

IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

2009 MTWCC 26

WCC No. 2009-2279

TERRY BOYD

Petitioner

vs.

ZURICH AMERICAN INSURANCE COMPANY

Respondent/Insurer.

Appealed to Montana Supreme Court - 09/09/09

Affirmed - 03/16/10 - 2010 MT 52

ORDER GRANTING RESPONDENT'S MOTION FOR SUMMARY JUDGMENT

Summary: Zurich American Insurance Company moved for summary judgment on the grounds that Petitioner Terry Boyd failed to petition this Court within two years of Zurich's denial of benefits, as required by § 39-71-2905(2), MCA. Boyd argued that Zurich's motion should be denied because the statute of limitations should not have commenced running until June 2008, when Boyd obtained the medical evidence needed to support his claim. Boyd contends that the language of § 39-71-2905(2), MCA, implies a tolling of the time limitation until the "dispute arises and is supported by admissible medical evidence."

Held: Zurich's motion is granted. Section 39-71-2905(2), MCA, unambiguously requires that "[a] petition for hearing before the workers' compensation judge must be filed within 2 years after benefits are denied." Although this Court has recognized a tolling of this time limit while the dispute is in mandatory mediation, it has never recognized an "implied tolling" until the claimant obtains medical evidence in support of his claim, and the Court declines to do so now.

Topics:

Constitutions, Statutes, Regulations, and Rules: Montana Code Annotated: 39-71-2905. Section 39-71-2905(2), MCA, unambiguously requires that "a petition for hearing . . . must be filed within 2 years after benefits are denied." This Court has never recognized an "implied tolling"

until the claimant obtains medical evidence in support of his claim. Such a tolling would effectively eliminate the statute of limitations for every claim that is denied because the claimant lacked supporting medical evidence.

Limitations Periods: Tolling. Section 39-71-2905(2), MCA, unambiguously requires that “a petition for hearing . . . must be filed within 2 years after benefits are denied.” This Court has never recognized an “implied tolling” until the claimant obtains medical evidence in support of his claim. Such a tolling would effectively eliminate the statute of limitations for every claim that is denied because the claimant lacked supporting medical evidence.

Limitations Periods: Petition Filing. Section 39-71-2905(2), MCA, unambiguously requires that “a petition for hearing . . . must be filed within 2 years after benefits are denied.” Where a claim was denied on October 27, 2006, and the claimant obtained a medical opinion in support of his claim on June 19, 2008, and the statute was tolled for 79 days while the case was in mediation, the claimant had until January 14, 2008, to file a petition in this Court. Since the claimant did not petition this Court until May 8, 2009, his claim is time-barred.

¶ 1 Respondent Zurich American Insurance Company (Zurich) moved for summary judgment on the grounds that Petitioner Terry Boyd (Boyd) failed to file his claim in this Court within two years of Zurich’s denial of benefits, as required by § 39-71-2905(2), MCA. Boyd argues that Zurich’s motion should be denied because Boyd lacked the medical evidence to support his claim until June 2008. Boyd argues that his “request for benefits arises out of a medical opinion that was only available in June 2008, and therefore any limitation period for that benefit request commenced running at that time.”¹ Boyd further argues that the language of § 39-71-2905(2), MCA, “implies a tolling . . . in a sense that until the dispute arises and is supported by admissible medical evidence, the claimant is not burdened with impossible feats.”² For the reasons discussed below, Zurich’s motion is granted.

Undisputed Material Facts

¶ 2 The facts material to this motion are as follows:³

¹ Brief in Opposition to Respondent’s Motion for Summary Judgment at 2.

² *Id.* at 3.

³ Excerpts from Respondent’s Motion for Summary Judgment and Supporting Brief at 3-7.

- ¶ 2a Boyd's claim with Zurich began with a left hand/finger injury on January 18, 2005, when Boyd was using a drill which locked up while in use. The torque from the drill was reported to have caused injury to Boyd's index and middle finger area of his left hand, a "2nd MCP joint capsule tear" and "[l]eft radial head capsulitis."
- ¶ 2b Boyd was examined by Dr. Bill Rosen on July 13, 2005. Boyd reported to Dr. Rosen "that he had twisted 'his left arm and shoulder'" while using a drill on January 10, 2005.
- ¶ 2c Disputes over liability for cervical, shoulder, lumbar, and thoracic spine conditions led to Zurich scheduling Boyd for re-evaluation with Dr. Rosen on June 13, 2006. After this evaluation, Dr. Rosen reported: "All diagnoses related to the neck, left shoulder girdle and low back are unrelated to [Boyd's] claim of 1/18/05."
- ¶ 2d On October 27, 2006, Zurich's counsel wrote to Boyd's counsel denying liability for numerous conditions as well as liability for disability and/or rehabilitation benefits. Specifically, Zurich's counsel wrote, in pertinent part:
- As you know the insurer . . . continues to deny liability for Mr. Boyd's shoulder complaints, low back pain and cervical complaints based on Dr. Rosen's opinions of June 13, 2006 that those conditions are unrelated to the injury of January 18, 2005. As Dr. Rosen assigned work restrictions only in relation to unrelated conditions, the insurer also denies liability for disability and/or rehabilitation benefits.
- ¶ 2e Boyd filed for Department of Labor & Industry Workers' Compensation Mediation on August 14, 2008.
- ¶ 2f Mediation was conducted on September 23, 2008.
- ¶ 2g The department mediator issued her report and recommendations on October 7, 2008.
- ¶ 2h Zurich responded to the mediator's recommendation on October 14, 2008.

- ¶ 2i Boyd responded to the mediator's recommendations on October 31, 2008.
- ¶ 2j Boyd filed his petition in this Court on May 8, 2009. In his prayer for relief, Boyd sought a ruling from this Court that his cervical condition was caused by the January 18, 2005, incident and that he is entitled to temporary total disability benefits and medical benefits.

Analysis and Decision

¶ 3 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 Boyd's injury.⁴

¶ 4 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.⁵ The material facts necessary for disposition of this case are undisputed. Accordingly, this case is susceptible to summary disposition.

¶ 5 Section 39-71-2905(2), MCA, mandates that a petition for hearing before the Workers' Compensation Judge must be filed within two years after benefits are denied. Zurich denied Boyd's claim for benefits on October 27, 2006. Boyd then filed for department mediation on August 14, 2008. The mediation process was completed seventy-nine days later with Boyd's response to the mediator's recommendation on October 31, 2008. After adding these seventy-nine days to the two-year time limitation of § 39-71-2905(2), MCA, Boyd's petition in this Court had to be filed no later than January 14, 2009.⁶ Boyd filed his Petition for Hearing on May 8, 2009.

¶ 6 Boyd does not dispute that Zurich denied benefits on October 27, 2006. Boyd contends, however, that this did not commence the running of the two-year statute of limitations pursuant to § 39-71-2905(2), MCA. Boyd argues that the statute of limitations actually commenced when he obtained a medical opinion supporting his claim from Dr. John Schneider on June 19, 2008, because prior to obtaining Dr. Schneider's opinion, Boyd contends that he did not have a cognizable claim. Boyd argues that the language of § 39-71-2905, MCA, "implies a tolling, a tolling in a sense that until the dispute arises and is

⁴ *Buckman v. Montana Deaconess Hosp.*, 224 Mont. 318, 321, 730 P.2d 380, 382 (1986).

⁵ ARM 24.5.329; *Farmers Union Mut. Ins. Co. v. Horton*, 2003 MT 79, ¶ 10, 315 Mont. 43, 67 P.3d 285.

⁶ See *Fleming v. Int'l Paper Co.*, 2005 MTWCC 34, ¶ 24 (citing *Preston v. Transp. Ins. Co.*, 2004 MT 339, ¶¶ 35, 37, 324 Mont. 225, 102 P.3d 527).

supported by admissible medical evidence, the claimant is not burdened with impossible feats.”⁷ Boyd’s argument is without merit.

¶ 7 Section 39-71-2905(2), MCA, unambiguously requires that “a petition for hearing before the workers’ compensation judge must be filed within 2 years **after benefits are denied.**” (Emphasis added.) Although this Court has recognized a tolling of this time limitation while the dispute is in mandatory mediation, it has never recognized an “implied tolling” until the claimant obtains medical evidence in support of his claim, and I decline to do so now. Indeed, were I to adopt such a tolling, it would effectively eliminate the statute of limitations for every claim that is denied because the claimant lacked supporting medical evidence.

¶ 8 Statutes of limitations seek to balance the interests of both parties by providing “a reasonable period of time in which wronged parties can initiate suit and obtain redress.”⁸ In this case, after Zurich denied Boyd’s claim, § 39-71-2905(2), MCA, provided him with two years in which to obtain the medical evidence necessary to challenge Zurich’s denial and petition this Court. Contrary to Boyd’s characterization that this “burdened” him with an “impossible feat,” this case actually illustrates just how possible this feat was. Zurich denied Boyd’s claim for benefits on October 27, 2006. Boyd obtained Dr. Schneider’s opinion in support of his claim on June 19, 2008 – approximately one year and eight months after his claim was denied. Boyd was then afforded an additional seventy-nine days as the statute was tolled during mediation, extending the deadline to file his petition to January 14, 2009. The fact that Boyd failed to petition this Court before this deadline had passed was not due to any impossible burden imposed by § 39-71-2905(2), MCA.

ORDER AND JUDGMENT

¶ 9 Zurich’s motion for summary judgment is GRANTED.

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

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⁷ Brief in Opposition to Respondent’s Motion for Summary Judgment at 3.

⁸ *Montana Petroleum Tank Release Comp. Bd. v. Federated Serv. Ins. Co.*, 2008 MT 194, ¶ 20, 344 Mont. 45, 185 P.3d 998. (Citing *Linder v. Missoula Cnty.*, 251 Mont. 292, 298, 824 P.2d 1004, 1007 (1992).)

DATED in Helena, Montana, this 12th day of August, 2009.

(SEAL)

/s/ JAMES JEREMIAH SHEA
JUDGE

c: Paul E. Toennis
James R. Hintz
Submitted: July 23, 2009