

James G. Hunt, Esq.
HUNT LAW FIRM
310 Broadway
Helena, MT 59601
Telephone: (406) 442-8552
Facsimile: (406) 495-1660
Attorneys for Petitioners

FILED

AUG 12 2004

OFFICE OF
WORKERS' COMPENSATION JUDGE
HELENA, MONTANA

**IN THE WORKERS' COMPENSATION COURT
FOR THE STATE OF MONTANA**

WC COURT NO. 2003-0840

<p>CATHERINE E. SATTERLEE, Petitioner, vs. LUMBERMAN'S MUTUAL CASUALTY COMPANY, Respondent/Insurer for BUTTREY FOOD & DRUG, Employer.</p>	<p>WC Claim No.: 788CU041791</p>
<p>JAMES ZENAHLIK, Petitioner, vs. MONTANA STATE FUND, Respondent/Insurer for EAGLE ELECTRIC, Employer.</p>	<p>WC Claim No.: 03-1997-06362-9</p>
<p>JOSEPH FOSTER, Petitioner, vs. MONTANA STATE FUND, Respondent/Insurer for ALLEN ELECTRIC, Employer.</p>	<p>WC Claim No.: 3-95-17425-3</p>
<p>DORIS BOWERS, Petitioner, vs. PUTMAN & ASSOCIATES, Adjusters for ROYAL & SUNALLIANCE, Respondent/Insurer for TIDYMANS, Employer.</p>	<p>WC Claim No.: 290044312000</p>

SECOND AMENDED PETITION FOR HEARING

COME NOW Petitioners, by and through their attorney of record pursuant to 24.5.301 A.R.M., and petition this Court for a hearing:

1. **Petitioner Catherine E. Satterlee** ("Satterlee") was injured attempting to turn over a 40-45 pound of dog food on the bottom of a shopping cart on July 25, 1992, while in the course and scope of her duties as an employee of Buttery Food & Drug, an employer enrolled under Plan II pursuant of the Montana Workers' Compensation Act.

2. The injury occurred in Deer Lodge County, Montana. Satterlee currently resides in Deer Lodge County, while counsel for Satterlee is located in Lewis and Clark County.

3. Respondent/Insurer Lumberman's Mutual Casualty Company ("Lumberman's") accepted liability for the claim as an industrial injury and paid medical and indemnity benefits for various periods of time. Lumberman's denied payment of permanent total disability benefits.

4. On January 25, 1996, this Court ruled that, although Satterlee was totally disabled on account of her emotional and psychological condition, she was not permanently totally disabled as a result of her July 25, 1992, industrial accident.

5. Satterlee appealed this Court's decision to the Montana Supreme Court. On December 10, 1996, the Montana Supreme Court issued its opinion and reversed this Court's denial of Satterlee's claims for total disability benefits and remanded the case for entry of judgment in Satterlee's favor. *Satterlee v. Lumberman's Mutual Casualty Company* (1996), 280 Mont. 85, 929 P.2d 212.

6. Satterlee turned age 65 on September 30, 1999. On or about that date, Lumberman's ceased paying permanent total disability payments in the amount of \$235.55 pursuant to §39-71-710, MCA.

7. **Petitioner James Zenahlik** ("Zenahlik") suffered an occupational disease as a result of exposure to lead on December 28, 1996, while in the course and scope of his duties as an employee of Eagle Electric, an employer enrolled under Plan III pursuant of the Montana Workers' Compensation Act.

8. The injury occurred in Lewis and Clark County, Montana. Zenahlik currently resides in Deer Lodge County, while counsel for Zenahlik is located in Lewis and Clark County.

9. Respondent/Insurer Montana State Fund ("State Fund") accepted liability for the claim as an occupational disease and paid medical and indemnity benefits for various periods of time. State Fund also paid permanent total disability benefits.

10. Zenahlik turned age 65 on March 19, 2002. On or about April 17, 2002, State Fund informed Zenahlik that his total disability payments in the amount of \$384.00 would cease in 14 days. The statutory basis for this termination of benefits was §39-71-710, MCA.

11. Petitioner Joseph Foster ("Foster") suffered various workers' compensation injuries and occupational diseases while in the course and scope of his duties as an employee of Allen Electric, an employer enrolled under Plan III pursuant of the Montana Workers' Compensation Act.

12. These injuries and diseases occurred while Mr. Foster was based in Lewis and Clark County, Montana. Mr. Foster currently resides in Lewis & Clark County, and counsel for Mr. Foster is located in Lewis and Clark County.

13. Respondent/Insurer Montana State Fund ("State Fund") accepted liability for these injuries and occupational diseases and paid medical and indemnity benefits for various periods of time. State Fund also paid permanent total disability benefits.

14. Mr. Foster turned age 65 on January 1, 2001. On December 21, 2000, State Fund informed Mr. Foster that his permanent total disability payments would cease on January 1, 2001, when he turned age 65. The statutory basis for this termination of benefits was §39-71-710, MCA.

15. Petitioner Doris Bowers was injured January 4, 2002, while in the course and scope of her duties as an employee of Tidymans, an employer enrolled under Plan II of the Montana Workers' Compensation Act.

16. The injury occurred in Lewis & Clark County, Montana. Ms. Bowers currently resides in Lewis and Clark County.

17. Respondent/Insurer Royal & Sunalliance, through adjusting company Putman & Associates, accepted liability for the claim as an industrial injury and paid medical and indemnity benefits for various periods of time. Royal & Sunalliance also paid permanent total disability benefits.

18. Based upon information and belief, Ms. Bowers is either permanently totally or permanently partially disabled. Nevertheless, upon termination of her temporary total disability benefits, the adjuster/insurer determined that she is eligible only for her impairment award and not eligible for rehabilitation, permanent total, or other permanent partial benefits pursuant to §39-71-710, MCA.

19. Petitioners contend that §39-71-710, MCA, is unconstitutional for the following reasons:

- a. it impermissibly delegates the legislative power of the state in violation of §1, Article III, Montana Constitution (1972) by adopting by reference changes in the federal social security laws or regulations to occur in the future;
- b. it violates the state and federal guarantees of equal protection of the laws as set forth in § 4, Article II, Montana Constitution (1972), and the Fourteenth Amendment to the United States Constitution;
- c. it violates the state and federal guarantees of due process of law as set forth in §17, Article II, Montana Constitution (1972), and the Fourteenth Amendment to the United States Constitution;
- d. it violates the state and federal guarantees of protection against age discrimination as set forth in § 4, Article II, Montana Constitution (1972), Title 49 of the Montana Code Annotated, the Fourteenth Amendment to the United States Constitution, and the statutes and codes of the United States.

20. Petitioners are four of numerous injured claimants whom have had their permanent total, permanent partial disability, or rehabilitation benefits terminated or denied by the Respondents, pursuant to §39-71-710, MCA. Petitioners seek to certify this case as a class action or establish a common fund on behalf of similarly situated claimants who are permanently totally disabled, but who had their benefits terminated or adversely affected pursuant to §39-71-710, MCA.

21. All of Petitioners' relevant medical information has been previously exchanged. Determinations concerning disability have already been made. The only remaining issue is whether disability benefits were impermissibly terminated pursuant to an unconstitutional statute.

22. In support of their petition, Petitioners anticipate calling the following witnesses:

WITNESSES

SUBJECT MATTER OF TESTIMONY

- | | | |
|----|--|--|
| 1. | The four Petitioners | Description of injury, reporting, treatment, activities, disability, receipt and termination of benefits, and communications between Petitioners and Respondents |
| 2. | David Johnson, CPA | Mr. Johnson's report has been produced and describes the subject matter of his testimony. |
| 3. | Professor David Patterson | It is anticipated Professor Patterson will opine on the relationship between social security benefits and workers' compensation benefits. |
| 4. | Corporate representatives of the insurers, including, but not limited to, the adjusters who handled the claims | The handling of Petitioners' claims, the determination of disability, and the payment and termination of disability benefits |
| 5. | Other Similarly Situated Claimants | Termination of disability benefits |

6. All witnesses identified by Respondents

23. Petitioners in support of their petition may offer the following exhibits:

- a. Satterlee's entire claim file.
- b. Zenahlik's entire claim file.
- c. Bower's entire claim file.
- d. Foster's entire claim file.
- e. David Johnson's report and supporting documents.
- f. Professor Patterson's report and supporting documents.
- g. Attorney Fee Agreements.
- h. All relevant correspondence between Petitioners, Respondents, and any third parties, including, but not limited to, third-party adjuster(s).
- i. All materials, guidelines, memoranda, or written procedures obtained from Respondents in discovery that in any way relate to the decision to terminate the payment of disability benefits.
- j. All files of other injured workers whose benefits have been adversely impacted by §39-71-710, MCA.
- k. All exhibits identified by Respondents.

WHEREFORE, in light of the foregoing, Petitioners request a hearing in this matter and an Order of this Court:

1. Finding that §39-71-710, MCA, is unconstitutional because:

- a. it impermissibly delegates the legislative power of the state in violation of §1, Article III, Montana Constitution (1972) by adopting by reference changes in the federal social security laws or regulations to occur in the future;
- b. it violates the state and federal guarantees of equal protection of the laws as set forth in §4, Article II, Montana Constitution (1972), and the Fourteenth Amendment to the United States Constitution;
- c. it violates the state and federal guarantees of substantive due process of law as set forth in §17, Article II, Montana Constitution (1972), and the Fourteenth Amendment to the United States Constitution;
- d. it violates the state and federal guarantees of protection against age discrimination as set forth in §4, Article II, Montana Constitution (1972), Title 49 of the Montana Code Annotated, the Fourteenth Amendment to the United States Constitution, and the statutes and codes of the United States.

2. Finding that Petitioners' disability benefits should not have been terminated and reinstating those benefits for so long as each shall live.
3. Certifying this case as a class action or establishing a common fund on behalf of similarly situated claimants who are permanently totally disabled, but who had their benefits terminated or adversely affected pursuant to §39-71-710, MCA.
4. For such other and further relief as the Court may deem just and appropriate.

DATED this 11 day of August, 2004.

HUNT LAW FIRM

BY: 

JAMES G. HUNT, Attorney for
Petitioners

CERTIFICATE OF SERVICE

I hereby certify that on the 11 day of August, 2004, I served the original of the foregoing **SECOND AMENDED PETITION FOR HEARING** first-class mail, postage prepaid, on the following:

Ms. Patricia J. Kessner
Clerk of Court - Workers' Compensation Court
P. O. Box 537
Helena, MT 59624-0537

and a copy of the same to the following:

David M. Sandler, Esq.
Hammer, Hewitt & Sandler, PLLC
100 Financial Center, Suite 100
P.O. Box 7310
Kalispell MT 59904-0310
Attorney for Putman & Associates/Royal & SunAlliance

Greg Overturf, Esq.
Montana State Fund
P. O. Box 4759
Helena, MT 59604-4759
Attorney for Montana State Fund

Michael P. Heringer, Esq.
Brown Law Firm, P.C.
P. O. Box 849
Billings, MT 59103-0849
Attorney for Lumberman's Mutual Casualty Company

Bradley J. Luck, Esq.
Garlington, Lohn & Robinson, PLLP
P. O. Box 7909
Missoula, MT 59807-7909
Attorney for Montana State Fund

