding his claim for benefits.¹⁶ However, Allum's claim for benefits against State Fund is the only claim over which this Court has subject matter jurisdiction because no statute confers upon this Court the power or authority to decide a dispute over whether Montana's Governor, its Attorney General, or its Secretary of State are performing their official duties, nor to order them to take any official action. Likewise, no statute confers upon this Court the power or authority to grant Allum any relief against them and in his favor on his allegations that they are not performing their official duties.¹⁷ Once a court determines that it lacks subject matter jurisdiction over a claim, "it can take no further action in the case other than to dismiss" the claim.¹⁸ Accordingly, this Court dismisses Allum's claims against the State of Montana, Governor Gianforte, Attorney General Knudsen, and Secretary of State Jacobsen for lack of subject matter jurisdiction.

¶ 7 This ruling does not preclude Attorney General Knudsen from intervening on behalf of the State of Montana in this case in the future. If Allum files a Notice of Constitutional Challenge which identifies the statute(s) that he claims to be unconstitutional and serves it on Attorney General Knudsen under M.R.Civ.P. 5.1(a), then Attorney General Knudsen will have 60 days to decide whether to intervene in this case on behalf of the State of Montana, as set forth in M.R.Civ.P. 5.1(b).

¶ 8 For the foregoing reasons, this Court enters the following:

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¹⁶ See, e.g., *Satterlee v. Lumberman's Mut. Cas. Co.*, 2009 MT 368, 353 Mont. 265, 222 P.3d 566 (affirming Workers' Compensation Court's decision that § 39-71-710, MCA, the statute providing that permanent total disability (PTD) and permanent partial disability (PPD) benefits terminate upon receipt of social security retirement benefits, or eligibility for full social security retirement benefits, was constitutional when applied to claimants receiving PTD benefits); *Reesor v. Mont. State Fund*, 2004 MT 370, 325 Mont. 1, 103 P.3d 1019 (reversing Workers' Compensation Court's decision that § 39-71-710, MCA, was constitutional for PPD claimants and remanding for a re-determination of the amount of PPD benefits due); *Miller v. Liberty Mut. Fire Ins. Corp.*, 2008 MTWCC 18 (ruling that Workers' Compensation Court had jurisdiction to hear a constitutional challenge to an administrative rule where a dispute over benefits existed); *Seger*, ¶ 8 (noting that the Workers' Compensation Court "routinely confronts and decides constitutional issues").

¹⁷ See *Liberty Nw. Ins. Corp.*, ¶ 10 (holding that the Workers' Compensation Court did not have subject matter jurisdiction over a misrepresentation claim by one workers' compensation insurer against another under § 39-71-2905, MCA, which provides that the Workers' Compensation Court has jurisdiction over cases involving a dispute over workers' compensation benefits, because the Workers' Compensation Court does not have "jurisdiction over tort actions, even though the tort action might result in a judgment requiring another party to pay, as damages, the amount which an insurer has paid to a claimant under the Workers' Compensation Act").

¹⁸ *Stanley v. Lemire*, 2006 MT 304, ¶ 31, 334 Mont. 489, 148 P.3d 643 (citations omitted).

ORDER

¶ 9 IT IS ORDERED that Respondents State of Montana, Governor Greg Gianforte, Attorney General Austin Knudsen, and Secretary of State Christi Jacobsen are **dismissed** from this case because this Court does not have subject matter jurisdiction over Allum's claims against them.

¶ 10 IT IS FURTHER ORDERED that the caption of this case is amended so that Montana State Fund is the only Respondent.

DATED this 24th day of February, 2022.

(SEAL)

/s/ DAVID M. SANDLER
JUDGE

c: Robert L. Allum
Montana State Fund
Governor Greg Gianforte
Attorney General Austin Knudsen
Secretary of State Christi Jacobsen