

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

**2009 MTWCC 34**

**WCC No. 2009-2222**

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**JEANNINE FOURNIER**

**Petitioner**

**vs.**

**MONTANA SCHOOLS GROUP INSURANCE AUTHORITY**

**Respondent/Insurer.**

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**FINDINGS OF FACT, CONCLUSIONS OF LAW AND JUDGMENT**

**Summary:** Petitioner Jeannine Fournier petitioned the Court for a determination of whether she properly reported her accident within thirty days pursuant to § 39-71-603(1), MCA. Petitioner worked as a special education paraprofessional at Kalispell Middle School. She slipped and fell on some ice in the school parking lot and injured her ankle. The following day, Petitioner's ankle was examined by a physician and he diagnosed her with a "SPRAIN OF ANKLE DELTOID." Approximately three to four weeks after Petitioner's accident, she approached a teacher in the school hallway and inquired about what she needed to do to report her injury. The teacher advised Petitioner to proceed to the school office and obtain an accident report form. Petitioner obtained the accident report form from the school office, but did not complete and return the form within thirty days of her accident.

**Held:** Petitioner failed to properly report her injury to her employer pursuant to § 39-71-603(1), MCA. The Court concluded that Petitioner did not satisfy the notice requirement when she approached a teacher and inquired as to what she needed to do to report her injury because the teacher was not in a supervisory capacity relative to Petitioner at the time of her accident. The Court also concluded that Petitioner did not satisfy the notice requirement because she did not complete and return the school's accident report form within thirty days of her accident. Finally, the Court concluded that although the notice requirement may not have begun to run until after Petitioner sought medical care, she did so the day after her accident. The evidence established that a completed accident report form was not returned to the school office until thirty-four days after she sought medical care. Therefore, Petitioner's notice was untimely.

## **Topics:**

**Constitutions, Statutes, Regulations, and Rules: Montana Code Annotated: 39-71-603.** Where the Petitioner worked as a paraprofessional in a middle school and reported her accident to a teacher that was not working with her at the time of the injury, did not prepare the Petitioner's daily schedule nor assign her any tasks or duties, and did not have the authority to either discipline or evaluate the Petitioner as an employee, the Court held that the teacher was not working in a supervisory capacity and therefore, the Petitioner failed to properly report her injury within thirty days as required by § 39-71-603, MCA.

**Claims: Notice to Employer or Insurer: Supervisor.** Where the Petitioner worked as a paraprofessional in a middle school and reported her accident to a teacher that was not working with her at the time of the injury, did not prepare the Petitioner's daily schedule nor assign her any tasks or duties, and did not have the authority to either discipline or evaluate the petitioner as an employee, the Court held that the teacher was not working in a supervisory capacity and therefore, the Petitioner failed to properly report her injury within thirty days as required by § 39-71-603, MCA.

¶ 1 The trial in this matter was held on August 19, 2009, in Kalispell, Montana. Petitioner Jeannine Fournier was present and represented by Kevin A. Duff. Respondent Montana Schools Group Insurance Authority was represented by Leo S. Ward.

¶ 2 Exhibits: Exhibits 1 through 26 were admitted without objection.

¶ 3 Witnesses and Depositions: Jeannine Fournier (Fournier), Jann Jorgensen (Jorgensen), Jane Radel (Radel), Barry Grace (Grace), and Marlene McCluskey (McCluskey) were sworn and testified at trial.

¶ 4 Issues Presented: The Pretrial Order states the following contested issues of law:<sup>1</sup>

¶ 4a Whether Fournier properly reported her injury to her employer within thirty days.

¶ 4b Whether Fournier is entitled to acceptance of her claim, appropriate wage loss, and medical benefits.

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<sup>1</sup> Pretrial Order at 2.

## FINDINGS OF FACT

¶ 5 Unless otherwise noted below, I found the testimony of Fournier, Jorgensen, Radel, Grace, and McCluskey to be credible.

¶ 6 Fournier is a paraprofessional and works with special education students at Kalispell Middle School (KMS). She has worked as a paraprofessional for approximately ten years.<sup>2</sup>

¶ 7 On April 7, 2008, Fournier injured her ankle when she slipped and fell on a patch of ice in the parking lot at KMS.<sup>3</sup> The following morning, Fournier sought treatment from Charles L. Dixon, M.D. Dr. Dixon diagnosed Fournier with a “SPRAIN OF ANKLE DELTOID.”<sup>4</sup> Fournier testified that she was aware of Dr. Dixon’s diagnosis and that the ankle sprain was the result of her slip and fall accident in the school parking lot. After her treatment with Dr. Dixon, Fournier’s ankle continued to be painful and swollen.<sup>5</sup> Fournier next sought treatment from Lexi L. Tabor-Manaker, M.D., on May 2, 2008, because her ankle had continued to be swollen and she was experiencing excruciating pain.<sup>6</sup>

¶ 8 Fournier was aware of the school policy that injuries must be reported. At some time at the end of April or beginning of May 2008, Fournier stopped Jorgensen in the hall to ask her what she needed to do to report an injury. At the time of Fournier’s injury, Jorgensen was a special education teacher at KMS. Jorgensen told Fournier that she should obtain an accident report form from the office and report the accident.<sup>7</sup>

¶ 9 Fournier obtained an accident report form from Radel, the school office secretary, on May 6, 2008. Fournier acknowledged at trial that Radel is not her supervisor. Fournier began filling out the form on the day she received it, but did not complete the form on that day because the office was closing. Fournier took the form home to complete it. Fournier testified that she returned the completed form to the office at some time during the week

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<sup>2</sup> Trial Test.

<sup>3</sup> Trial Test.

<sup>4</sup> Ex. 4.

<sup>5</sup> Trial Test.

<sup>6</sup> Trial Test.; Ex. 5.

<sup>7</sup> Trial Test.

of May 12, 2008.<sup>8</sup> A notation on the form reflects that it was received in the business office via school mail on May 23, 2008.<sup>9</sup>

¶ 10 Fournier testified that she believed Jorgensen was her supervisor because, according to Fournier, she worked in Jorgensen's classrooms, Jorgensen was responsible for Fournier's daily schedule, and Jorgensen informed the staff about changes in laws related to special education. Jorgensen testified that she did not consider herself to be Fournier's supervisor at the time of the accident. Jorgensen testified that Fournier was not a paraprofessional in one of her classrooms at the time of the accident nor did she prepare Fournier's schedule. Jorgensen did not have any authority to either discipline Fournier or evaluate her as an employee.<sup>10</sup>

¶ 11 In the fall of 2008 – several months after Fournier's injury – Jorgensen was promoted to special education department head at KMS. Jorgensen acknowledged that she became Fournier's supervisor at that time.<sup>11</sup>

¶ 12 Having had the opportunity to evaluate both Fournier's and Jorgensen's testimony, I find Jorgensen's testimony regarding her working relationship with Fournier at the time of Fournier's injury to be more convincing. Jorgensen was unequivocal in her testimony that she and Fournier were not working together at the time of Fournier's injury, that she did not prepare Fournier's daily schedule, nor did she assign Fournier any tasks or duties. Jorgensen's testimony is uncontroverted that she did not have the authority to either discipline or evaluate Fournier as an employee. Moreover, the nature of Fournier's interaction with Jorgensen when she discussed the accident with her belies Fournier's characterization that Jorgensen was her supervisor. Although Fournier testified that she was working with Jorgensen at the time of her injury, Fournier's testimony establishes that she stopped Jorgensen in the hall between classes several weeks after her accident. Fournier further testified that she was not attempting to report her injury to Jorgensen when she stopped her in the hall; rather, she was merely seeking information from Jorgensen as to what she needed to do to report her injury, in response to which Jorgensen advised Fournier to obtain an accident report form from the office.<sup>12</sup> Based on Jorgensen's testimony, I find that Jorgensen was not in a supervisory capacity relative to Fournier at the time of Fournier's accident.

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<sup>8</sup> Trial Test.

<sup>9</sup> Ex. 1.

<sup>10</sup> Trial Test.

<sup>11</sup> Trial Test.

<sup>12</sup> Trial Test.

## CONCLUSIONS OF LAW

¶ 13 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 Fournier's industrial accident.<sup>13</sup>

¶ 14 Fournier bears the burden of proving by a preponderance of the evidence that she is entitled to the benefits she seeks.<sup>14</sup>

¶ 15 At issue in the present case is whether Fournier properly reported her accident and injury to her employer within thirty days as required by § 39-71-603(1), MCA. That statute reads as follows:

A claim to recover benefits under the Workers' Compensation Act for injuries not resulting in death may not be considered compensable unless, within 30 days after the occurrence of the accident that is claimed to have caused the injury, notice of the time and place where the accident occurred and the nature of the injury is given to the employer or the employer's insurer by the injured employee or someone on the employee's behalf. Actual knowledge of the accident and injury on the part of the employer or the employer's managing agent or superintendent in charge of the work in which the injured employee was engaged at the time of the injury is equivalent to notice.

¶ 16 The thirty-day notice requirement does not commence running until an injured employee recognizes that a work-related event may require medical care or may be compensable.<sup>15</sup> In this case, Fournier sought medical care for her injury on April 8, 2008, the day after her accident. Therefore, in order to comply with the notice requirement of § 39-71-603(1), MCA, Fournier must have given notice no later than May 8, 2008.

¶ 17 Fournier contends that she satisfied the thirty-day notice requirement when she informed Jorgensen of her accident. In order to satisfy the notice requirement, someone with supervisory status must be notified or have actual knowledge of the employee's injury.<sup>16</sup> As discussed above, I have found that Jorgensen was not in a supervisory

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<sup>13</sup> *Buckman v. Montana Deaconess Hosp.*, 224 Mont. 318, 321, 730 P.2d 380, 382 (1986).

<sup>14</sup> *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).

<sup>15</sup> *Bain v. Liberty Mutual Fire Ins. Co.*, 2004 MTWCC 45, ¶ 123.

<sup>16</sup> *Alsburly v. State Comp. Ins. Fund*, 2001 MTWCC 8, ¶ 23.

capacity relative to Fournier at the time of Fournier's accident. Therefore, Fournier did not satisfy the thirty-day notice requirement when she informed Jorgensen of her accident.

¶ 18 Fournier next argues that she satisfied the notice requirement "By completing the school's Accident Report form within 30 days."<sup>17</sup> However, Fournier's own testimony established that although she obtained the accident report form on May 6, 2008, she did not complete and return the form to the school until sometime during the week of May 12, 2008. This was more than thirty days after her accident and the date on which she first sought medical treatment for her injury. Therefore, Fournier did not satisfy the notice requirement because she did not complete and return the school's accident report form within thirty days of her accident.

¶ 19 Finally, Fournier argues that the thirty-day notice requirement "did not begin to run until [Fournier] realized she needed medical care."<sup>18</sup> Fournier is correct that the thirty-day notice requirement does not commence running until an injured employee recognizes that a work-related event may require medical care or may be compensable.<sup>19</sup> In the present case, Fournier sought medical care the day after the accident and was informed that she suffered an injury, albeit a sprain, as a result of the accident. Fournier further testified that after her treatment with Dr. Dixon, her ankle continued to be painful and swollen until she finally sought treatment from Dr. Tabor-Manaker on May 2, 2008. Although the notice requirement may not have begun to run until Fournier sought medical care on April 8, 2008, her testimony establishes that the earliest she reported her accident was when she turned in the completed accident report form at some time during the week of May 12, 2008. Since Fournier did not report her accident and injury until at least thirty-four days after the notice requirement began to run, her report was not timely.

### JUDGMENT

¶ 20 Fournier failed to properly report her injury to her employer pursuant to § 39-71-603(1), MCA.

¶ 21 Fournier is not entitled to acceptance of her claim, appropriate wage loss, or medical benefits.

¶ 22 Pursuant to 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.

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<sup>17</sup> Pretrial Order at 3.

<sup>18</sup> Pretrial Order at 3.

<sup>19</sup> *Bain, supra*, ¶ 123.

DATED in Helena, Montana, this 23<sup>rd</sup> day of October, 2009.

(SEAL)

/s/ JAMES JEREMIAH SHEA  
JUDGE

c: Kevin A. Duff  
Leo S. Ward

Submitted: August 19, 2009