

IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

2016 MTWCC 11

WCC No. 2016-3804

GLEN A. BRICKMAN

Appellant/Claimant

vs.

AIR TECH HEATING & COOLING INC.

Employer

MONTANA STATE FUND

Appellee/Insurer.

APPEALED TO MONTANA SUPREME COURT – 08/11/16
DISMISSED ON APPEAL BY STIPULATION – 10/13/16

ORDER DENYING PETITIONER'S REQUEST
FOR BENEFITS UNDER § 39-71-610, MCA

Summary: Claimant appeals the order by the DLI denying his request for interim TTD benefits under § 39-71-610, MCA. The DLI denied Claimant's request on the grounds that he continued to receive biweekly compensation benefits because his biweekly compensation benefits were not terminated; rather, his benefits were converted from TTD benefits to PPD benefits.

Held: Claimant does not qualify for interim TTD benefits under § 39-71-610, MCA, because he continues to receive biweekly compensation benefits.

¶ 1 On August 6, 2013, Appellant/Claimant Glen A. Brickman suffered an injury to his foot and ankle acting within the course of employment.

¶ 2 Appellee/Insurer Montana State Fund (State Fund) accepted liability for the injury and commenced paying temporary total disability (TTD) benefits at the rate of \$698 per week.

¶ 3 On May 20, 2016, State Fund informed Brickman that it would terminate his TTD benefits in 14 days and convert them to permanent partial disability (PPD) benefits because he was “deemed employable” and “no longer entitled to temporary total disability.” His PPD rate is \$349 per week.

¶ 4 Following the conversion of TTD benefits to PPD benefits, Brickman petitioned the Department of Labor & Industry (DLI) for interim TTD benefits under § 39-71-610, MCA. The DLI denied Brickman’s application for the return payment of TTD benefits on the grounds that State Fund did not terminate his biweekly compensation benefits; rather, State Fund converted his TTD benefits to PPD benefits.

¶ 5 On June 27, 2016, Brickman filed a Notice of Claimant’s Appeal of Order Denying Additional Biweekly Compensation Benefits Under 39-71-610.

LAW AND ANALYSIS

¶ 6 This case is governed by the 2011 version of the Montana Workers’ Compensation Act because that was the law in effect at the time of Brickman’s injury.¹

¶ 7 A proceeding before this Court under § 39-71-610, MCA, is “a new proceeding and is not subject to mediation.” This Court’s standard of review of appeals from a DLI order regarding interim benefits under this statute is *de novo*.²

¶ 8 Section 39-71-610, MCA, states, in relevant part:

If an insurer terminates biweekly compensation benefits and the termination of compensation benefits is disputed by the claimant, the department may, upon written request, order an insurer to pay additional biweekly compensation benefits

¶ 9 This Court has already interpreted this statute under the same circumstances in *Klinkam v. MACo Workers’ Compensation Trust*.³ Similar to the case at bar, the insurer converted Klinkam’s TTD benefits to PPD benefits and considered whether that conversion resulted in a termination of biweekly compensation benefits. This Court used the rule of statutory construction § 1-2-101, MCA, which states:

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

² *New Hampshire Ins. Co. v. Matejovsky*, 2015 MTWCC 15, ¶ 10 (citation omitted).

³ 2012 MTWCC 25.

In the construction of a statute, the office of the judge is simply to ascertain and declare what is in terms or in substance contained therein, not to insert what has been omitted or to omit what has been inserted. Where there are several provisions or particulars, such a construction is, if possible, to be adopted as will give effect to all.

This Court ruled “that, under a strict reading of § 39-71-610, MCA, Klinkam’s benefits were not terminated and therefore, she was not entitled to additional benefits under the statute.”⁴ This Court also explained:

Klinkam admits that she continues to receive compensation benefits; therefore, her compensation benefits have not been terminated. Rather, her benefits have been converted from one type of compensation benefit to a different type of compensation benefit. Pursuant to § 39-71-610, MCA, Klinkam does not qualify for “additional biweekly compensation benefits.”⁵

¶ 10 There is no meaningful way to distinguish *Klinkam* from the instant case. Like Klinkham, Brickman continues to receive PPD benefits, which are a biweekly compensation benefit. Therefore, State Fund did not terminate Brickman’s biweekly compensation benefits and he does not qualify to receive additional biweekly benefits under the plain language of § 39-71-610, MCA. Having concluded the language of the statute is unambiguous, there is no need to go further to apply other means of interpretation, such as legislative history.

¶ 11 Furthermore, this Court does not agree with Brickman that *Klinkam* should be overruled. The Montana Supreme Court explains:

[S]tare decisis protects the stability and predictability of law in order to ensure equal treatment. Though *stare decisis* is not a rigid doctrine preventing reexamination of past cases, “weighty considerations underlie the principle that courts should not lightly overrule past decisions.” *Stare decisis* provides the “preferred course” when faced with viable alternatives.⁶

However, *stare decisis* does not require this Court to follow a “manifestly wrong decision.”⁷ The burden of demonstrating that a prior decision is manifestly wrong is on the party seeking to overturn it.⁸

⁴ *Klinkam*, ¶ 4.

⁵ *Klinkam*, ¶ 10.

⁶ *Guethlein v. Family Inn*, 2014 MT 121, ¶ 16, 375 Mont. 100, 324 P.3d 1194 (citations omitted).

⁷ *Formicove, Inc. v. Burlington Northern, Inc.*, 207 Mont. 189, 194-95, 673 P.2d 469, 472 (1983) (citations omitted).

⁸ See *In re McCabe*, 168 Mont. 334, 337, 544 P.2d 825, 827 (1975) (noting petitioner’s failure to raise a sufficient reason to overturn the court’s prior construction).

¶ 12 Brickman has not met his burden to demonstrate that *Klinkam* is manifestly wrong. He claims that § 39-71-610, MCA, should be interpreted as applying when an insurer terminates a biweekly benefit. He thus argues he is eligible for interim TTD benefits rather than PPD benefits, because State Fund terminated his TTD benefits, as set forth in one of State Fund's letters, and then began paying him PPD benefits. However, State Fund is correct that § 39-71-610, MCA, does not say that interim benefits are available when an insurer terminates a biweekly compensation benefit. The statute states that DLI may order interim benefits only when the "insurer terminates biweekly compensation benefits"; i.e., the statute requires that the insurer "stop paying biweekly benefits"⁹ before the claimant is eligible for interim benefits. Thus, this Court correctly decided *Klinkam*.

ORDER

¶ 13 Petitioner's request for additional biweekly benefits under § 39-71-610, MCA, is **DENIED**.

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

DATED this 25th day of July, 2016.

(SEAL)

/s/ DAVID M. SANDLER
JUDGE

c: Norman L. Newhall

⁹ *Matejovsky*, ¶ 13.

Leanora O. Coles
Submitted: July 6, 2016