

IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

2013 MTWCC 13

WCC No. 2013-3099

PAUL F. BOND

Petitioner

vs.

ASSOCIATED LOGGERS EXCHANGE

Respondent/Insurer.

FINDINGS OF FACT, CONCLUSIONS OF LAW AND JUDGMENT

Summary: Petitioner sought to reopen a settlement agreement, arguing that Respondent should be liable for additional benefits relating to medical treatment Petitioner recently obtained which he contended related to his industrial injury. Respondent objected, arguing that Petitioner had no grounds for reopening the settlement, and further arguing that Petitioner's claim must fail either for causation or because his claims for medical benefits are barred by § 39-71-704(1)(e), MCA.

Held: Petitioner has not demonstrated any legal grounds for reopening the settlement agreement. Therefore, his claims for additional medical, indemnity, and vocational rehabilitation benefits are denied.

Topics:

Constitutions, Statutes, Regulations, and Rules: Montana Code Annotated: 28-2-1711. An urgent need to pay debts does not constitute "duress" under § 28-2-1711, MCA, and therefore is not grounds to rescind a settlement agreement.

Settlements: Reopening: Duress and Undue Influence. An urgent need to pay debts does not constitute "duress" under § 28-2-1711, MCA, and therefore is not grounds to rescind a settlement agreement.

Settlements: Reopening. Although Petitioner argued that he should be allowed to reopen his settlement because he did not believe the medical

treatment he received in the six months following his industrial accident was adequate, the Court concluded that since Petitioner did not settle his claim until a year after his industrial injury, any dissatisfaction he may have had with his initial treatment would have been readily apparent by that time and therefore could not constitute grounds for reopening the settlement.

Pro Sé. Relying on § 39-71-105(3), MCA, this Court has held that it has a fundamental obligation to preserve basic principles of justice and the rights of the parties where a pro sé claimant is unsophisticated in legal matters. In this case, where Petitioner wants to reopen his settlement, while Petitioner did not specifically allege that a mutual mistake of fact occurred, the Court will construe his testimony regarding the alleged misidentification of which shoulder was injured in the industrial accident as an argument alleging a mutual mistake of fact.

Settlements: Reopening: Mutuality of Mistake. Where Petitioner presented evidence that Respondent may have been mistaken as to which shoulder Petitioner injured in his industrial accident, Petitioner presented no evidence that he himself was ever mistaken as to which shoulder was injured. There is therefore no evidence that a mutual mistake of fact occurred and the additional benefits Petitioner now seeks are barred by the settlement agreement.

¶ 1 The Court held trial in this matter on May 24, 2013, at the Workers' Compensation Court. Petitioner Paul F. Bond appeared and represented himself. James R. Hintz represented Respondent/Insurer Associated Loggers Exchange (Associated).

¶ 2 Exhibits: I admitted Exhibits 2 through 22 without objection. I admitted Exhibit 1 over Bond's objections. I admitted Exhibit 23.

¶ 3 Witnesses: Bond, Shawn Nicholls, and Marshall Aarnold were sworn and testified.

¶ 4 Issues Presented: The parties present the following issues for resolution:

Issue One: Whether Petitioner is entitled to compensation, rehabilitation, and medical benefits under the claim of January 12, 2005;

Issue Two: Whether Petitioner's claims for additional benefits are barred by settlement;

Issue Three: Whether Petitioner's claims for additional benefits are barred by failure to meet his burden of proof as to causation of his condition from the injury of January 12, 2005; and

Issue Four: Whether Petitioner's claims for past and future medical benefits are barred by § 39-71-704(1)(e), MCA.

¶ 5 Since I have concluded that Issue Two is dispositive of this case, I address only Issue Two in my Conclusions of Law below.

FINDINGS OF FACT

¶ 6 On January 12, 2005, Bond suffered a right shoulder and low-back injury in a motor vehicle accident occurring within the course and scope of his employment with Miller's Trucking, Inc. Associated accepted liability for Bond's claim and paid medical benefits.¹

¶ 7 Bond testified at trial. I found him to be a credible witness. Bond stated that on January 12, 2005, he learned that a large winter storm was expected while he was delivering logs to Townsend, Montana. After unloading his logs, Bond drove as part of a caravan with other trucks as far as Harlowton, Montana, where the drivers learned that the highway was closed. The drivers decided to take an alternate route home with Bond leading the way. The visibility was very poor and approximately two or three miles after embarking on the alternate route, Bond lost control of his truck and it rolled on its side.²

¶ 8 Nicholls testified at trial. I found him to be a credible witness. Nicholls testified that on January 12, 2005, he was driving a truck directly behind Bond and he witnessed Bond's accident. Nicholls testified that Bond drove off the road and Bond's truck rolled over onto its side.³

¶ 9 Bond testified that he was thrown about the cab of the truck in the accident. He hit his back on the dashboard and his shoulder on the window and he was dizzy and disoriented. Bond testified that the next thing he recalled was that another truck driver got him out of the truck. He recalled that he had difficulty climbing up the embankment

¹ Pretrial Order, Statement of Uncontested Facts, at 2.

² Trial Test.

³ Trial Test.

where the truck had come to rest, and his left arm was injured. Bond testified that he “hurt all over” from the accident, but that his left shoulder was particularly painful.⁴

¶ 10 Aamold testified at trial. I found him to be a credible witness. Aamold testified that he did not witness Bond’s accident, but he saw him shortly afterward and Bond was holding his left shoulder.⁵

¶ 11 One of the other drivers took Bond to a hospital for medical treatment. Bond testified that he was examined and then discharged with instructions to return the following day. He was surprised that the hospital chose to discharge him instead of admitting him overnight.⁶

¶ 12 Bond testified that the medical record from his January 12, 2005, emergency room visit is inaccurate in that it describes him as having right shoulder pain, when he actually injured his left shoulder in the accident.⁷ Bond testified that the emergency room registration form also inaccurately describes his injury as being his right shoulder and he further testified that he does not recall having an abrasion on his shoulder as described in that medical note.⁸

¶ 13 Bond further testified that although he signed the First Report of Injury, Miller’s Trucking, Inc., had first submitted it to Associated’s third-party adjuster without giving Bond the opportunity to review it for accuracy and he later signed it when the adjuster asked him to do so because Bond understood that he would not receive any benefits until he did so.⁹

¶ 14 On March 18, 2005, Bond informed John C. Schumpert, M.D., that his shoulder concerns had resolved approximately one month after his industrial accident.¹⁰

¶ 15 Bond testified that for some time after the accident, he had difficulty with pain in his left shoulder.¹¹ Bond acknowledged that on May 16, 2005, he probably told his

⁴ Trial Test.

⁵ Trial Test.

⁶ Trial Test.

⁷ Trial Test. See Ex. 1.

⁸ Trial Test. See Ex. 2.

⁹ Trial Test.

¹⁰ Pretrial Order, Statement of Uncontested Facts, at 2.

¹¹ Trial Test.

physical therapist that his shoulder pain was resolving. Bond explained that at that time, he was more concerned about his back pain.¹²

¶ 16 Bond further testified that he was terminated from his employment with Miller's Trucking, Inc., for allegedly failing to accept light-duty work, but Miller's Trucking, Inc., never offered him light-duty work.¹³

¶ 17 On July 7, 2005, Thomas R. Johnson, M.D., released Bond to return to work without restrictions.¹⁴ Bond testified that he had asked his doctor to release him to return to work because he needed income.¹⁵

¶ 18 On September 1, 2005, Bond last received medical treatment related to his claim from Dr. Johnson.¹⁶

¶ 19 On January 19, 2006, the Department of Labor and Industrial, Employment Relations Division, approved a settlement in which the parties had negotiated the settlement of Bond's claim in its entirety.¹⁷ Bond and a representative for Associated signed a Petition for Full and Final Compromise Settlement and Release (Disputed Liability) in which Bond agreed to accept \$10,000 to settle his claim from his January 12, 2005, industrial injury. The parties agreed to close past, present, and future medical benefits, as well as past, present, and future temporary total disability, permanent total disability, permanent partial disability, wage supplement, impairment, and rehabilitation benefits.¹⁸ Bond testified that he signed the settlement agreement and agreed to settle his claim because he was desperate for the money.¹⁹

¶ 20 On January 24, 2012, Bond sought treatment for conditions which he contends were caused by his January 12, 2005, industrial accident for the first time since September 1, 2005.²⁰

¹² Trial Test. See the assessment at Ex. 14 at 2, which states in part, "Shoulder pain has gone. Back pain has stayed."

¹³ Trial Test.

¹⁴ Pretrial Order, Statement of Uncontested Facts, at 2.

¹⁵ Trial Test.

¹⁶ Pretrial Order, Statement of Uncontested Facts, at 2.

¹⁷ Pretrial Order, Statement of Uncontested Facts, at 2.

¹⁸ Ex. 17 at 1-2.

¹⁹ Trial Test.

²⁰ Pretrial Order, Statement of Uncontested Facts, at 2.

¶ 21 On August 16, 2012, Bond underwent left shoulder total arthroplasty. On November 16, 2012, he was released to full activity without restriction.²¹ Bond testified that the Veteran's Administration Hospital surgically repaired his shoulder and while his recovery is ongoing, he is progressing well.²² However, his industrial injury has affected his ability to earn a living and has caused him serious financial hardship. He believes Associated failed to provide him with the benefits to which he should have been entitled. Bond further testified that the permanent impairment from his industrial accident has precluded his ability to return to work as a truck driver as he does not believe he will be able to pass the required Department of Transportation physical.²³

CONCLUSIONS OF LAW

¶ 22 This case is governed by the 2003 version of the Montana Workers' Compensation Act since that was the law in effect at the time of Bond's industrial accident.²⁴ Bond bears the burden of proving by a preponderance of the evidence that he is entitled to the benefits he seeks.²⁵

Issue Two: Whether Petitioner's claims for additional benefits are barred by settlement.

¶ 23 After the close of Bond's testimony, counsel for Associated moved for a directed verdict. Associated argued that Bond had presented no grounds upon which to reopen the settlement. I denied the motion.

¶ 24 The full and final settlement entered into by the parties is a contract, thus contract law governs the agreement.²⁶

¶ 25 In spite of the existence of the settlement agreement, Bond contends that he is entitled to disability benefits from August 16, 2012, through November 16, 2012, when he was off work due to his left shoulder joint replacement surgery, and that he is further entitled to future medical and disability benefits for his low back relating to a future anticipated back surgery and future retraining or vocational rehabilitation benefits after the anticipated back surgery. Bond also contends that Associated should repay the

²¹ Pretrial Order, Statement of Uncontested Facts, at 2.

²² Trial Test.

²³ Trial Test.

²⁴ *Buckman v. Montana Deaconess Hosp.*, 224 Mont. 318, 321, 730 P.2d 380, 382 (1986).

²⁵ *Ricks v. Teslow Consol.*, 162 Mont. 469, 512 P.2d 1304 (1973); *Dumont v. Wickens Bros. Constr. Co.*, 183 Mont. 190, 598 P.2d 1099 (1979).

²⁶ *Morrisette v. Zurich American Ins. Co.*, 2000 MTWCC 2, ¶ 61 (citing *Kienas v. Peterson*, 191 Mont. 325, 329, 624 P.2d 1, 3 (1980)).

Veteran's Administration for medical treatment he received in 2012 for his left shoulder, and that Associated should indemnify the Veteran's Administration for future medical treatment for his low-back condition.²⁷

¶ 26 Although Bond clearly articulated what benefits he is seeking, it is not entirely clear on which legal basis he believes he is entitled to these benefits. At trial, he testified that he signed the settlement agreement because of financial desperation. However, this Court has held that an urgent need to pay debts does not constitute "duress" under § 28-2-1711, MCA, and therefore is not grounds to rescind a settlement agreement.²⁸ I therefore conclude that Bond does not have grounds to reopen the settlement for duress.

¶ 27 Since settlement agreements are governed by contract law, this Court has looked to the statutes governing contracts in determining whether a settlement agreement is valid.²⁹ As the Montana Supreme Court explained in *Gamble v. Sears*:

The parties must give their consent to enter into a contract. The requisite consent must be given freely, and consent cannot be given freely when it is based on a mistake. Either a mistake of fact or a mistake of law will preclude freely given consent. A mistake of fact . . . is defined as "a mistake not caused by the neglect of a legal duty on the part of the person making the mistake," and consisting of "an unconscious ignorance or forgetfulness of a fact, past or present, material to the contract" or a belief in "the present existence of a thing . . . which does not exist"

Pursuant to these rules, it is well established that a settlement agreement must be rescinded if, when the parties entered into it, they were mutually mistaken regarding a fact that was material to the agreement.³⁰

¶ 28 Bond further argued that he should be allowed to reopen his settlement because he does not believe his initial medical treatment was adequate and his medical providers did not properly diagnose his shoulder problems and did not adequately investigate his back problems until six months after his industrial accident.³¹ However, Bond's initial medical treatment and diagnoses and investigation into his back problems all occurred long before January 2006, when Bond agreed to settle his claim. Any

²⁷ Pretrial Order at 3.

²⁸ *Vandervalk v. Montana State Fund*, 2009 MTWCC 35, ¶ 59. (Citation omitted.)

²⁹ See, e.g., *Montana State Fund v. Simms*, 2010 MTWCC 40, ¶ 17.

³⁰ 2007 MT 131, ¶¶ 25-26, 337 Mont. 354, 160 P.3d 537. (Internal citations omitted.)

³¹ Trial Test.

dissatisfaction Bond may have with the treatment he received within the first six months following his industrial injury was apparent at the time he entered into the January 2006 settlement agreement. Therefore, no grounds exist to reopen the settlement agreement because of any alleged inadequacy of Bond's early diagnosis and treatment.

¶ 29 Noting Bond's testimony regarding his disagreement with the contemporary medical records as to which shoulder he injured in the industrial accident, Associated argues that the medical records indicate only that Bond suffered a right shoulder injury which resolved shortly after his industrial accident, and that the medical evidence does not support Bond's argument that the condition which required his left shoulder surgery was causally related to his January 12, 2005, industrial accident. Associated argues that all of the disputes Bond attempts to raise were issues which the parties settled in the January 2006 settlement agreement. Associated argues that, even if Bond is correct that Associated wrongly believed his right shoulder was injured in the industrial accident, Bond further testified that he always knew that it was his left shoulder and therefore any mistake of fact was not mutual.

¶ 30 Pursuant to § 39-71-105(3), MCA, the workers' compensation system is intended to be primarily self-administering and the system must be designed to minimize reliance upon lawyers and the courts to obtain benefits and interpret liabilities. Relying on this statute, this Court has previously held that it has a fundamental obligation to preserve basic principles of justice and the rights of the parties where a pro sé claimant is unsophisticated in legal matters.³² Therefore, although Bond did not specifically allege that a mutual mistake of fact occurred in his case, I nonetheless will construe his testimony that the initial, contemporary medical records incorrectly identified his right shoulder as the injured shoulder when he maintains that it was in fact his left shoulder which he injured in the January 12, 2005, industrial accident and that he has therefore raised an argument alleging a mutual mistake of fact.

¶ 31 However, for a mistake of fact to constitute grounds for reopening a settlement, the mistake must also be mutual.³³ In the present case, Bond has presented no evidence that he himself was mistaken as to which shoulder was injured in the industrial accident. At best, Bond has presented evidence only to **suggest** that Associated would have been mistaken as to which shoulder was injured because of his belief that Associated would have relied upon the allegedly incorrect medical records. I therefore conclude that Bond has not proven that a mutual mistake of fact occurred regarding his shoulder injury.

³² *State Compen. Ins. Fund v. Vannett*, 1999 MTWCC 66, ¶ 29.

³³ *See, e.g., Harter v. Liberty Northwest Ins. Corp.*, 2006 MTWCC 39, ¶ 20.

¶ 32 I cannot find legal grounds upon which Bond may reopen his January 2006 settlement agreement. Since that settlement agreement closed Bond's entitlement to all benefits relating to his January 12, 2005, industrial injury claim, including any entitlement to medical, indemnity, and vocational rehabilitation benefits, I therefore conclude that the additional benefits Bond now seeks are barred by that settlement.

JUDGMENT

¶ 33 Petitioner's claims for additional benefits are barred by settlement.

¶ 34 Pursuant to ARM 24.5.348(2), this Judgment is certified as final and, for purposes of appeal, shall be considered as a notice of entry of judgment.

¶ 35 Any party to this dispute may have twenty days in which to request reconsideration from these FINDINGS OF FACT, CONCLUSIONS OF LAW AND JUDGMENT.

DATED in Helena, Montana, this 6th day of June, 2013.

(SEAL)

/s/ JAMES JEREMIAH SHEA
JUDGE

c: Paul F. Bond
James R. Hintz
Submitted: May 24, 2013