

IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

2012 MTWCC 2

WCC No. 2011-2715

SHAWNA HARDIE

Petitioner

vs.

MONTANA STATE FUND

Respondent/Insurer.

ORDER DENYING RESPONDENT'S MOTION FOR SUMMARY JUDGMENT

Summary: Respondent moved for summary judgment, arguing that Petitioner's claim was untimely. Petitioner opposed Respondent's motion, arguing that she filed her claim within the statute of limitations when the tolling during the pendency of mediation is taken into account.

Held: Under § 39-71-2905(2), MCA, a claimant must file her petition for hearing within two years after benefits are denied. However, the statute of limitations is tolled during the pendency of mediation. In the present case, Petitioner filed her petition within 25 days of the issuance of the mediator's report pursuant to § 39-71-2411, MCA, and it is therefore timely filed. Respondent's motion for summary judgment is denied.

Topics:

Constitutions, Statutes, Regulations, and Rules: Montana Code Annotated: 39-71-2905. The Montana Supreme Court has previously held that the statute of limitations in § 39-71-2905(2), MCA, is tolled from the date a claimant files for mediation through the 25-day timeframe set forth in § 39-71-2411(7), MCA. The court has further held that the tolling period is calculated from the date of the mediation request through the deadline for both parties to respond to the mediator's recommendation. Petitioner's petition in this matter was timely as it was filed within two years of the claim denial, when the tolling of the statute of limitations from the date of the mediation petition filing through 25 days following the issuance of the mediator's report is taken into account.

Constitutions, Statutes, Regulations, and Rules: Montana Code Annotated: 39-71-2411. The Montana Supreme Court has previously held that the statute of limitations in § 39-71-2905(2), MCA, is tolled from the date a claimant files for mediation through the 25-day timeframe set forth in § 39-71-2411(7), MCA. The court has further held that the tolling period is calculated from the date of the mediation request through the deadline for both parties to respond to the mediator's recommendation. Petitioner's petition in this matter was timely as it was filed within two years of the claim denial, when the tolling of the statute of limitations from the date of the mediation petition filing through 25 days following the issuance of the mediator's report is taken into account.

Limitation Periods: Tolling. The Montana Supreme Court has previously held that the statute of limitations in § 39-71-2905(2), MCA, is tolled from the date a claimant files for mediation through the 25-day timeframe set forth in § 39-71-2411(7), MCA. The court has further held that the tolling period is calculated from the date of the mediation request through the deadline for both parties to respond to the mediator's recommendation. Petitioner's petition in this matter was timely as it was filed within two years of the claim denial, when the tolling of the statute of limitations from the date of the mediation petition filing through 25 days following the issuance of the mediator's report is taken into account.

¶ 1 Respondent Montana State Fund (State Fund) moves this Court for summary judgment in its favor.¹ State Fund contends that Hardie's claim for benefits is untimely because Hardie failed to file a petition in this Court within two years of State Fund's denial of her workers' compensation claim, as set forth in § 39-71-2905(2), MCA.²

¶ 2 Petitioner Shawna Hardie opposes State Fund's motion.³ Hardie contends that her petition was not untimely as it fell within two years of State Fund's denial of her claim when the time the statute of limitations was tolled due to the mediation process is added.⁴

¹ Respondent's Motion for Summary Judgment, Docket Item No. 16.

² Respondent's Brief in Support of Motion for Summary Judgment (Opening Brief), Docket Item No. 17.

³ Petitioner's Answer Brief to Respondent's Motion for Summary Judgment (Response Brief), Docket Item No. 18.

⁴ Response Brief.

Undisputed Facts⁵

- ¶ 3 On March 2, 2009, State Fund denied liability for Hardie's claim of an industrial injury.
- ¶ 4 On February 23, 2011, Hardie filed for mediation.
- ¶ 5 On March 31, 2011, the mediator issued a report and recommendation.
- ¶ 6 On April 1, 2011, State Fund rejected the mediator's recommendation via letter.
- ¶ 7 On April 5, 2011, Hardie rejected the mediator's recommendation via letter.
- ¶ 8 On April 11, 2011, Hardie filed a Petition for Hearing in the Workers' Compensation Court.

Analysis and Decision

¶ 9 For the Court to grant summary judgment, the moving party must establish that no genuine issues of material fact exist and that the moving party is entitled to judgment as a matter of law.⁶ The material facts necessary for disposition of this case are undisputed. Accordingly, this case is appropriate for summary disposition.

¶ 10 State Fund contends that Hardie's Petition for Hearing is untimely because she filed it more than two years after State Fund denied her claim. State Fund relies upon § 39-71-2905(2), MCA, which provides that a petition for hearing must be filed within two years after benefits are denied.

¶ 11 Under *Preston v. Transportation Ins. Co.*, this statute of limitations is tolled during the pendency of mediation proceedings.⁷ State Fund acknowledges that Hardie filed for mediation within the two-year time period, tolling the statute of limitations for the pendency of the mediation proceedings.⁸ However, State Fund argues that the tolling ended on April 8, 2011:

In this case Petitioner filed for mediation on February 23, 2011. The Mediator issued her report and recommendation on March 31, 2011 and it

⁵ Opening Brief at 2; Response Brief at 2.

⁶ ARM 24.5.329; *Farmers Union Mut. Ins. Co. v. Horton*, 2003 MT 79, ¶ 10, 315 Mont. 43, 67 P.3d 285.

⁷ *Preston*, 2004 MT 339, ¶ 37, 324 Mont. 225, 102 P.3d 527.

⁸ Opening Brief at 3.

was rejected on April 1, 2011. Thus, the running of the statute of limitation was tolled from February 23, 2011 until April 1, 2011 or a total of 37 days. Taking into account the 37 days for mediation extended the statute of limitation until April 8, 2011. Petition[er] did not file a petition for hearing with the Workers' Compensation Court until April 11, 2011.⁹

¶ 12 State Fund argues that the tolling period only includes the time following the mediation until either party rejects the mediator's recommendation – in this case April 1, 2011, when State Fund wrote a letter rejecting the mediator's recommendation.¹⁰

¶ 13 Hardie responds that State Fund misinterprets the Supreme Court's holding in *Preston*. She contends that the statute of limitations was tolled for 37 days – from February 23, 2011, until the mediator issued a report on April 1, 2011 – plus an additional 25 days which § 39-71-2411, MCA, allows for either party to accept or reject the mediator's recommendation. Hardie contends that this period extended until April 25, 2011, and since she filed her petition in this Court on April 11, 2011, she was within the time period during which the statute of limitations was tolled.¹¹

¶ 14 Hardie notes that in *Preston*, the Montana Supreme Court stated:

Here, Preston petitioned for mediation on November 29, 2000. The mediator submitted her report on January 4, 2001, and from that date, Preston had 25 days within which to accept the mediator's recommendations or to petition the Workers' Compensation Court for resolution, § 39-71-2411(6), MCA. Taken together, the statutorily-mandated mediation process that Preston initiated took from November 29, 2000, to January 29, 2001 – a total of 62 days.¹²

¶ 15 Hardie further notes that the Workers' Compensation Court similarly calculated the mediation tolling period in *Fleming v. Int'l Paper Co.*: "The tolling period is calculated from the date of the request for mediation through the deadline for both parties to respond to the mediator's recommendation."¹³

¶ 16 Section 39-71-2411, MCA, states in pertinent part:

⁹ Opening Brief at 3.

¹⁰ Opening Brief at 3.

¹¹ Response Brief at 2-3.

¹² *Preston*, ¶ 35.

¹³ *Fleming*, 2005 MTWCC 34, ¶ 24.

(7) A party shall notify the mediator within 25 days of the mailing of the mediator's report as to whether the party accepts the mediator's recommendation. If either party does not accept the mediator's recommendation, the party may petition the workers' compensation court for resolution of the dispute.

¶ 17 State Fund draws the Court's attention to three cases it contends support its position that the tolling of the statute of limitations ends as soon as a party rejects the mediator's recommendation. In *Karstetter v. State Compens. Ins. Fund*, this Court held that a party may file a petition in this Court as soon as either party rejects the mediator's recommendation and need not wait until the notification period – currently 25 days, but under the applicable statute in *Karstetter*, 45 days.¹⁴ In *Karstetter*, however, this Court recognized that the party had the entire 45-day period in which to reject the mediator's recommendation and file a petition. There is nothing in *Karstetter* to indicate that the Court would have ruled that a tolling would have ended upon the moment that either party rejected the mediator's recommendation.

¶ 18 State Fund further relies upon *Stoller v. State Compens. Ins. Fund*; however, in this case, the Court held that § 39-71-2411, MCA, requires one of the parties to specifically respond to the mediator's written recommendation prior to filing a petition for trial.¹⁵ I do not see any factual similarity between *Stoller* and the present case.

¶ 19 State Fund also cites *Charlson v. Montana State Fund* in which I held that the petitioner met the requirements of § 39-71-2411(7), MCA, when he wrote a letter to the mediator in which he stated, among other things, that he intended to move forward with filing a petition in this Court.¹⁶ I fail to see the nexus between the facts and law of *Charlson* and State Fund's current argument.

¶ 20 The scenario State Fund contemplates brings up a practical consideration as well. As Hardie notes, "the party not rejecting the mediator's recommendation has no notice of the rejection . . . until that party receives written notice of the rejection."¹⁷ Under State Fund's interpretation, if the two-year anniversary of a claim denial occurs prior to the mediator issuing a report, without notifying the claimant of its intentions, the insurer could reject the mediator's recommendation at 4:45 p.m. that day, and should the claimant not file her petition by 5:00 p.m., the petition would be untimely.

¹⁴ *Karstetter*, 1995 MTWCC 16.

¹⁵ *Stoller*, 1995 MTWCC 59.

¹⁶ *Charlson*, 2010 MTWCC 23.

¹⁷ Response Brief at 4.

¶ 21 As set forth above, the Montana Supreme Court held in *Preston* that the statute of limitations set forth in § 39-71-2905(2), MCA, was tolled from the date the claimant filed for mediation through the 25-day timeframe set forth in § 39-71-2411(7), MCA. As this Court held in *Fleming*, the tolling period is calculated from the date of the request for mediation through the deadline for both parties to respond to the mediator's recommendation. Under *Preston* and *Fleming*, Hardie's petition is timely as it was filed within two years of the claim denial, taking into account the tolling of the statute of limitations from the date Hardie filed her petition for mediation through 25 days following the issuing of the mediator's report. State Fund's motion for summary judgment is therefore denied.

ORDER

¶ 22 Respondent's motion for summary judgment is **DENIED**.

¶ 23 The Court will issue an Order setting this matter on the next Missoula trial docket.

DATED in Helena, Montana, this 9th day of January, 2012.

(SEAL)

/s/ JAMES JEREMIAH SHEA
JUDGE

c: Robert K. Ogg
Thomas E. Martello
Submitted: November 23, 2011