

IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

2017 MTWCC 11

WCC No. 2017-3948

ALAN DAVIS

Petitioner

vs.

LIBERTY INSURANCE CORPORATION

Respondent/Insurer

EMPLOYMENT RELATIONS DIVISION, DEPARTMENT OF LABOR AND INDUSTRY

Intervenor.

**ORDER DENYING RESPONDENT'S MOTION TO DISMISS OR IN THE
ALTERNATIVE MOTION FOR SUMMARY JUDGMENT**

Summary: Respondent moved to dismiss Petitioner's claim that he is permanently totally disabled and therefore has the right to medical benefits under § 39-71-704(1)(f)(ii), MCA (2011). Respondent contends that this Court does not have jurisdiction because Petitioner has not gone through the administrative process to reopen his medical benefits. In the alternative, Respondent alleges that Petitioner settled the issue of whether he is permanently totally disabled, and must reopen his settlement before he can argue he is permanently totally disabled.

Held: This Court denied Respondent's motion. Under the plain and unambiguous language of § 39-71-704(1)(f)(ii), MCA, a permanently totally disabled claimant's medical benefits do not terminate 60 months from his date of injury, and a permanently totally disabled claimant is not required to petition the DLI to "reopen" his medical benefits. Moreover, Petitioner is not attempting to reopen his settlement agreement. He did not settle the issue of whether he is permanently totally disabled; he settled his claimed right to PTD benefits on a compromise basis, thereby leaving the issue of whether he is permanently totally disabled "uncertain" and "undetermined." And, the settlement agreement states that his medical benefits remained open "to the extent such benefits

are allowed under the Workers' Compensation Act.” This includes the contractual right to medical benefits under § 39-71-704(1)(f)(ii), MCA.

¶ 1 Petitioner Alan Davis contends that he has the right to ongoing medical benefits notwithstanding the 60-month limitation for medical benefits in § 39-71-704(1)(f)(i), MCA. Davis alleges that he is permanently totally disabled and therefore entitled to ongoing medical benefits under § 39-71-704(1)(f)(ii), MCA, which states, *inter alia*, that the 60-month limitation on medical benefits does not apply to a claimant who is permanently totally disabled. In the alternative, Davis alleges that the 60-month limitation is unconstitutional on due process and equal protection grounds.

¶ 2 Respondent Liberty Insurance Corporation (Liberty) moves to dismiss on the grounds that this Court lacks jurisdiction to hear and decide Davis's claim.¹ Liberty asserts that Davis did not exhaust his administrative remedies and that this Court must dismiss this case and wait for Davis to have his claim determined by the medical review panel and complete mandatory mediation before it has jurisdiction to hear and decide Davis's claim that he is permanently totally disabled. In the alternative, Liberty asserts that under the terms of the compromise settlement of his wage-loss benefits, Davis settled the issue of whether his “disability status is PTD.” Liberty maintains that Davis is attempting to reopen his settlement, and must mediate that issue before this Court has jurisdiction.

¶ 3 Davis counters that, under the plain statutory language stating that the administrative reopening procedure “does not apply” to a permanently totally disabled claimant, he was not required to petition the Department of Labor and Industry (DLI) to reopen his medical benefits. Davis also argues that the compromise settlement of his claimed right to permanent total disability (PTD) benefits does not preclude him from asserting he is permanently totally disabled for purposes of claiming a right to medical benefits under § 39-71-704(1)(f)(ii), MCA. For the following reasons, Davis is correct.

¹ Liberty indicates that, in the alternative, it is seeking summary judgment on Davis's claim. However, Liberty argues that this Court does not currently have jurisdiction to hear and decide this case and only asks this Court to dismiss Davis's Petition for Hearing. This Court therefore limits its analysis to whether it should dismiss this case for lack of jurisdiction.

Facts² and Procedural History

¶ 4 Davis was injured on October 7, 2011.³ Liberty accepted liability for his claim.

¶ 5 In the early summer of 2016, Davis and Liberty entered into a compromise settlement of his wage-loss benefits. In relevant part, the Petition for Settlement states:

Significant disputes exist concerning Claimant's entitlement to wage loss and/or rehabilitation benefits for his October 7, 2011 claim. Based on these and other disputes between the parties, and rather than face the uncertainty of litigation, the parties have agreed to resolve all disputes between them by way of compromise settlement. Pursuant to this agreement, the Insurer shall pay and the Claimant shall accept the sum of Seventy-Two Thousand Two Hundred Seventy-Three and 30/100 Dollars (\$72,273.30). The settlement resolves any and all claims by Claimant for benefits arising out of his October 7, 2011 workers' compensation claim including, but not limited to, any claims for past or future temporary total disability benefits, permanent partial disability benefits, temporary partial disability benefits, permanent total disability benefits, death benefits, rehabilitation benefits, and any claim for costs or attorney's fees pursuant to the Workers' Compensation Act. Claimant is responsible for the payment of any attorney fee that is owed as a result of this settlement. **Medical benefits are expressly reserved by Claimant for any medical condition causally related to the October 7, 2011 workers' compensation claim to the extent such benefits are allowed under the Workers' Compensation Act, and the Insurer reserves any and all defenses at law or equity to any claims for medical benefits.**⁴

The Petition for Settlement and the Settlement Recap Sheet states: "This settlement is based on consideration of Claimant's permanent total disability benefit rate after that rate has been adjusted to reflect the offset the Insurer would be entitled to take against an award of social security benefits." The Settlement Recap Sheet also states:

² Unlike a motion to dismiss for failure to state a claim, a court may consider evidence outside the pleadings in connection with a motion to dismiss for lack of jurisdiction. *Kutzler v. Montana State Fund*, 2005 MTWCC 5, ¶ 4 (citing *Minuteman Aviation, Inc. v Swearingin*, 237 Mont. 207, 212, 772 P.2d 305, 308 (1989)). Thus, this Court may consider the content of the parties' settlement agreement and other documents as necessary to resolve the pending motion.

³ The parties agree that the 2011 version of the Workers' Compensation Act (WCA) governs this claim, as that was the law in effect on Davis's date of injury, and all citations in this Order Denying Respondent's Motion to Dismiss are to the 2011 version of the WCA.

⁴ Emphasis in original.

The [part-time job Davis worked for about four years] is no longer available to Claimant and the party's [sic] dispute claimant's disability status and whether he is entitled to additional wage loss and/or rehabilitation benefits for his October 7, 2011 claim. Based on these and other disputes between the parties, and rather than face the uncertainty of litigation, the parties have agreed to resolve all disputes between them by way of compromise settlement.

¶ 6 The Employment Relations Division of the DLI approved the settlement on July 8, 2016.

¶ 7 On October 17, 2016, Liberty denied liability for Davis's ongoing medical benefits pursuant to § 39-71-704(1)(f), MCA.

¶ 8 Davis did not petition the DLI to reopen his medical benefits under §§ 39-71-704(1)(f)(i) and -717, MCA.

¶ 9 In his Petition for Hearing, Davis alleges that he is permanently totally disabled and, therefore, that his medical benefits remain open pursuant to § 39-71-704(1)(f)(ii), MCA. In the alternative, Davis challenges the 60-month limitation on equal protection and due process grounds.

¶ 10 In its Response to Petition for Hearing, Liberty counters that Davis is not permanently totally disabled. Liberty also asserts that § 39-71-704(1)(f)(i), MCA, is constitutional.

¶ 11 The parties agreed to bifurcate the issue of whether Davis is permanently totally disabled from the constitutional issue, and will therefore try the issue of whether Davis is permanently totally disabled first.

Law and Analysis

Issue One: Is Davis required to go through the DLI's process to "reopen" his medical benefits under § 39-71-704(1)(f)(i), MCA, before this Court has jurisdiction to hear and decide whether he has the right to medical benefits under § 39-71-704(1)(f)(ii), MCA?

¶ 12 Since 2011, § 39-71-704(1)(f), MCA, provides that medical benefits terminate 60 months from the date of injury, subject to reopening and to an exception for claimants who are permanently totally disabled. It states:

(i) The benefits provided for in this section terminate 60 months from the date of injury or diagnosis of an occupational disease. A worker may request reopening of medical benefits that were terminated under this subsection (1)(f) as provided in 39-71-717.

(ii) Subsection (1)(f)(i) does not apply to a worker who is permanently totally disabled as a result of a compensable injury or occupational disease or for the repair or replacement of a prosthesis furnished as a direct result of a compensable injury or occupational disease.

¶ 13 In turn, § 39-71-717, MCA, states that a worker can petition the DLI, which shall then have a medical review panel — or, if the parties agree, just the DLI’s medical director — consider the petition and determine whether the claimant’s medical benefits are to be reopened, which is to occur “if the workers’ medical condition is a direct result of the compensable injury or occupational disease and requires medical treatment in order to allow the worker to continue to work or return to work.” Section 39-71-717(9), MCA, states, in relevant part, “A party aggrieved by a decision of the department’s medical director or medical review panel may, after satisfying the dispute resolution requirements provided in this chapter, file a petition with the workers’ compensation court.”

¶ 14 Liberty argues that before Davis can reopen his medical benefits, he must first petition the DLI under §§ 39-71-704(1)(f)(i) and -717, MCA. Liberty argues that if the medical panel determines that Davis does not have the right to ongoing medical benefits, he must then go through the WCA’s mandatory mediation process before this Court has jurisdiction to consider his request. Since Davis has not petitioned the DLI to reopen his medical benefits, nor mediated the issue of whether the medical review panel made the correct determination, Liberty argues that this Court does not currently have jurisdiction and must dismiss Davis’s Petition for Hearing.

¶ 15 Davis counters that Liberty’s argument is without merit because he brought this case under § 39-71-704(1)(f)(ii), MCA, since he contends he is permanently totally disabled. Davis relies upon the language stating, “Subsection (1)(f)(i) does not apply to a worker who is permanently totally disabled as a result of a compensable injury”

¶ 16 When interpreting a statute, this Court must apply plain language and neither insert what has been omitted nor omit what has been inserted.⁵ “If the intent of the Legislature can be determined from the plain meaning of the words used in the statute,

⁵ § 1-2-101, MCA.

the plain meaning controls and the Court need go no further nor apply any other means of interpretation.”⁶

¶ 17 Under the plain language of § 39-71-704(1)(f), MCA, Davis is correct that a permanently totally disabled claimant need not petition the DLI to reopen his medical benefits before petitioning this Court. Subsection (1)(f)(i) sets forth the 60-month limitation and states that a claimant may petition the DLI to reopen medical benefits. However, subsection (1)(f)(ii) states, in relevant part: “Subsection (1)(f)(i) does not apply to a worker who is permanently totally disabled as a result of a compensable injury” The Legislature could not have been any clearer: § 39-71-704(1)(f)(ii), MCA, plainly and unequivocally provides that a permanently totally disabled claimant’s medical benefits do not terminate 60 months after the date of injury, and that a permanently totally disabled claimant does not need to petition the DLI to “reopen” his medical benefits because such benefits do not terminate.

¶ 18 Moreover, the DLI’s administrative rules indicates it would dismiss a petition to reopen medical benefits from a claimant alleging he is permanently totally disabled and, therefore, has the right to medical benefits under § 39-71-704(1)(f)(ii), MCA. ARM 24.29.3101(2)(d)(i) states that the administrative process to have the medical review panel determine whether to reopen medical benefits “does not apply . . . where the injury results in permanent total disability.” This Court gives deference to the DLI’s interpretation of § 39-71-704(1)(f), MCA, which is supported by the plain and unequivocal language of the statute.⁷

¶ 19 The parties agree that they have complied with the WCA’s mandatory mediation procedures⁸ on the issue of whether Davis is permanently totally disabled and therefore has the right to medical benefits under § 39-71-704(1)(f)(ii), MCA. Thus, Davis has no more administrative remedies to exhaust and this Court currently has jurisdiction over this issue. Accordingly, Liberty’s Motion to Dismiss or in the Alternative for Summary Judgment on this issue is denied.

Issue Two: Does the compromise settlement of Davis’s wage-loss benefits preclude him from arguing that he is permanently totally disabled?

⁶ *The Clark Fork Coal. v. Tubbs*, 2016 MT 229, ¶ 20, 384 Mont. 503, 380 P.3d 771 (citation omitted).

⁷ *See New Hampshire Ins. Co. v. Matejovsky*, 2016 MTWCC 8, ¶ 23.

⁸ *See* §§ 39-71-2401, et seq., MCA.

¶ 20 Liberty points out that Davis settled the dispute over whether he has the right to PTD benefits. Liberty contends that Davis cannot argue that he is permanently totally disabled unless he first reopens his settlement. Since Davis has not mediated this issue, nor pleaded a claim to reopen the settlement, Liberty argues that this Court does not have jurisdiction to hear and decide this issue.⁹

¶ 21 Davis argues that PTD benefits and medical benefits are separate and distinct, and not interdependent. Davis points out that he expressly reserved his right to medical benefits “to the extent allowed under the Workers’ Compensation Act.” Davis argues that this includes the right to argue he is permanently totally disabled and has the right to medical benefits under § 39-71-704(1)(f)(ii), MCA.

¶ 22 As this Court explained in its Order Denying Respondent’s Motion to Amend, the compromise settlement does not preclude Davis from arguing that he is permanently totally disabled for purposes of asserting his right to medical benefits under § 39-71-704, MCA.¹⁰ There, this Court ruled that Liberty’s proposed affirmative defenses of accord and satisfaction, payment, release, and waiver were not legally tenable defenses for two reasons, and this reasoning is also applicable here.¹¹

¶ 23 First, under § 39-71-704(1)(f)(ii), MCA, the issue is not whether the claimant is receiving PTD benefits under § 39-71-702, MCA, rather the issue is whether the claimant “is permanently totally disabled.” This Court can determine whether Davis is permanently totally disabled under the definition in § 39-71-116(28), MCA, notwithstanding his compromise settlement on the issue of whether he has the right to PTD benefits under § 39-71-702, MCA.

¶ 24 Second, since Davis and Liberty entered into a compromise settlement, the issue of whether he is PTD is “uncertain” and “undetermined.”¹² While Davis cannot claim a right to PTD benefits under § 39-71-702, MCA, without first reopening the settlement, he may assert that he is permanently totally disabled as defined in § 39-71-116(28), MCA, for purposes of obtaining medical benefits under § 39-71-704(1)(f)(ii), MCA.

¶ 25 As a final point, under *Wiard v. Liberty Northwest Ins. Corp.*¹³ — in which the Montana Supreme Court held that, unless the parties agree otherwise, the WCA at the

⁹ *Preston v. Transp. Ins. Co.*, 2004 MT 339, ¶ 36, 324 Mont. 225, 102 P.3d 527.

¹⁰ *Davis v. Liberty Ins. Corp.*, 2017 MTWCC 10, ¶¶ 16-21.

¹¹ *Davis*, ¶¶ 15-17.

¹² See *Johnson v. Liberty Northwest Ins. Corp.*, 2007 MTWCC 7, ¶ 9.

¹³ 2003 MT 295, 318 Mont. 132, 79 P.3d 281.

time of the injury is part of the settlement agreement — Davis has the contractual right under the terms of the Petition for Settlement to medical benefits if he is permanently totally disabled. There is no merit to Liberty’s claim that “Davis reserved up to 60 months of medical benefits running from the date of his injury.” That language is **not** in the Petition for Settlement nor in the Settlement Recap Sheet. Rather, Davis and Liberty expressly agreed that Davis’s right to medical benefits remained open “to the extent such benefits are allowed under the Workers’ Compensation Act.” This provision gives him a contractual right to medical benefits under § 39-71-704, MCA, which includes ongoing medical benefits if he is permanently totally disabled per § 39-71-704(1)(f)(ii), MCA, as that statutory provision is part of the settlement agreement under *Wiard*.

¶ 26 The compromise settlement of Davis’s wage-loss benefits does not preclude him from seeking medical benefits under § 39-71-704(1)(f)(ii), MCA, on the grounds that he is permanently totally disabled. Contrary to Liberty’s claim, Davis is not attempting to reopen the settlement. Accordingly,

ORDER

¶ 27 Liberty’s Motion to Dismiss or in the Alternative Motion for Summary Judgment is **denied**.

DATED this 27th day of July, 2017.

(SEAL)

/s/ DAVID M. SANDLER
JUDGE

c: Thomas J. Murphy
Larry W. Jones
Quinlan L. O’Connor

Submitted: July 7, 2017

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