

IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

2012 MTWCC 3

WCC No. 2010-2603

TODD H. DELONG

Petitioner

vs.

MONTANA STATE FUND

Respondent/Insurer.

FINDINGS OF FACT, CONCLUSIONS OF LAW AND JUDGMENT

Summary: Petitioner contends he injured his back while lifting a motor at work. Although Petitioner's employer had no formal policy for reporting work-related injuries, Petitioner informed him that he had injured his back, that his pain was not resolving, and that he intended to seek medical treatment. Petitioner did not file a workers' compensation claim until more than 30 days after the incident. The employer denied any knowledge of Petitioner's industrial injury until getting a call about the report from Respondent. Respondent denied Petitioner's claim for failure to give timely notice to his employer, pursuant to § 39-71-603, MCA.

Held: Petitioner and two former coworkers testified that everyone at the business, including the employer, knew about Petitioner's industrial accident shortly after its occurrence. The employer's deposition testimony to the contrary was not credible. The Court concluded the employer had actual notice of Petitioner's industrial injury within 30 days of its occurrence.

Topics:

Constitutions, Statutes, Regulations, and Rules: Montana Code Annotated. 39-71-603. Although the employer denied knowing about Petitioner's work-related injury within thirty days of the accident, his deposition testimony contradicts the Petitioner and two co-workers who testified credibly that the employer knew of the accident and injury shortly after it occurred. It is implausible that the employer was the only person in a small shop who did not know that Petitioner injured himself lifting a

motor. Section 39-71-603, MCA, is satisfied, as the employer had actual knowledge equivalent to notice of the time, place, and nature of the accident and injury within the 30-day statute of limitations.

Credibility. Although the employer denied knowing about Petitioner's work-related injury within thirty days of the accident, his deposition testimony contradicts the Petitioner and two co-workers who testified credibly that the employer knew of the accident and injury shortly after it occurred. It is implausible that the employer was the only person in a small shop who did not know that Petitioner injured himself lifting a motor. Section 39-71-603, MCA, is satisfied, as the employer had actual knowledge equivalent to notice of the time, place, and nature of the accident and injury within the 30-day statute of limitations.

Proof: Conflicting Evidence. Although the employer denied knowing about Petitioner's work-related injury within thirty days of the accident, his deposition testimony contradicts the Petitioner and two co-workers who testified credibly that the employer knew of the accident and injury shortly after it occurred. It is implausible that the employer was the only person in a small shop who did not know that Petitioner injured himself lifting a motor. Section 39-71-603, MCA, is satisfied, as the employer had actual knowledge equivalent to notice of the time, place, and nature of the accident and injury within the 30-day statute of limitations.

¶ 1 The trial in this matter was held on August 31, 2011, at the Workers' Compensation Court. Petitioner Todd H. Delong was present and represented by Benjamin C. Tiller. William Dean Blackaby represented Respondent Montana State Fund (State Fund).

¶ 2 **Exhibits:** I admitted Exhibits 1 through 3, 6, 7, 9, and 10 without objection. Delong withdrew his objection to Exhibits 4 and 8 and I admitted these exhibits. I sustained Delong's hearsay objection to Exhibit 5 and did not allow the exhibit into evidence. Mr. Blackaby advised that Delong's First Report of Injury (FROI) marked as Exhibit 3 in the exhibit binder was not signed by Delong. Mr. Tiller advised that the FROI attached to Delong's deposition as Exhibit 2 was a signed copy; however, this copy did not have the employer's notation, as did Exhibit 3. Both exhibits together constitute Delong's FROI. Patrick McCorkle's FROI was introduced at trial as rebuttal evidence, and was marked and admitted as Exhibit 11.

¶ 3 **Witnesses and Depositions:** The depositions of Delong and Mark Hanson were submitted to the Court and are considered part of the record. Tom Aced, McCorkle, Delong, and Cecelia Robinson were sworn and testified at trial.

¶ 4 **Issues Presented:** The Pre-Trial Order states the following contested issues of law:¹

Issue 1: Whether the employer had actual notice of the Petitioner's accident and injury within 30 days of the Petitioner's accident and injury.

Issue 2: Whether the employer failed to hang the Workers' Compensation Insurance Coverage Employee Notice mandated by § 39-71-401(6), MCA, and, if so, whether the Insurer is estopped from denying the claim based on § 39-71-603(1), MCA.

Issue 3: Whether the doctrine of equitable tolling should apply if the Court finds that the employer did not receive actual notice within thirty days of the accident and injury.

Issue 4: Whether the Petitioner reasonably believed the injury would not require treatment until he was notified that he needed surgery, thus tolling the 30-day statute of limitations.

Issue 5: Whether the Insurer is equitably estopped from denying the claim under § 39-71-603(1), MCA, due to the employer's conduct.

FINDINGS OF FACT

¶ 5 Todd Delong testified at trial. I found him credible. Delong was employed at All Points Propeller and Marine, Inc., (All Points) as a propeller technician working for Mark Hanson from January 2007 to October 2010.² Delong's primary duties included welding, grinding, and balancing boat propellers.³ Delong has a history of back problems, first injuring his back in 2001 and having had back surgeries in 2002 and

¹ Pre-Trial Order at 3-4, Docket Item No. 25.

² Trial Test.

³ Trial Test.

2006.⁴ Delong testified that he was under the impression that Hanson knew of his back history.⁵

¶ 6 On September 19, 2008, Delong suffered an industrial injury during the course and scope of his employment with All Points while removing an outboard motor from the back of a customer's pickup truck. Delong felt a sharp pain as if something had popped in his back while lifting the motor.⁶ Delong was alone at the shop at the time of injury.⁷ All Points had four employees at the time of Delong's accident. They were Delong, McCorkle, Jeff Olson, and Eddie Bobo.⁸

¶ 7 At the time of the injury, All Points was enrolled under Compensation Plan No. 3 of the Workers' Compensation Act, and was insured by the State Fund.

¶ 8 Delong testified that on the morning of the injury, he would have appeared fine to his coworkers.⁹ He testified that when he left that evening it would have been impossible not to notice that he was in considerable pain.¹⁰ Delong testified that he saw Hanson both before and after the accident.¹¹

¶ 9 Delong testified that he did not immediately seek medical attention because he wanted to "tough it out" and did not want to get Hanson in trouble.¹² Although Delong did not have any prior interaction with State Fund, he was under the impression that Hanson would get in trouble and Hanson repeatedly told him that insurance costs would increase if a claim were filed.¹³ Delong testified that he feared All Points would be shut down if he filed a claim because Hanson constantly complained about the cost of workers' compensation insurance.¹⁴

⁴ Trial Test.

⁵ Trial Test.

⁶ Trial Test.

⁷ Trial Test.

⁸ Trial Test.; Hanson Dep. 33:6 – 34:1.

⁹ Trial Test.

¹⁰ Trial Test.

¹¹ Trial Test.

¹² Trial Test.

¹³ Trial Test.

¹⁴ Trial Test.

¶ 10 Delong was in visible pain the following Monday and he was much worse than when he initially injured his back.¹⁵ Delong testified that Hanson initially gave him some Advil from the emergency kit and later went to the neighboring gas station and bought Delong a bottle of Aleve.¹⁶ Delong testified that there was an informal policy to report injuries to Hanson, but he did not recall a formal reporting procedure.¹⁷ Delong testified that he told Hanson about his injury on the day it happened, but it was not until the following Monday that he told Hanson it was from picking up a motor.¹⁸

¶ 11 Although Delong could not remember the exact date, he recalled showing Hanson the motor he was moving when he injured his back.¹⁹ Delong testified that he was certain that this occurred prior to him first seeking medical treatment.²⁰

¶ 12 Delong testified that the Aleve helped for a while and that he kept working without seeing a doctor because he thought his back would heal on its own.²¹ However, after about two weeks, the pain was not improving and he decided to seek medical attention.²²

¶ 13 Delong testified that he continued to work through the pain until he could no longer bear it and told Hanson on October 6, 2008, that he needed to see a doctor.²³ Delong recalled Hanson saying that if he needed to see a doctor, then he should go see a doctor.²⁴

¶ 14 On October 28, 2008, after an MRI indicated a ruptured disk, DeLong was referred to Carter Beck, M.D., who recommended surgery.²⁵ Delong informed Hanson the following morning that he would need time off for the surgery beginning November 18, 2008.²⁶

¹⁵ Trial Test.

¹⁶ Trial Test.

¹⁷ Trial Test.

¹⁸ Delong Dep. 19:13-14; 20:8-10.

¹⁹ Trial Test.

²⁰ Trial Test.

²¹ Trial Test.

²² Trial Test.

²³ Trial Test.

²⁴ Trial Test.

²⁵ Trial Test.

²⁶ Trial Test.

¶ 15 Delong testified that prior to the surgery, someone at the hospital explained to him that he needed to file a workers' compensation report if the surgery costs were going to be covered.²⁷ This was the first time that Delong had ever heard of this procedure as he was under the impression that it was the employer's job to file a workers' compensation claim.²⁸ Delong filed a FROI form provided by State Fund on November 18, 2008.²⁹

¶ 16 The day after he filed the report, Delong testified that Hanson stormed into the shop yelling that State Fund had just hit him with a \$5,000 fine because of the claim.³⁰

¶ 17 On November 21, 2008, Delong underwent back surgery.³¹ On November 23, 2008, Delong was discharged from the hospital.³²

¶ 18 On November 26, 2008, State Fund interviewed Delong about the accident.³³ Delong testified that he was recovering in bed and was on numerous pain medications during the interview.³⁴ Delong recalled feeling very foggy during the interview and was not quite sure what was going on.³⁵ Delong recalled feeling as though he were being interrogated and remembered thinking that State Fund was trying to trick him so that they could get All Points in trouble.³⁶ Delong testified that during the interview he had trouble remembering what he had told Hanson and when because of his medication.³⁷

¶ 19 Delong testified that he first became aware of the 30-day statute of limitations to provide notice of an industrial accident or injury to his employer when State Fund rejected his claim.³⁸ On December 11, 2008, State Fund denied Delong's claim for

²⁷ Trial Test.

²⁸ Trial Test.

²⁹ Trial Test.

³⁰ Trial Test.

³¹ Trial Test.

³² Trial Test.

³³ Ex. 4.

³⁴ Trial Test.

³⁵ Trial Test.

³⁶ Trial Test.

³⁷ Trial Test.

³⁸ Trial Test.

failing to notify his employer of his accident within 30 days of its occurrence pursuant to § 39-71-603, MCA.³⁹

¶ 20 Delong returned to work in January 2011.⁴⁰ He testified that Hanson had a running joke where he told Delong not to lift any heavy motors while he was gone every time he left All Points.⁴¹

¶ 21 Delong testified that employment-related signs and posters were located in the stair entranceway between the customer entrance and the front of the shop.⁴² Delong recalled seeing a minimum wage poster, but did not recall ever seeing a posted sign regarding workers' compensation.⁴³

¶ 22 Mark Hanson is the owner of All Points. At his deposition, Hanson denied knowing about Delong's injury. Hanson stated: "I still to this day don't know what happened to Todd at the business. When I got the phone call from work comp it was a blindside, I knew nothing about it."⁴⁴

¶ 23 When asked if Delong provided any details of what happened, Hanson responded, "The only thing Todd ever told me is that he hurt his back chopping wood."⁴⁵ Delong disputes this. Delong testified that he once had injured his back chopping wood in 2006 and he now uses an electric wood splitter.⁴⁶

¶ 24 Hanson admitted that he discussed Delong's accident with McCorkle, but could not pinpoint an exact time.⁴⁷ Hanson testified, "There was no accident at the shop that we know of."⁴⁸ When Hanson filled out the FROI on December 6, 2008, he did not mention that Delong injured his back chopping wood.⁴⁹ When asked about this inconsistency, Hanson responded, "[I]f Todd told me he hurt himself he said he did it at

³⁹ Ex. 9.

⁴⁰ Trial Test.

⁴¹ Trial Test.

⁴² Trial Test.

⁴³ Trial Test.; Ex. 1.

⁴⁴ Hanson Dep. 7:25 – 8:3.

⁴⁵ Hanson Dep. 8:24-25.

⁴⁶ Trial Test.

⁴⁷ Hanson Dep. 10:11-25.

⁴⁸ Hanson Dep. 11:3-4.

⁴⁹ Ex. 3.

home.”⁵⁰ Hanson elaborated on the FROI that “Todd never told me he specifically hurt his back on a particular day or time/just that he hurt himself.”⁵¹

¶ 25 When shown the Workers’ Compensation Insurance Coverage Employee Notice sign, Hanson stated that he had seen it before, but that he had never read it, and that he was unaware of the 30-day statute of limitations until Delong filed his claim.⁵² Hanson claimed that the notice was posted on a bulletin board at All Points along with a laminated minimum wage poster, but that the bulletin board was removed during a remodeling project and was never put back up.⁵³ Hanson insisted that the notice poster had been up prior to Delong’s alleged injury.⁵⁴ However, every other witness besides Hanson testified that the bulletin board was hanging and contained a laminated minimum wage poster, but did not have a Workers’ Compensation Insurance Coverage Employee Notice poster.⁵⁵

¶ 26 Hanson admitted during his deposition that his employees overheard his comments about All Points’ financial troubles, including the cost of workers’ compensation insurance.⁵⁶ Hanson estimated that a third of his operating expenses go toward State Fund insurance and felt that it was “awful high for what we do.”⁵⁷ Hanson denied telling his employees that he had been fined by the Department of Labor and Industry or State Fund.⁵⁸ I find this statement incredible as every other witness testified that Hanson had in fact reported receiving a fine as a result of Delong’s claim.⁵⁹ Hanson admitted that he had never actually been fined by either entity.⁶⁰

¶ 27 As noted above, Hanson’s deposition testimony contained a number of internal inconsistencies and salient portions of his testimony were contradicted by the other witnesses whom I found to be credible. I therefore give no weight to Hanson’s testimony.

⁵⁰ Hanson Dep. 14:23-24.

⁵¹ Ex. 3.

⁵² Hanson Dep. 17:3 – 18:7.

⁵³ Hanson Dep. 17:6-17; 18:11 – 19:2; 19:6-9; 21:11-17.

⁵⁴ Hanson Dep. 19:19-20.

⁵⁵ Trial Test.

⁵⁶ Hanson Dep. 28:2-5.

⁵⁷ Hanson Dep. 31:11-17; 34:20-25.

⁵⁸ Hanson Dep. 22:18-21.

⁵⁹ Trial Test.

⁶⁰ Hanson Dep. 22:11-17.

¶ 28 Pat McCorkle testified at trial. I found him credible. McCorkle worked at All Points from March 2008 through October 2010 when Hanson terminated all the employees.⁶¹ McCorkle testified that he had known Delong socially and professionally since early 2007.⁶²

¶ 29 McCorkle testified that Delong's injury occurred on a Friday when Delong was moving a motor out of a customer's truck when he was in the shop by himself.⁶³ McCorkle recalled Delong telling him that he was hurt that same afternoon.⁶⁴ McCorkle testified that Delong was fine when he arrived at work that morning, but was visibly in pain when he left work that afternoon.⁶⁵

¶ 30 McCorkle provided a detailed description of the motor that Delong removed from the customer's pickup truck. McCorkle described the motor as a 30 or 35 horsepower Mariner long shaft with an electric start.⁶⁶ McCorkle testified that long shaft electric start motors are heavier than a typical outboard motor.⁶⁷ McCorkle stated that any motor over 25 horsepower usually takes two men to move.⁶⁸

¶ 31 On the following Monday, McCorkle saw Delong rest several times and adjust his position to take pressure off of his back.⁶⁹ McCorkle testified that on either the Tuesday or Wednesday after Delong's accident, Delong came to work in slippers because he could not bend enough to put on his socks or boots.⁷⁰ McCorkle testified that everyone in the shop knew that Delong had been injured because the shop employees had discussed it over coffee.⁷¹ McCorkle testified that Delong could not make it through a whole workday shortly after the injury.⁷² McCorkle testified that some time during the

⁶¹ Trial Test.

⁶² Trial Test.

⁶³ Trial Test.

⁶⁴ Trial Test.

⁶⁵ Trial Test.

⁶⁶ Trial Test.

⁶⁷ Trial Test.

⁶⁸ Trial Test.

⁶⁹ Trial Test.

⁷⁰ Trial Test.

⁷¹ Trial Test.

⁷² Trial Test.

week after Delong's injury, Hanson gave Delong an entire bottle of Aleve when Delong told Hanson about the motor.⁷³

¶ 32 McCorkle described an open work area and indicated where the employer normally posted employee notices.⁷⁴ McCorkle recalled seeing posters for OSHA and the Minimum Wage Act, but when shown a copy of the Department of Labor and Industry's Workers' Compensation Insurance Coverage Employee Notice, McCorkle did not recognize it and stated that it was never displayed in the shop.⁷⁵ McCorkle testified that he walked by the bulletin board every day and did not remember the notices ever being taken down.⁷⁶

¶ 33 McCorkle recalled Hanson frequently complaining about workers' compensation insurance costs and that his premiums would increase if he filed a claim.⁷⁷ McCorkle testified that Hanson often paid him in cash and had promised to provide him with pay stubs but still owed him six or seven pay stubs.⁷⁸ McCorkle testified that Hanson laid off all of All Points' employees in October 2010 and told them that State Fund had shut the business down for not having insurance.⁷⁹ McCorkle immediately went to the Department of Labor and Industry to verify Hanson's statement.⁸⁰ McCorkle suspected that All Points had been uninsured for some time, and he wanted to know for sure.⁸¹

¶ 34 McCorkle testified that when he went back to All Points in January of 2011 to gather some of his things, he checked to see if the workers' compensation notice was posted.⁸² McCorkle testified that the bulletin board containing the OSHA and minimum wage posters was still present, but that the notice of workers' compensation coverage was not present.⁸³

⁷³ Trial Test.

⁷⁴ Trial Test.

⁷⁵ Trial Test.

⁷⁶ Trial Test.

⁷⁷ Trial Test.

⁷⁸ Trial Test.

⁷⁹ Trial Test.

⁸⁰ Trial Test.

⁸¹ Trial Test.

⁸² Trial Test.

⁸³ Trial Test.

¶ 35 McCorkle stated that he has known Hanson personally and professionally since 2003.⁸⁴ McCorkle expressed skepticism regarding Hanson's truthfulness.⁸⁵ McCorkle testified that Hanson frequently doubled estimates after writing them for customers.⁸⁶

¶ 36 McCorkle described Hanson's desire to avoid a worker's compensation claim based on his own workplace injury. McCorkle had injured his shoulder when he fell off of a boat during a lake test.⁸⁷ Hanson took McCorkle to Urgent Care and when a nurse asked about the bill, Hanson replied that they would be paying cash.⁸⁸ McCorkle described the nurse's disapproving response and initiated the workers' compensation paperwork.⁸⁹ McCorkle's medical bills were then paid with no issues.⁹⁰

¶ 37 Tom Aced testified at trial. I found him credible. Aced worked at All Points from May 2009 until October 2010.⁹¹ Aced was not an All Points employee at the time of Delong's September 2008 injury.

¶ 38 Aced testified that he had never seen the notice of workers' compensation coverage displayed at All Points.⁹² Aced knew from his experience running a restaurant with his wife that the workers' compensation information needed to be posted.⁹³ Aced recalled seeing only the minimum wage poster on the bulletin board that he walked by every day.⁹⁴ Aced did not recall the bulletin board or individual notices ever being removed.⁹⁵ Aced testified that he was instructed to inform Hanson of any injuries, but did not remember there ever being a formal injury reporting policy.⁹⁶

¶ 39 Aced's coworkers told him that Delong could not lift anything heavy because he had injured his back when helping a customer move a motor.⁹⁷ Aced described the

⁸⁴ Trial Test.

⁸⁵ Trial Test.

⁸⁶ Trial Test.

⁸⁷ Trial Test.

⁸⁸ Trial Test.

⁸⁹ Trial Test.

⁹⁰ Trial Test.

⁹¹ Trial Test.

⁹² Trial Test.

⁹³ Trial Test.

⁹⁴ Trial Test.

⁹⁵ Trial Test.

⁹⁶ Trial Test.

⁹⁷ Trial Test.

workplace as a small open shop approximately 30 feet by 40 feet with a collegial environment where employees frequently saw and spoke with one another.⁹⁸

¶ 40 Aced testified that Hanson constantly complained about the cost of workers' compensation insurance, but never mentioned an exact figure.⁹⁹ Aced testified that Hanson had instructed him not to tell State Fund when McCorkle suffered his August 2009 shoulder injury because Hanson would take care of it and did not want his premiums to increase.¹⁰⁰

¶ 41 Aced testified that Hanson frequently paid him in cash to avoid payroll taxes and that Hanson often increased estimates and customers' bills without reason.¹⁰¹ Aced did not think Hanson was a truthful person.¹⁰² Aced, along with his coworkers, was laid off in October 2010.¹⁰³ Aced testified that Hanson told him that State Fund had shut down All Points.

¶ 42 Cecelia Robinson testified at trial. I found her credible. Robinson has been a claims examiner at State Fund since 2006.¹⁰⁴ Robinson indicated that inquiring whether the notice is posted is not part of her investigation, but she knows it is a requirement for employers.¹⁰⁵ Robinson estimated that approximately one case a month or one out of every 30 investigations is denied based on the 30-day notice provision.¹⁰⁶

CONCLUSIONS OF LAW

¶ 43 This case is governed by the 2007 version of the Montana Workers' Compensation Act since that was the law in effect at the time of Delong's industrial injury.¹⁰⁷

¶ 44 Delong bears the burden of proving by a preponderance of the evidence that he is entitled to the benefits he seeks¹⁰⁸ Delong has met this burden.

⁹⁸ Trial Test.

⁹⁹ Trial Test.

¹⁰⁰ Trial Test.

¹⁰¹ Trial Test.

¹⁰² Trial Test.

¹⁰³ Trial Test.

¹⁰⁴ Trial Test.

¹⁰⁵ Trial Test.

¹⁰⁶ Trial Test.

¹⁰⁷ *Buckman v. Montana Deaconess Hosp.*, 224 Mont. 318, 321, 730 P.2d 380, 382 (1986).

Issue 1: Whether the employer had actual notice of the Petitioner's accident and injury within 30 days of the Petitioner's accident and injury.

¶ 45 Under § 39-71-603(1), MCA, an injured worker's employer must be informed of the time, place, and nature of the accident within 30 days after its occurrence.¹⁰⁹ Actual knowledge of the accident and injury on the part of the employer is equivalent to notice.¹¹⁰ In this case, it is undisputed that Delong did not file his FROI with State Fund until more than 30 days after his industrial accident. However, the parties disagree whether Hanson was informed or knew of Delong's accident and injury within 30 days of its occurrence.

¶ 46 As set forth in the findings above, I found all of the testifying witnesses credible. I did not have the opportunity to hear live testimony from Hanson, but I have reviewed his deposition testimony. I do not believe Hanson's testimony and cannot give it any weight. In light of the internal inconsistencies in Hanson's deposition testimony and the contradictory testimony of the witnesses who testified at trial, I find it implausible that Hanson did not have actual notice of Delong's injury.

¶ 47 The Montana Supreme Court has held that the § 39-71-603, MCA, notice requirement is satisfied by "giving the employer sufficient information to lead a reasonably conscientious person to conclude that there may be a connection between the worker's condition and his job."¹¹¹ Something in the notice must indicate "to a reasonably conscientious manager that the case might involve a potential compensation claim."¹¹² At a minimum, I find that consistent with previous case law, any reasonably conscientious manager would have known that Delong's injury was work-related and might be a workers' compensation claim. Delong provided Hanson with all the information he had within 17 days. He showed Hanson the motor, he explained that he had injured his back while removing the motor from the customer's pickup, he was demonstrably uncomfortable in the days following the accident, and he informed Hanson that he was seeking medical treatment for his increased back pain on October 6, 2008. Delong and McCorkle both testified that Delong appeared fine the morning of his accident and was noticeably in pain at the end of the day. Delong testified that he

¹⁰⁸ *Ricks v. Teslow Consol.*, 162 Mont. 469, 512 P.2d 1304 (1973); *Dumont v. Wickens Bros. Constr. Co.*, 183 Mont. 190, 598 P.2d 1099 (1979).

¹⁰⁹ § 39-71-603(1), MCA.

¹¹⁰ § 39-71-603(1), MCA.

¹¹¹ *Bodily v. John Jump Trucking, Inc.*, 250 Mont. 274, 282-83, 819 P.2d 1262, 1267 (1991).

¹¹² *Siebken v. Liberty Mut. Ins. Co.*, 2008 MT 353, 346 Mont. 330, 333-34, 195 P.3d 803, 806, *citing Killebrew v. Larson Cattle Co.*, 254 Mont. 513, 523, 839 P.2d 1260, 1267 (1992) (Weber, concurring).

had seen Hanson both before and after the accident and that Hanson would have noticed that something was wrong. Hanson first gave Delong Advil from a first aid kit and later proceeded to give Delong an entire bottle of Aleve. McCorkle testified that everyone in the shop knew of Delong's injury because it had been discussed over coffee. Delong also told Hanson about his injury on October 6, 2008, when informing him that his back was not getting any better and that he needed to see a doctor.

¶ 48 It strains credulity that Hanson could be the only person in an approximately 1,200 square foot open shop who did not know that Delong had injured himself unloading a motor.

¶ 49 Section 39-71-603, MCA, is satisfied. Hanson had actual knowledge and therefore notice of Delong's accident and injury within the 30-day statute of limitations.

¶ 50 Since Hanson had actual knowledge and notice of Delong's accident and injury within 30 days of its occurrence, Issues 2 through 5 regarding whether Hanson posted the Workers' Compensation Insurance Coverage Employee Notice and Delong's equitable arguments are moot and need not be addressed.

JUDGMENT

¶ 51 Hanson had actual knowledge and therefore notice of Delong's accident and injury within 30 days of its occurrence in compliance with § 39-71-603, MCA.

¶ 52 Issues 2 through 5 are moot.

¶ 53 Pursuant 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 12th day of January, 2012.

(SEAL)

/s/ JAMES JEREMIAH SHEA
JUDGE

c: Benjamin C. Tiller
William Dean Blackaby
Submitted: August 31, 2011