

IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

2019 MTWCC 7

WCC No. 2018-4385

DANIELLE BEGGER

Petitioner

vs.

MONTANA HEALTH NETWORK WC INS. TRUST

Respondent/Insurer.

ORDER DENYING CROSS-MOTIONS FOR SUMMARY JUDGMENT

Summary: Respondent moved for summary judgment and Petitioner filed a cross-motion for summary judgment on the issue of whether Petitioner notified her employer of her accident and resulting injury within the 30-day period required by § 39-71-603, MCA. Respondent argues that Petitioner's claim is time-barred because she missed the notice deadline by 10 days and did not have a "latent injury" sufficient to toll the statute because she knew, within 30 days of her accident, that she had suffered an injury and would require medical treatment. Petitioner argues that although she had pain, she had previously experienced like symptoms and they always went away with time. She contends that the notice period began running the day she first scheduled a medical appointment, and that the notice she gave her employer 24 days later was timely.

Held: Both parties' motions for summary judgment are denied. Under the latent injury doctrine, "An employee who has a reasonable belief at the time of an accident that he has suffered no injury which will require treatment or is otherwise compensable, is not barred from recovery under § 603 because he learns otherwise beyond the 30-day period." Whether the 30-day notice requirement may be equitably tolled here depends on whether it was reasonable for Petitioner to believe she did not suffer an injury which would require treatment until 30 days prior to giving her employer notice. Because reasonableness is a question of fact, summary judgment on this issue is not appropriate.

¶ 1 Respondent Montana Health Network WC Ins. Trust (Montana Health Network) moves for summary judgment and Petitioner Danielle Begger cross-moves for summary

judgment on the issue of whether Begger notified her employer Billings Clinic of her accident and resulting injury within the 30-day period required by § 39-71-603, MCA.

FACTS

¶ 2 Begger is a radiological technician for Billings Clinic and has held that position for nearly 17 years.

¶ 3 On Thursday, December 14, 2017, while in the course and scope of her employment, Begger felt low-back pain after assisting a large, obese patient with multiple sclerosis and poor balance sit up and lie down on an examination table approximately 10 times over the course of two hours.

¶ 4 After Begger was finished assisting the patient with the procedure, she noticed her back was sore, but stretched it out and finished her shift. She did not take any medications and thought the soreness was routine.

¶ 5 At this time, Billings Clinic was insured by Montana Health Network.

¶ 6 Begger woke up the morning of December 15, 2017, and noticed a sharp pain going down one of her legs. It was not dissimilar to pain she had experienced before while on the job. She worked a full shift at Billings Clinic that day and applied an ice pack that evening.

¶ 7 Begger did not work over the weekend of December 16 and 17. She worked full shifts on December 18 and 19; was on call December 22 through 25, wherein she worked approximately 17 hours; worked another full shift on December 26; and a half-shift on December 27 without incident.

¶ 8 On December 28, Begger went to Las Vegas for vacation, and her pain progressed. On December 30, she scheduled an appointment to see Cameron Grove, MD, her personal care provider. Dr. Grove's earliest available appointment was on January 15, 2018.

¶ 9 In the interim, Begger continued working without restriction or incident, and appeared for all six of her scheduled shifts at Billings Clinic between her return to Billings and her appointment with Dr. Grove.

¶ 10 By the time of her appointment, Begger's pain had progressed to her right glute/hip and traveled down the right leg to her ankle. She described the pain to Dr. Grove as constant and throbbing, noting aggravation while she was lying down or sitting. She additionally described intermittent numbness and tingling in the tops of her toes. Dr. Grove performed some stretching exercises and manipulations, and Begger continued working without restrictions on January 16, 17, 18, 19, and 22. She was not scheduled to work on January 20 or 21.

¶ 11 On January 23, 2018, Begger sought treatment from Scot Bowen, DC, and reported pain at an 8 out of 10. Begger reported the incident to her supervisor, Mike Klein, via telephone. Mr. Klein advised her to call their other manager, Stuart Schaub. Begger completed a work-related injury report that day.

¶ 12 Begger appeared before John Petrisko, MD, on January 29, 2018. Dr. Petrisko opined that Begger could keep working without restrictions and recommended she go to physical therapy two to three times a week for up to four weeks.

¶ 13 On January 29, 2018, Montana Health Network advised Begger it was denying her claim for benefits for failing to comply with the 30-day notice requirements set forth in § 39-71-603, MCA.

LAW AND ANALYSIS

¶ 14 This case is governed by the 2017 version of the Montana Workers' Compensation Act since that was the law in effect at the time of Begger's industrial accident.¹

¶ 15 This Court renders summary judgment when the moving party demonstrates an absence of a genuine issue of material fact and entitlement to judgment as a matter of law.² "After the moving party meets its initial burden to show the absence of a genuine issue of fact and entitlement to judgment, the burden shifts to the party opposing summary judgment either to show a triable issue [of fact] or to show why the undisputed facts do not entitle the moving party to judgment."³

¶ 16 The parties agree that Begger first notified Billings Clinic 40 days after her accident, on January 23, 2018.

¶ 17 Montana Health Network argues that because Begger missed the notice deadline by 10 days, she may not maintain a claim for compensation. Moreover, Montana Health Network contends that Begger could not have had a "latent injury" sufficient to toll the notice statute because she knew, within 30 days of her accident, that she had suffered an injury and would require medical treatment.

¶ 18 Begger argues that although she felt sore after assisting the patient and experienced a sharp pain the next morning, she had previously experienced like symptoms and they always went away with time. She continued working, only becoming aware of the severity of her injury and scheduling a medical appointment several weeks later, on December 30, 2017. Begger contends that the 30-day period began running

¹ *Ford v. Sentry Cas. Co.*, 2012 MT 156, ¶ 32, 365 Mont. 405, 282 P.3d 687 (citation omitted); § 1-2-201, MCA.

² ARM 24.5.329(2); *Farmers Union Mut. Ins. Co. v. Horton*, 2003 MT 79, ¶ 10, 315 Mont. 43, 67 P.3d 285 (citation omitted).

³ *Amour v. Collection Prof'ls, Inc.*, 2015 MT 150, ¶ 7, 379 Mont. 344, 350 P.3d 71 (citation omitted).

that day, and that her notice to Billings Clinic 24 days later, on January 23, 2018, was therefore timely.

¶ 19 Under § 39-71-603(1), MCA, an injured employee must, within 30 days of an accident, give notice to her employer or the employer's insurer of the "time and place where the accident occurred and the nature of the injury." Nevertheless, the 30-day notice requirement may be equitably tolled for latent injuries.⁴ Under the latent injury doctrine, "An employee who has a reasonable belief at the time of an accident that he has suffered no injury which will require treatment or is otherwise compensable, is not barred from recovery under § 603 because he learns otherwise beyond the 30-day period."⁵

¶ 20 Here, then, the dispositive issue is whether it was reasonable for Begger to believe that she did not suffer an injury which would require treatment until December 25, 2017, or 30 days before she gave Billings Clinic notice.

¶ 21 Because "[r]easonableness is a question of fact,"⁶ summary judgment on this issue is not appropriate.⁷

ORDER

¶ 22 The parties' Cross-Motions for Summary Judgment are **denied**.

DATED this 14th day of May, 2019.

(SEAL)

/s/ DAVID M. SANDLER
JUDGE

c: Andrew J. Miller
Michelle M. Sullivan

Submitted: April 30, 2019

⁴ *Siebken v. Liberty Mut. Ins. Co.*, 2008 MT 353, ¶ 16, 346 Mont. 330, 195 P.3d 803 (citations omitted).

⁵ *Killebrew v. Larson Cattle Co.*, 254 Mont. 513, 521, 839 P.2d 1260, 1265 (1992).

⁶ *Marcott v. La. Pac. Corp.*, 275 Mont. 197, 203, 911 P.2d 1129, 1133 (1996) (citation omitted).

⁷ See, e.g., *Dvorak v. Mont. State Fund*, 2013 MT 210, ¶ 30, 371 Mont. 175, 305 P.3d 873 ("If her doctor did not conclude she had an occupational disease until March or April 2011, a material question of fact arises as to when Dvorak—who is not trained in medicine—should have known she was suffering from an occupational disease. This being so, summary judgment on this issue was not appropriate.").