IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

2008 MTWCC 29

WCC No. 2003-0840

CATHERINE E. SATTERLEE, et al.

Petitioners

vs.

LUMBERMAN'S MUTUAL CASUALTY COMPANY, et al.

Respondents/Insurers.

ORDER GRANTING RESPONDENT MONTANA STATE FUND'S
MOTION FOR PARTIAL SUMMARY JUDGMENT

Summary: Respondent Montana State Fund moved the Court for partial summary judgment regarding Petitioners' two remaining constitutional challenges to § 39-71-710, MCA: (1) Whether § 39-71-710, MCA, violates Petitioners' right to due process; and (2) Whether § 39-71-710, MCA, unconstitutionally or impermissibly discriminates against Petitioners based on their age.

Held: Respondent's motion is granted. Section 39-71-710, MCA, does not violate Petitioners' substantive due process rights because it is reasonably related to a permissible legislative objective. Section 39-71-710, MCA, does not unconstitutionally discriminate against Petitioners based on their age because it is rationally related to a legitimate governmental purpose.

¶ 1 On December 12, 2007, the Montana Supreme Court dismissed Petitioners' appeal of this Court's order granting Respondents' partial summary judgment motion because the order fell short of a final judgment and therefore required Rule 54(b) certification. The Supreme Court identified two remaining unresolved issues to be decided by this Court before a final judgment was rendered:

¶ 1a Whether § 39-71-710, MCA, violates Petitioners' right to due process; and

¶ 1b Whether § 39-71-710, MCA, unconstitutionally or impermissibly discriminates against Petitioners based on their age.

¶ 2 Respondent Montana State Fund moves the Court for partial summary judgment on the two remaining issues. For the reasons set forth below, Respondent's motion is granted.

Substantive Due Process

¶ 3 In *Powell v. State Compensation Ins. Fund*,[1] the Montana Supreme Court held:

> "Substantive due process analysis requires a test of the reasonableness of a statute in relation to the State's power to enact legislation." *Newville*, 267 Mont. at 250, 883 P.2d at 801 (quoting *Raisler v. Burlington N. R. Co*. (1985), 219 Mont. 254, 263, 717 P.2d 535, 541). Since the State cannot use its power to take unreasonable, arbitrary or capricious action against an individual, a statute enacted by the legislature must be reasonably related to a permissible legislative objective in order to satisfy guarantees of substantive due process. *Newville*, 267 Mont. at 250, 883 P.2d at 801 (citing *Raisler*, 219 Mont. at 263, 717 P.2d at 541). *See also Ball v. Gee* (1990), 243 Mont. 406, 412, 795 P.2d 82, 86; *In re C.H.* (1984), 210 Mont. 184, 194, 683 P.2d 931, 936.[2]

¶ 4 In analyzing the constitutionality of this statute previously, I held:

> [T]he statute places a reasonable limitation on PTD benefits in order to contain the cost of the system for employers while ensuring that PTD claimants are compensated commensurately with the wages they were earning when they left the workforce for what otherwise would have been their remaining "work life." At the same time, the termination of benefits achieves the rational result of ensuring that PTD benefits do not become the pension program the Legislature never intended to create.[3]

¶ 5 I fail to see any appreciable distinction between my finding set forth above and a determination that the statute is reasonably related to a permissible legislative objective.

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[1] *Powell v. State Compensation Ins. Fund*, 2000 MT 321, 302 Mont. 518, 15 P.3d 877.

[2] *Id.* at ¶ 29.

[3] *Satterlee v. Lumberman's Mutual Cas. Co.*, 2005 MTWCC 55, ¶ 23.

Therefore, I find that the statute passes constitutional muster under a substantive due process challenge.[4]

Age Discrimination

¶ 6 The entire substance of Petitioners' age discrimination claim, as argued in their brief opposing Respondent's motion for summary judgment, is a quote from the Montana Supreme Court's holding in *Reesor v. Montana State Fund*,[5] in which the Supreme Court held that the disparate treatment of partially disabled claimants based upon their age, because they are receiving or are eligible to receive social security retirement benefits, is not rationally related to a legitimate governmental interest.[6] Petitioners then argue: "Because the Supreme Court defined the issue in *Reesor*, and this Court identified the classes in *Satterlee* pursuant to *Reesor*, the issue is not work history but age."[7]

¶ 7 Petitioners' argument is correct insofar as it applies to the classes involved in this constitutional challenge. In my previous ruling, I acknowledged that the Supreme Court found in *Reesor* that § 39-71-710(1), MCA, was effectively an unconstitutional limitation on PPD benefits based on age.[8] Nevertheless, I further held that – as applied to PTD benefits – this statute was rationally related to a legitimate governmental purpose.[9] I, therefore, held that the statute did not violate equal protection and was constitutional.[10] In the present case, Petitioners offer no distinction between their equal protection challenge, upon which

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[4] Petitioners also cite the Court to the case of *Hunter v. Gibson*, 224 Mont. 481, 730 P.2d 1139 (1986), in support of their contention that the Montana Supreme Court has effectively invalidated the statutory scheme that § 39-71-710, MCA, presently provides. I find *Hunter* inapposite to the present dispute. *Hunter* did not address the constitutionality of § 39-71-710, MCA. Rather, the issue in *Hunter* was whether the 1983 version of § 39-71-710, MCA, should be interpreted to allow for payment of permanent partial disability benefits to a permanently totally disabled claimant who had reached the age of 65. In *Otteson v. Montana State Fund*, 2005 MT 198, 328 Mont. 174, 119 P.3d 1188, however, the Supreme Court squarely addressed the conclusions reached in *Hunter* and held that the liberal construction provision was dispositive of the Supreme Court's conclusion in *Hunter*. The Supreme Court went on to note that since the repeal of the liberal construction statute in 1987, this Court is required to construe the statutes according to their terms and not liberally in favor of any party.

[5] *Reesor v. Montana State Fund*, 2004 MT 370, 325 Mont. 1, 103 P.3d 1019.

[6] Satterlee's Response to the State Fund's Motion for Partial Summary Judgment and Memorandum in Support at 5. (Quoting, *Reesor*, ¶ 19.)

[7] Satterlee's Response to the State Fund's Motion for Partial Summary Judgment and Memorandum in Support at 5.

[8] *Satterlee*, 2005 MTWCC 55, ¶ 6.

[9] *Satterlee*, 2005 MTWCC ¶ 23.

[10] *Satterlee*, 2005 MTWCC ¶ 32.

I have already ruled, and their age discrimination challenge which is presently before me. Indeed, from what I can discern from the argument set forth in Petitioners' brief, they are merely rearguing their equal protection challenge. Specifically, Petitioners argue, "For the same reasons that § 39-71-710, MCA, violates Satterlee's right to equal protection . . . it unconstitutionally discriminates against her based on age."[11] Likewise, for the same reasons that I found that § 39-71-710(1), MCA, did not violate equal protection, I find that it does not unconstitutionally discriminate against Petitioners based on their age.

Conclusion

¶ 8 Section 39-71-710, MCA, does not violate Petitioners' substantive due process rights because it is reasonably related to a permissible legislative objective. Section 39-71-710, MCA, does not unconstitutionally discriminate against Petitioners based on their age because it is rationally related to a legitimate governmental purpose.

ORDER

¶ 9 Respondent's Motion for Partial Summary Judgment is **GRANTED**.

¶ 10 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 in Helena, Montana, this 4th day of June, 2008.

(SEAL)

/s/ JAMES JEREMIAH SHEA
JUDGE

c: Parties of Record Via Website
Submitted: February 11, 2008

[11] Satterlee's Response to the State Fund's Motion for Partial Summary Judgment and Memorandum in Support at 5.