

IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

2011 MTWCC 23

WCC No. 2011-2711

BRADLEY BELL

Petitioner

vs.

MONTANA STATE FUND

and

MONTANA CONTRACTOR COMP FUND

Respondents.

ORDER DENYING MONTANA CONTRACTOR COMPENSATION FUND'S MOTIONS TO STRIKE AND FOR SUMMARY JUDGMENT, AND GIVING NOTICE OF INTENT TO GRANT SUMMARY JUDGMENT TO NON-MOVING PARTY

Summary: Respondent Montana Contractor Compensation Fund (MCCF) moved for summary judgment, alleging Petitioner's Petition for Trial was untimely under § 39-71-2905(2), MCA. MCCF contends that Petitioner's petition was not filed within two years of MCCF's denial of benefits. Petitioner argues that MCCF had accepted liability for his claim and that MCCF's letter which MCCF argues constitutes a denial of benefits, denied only one specific medical bill. Respondent Montana State Fund (State Fund) also opposed Respondent MCCF's motion for summary judgment. Respondent MCCF moved to strike State Fund's brief, arguing that State Fund lacks the standing to oppose MCCF's motion because State Fund is not an adverse party.

Held: MCCF's motion to strike is denied. State Fund has opposed MCCF's motion for summary judgment. As it pertains to MCCF's motion, therefore, State Fund is adverse. MCCF's motion for summary judgment is denied. Section 39-71-2905(2), MCA, provides: "A petition for hearing before the workers' compensation judge must be filed within 2 years after benefits are denied." MCCF accepted liability for Petitioner's claim, but denied treatment for one specific medical bill. MCCF's denial cannot be construed as a denial of benefits and a dispute over liability as to Bell's claim in general.

Regarding the limited issue of whether the statute of limitations has run on Bell's claim exclusive of the treatment for which MCCF specifically denied liability, the Court sees no disputed facts which would preclude summary judgment in Petitioner's favor. Since neither Petitioner nor State Fund have moved for summary judgment on this issue, MCCF will have 10 days to file a supplemental brief as to why summary judgment in favor of Petitioner should not be granted on this issue. Petitioner and State Fund may file reply briefs within 5 days after MCCF's brief.

Topics:

Jurisdiction: Standing: Insurers. Although one respondent/insurer argued that the other respondent/insurer did not have standing to oppose its motion for summary judgment because no cross-claims existed between the parties, it is clear that, at least as it pertains to the motion for summary judgment, the parties are adverse to each other and therefore the motion to strike the opposing brief is denied.

Limitation Periods: Petition Filing. Where an insurer accepted a claim and then later sent a letter denying a specific medical bill, the insurer cannot construe that letter as a general denial of liability and thereby raise a statute of limitations defense to other elements of the claim under § 39-71-2905(2), MCA.

Constitutions, Statutes, Regulations and Rules: Section 39-71-2905(2), MCA. Where an insurer accepted a claim and then later sent a letter denying a specific medical bill, the insurer cannot construe that letter as a general denial of liability and thereby raise a statute of limitations defense to other elements of the claim under § 39-71-2905(2), MCA.

Claims: Acceptance. On a claim for which the insurer previously accepted liability but sent a letter denying a specific medical treatment, the letter does not create the existence of a dispute over liability of the claim in general such that the statute of limitations under § 39-71-2905(2), MCA, would begin to run on the entire claim.

Summary Judgment: Nonmoving Party. Where no cross-motion for summary judgment is filed but the facts are clear and the law is dispositive, the Court will allow the original movant time to file a supplemental brief as to why the Court should not grant summary judgment in favor of the nonmoving party. While no formal cross-motion is

necessary, it is critical that the Court ensure the original movant had full and fair opportunity to be heard.

¶ 1 Respondent Montana Contractor Compensation Fund (MCCF) moves this Court for summary judgment in its favor.¹ Petitioner Bradley Bell and co-Respondent Montana State Fund (State Fund) oppose MCCF's motion.² MCCF further moves to strike State Fund's brief opposing MCCF's motion for summary judgment on the grounds that State Fund is not an adverse party to MCCF and lacks standing to oppose MCCF's motion.

MOTION TO STRIKE

¶ 2 MCCF argues that because there are no cross-claims between MCCF and State Fund, the parties are not adverse. Therefore, MCCF reasons, State Fund lacks standing to oppose MCCF's motion for summary judgment.³ MCCF acknowledges that Montana courts have not addressed this issue nor have the federal district courts reached a consensus on this issue.⁴

¶ 3 MCCF does not contest State Fund's legitimacy as a party to this action. To my knowledge, this Court has never denied a party that has legitimately appeared in a case the opportunity to be heard on any motion. Although there may not be any cross-claims between MCCF and State Fund, State Fund has opposed MCCF's motion for summary judgment. At least as it pertains to MCCF's motion, State Fund has staked out an adverse position. MCCF's motion to strike State Fund's brief in opposition to MCCF's motion for summary judgment is denied.

MOTION FOR SUMMARY JUDGMENT

¶ 4 MCCF contends that Bell's claim for benefits against MCCF is untimely and barred because Bell failed to file a petition in this Court within two years of MCCF's denial of his benefits, as required by § 39-71-2905(2), MCA.⁵ Bell and State Fund argue that MCCF's April 24, 2008, letter was not a blanket denial of all further treatment under

¹ Respondent MCCF's Motion for Summary Judgment and Brief in Support (Opening Brief), Docket Item No. 12.

² Petitioner's Answer Brief in Opposition to MCCF's Motion for Summary Judgment (Petitioner's Response), Docket Item No. 16; Montana State Fund's Brief in Opposition to Montana Contractor Compensation Fund's Motion for Summary Judgment (State Fund's Response), Docket Item No. 15.

³ Respondent MCCF's Reply Brief in Support of its Motion for Summary Judgment and Motion to Strike Montana State Fund's Response in Opposition and Brief in Support at 3.

⁴ *Id.*

⁵ Opening Brief at 2.

his claim, but a specific denial for treatment on April 9, 2008, at SVH Northern Rockies Regional Pain Center.⁶

Uncontested Facts

¶ 5 Bell injured his back on September 7, 2002, while performing his duties as a heavy equipment mechanic for JTL Group, Inc. in Billings, Montana.⁷

¶ 6 MCCF accepted liability and initially paid appropriate benefits for the September 7, 2002, claim.⁸

¶ 7 Bell and MCCF settled the September 7, 2002, claim by way of compromise settlement, approved by the Department of Labor and Industry, Employment Relations Division, on July 12, 2006. Pursuant to the terms of the settlement, all compensation and rehabilitation benefits are settled and closed. Medical benefits were reserved.⁹

¶ 8 On December 1, 2007, Bell began working as a mechanic for Farstad Oil in Billings, Montana.¹⁰

¶ 9 On April 1, 2008, Bell injured his back while performing his duties as a mechanic for Farstad Oil.¹¹

¶ 10 Respondent, Montana State Fund, accepted liability and initially paid appropriate benefits for the April 1, 2008, claim.¹²

¶ 11 On April 23, 2008, MCCF received a medical note and bill for Bell's care on April 9, 2008, at SVH Northern Rockies Regional Pain Center.¹³

¶ 12 On April 24, 2008, MCCF sent a letter to SVH Northern Rockies Regional Pain Center returning the bill and denying payment for the services on that date stating:

⁶ Petitioner's Response at 2; State Fund's Response at 3-4.

⁷ Opening Brief at 1-2.

⁸ Opening Brief at 2.

⁹ *Id.*

¹⁰ Petitioner's Response at 3.

¹¹ *Id.*

¹² *Id.*

¹³ Petitioner's Response, Ex. 3.

Our office denied and is returning the enclosed statement(s) for the following reason(s):

The medical records indicate that Mr. Bell incurred a new injury to his low back as a result of [a] work related injury approximately 1 week prior to the date of service. This is unrelated to his 9/7/2002 claim. Therefore, the MCCF denies further liability regarding this treatment.¹⁴

¶ 13 MCCF attached the SVH Northern Rockies Regional Pain Center bill to its April 24, 2008, letter.¹⁵

¶ 14 Bell filed a mediation petition on December 22, 2010. Bell filed a Petition for Trial on April 5, 2011.¹⁶

Discussion

¶ 15 For summary judgment to be granted, the moving party must establish that no genuine issues of material fact exist and that the moving party is entitled to judgment as a matter of law.¹⁷

¶ 16 MCCF argues that it is entitled to summary judgment pursuant § 39-71-2905(2), MCA, because Bell failed to timely file a Petition for Trial within two years after MCCF denied further liability for medical benefits.

¶ 17 Section 39-71-2905(2), MCA, states:

A petition for hearing before the workers' compensation judge must be filed within 2 years after benefits are denied.

¶ 18 Bell argues that MCCF's April 24, 2008, letter did not constitute a denial of benefits on his previously accepted liability claim. Rather, MCCF denied liability only for the medical treatment rendered on April 9, 2008, at SVH Northern Rockies Regional Pain Center. I agree.

¶ 19 MCCF's April 24, 2008, letter to SVH Northern Rockies Regional Pain Center reads in pertinent part:

¹⁴ Petitioner's Response, Ex. 5.

¹⁵ Petitioner's Response at 2.

¹⁶ Petitioner's Response at 4.

¹⁷ ARM 24.5.329; *Farmers Union Mut. Ins. Co. v. Horton*, 2003 MT 79, ¶ 10, 315 Mont. 43, 67 P.3d 285.

Our office denied and is returning the enclosed statement(s) for the following reason(s):

The medical records indicate that Mr. Bell incurred a new injury to his low back as a result of work related injury approximately 1 week prior to the date of service. This is unrelated to his 9/7/2002 claim. Therefore, the MCCF denies further liability regarding **this treatment**.¹⁸

¶ 20 MCCF's denial letter was explicitly limited to the April 9, 2008, treatment at SVH Northern Rockies Regional Pain Center. The April 9, 2008, treatment is not at issue in Bell's petition. Bell's petition seeks a determination as to which insurer is liable for an L5-S1 fusion and related medical treatment and benefits recommended by Bell's physician.¹⁹

¶ 21 MCCF cites *Boyd v. Zurich Am. Ins. Co.* in arguing that "Section 39-71-2905(2), MCA, unambiguously requires that 'a petition for hearing . . . be filed within 2 years after benefits are denied.'"²⁰ MCCF's reliance on *Boyd* is misplaced. In *Boyd*, I granted summary judgment in favor of the insurer because Boyd did not file his petition for hearing within the appropriate two-year period after Zurich denied his claim for benefits.²¹ Zurich's letter denying benefits unambiguously denied liability for all benefits for which Boyd sought compensation.²² In its opinion affirming *Boyd*, the Montana Supreme Court noted that the insurer's letter to Boyd's attorney denying coverage for Boyd's shoulder injury claims "firmly established a denial of benefits and the existence of a 'dispute over liability,' thus triggering the 2-year statute of limitations contained in § 39-71-2905(2), MCA" ²³

¶ 22 I recently revisited *Boyd* in *Johnson v. Montana State Fund*.²⁴ Relying on the Supreme Court's holding in *Boyd*, I granted summary judgment to the insurer because the insurer's letter denying benefits "firmly established a denial of benefits and the existence of a 'dispute over liability,' thus triggering the 2-year statute of limitations contained in § 39-71-2905(2), MCA."²⁵ In this case, MCCF's April 24, 2008, letter firmly

¹⁸ Petitioner's Response, Ex. 5 (emphasis added).

¹⁹ Petition for Trial at 4.

²⁰ *Boyd v. Zurich Am. Ins. Co.*, 2009 MTWCC 26, ¶ 7 (emphasis removed).

²¹ *Boyd*, 2009 MTWCC 26, ¶¶ 8-9.

²² *Boyd*, 2009 MTWCC 26, ¶¶ 2d, 6.

²³ *Boyd v. Zurich American Ins. Co.*, 2010 MT 52, 355 Mont. 336, 227 P.3d 1026, ¶¶ 19-20.

²⁴ *Johnson v. Montana State Fund*, 2011 MTWCC 22.

²⁵ *Johnson v. Montana State Fund*, 2011 MTWCC 22, ¶ 21.

established a denial of benefits and the existence of a dispute over liability regarding Bell's April 9, 2008, treatment at SVH Northern Rockies Regional Pain Center. Having previously accepted liability for Bell's claim, MCCF's letter cannot be construed as having firmly established a denial of benefits and the existence of a dispute over liability as to Bell's claim in general. MCCF's motion is without merit.

NOTICE OF INTENT TO GRANT SUMMARY JUDGMENT TO NONMOVING PARTY

¶ 23 The Montana Supreme Court has held:

Generally, no formal cross motion is necessary for a court to enter summary judgment in favor of the nonmoving party. However, it is critical that the court ensure the original movant had "full and fair opportunity to meet the proposition, that there is no genuine issue of material fact and the [nonmoving] party is entitled to judgment as a matter of law." The court, therefore, must afford the original movant with notice and an opportunity to be heard when it determines whether the case warrants judgment in favor of the nonmoving party. Further, the parties should be given an opportunity to present facts concerning the grounds upon which the district court granted summary judgment.²⁶

¶ 24 Regarding the limited issue of whether the statute of limitations has run on Bell's claim exclusive of the April 9, 2008, treatment at SVH Northern Rockies Regional Pain Center, I see no disputed facts which would preclude summary judgment in Bell's favor. Since neither Bell nor State Fund have moved for summary judgment on this issue, I will afford MCCF 10 days from the date of this Order to file a supplemental brief as to why summary judgment in favor of Bell should not be granted on this issue. Bell and State Fund may file reply briefs within 5 days after MCCF's brief.

ORDER

¶ 25 MCCF's motion to strike State Fund's brief in opposition to MCCF's motion for summary judgment is **DENIED**.

¶ 26 MCCF's motion for summary judgment is **DENIED**.

¶ 27 MCCF shall have 10 days from the date of this Order to file a supplemental brief as to why summary judgment in favor of Bell should not be granted on the limited issue

²⁶ *In Re Estate of Marson*, 2005 MT 222, ¶ 9, 328 Mont. 348, 120 P.3d 382 (citations omitted).

of whether the statute of limitations has run on Bell's claim exclusive of the April 9, 2008, treatment at SVH Northern Rockies Regional Pain Center.

¶ 28 Bell and State Fund may file reply briefs within 5 days after MCCF's brief.

DATED in Helena, Montana, this 2nd day of August, 2011.

(SEAL)

/s/ JAMES JEREMIAH SHEA
JUDGE

c: J. Kim Schulke
Kevin Braun
Kelly M. Wills

Submitted: June 20, 2011 & July 6, 2011