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THE WORKERS' COMPENSATION COURT IN THE STATE OF MONTANA
 WCC No. 2003-0840

<p>CATHERINE E. SATTERLEE, Petitioner, v. LUMBERMAN'S MUTUAL CASUALTY COMPANY, Respondent/Insurer.</p>	<p>WC Claim No. 788CU041791 STATE FUND'S REPLY IN SUPPORT OF MOTION FOR PARTIAL SUMMARY JUDGMENT</p>
<p>JAMES ZENAHLIK, Petitioner, v. MONTANA STATE FUND, Respondent/Insurer.</p>	<p>WCC Claim No. 03-1977-06362-9</p>
<p>JOSEPH FOSTER, Petitioner, v. MONTANA STATE FUND, Respondent/Insurer.</p>	<p>WCC Claim No. 3-95-17425-3</p>

DORIS BOWERS,

Petitioner,

v.

PUTNAM & ASSOCIATES,

Respondent/Insurer.

WCC Claim No. 290044312000

The Montana State Fund ("State Fund") files this reply in support of its motion for partial summary judgment. Petitioners Catherine E. Satterlee, James Zenahlik, and Joseph Foster (collectively "Satterlee") respond with blanket assertions that the State Fund's arguments are wrong, but they cannot evade the prior decisions of this Court, in this action, that determine the outcome of this case. Satterlee's very introduction demonstrates that she simply continues to disagree with this Court's prior reasoning. ("[F]or the same reasons § 39-71-710, MCA, violates her right to equal protection the statute also violates her right to due process." Satterlee's Resp. State Fund's Mot. Partial Summ. J. & Mem. Supp. 2, Feb. 4, 2008 ("Satterlee Br.")). This may accurately state her position but it ignores the previous proceedings and applicable, dispositive rulings. This Court's prior holdings determine the outcome of this litigation.

I. THE LAW OF THE CASE DECIDES THE OUTSTANDING ISSUES

As a preliminary matter, Satterlee suggests that the Montana Supreme Court, in its remand, implied that this Court's previous analysis did not apply to the remaining issues of due process and age discrimination.

Thus, it is apparent that the Supreme Court did not find the law of the case to be controlling in the disposition of the two other constitutional issues.

Satterlee Br. 2. That is simply inaccurate. The Supreme Court's remand was purely procedural and should not be understood to comment at all on the merits of the undecided issues. It would have been highly unusual for the Supreme Court to decide or comment substantively on issues that were not properly before it, and therefore, the Supreme Court's silence on the law of the case says nothing. The State Fund's position is not that this Court has already specifically resolved these undecided issues, but rather, it has performed all of the necessary steps of the proper analysis. All that is left is to connect the final dots.¹

¹ Satterlee raises an issue about the parties' statements of fact, but since she concedes that the case is ripe for summary judgment, the State Fund will rely on the

Satterlee also makes the blanket assertion that the State Fund's citation to appropriate "law of the case" authority is distinguishable. She fails to explain her position or otherwise cite applicable law. Taken in the context of the argument she presents thereafter, it is clear she is unable to refute the binding, applicable effect of the Court's previous rulings on pending issues.

II. THIS COURT HAS ALREADY DECIDED THAT MONTANA CODE ANNOTATED § 39-71-710 DOES NOT TERMINATE PTD BENEFITS BASED ON AGE

Throughout this litigation, the State Fund has steadfastly maintained that the distinctions created by § 39-71-710 rest on eligibility for retirement benefits and not on chronological age. This Court agreed with State Fund's view in its first rulings on partial summary judgment, when it identified the classes as based on eligibility for Social Security or other retirement benefits. Order, 2005 MTWCC 55, ¶ 11. That should be the end of the inquiry on the remaining claims, because for Satterlee to succeed on those claims, § 39-71-710 must discriminate based on age. It has already been properly determined that it does not.

III. THIS COURT HAS ALREADY DECIDED THAT § 39-71-710 HAS A RATIONAL BASIS

This Court, after careful analysis, held that § 39-71-710 was constitutionally sound because it is rationally related to a legitimate government interest. Order, 2005 MTWCC 55, ¶ 21. Satterlee attempts to circumvent this inconvenient finding of fact and ruling of law by clinging to *Reesor v. Montana State Fund*, 2004 MT 370, 325 Mont. 1, 103 P.3d 1019. But this Court already carefully explained in its Order why *Reesor* is inapplicable here. "[T]he analysis must differ from the analysis in *Reesor* because the *rationale* for PPD benefits and PTD benefits is different." Order, 2005 MTWCC 55, ¶ 16 (emphasis in original). Satterlee has provided no counterargument to the Court's clear distinction between § 39-71-710's application to PTD and PPD, and yet that distinction is at the core of the rational basis for the statute.

Satterlee contends that substantive due process is violated because terminating her PTD benefits at 65 means there is no *quid pro quo* for giving up her right to sue. This is an insupportable statement. Satterlee received over seven years of benefits as the result of the Workers' Compensation Act's *quid pro quo* between employers and

Court's previous conclusion that there are "no consequential facts which are in dispute and this matter is ripe for summary judgment." Order Den. Mot. Partial Summ. J., 2005 MTWCC 55, ¶ 2. The Court reiterated this finding in its 2006 MTWCC 36 Order at ¶ 7.

employees. See *Satterlee Br. 2-3* (Satterlee was injured in 1992 and received benefits until 1999). In addition, she and the other claimants received temporary total, permanent total and medical benefits all without any consideration of fault or whether any common law remedy was even available for the injuries or disease in question. The *quid pro quo* is alive and well in § 39-71-710 cases. All that is at issue in this proceeding is a benefit question, arising late in the history of the claims at issue, regarding entitlement to permanent total disability benefits after retirement.

The legislature did not intend PTD benefits to be a substitute for a retirement system. Mins., S. Lab. & Empl. Rel. Comm. 2, Jan. 13, 1981. The *quid pro quo* is for benefits during one's work life. PTD and other wage-loss benefits under the Workers' Compensation Act, consistent with the purpose of the legislation, have always related to an injured worker's ability to engage in employment activities in the regular, competitive, open labor market. The Montana Supreme Court acknowledged this fact in *Rausch v. State Compensation Insurance Fund*, 2005 MT 140, ¶ 25, 327 Mont. 272, ¶ 25, 114 P.3d 192, ¶ 25 (indicating a PTD entitlement allows for "a continuous, higher benefit which is *paid over the work life* of the totally disabled claimant") (emphasis added). Consistent with this approach, entitlement discussions by the Supreme Court concerning lost earnings and earning capacity have long been formulated in terms of "ability to earn in the open labor market." *Dunn v. Champion Int'l Corp.* (1986), 222 Mont. 142, 148, 720 P.2d 1186, 1189; *Wunderlich v. Lumbermens Mut. Cas. Co.* (1995), 270 Mont. 404, 407, 892 P.2d 563, 565; or in the "normal labor market," *Metzger v. Chemetron Corp.* (1984), 212 Mont. 351, 355, 687 P.2d 1033, 1035. Satterlee received her *quid pro quo* benefits for the time of her work life, but now that she is eligible for retirement benefits, the legislature has determined that she should not receive a benefit windfall. This benefit determination is within the prerogative of the legislature. (See *Stratemeyer v. Lincoln County* (1993), 259 Mont. 147, 150, 855 P.2d 506, 508-509; *Ingraham v. Champion Int'l* (1990), 243 Mont. 42, 48, 793 P.2d 769, 772; *Cunningham v. Nw. Improvement Co.* (1911), 44 Mont. 180, 119 P. 554; and other cases discussed in the State Fund's initial brief.)

Finally, Satterlee's reliance on the "absurdity" language from *Hunter v. Gibson* is misplaced. *Hunter v. Gibson Prods. of Billings Heights, Inc.* (1986), 224 Mont. 481, 485, 730 P.2d 1139, 1141.² While absurdity might have some rhetorical force, the term

² As the Court is aware, *Hunter* was overruled by a 1987 change in the Workers' Compensation Act, as explained in *Otteson v. Montana State Fund*. As the *Otteson* Court put it, "Although *Otteson* argues that the liberal construction provision was not dispositive to the *Hunter* result, this argument is refuted by our discussion in *Hunter* wherein we stated '[t]he Court is aware that it is stretching its mandate of liberal construction' and 'liberal construction of the statute, as mandated by § 39-71-104, MCA,

does not change the analysis that this Court is required to apply to § 39-71-710.³ As explained at length in the State Fund's opening brief in support of partial summary judgment, unrefuted by Satterlee, statutory age classifications are subject to rational review. See *Gregory v. Ashcroft*, 501 U.S. 452 (1991); *Vance v. Bradley*, 440 U.S. 93, 99 (1979); *Mass. Bd. of Ret. v. Murgia*, 427 U.S. 307 (1976); *Arneson v. State* (1993), 262 Mont. 269, 272-273, 864 P.2d 1245, 1248. Even if, as the State Fund disputes, the classification were purely age-based, the Court would still be directed by U.S. and Montana Supreme Court precedent to subject the statute to rational review. The Court already performed that task in its 2005 Order. Satterlee has provided no explanation for how or why the result should be different this time.

IV. CONCLUSION

When this Court issued its 2005 and 2006 Orders in this matter awarding partial summary judgment to the State Fund, Satterlee was clearly dissatisfied and therefore appealed. She has had a second chance to develop new arguments in this Court upon remand, but she has simply repeated her disapproval of this Court's earlier rulings. This Court's prior reasoning is sound and provides the rational basis for § 39-71-710's benefits classifications. The State Fund respectfully requests summary judgment on all remaining issues.

DATED this 11th day of February, 2008.

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results in the conclusion claimant is entitled to an award of permanent partial benefits upon reaching the age of 65." *Otteson v. Mont. State Fund*, 2005 MT 198, ¶ 17, 328 Mont. 174, 177, ¶ 17, 119 P.3d 1188, ¶ 17 (citation omitted). Any citation of *Hunter* must be considered in the light that the Court was deliberately stretching the statute to extend benefits where the law did not clearly provide them.

³ In addition, the legislature specifically indicated that it is the public policy of this State that § 39-71-710 "must be construed according to its terms and not liberally in favor of any party." Mont. Code Ann. § 39-71-105(5) (2007).

CERTIFICATE OF MAILING

I, the undersigned, of GARLINGTON, LOHN & ROBINSON, PLLP, Attorneys for Respondent/Insurer, Montana State Fund, hereby certify that on this 11 day of February, 2008, I mailed a copy of the foregoing STATE FUND'S REPLY IN SUPPORT OF MOTION FOR PARTIAL SUMMARY JUDGMENT, postage prepaid, to the following:

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