

IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

WCC No. 2008-2042

TONY CASIANO

Petitioner

vs.

MONTANA CONTRACTOR COMPENSATION FUND

Respondent/Insurer.

APPEALED TO MONTANA SUPREME COURT - APRIL 2, 2009

**ORDER GRANTING RESPONDENT MONTANA CONTRACTOR COMPENSATION
FUND'S MOTION FOR SUMMARY JUDGMENT**

¶ 1 Respondent Montana Contractor Compensation Fund moves the Court for summary judgment in its favor regarding Petitioner's claim for indemnity benefits. Respondent argues that Petitioner's claim is time-barred under § 39-71-2905(2), MCA (1997), since more than two years have passed since Respondent denied Petitioner's claim for additional benefits.¹

¶ 2 On September 5, 2008, this Court granted Respondent partial summary judgment in this case regarding Petitioner's claim for medical benefits.² Since Petitioner's petition also contained a claim for "settlement for all back and future loss [sic] wages," the Order did not dispose of the entire claim. Respondent argues that the undisputed facts which support the Court's decision regarding Petitioner's claim for medical benefits likewise support a determination that Respondent is entitled to summary judgment on Petitioner's claim for indemnity benefits.

¶ 3 Petitioner, appearing pro sé, filed a brief in opposition to Respondent's motion for summary judgment. Petitioner's brief states, in its entirety:

¹ Motion for Summary Judgment and Supporting Brief, Docket Item No. 14.

² Order Granting Respondent Montana Contractor Compensation Fund's Motion for Partial Summary Judgment, Docket Item No. 12.

COMES NOW the Respondent, Statement of Contested Facts

1. Liability was not accepted by respondent. I had to contest it. My employer said I did not suffer wage lost [sic] because of injury.
2. I did not know the insurance status.
3. My attorney was relieved of his dut[ies]. I felt he did not represent me entirely to his potential.
4. They already agreed there was an issue of entitlement.³

¶ 4 Petitioner attached several exhibits to his brief, including correspondence from August 1998; part of a handwritten note; correspondence between his then-counsel and Respondent from February and July of 2002; a March 22, 2002, petition for mediation conference; a release of information from March 2001; and a medical record and payment plan agreement from late January and early February 2009.⁴

¶ 5 Respondent argues that Petitioner has not provided a substantive response to its motion for summary judgment and that this Court should therefore deem Respondent's motion well-taken under ARM 24.5.316(4). Respondent alleges that Petitioner's "contested facts" are not supported by affidavit or other sworn testimony and do not raise any genuine issues of material fact which would warrant denial of Respondent's motion. Citing *Cuellar v. Vanliner Ins. Co.*,⁵ Respondent argues that this Court has held that pro sé litigants are held to the same standards and legal principles applicable to all parties.

Uncontested Facts

¶ 6 At the time this Court considered Respondent's previous motion for summary judgment on Petitioner's claim for medical benefits, the Court conducted a hearing to allow Petitioner to appear before the Court and respond to the motion. At that time, the uncontested facts asserted in Respondent's brief in support of its motion were recited paragraph by paragraph to Petitioner to allow him to respond to each one. The Court further questioned Petitioner to ascertain that he understood Respondent's uncontested facts, and Petitioner ultimately did not dispute the facts Respondent set forth.⁶ Respondent

³ Motion in Opposition Request for Summary Judgement, Docket Item No. 20.

⁴ Exhibits attached to Motion in Opposition Request for Summary Judgement, Docket Item No. 20.

⁵ 2004 MTWCC 51, ¶ 4. (Citation omitted.)

⁶ Order Granting Respondent Montana Contractor Compensation Fund's Motion for Partial Summary Judgment, ¶ 2, Docket Item No. 12.

has relied on the following uncontested facts from the previous Order in support of its present motion:

¶ 6a On or about June 5, 1998, Petitioner sustained an industrial injury arising out of and in the course of his employment with Greenway Construction, in Lewis and Clark County, Montana. Liability for the industrial accident was accepted by Respondent.

¶ 6b At the time of the alleged industrial injury, Petitioner's employer was self-insured and enrolled under Compensation Plan No. 1 of the Montana Workers' Compensation Act and a member of Respondent, Montana Contractor Compensation Fund.

¶ 6c Petitioner reached maximum medical improvement for his June 5, 1998, industrial injury on or before August 29, 2000. In November 2000, Petitioner sustained a subsequent work-related injury while employed with an employer other than Greenway Enterprises.

¶ 6d The last medical treatment for which medical benefits were paid on this claim was on February 26, 2001. Liability for ongoing benefits was denied by Respondent based on Petitioner's attainment of maximum medical improvement and his subsequent work-related injury.

¶ 6e Petitioner filed for mediation on March 25, 2002, and the mediation request was dismissed on April 8, 2002.

¶ 6f Petitioner filed a Petition for Hearing on or about February 21, 2008.

¶ 6g More than two years have passed since Respondent denied additional liability for Petitioner's June 5, 1998, industrial injury claim.⁷

¶ 7 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.⁸ The uncontested facts contained in Respondent's motion for summary judgment are sufficient for summary disposition of the matter.

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⁷ Order Granting Respondent Montana Contractor Compensation Fund's Motion for Partial Summary Judgment, ¶¶ 3-8, and 10, respectively (footnotes omitted), Docket Item No. 12.

⁸ ARM 24.5.329; *Farmers Union Mut. Ins. Co. v. Horton*, 2003 MT 79, ¶ 10, 315 Mont. 43, 67 P.3d 285.

Summary Judgment

¶ 8 At the time Respondent set forth its facts, Petitioner did not dispute them, nor has Petitioner disputed any of these facts in his brief in opposition to this motion. While Petitioner has set forth four allegedly contested facts, those facts are not supported by affidavit or sworn testimony. However, even if Petitioner's alleged facts were taken as true, none of them bear any relevancy to the issue at hand, and therefore even if disputed, they are not material to the pertinent issue. Whether or not Respondent accepted liability or Petitioner had to contest it; Petitioner "did not know the insurance status;" Petitioner's attorney was relieved of his duties and Petitioner did not feel adequately represented; and "there was an issue of entitlement;" bear no relevancy in determining whether Petitioner's claim is time-barred under § 39-71-2905(2), MCA (1997).

¶ 9 Section 39-71-2905(2), MCA (1997), states that a petition for hearing before the workers' compensation judge must be filed within 2 years after benefits are denied.

It is undisputed that more than two years have passed since Respondent denied additional liability for Petitioner's June 5, 1998, industrial injury claim. Therefore, pursuant to § 39-71-2905(2), MCA (1997), Petitioner's claim for indemnity benefits is denied because it is time-barred.

ORDER

¶ 10 Respondent's motion for summary judgment is **GRANTED**.

¶ 11 Petitioner's Petition for Hearing is hereby **DISMISSED**.

¶ 12 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.

DATED in Helena, Montana, this 10th day of March, 2009.

(SEAL)

/s/ JAMES JEREMIAH SHEA
JUDGE

c: Tony Casiano
Kelly M. Wills
Submitted: February 17, 2009