

IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

2014 MTWCC 2

WCC No. 2013-3192

CHARLES GRAY

Petitioner

vs.

MONTANA STATE FUND

Respondent/Insurer.

ORDER DENYING PETITIONER'S MOTION FOR SUMMARY JUDGMENT

Summary: Petitioner began receiving social security retirement benefits at age 62, but continued to work. He subsequently suffered an industrial injury for which he has reached MMI. Petitioner contends that he only received "partial" social security benefits and that he is entitled to PTD benefits until he reaches the age of "full retirement." Respondent contends that Petitioner is considered "retired" under § 39-71-710, MCA, and that he is therefore ineligible for PTD benefits.

Held: Section 39-71-710, MCA, provides that injured workers are considered retired if they receive social security retirement benefits **or** if they are eligible to receive full social security retirement benefits. This provision of the statute is framed in the disjunctive. Under the terms of this statute, if an injured worker is either **eligible** to receive **full** social security retirement benefits or **actually** receives social security retirement benefits in any amount, the worker is considered retired. Since Petitioner received social security retirement benefits, even though they are not "full" benefits, he fulfills the requirements of the statute and is considered "retired." He is therefore not eligible for PTD benefits.

Topics:

Constitutions, Statutes, Regulations, and Rules: Montana Code Annotated: 39-71-710. Section 39-71-710(1), MCA, provides for two ways in which a claimant will be deemed retired: if he is receiving social security retirement benefits; or if he is eligible to receive full social security retirement benefits. Therefore, Petitioner, who is receiving "partial" or "early" social security retirement benefits, is considered retired under the

statute, and Respondent is not liable to Petitioner for permanent total disability benefits.

Benefits: Permanent Total Disability Benefits: Retirement. Section 39-71-710(1), MCA, provides for two ways in which a claimant will be deemed retired: if he is receiving social security retirement benefits; or if he is eligible to receive full social security retirement benefits. Therefore, Petitioner, who is receiving “partial” or “early” social security retirement benefits, is considered retired under the statute, and Respondent is not liable to Petitioner for permanent total disability benefits.

¶ 1 On September 25, 2013, pursuant to the stipulation of the parties, this Court ordered that this matter be submitted for resolution on briefs.¹ On December 23, 2013, the parties completed the briefing and this matter was submitted for decision.²

¶ 2 Issue Presented: The parties present the following issue for resolution:

Whether Respondent Montana State Fund (State Fund) may disallow Petitioner Charles Gray’s request for permanent total disability (PTD) benefits because Gray was already receiving partial social security retirement benefits prior to his industrial injury.³

STIPULATED FACTS⁴

¶ 3 Charles Gray’s date of birth was 5/17/49. At the time of the subject industrial injury, he was 63 years of age.

¶ 4 Charles Gray elected to receive partial Social Security retirement benefits before the subject injury. He started receiving partial Social Security Retirement benefits in February, 2012.

¶ 5 On June 19, 2012, Charles Gray had the present industrial injury arising out of and in the course and scope of his employment with Patricia Compton in Browning, Glacier County, Montana.

¹ Order Vacating Scheduling Order and Setting Briefing Schedule, Docket Item No. 16.

² [Petitioner’s] Reply Brief (Reply Brief), Docket Item No. 20.

³ Petitioner’s Brief in Support of Motion for Summary Judgment (Opening Brief), Docket Item No. 18, at 2.

⁴ All facts are written as submitted in the parties’ Joint Stipulation of Facts, Docket Item No. 17.

¶ 6 At the time of the injury, Charles Gray's employer was enrolled under Compensation Plan III of the Montana Workers' Compensation Act, so its insurer is the Montana State Fund.

¶ 7 The Montana State Fund accepted liability for Charles Gray's industrial injury, and it paid medical benefits, temporary total disability benefits, and a two percent (2%) whole person impairment benefit.

¶ 8 The parties stipulate that on October 30, 2012, Charles Gray reached Maximum Medical Improvement ("MMI"), as declared by his treating physician, Dr. K. Allan Ward.

¶ 9 As of the date of MMI, based on a preponderance of the medical and vocational evidence, the parties stipulate that Charles Gray was permanently totally disabled as defined by Section 39-71-116 (28) MCA (2011).

¶ 10 A dispute exists between the parties within the context of Section 39-71-710 MCA (2011). Gray contends that he is eligible for PTD until he reaches the age of "full retirement." The Montana State Fund refuses to pay PTD, because it contends that Gray had "retired."

¶ 11 Within the context of Section 39-71-710 MCA, the Montana State Fund contends that Gray had already "retired" before the subject injury. Gray contends that he was not "retired," because Gray was working at the time of his injury.

ANALYSIS AND DECISION

¶ 12 This case is governed by the 2011 version of the Montana Workers' Compensation Act (WCA) since that was the law in effect at the time of Gray's industrial accident.⁵ Gray bears the burden of proving by a preponderance of the evidence that he is entitled to the benefits he seeks.⁶

¶ 13 Gray argues that State Fund has incorrectly denied him payment of PTD benefits to which he is entitled because it has misapplied § 39-71-710, MCA, to the facts of his case.⁷ Gray argues that under § 39-71-710, MCA, he should receive workers'

⁵ *Ford v. Sentry Cas. Co.*, 2012 MT 156, ¶ 32, 365 Mont. 405, 282 P.3d 687; § 1-2-201, MCA.

⁶ *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).

⁷ Opening Brief at 5-7.

compensation benefits until he receives, or is eligible to receive, full social security retirement benefits.⁸

¶ 14 State Fund responds that it correctly denied Gray PTD benefits because he is considered “retired” under § 39-71-710(1), MCA. State Fund points to *Satterlee v. Lumberman’s Mut. Cas. Co.*⁹ and argues that *Satterlee* held that PTD benefits are meant to assist a worker over the course of his work life and defined who is “retired” and who is not “retired” under § 39-71-710, MCA.¹⁰

¶ 15 Gray replies that *Satterlee* is not relevant to his claim, because *Satterlee* “had nothing to do with the question about whether PTD [benefits] should be paid until a claimant reaches ‘full retirement’” under § 39-71-710(1), MCA.¹¹

¶ 16 Gray further argues that under § 39-71-105, MCA, wage-loss benefits should bear a reasonable relationship to the actual wages lost as a result of a work-related injury or disease, and that adopting State Fund’s interpretation of § 39-71-710, MCA, would negate this principle. Gray contends that the facts in this case demonstrate that he decided not to retire at age 62, but instead remained in the workforce while receiving partial social security retirement benefits. Therefore, he did not cease working because of retirement, but rather because his industrial injury forced him to do so. Gray argues that he therefore should receive wage-loss benefits reasonably related to his actual wage loss, as contemplated by § 39-71-105, MCA.¹²

¶ 17 State Fund counters that when Gray became permanently totally disabled, he was not eligible to receive PTD benefits because he was “retired” under § 39-71-710(1), MCA, as a result of his election to receive early social security retirement benefits.¹³ State Fund argues that a person, like Gray, who elects to receive social security retirement benefits at the age of 62 “has made an affirmative declaration of retirement” and it is therefore appropriate to terminate that person’s benefits under § 39-71-710, MCA.¹⁴ State Fund maintains:

An individual who is not “retired” may forego the receipt of early Social Security retirement benefits and continue to receive permanent total

⁸ Opening Brief at 5.

⁹ 2009 MT 368, 353 Mont. 265, 222 P.3d 566.

¹⁰ Respondent’s Answer Brief (Response Brief), Docket Item No. 19, at 3.

¹¹ Reply Brief at 2.

¹² Opening Brief at 7.

¹³ Response Brief at 5.

¹⁴ Response Brief at 6.

disability [benefits] until such time [as] they become eligible for or receive full social security retirement benefits. Such an individual accomplishes this by not electing to receive early [social security retirement benefits] at any time after turning age 62.¹⁵

¶ 18 State Fund disagrees with Gray's characterization of his social security retirement benefits as "partial" benefits. State Fund argues that Gray's benefits are more appropriately referred to as "early" social security retirement benefits. State Fund claims, "Gray's implication that the election to receive [social security retirement benefits] as early as age 62 is less than 'full' retirement is actuarially inaccurate."¹⁶

¶ 19 State Fund argues:

As a general rule, early or late retirement will result [in] about the same total Social Security [retirement] benefits over a lifetime as would election of retirement income at the normal age. By retiring early, the monthly benefit amounts will be smaller, 42 U.S.C. 402(q)(1), to take into account the longer period of time [over which] the benefits will be paid. A retiree that delays receipt of benefits beyond normal retirement age will get benefits for a shorter period of time but the monthly amounts will be larger to make up for the months when no benefits were paid.¹⁷

¶ 20 Gray replies that State Fund's characterization of the social security benefits he currently receives as "early" rather than "partial" is inaccurate. He claims that he will become eligible for "full" social security retirement benefits on his 66th birthday.¹⁸

¶ 21 Section 39-71-710(1), MCA, provides in pertinent part:

If a claimant is receiving disability or rehabilitation compensation benefits and the claimant receives social security retirement benefits or is eligible to receive or is receiving full social security retirement benefits or retirement benefits from a system that is an alternative to social security retirement, the claimant is considered to be retired.

¶ 22 State Fund argues that the first sentence of § 39-71-710(1), MCA, is disjunctive. It contends that under § 39-71-710(1), MCA, a person is retired if he receives social security retirement benefits or is eligible to receive or is receiving full social security

¹⁵ Response Brief at 5. (Emphasis in original.)

¹⁶ Response Brief at 6.

¹⁷ Response Brief at 7.

¹⁸ Reply Brief at 1.

retirement benefits.¹⁹ State Fund argues that this is how the Montana Supreme Court interpreted § 39-71-710(1), MCA, in *Satterlee*. State Fund contends:

In the context of the instant case that means as follows:

If a claimant is receiving disability or rehabilitation compensation benefits **and**

(1) the claimant receives social security retirement benefits
or

(2) is eligible to receive or is receiving full social security retirement benefits.

The claimant is considered to be **retired**.²⁰

¶ 23 State Fund adds, “Such a reading is consistent with the plain language of the statute and significantly, with the object and intent of the statute as defined by the Legislature and recognized in *Satterlee*.”²¹ State Fund argues that because Gray elected to receive social security retirement benefits, he “made an affirmative declaration of retirement” and therefore he falls under the statute.²²

¶ 24 Gray contends that under State Fund’s proposed interpretation of § 39-71-710(1), MCA, a claimant could be eligible for both workers’ compensation and social security benefits, but could never receive both.²³ Gray points out that the second sentence of § 39-71-710(1), MCA, specifically references **full** retirement benefits and argues that the statute mandates benefit termination only if the injured worker receives full social security retirement benefits.²⁴

¶ 25 State Fund offers a summary of the Montana Supreme Court’s holdings regarding statutory interpretation:

Statutory interpretation is a “holistic endeavor” that must consider the statute’s text, language, structure, and object.

¹⁹ Response Brief at 4 (citing *Satterlee*, ¶ 16).

²⁰ Response Brief at 5. (Emphasis in Response Brief.)

²¹ Response Brief at 5.

²² Response Brief at 5-6.

²³ Opening Brief at 6.

²⁴ Opening Brief at 7.

The Court must “first look to the plain language of the statute to determine legislative intent[,]” and not insert what has been omitted. However, the Court should read and construe the statute as a whole to avoid an absurd result and to give effect to a statute’s purpose. In addition, the terms of the section must be considered and read in “the context in which they were used by the legislature.”²⁵

¶ 26 In this instance, regardless of whether the social security retirement benefits Gray receives are considered “partial” or “early,” the fact remains that he is indeed receiving social security retirement benefits. Section 39-71-710(1), MCA, enunciates two ways which would cause a claimant to be deemed retired: either the claimant receives social security retirement benefits, **or** the claimant is **eligible** to receive **full** social security retirement benefits. In Gray’s case, as he notes, he will not be **eligible** to receive **full** social security retirement benefits until age 66. However, although Gray is not yet eligible to receive full social security retirement benefits, he is in fact currently receiving social security retirement benefits in a lesser amount because he elected to begin receiving those benefits at age 62. Therefore, since Gray is receiving social security retirement benefits, that triggers a determination that he is considered “retired” under § 39-71-710, MCA. Put another way, § 39-71-710(1), MCA, offers two scenarios under which a claimant will be deemed retired: either the claimant **actually** receives social security retirement benefits in any amount, or the claimant is **eligible** to receive full social security retirement benefits. Gray falls into the former category and is therefore deemed “retired” under the statute.

¶ 27 As to Gray’s argument that this interpretation would violate the principle of wage-loss benefits bearing a reasonable relationship to wages lost as set forth in § 39-71-105, MCA, the Montana Supreme Court addressed this in *Satterlee*: “In order to achieve the stated purpose of PTD benefits, which the legislature explained to be the provision of wage-loss benefits that bear a reasonable relationship to actual wages lost, it is sufficiently rational that such benefits would terminate when actual wages would normally terminate – upon retirement.”²⁶ Although it is true that Gray may have continued working past age 62, this is equally true of workers such as those in *Satterlee*, who may have continued working past the age of full retirement eligibility but were nonetheless deemed “retired” by the terms of the statute.

¶ 28 As *Satterlee* illustrates, § 39-71-710(1), MCA, sets forth the mechanisms which trigger a determination that a claimant is deemed retired. Those mechanisms are triggered either when, as in *Satterlee*, the claimants become eligible for full social

²⁵ Response Brief at 4. (Citations omitted.)

²⁶ *Satterlee*, ¶ 27.

security retirement benefits, or as is the case here, when the claimant actually receives social security retirement benefits. Although I may sympathize with the specific facts of Gray's situation, in the final analysis this is a matter of statutory construction. "In the construction of a statute, the office of the judge is simply to ascertain and declare what is in terms or in substance contained therein, not to insert what has been omitted or to omit what has been inserted."²⁷ Therefore, I conclude that State Fund is not liable to Gray for PTD benefits because Gray is considered "retired" under § 39-71-710(1), MCA, since he actually receives social security retirement benefits.

ORDER

¶ 29 Respondent Montana State Fund may disallow Petitioner Charles Gray's request for permanent total disability (PTD) benefits because Gray was already receiving partial social security retirement benefits prior to his industrial injury.

¶ 30 Petitioner's Motion for Summary Judgment is **DENIED**.

DATED in Helena, Montana, this 30th day of January, 2014.

(SEAL)

JAMES JEREMIAH SHEA
JUDGE

c: Thomas J. Murphy
Daniel B. McGregor
Submitted: December 23, 2013

²⁷ § 1-2-101, MCA.