

IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

2012 MTWCC 44

WCC No. 2011-2715

SHAWNA HARDIE

Petitioner

vs.

MONTANA STATE FUND

Respondent/Insurer.

FINDINGS OF FACT, CONCLUSIONS OF LAW AND JUDGMENT

Summary: Petitioner fell in her employer's parking lot, landing on her backside, causing immediate low-back pain. Her pain improved over time and she sought no medical attention until months later, but failed to relate the onset of pain to the fall at work for over ten months. Respondent denied Petitioner's claim on the basis of a lack of objective medical evidence.

Held: Petitioner has shown by a preponderance of the evidence that her fall at work caused the objective medical findings of a bulging disk and annular tear in her lumbar spine revealed in an MRI some ten months post-injury. She is entitled to past and future medical and indemnity benefits related to her low-back condition.

Topics:

Constitutions, Statutes, Regulations, and Rules: Montana Code Annotated: 39-71-407. An injured worker who slipped on ice and fell onto her buttocks in a parking lot at work, who limped for days afterwards and complained of low back pain until the pain dissipated, and who reported the incident to her employer, failed to relate a sudden onset of low back five months later to the slip and fall. However, with no intervening event that could account for her torn annulus and bulging disk in her lumbar spine, and with her treating physician opining that the fall more probably than not caused her back condition, Petitioner sustained her burden of proving that her condition was traceable to her industrial accident.

Causation: Medical Condition. An injured worker who slipped on ice and fell onto her buttocks in a parking lot at work, who limped for days afterwards and complained of low back pain until the pain dissipated, and who reported the incident to her employer, failed to relate a sudden onset of low back five months later to the slip and fall. However, with no intervening event that could account for her torn annulus and bulging disk in her lumbar spine, and with her treating physician opining that the fall more probably than not caused her back condition, Petitioner sustained her burden of proving that her condition was traceable to her industrial accident.

¶ 1 The trial in this matter was held on March 27, 2012, in the offices of Fisher Court Reporting, Missoula, Montana. Petitioner Shawna Hardie was present and represented by Christopher D. Helmer and Robert K. Ogg. Respondent Montana State Fund (State Fund) was represented by Thomas E. Martello.

¶ 2 Exhibits: I admitted Exhibits 1 through 19 and 21 without objection. I admitted pages 1 through 88 of Exhibit 20 over Respondent's objection and excluded page 89. I sustained Respondent's objection to Exhibit 22 and the exhibit was excluded.

¶ 3 Witnesses and Depositions: The parties agreed that the depositions of Petitioner Shawna Hardie, Corey Gray, DC, Rachel Romanelli, LMP, and Troy Warling, FNP, could be considered part of the record. Shawna Hardie and Hal Pulling were sworn and testified at trial.

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

Issue 1: Whether Petitioner suffered an injury to her low back due to her slip and fall during the course and scope of her employment with Opportunity Resources, Inc., on February 26, 2009.

Issue 2: If the Court finds that Petitioner suffered an injury on February 26, 2009, whether Petitioner's low-back condition was either caused or aggravated by the February 26, 2009, industrial injury, entitling her to medical and indemnity benefits for her low-back condition.

¹ Pretrial Order at 4, Docket Item No. 32.

FINDINGS OF FACT

¶ 5 Petitioner Shawna Hardie alleges that on February 26, 2009, she suffered an injury arising out of and in the course of her employment with Opportunity Resources, Inc.²

¶ 6 Hardie testified at trial. I found her to be a credible witness. She described the incident of February 26, 2009, as one in which she was walking to her car in her employer's icy parking lot when suddenly both her feet went in the air and she came down hard onto her rear end.³ She sustained a bruise on her buttocks and experienced pain in her low back as well as her left knee, and limped for several days thereafter.⁴

¶ 7 Hal Pulling testified at trial. I found Pulling to be a credible witness. Pulling works in the same building as Hardie and was leaving work at the same time as her on February 26, 2009. He testified that they were walking across their employer's parking lot with a vehicle separating them when he saw both of Hardie's legs go into the air. He walked around the car and saw her on the ground. She was able to rise unassisted and told him she was fine. Later that week, he again asked if she was alright and she complained that her back hurt.⁵

¶ 8 Hardie reported the fall and resulting pain to her company's human resource department and signed a First Report of her injury on March 2, 2009. On the same day, the State Fund denied the claim for lack of objective medical evidence to support it.⁶

¶ 9 Since December 2007, Hardie had been seeing a massage therapist, Rachel Romanelli, LMP, for upper back and neck pain following a motor vehicle accident in November 2006.⁷ She complained to Romanelli in March 2009 about low-back pain following her fall at work.⁸ Hardie's pain improved over time, but gradually returned that summer; she recalled that it was significantly worse in July 2009 following her thyroid surgery.⁹

² Pretrial Order, Statement of Uncontested Facts, at 1, ¶ 1.

³ Trial Test.

⁴ Trial Test.; Hardie Dep. 67:9 - 68:14.

⁵ Trial Test.

⁶ Pretrial Order, Statement of Uncontested Facts, at 1, ¶ 3.

⁷ Romanelli Dep. 7:25 - 8:7.

⁸ *Id.* at 8:8-15.

⁹ Trial Test.

¶ 10 Hardie had treated with Corey Gray, DC, since September 2007 primarily for complaints of neck and upper back pain due to her November 2006 motor vehicle accident.¹⁰ On August 27, 2009, Hardie went to Dr. Gray complaining of low-back pain. She did not attribute her pain to her fall at work, but rather to other physical problems she was experiencing including a kidney infection.¹¹

¶ 11 Hardie continued to see Dr. Gray for low-back pain during the fall of 2009, but her pain did not improve. Dr. Gray eventually referred Hardie for an MRI in December 2009.¹² The MRI revealed a bulging disk at L5-S1 with an annular tear at L4-5.¹³

¶ 12 Hardie testified that there was “absolutely nothing” that she did that could account for her back pain from the time of her fall to when she began treating with Dr. Gray for low back pain, other than her fall at work in February, 2009. In fact, Hardie testified that she was fairly limited in her activities that summer because of her health problems, including thyroid surgery.¹⁴

¶ 13 Hardie last saw Dr. Gray in April 2010 after he referred her to other physicians because of her MRI report.¹⁵ Because of the “many other health issues being evaluated and remedied during the time period of 2009-2010,” Dr. Gray did not pinpoint a “specific mechanism of trauma” as the cause for Hardie’s back condition.¹⁶ He was, however, comfortable in finding a relationship between her fall at work and her onset of low-back pain later that year as “[h]er care was markedly divergent from any previous chief complaint and previous history in our office.”¹⁷ Dr. Gray also testified that, given the type of fall that Hardie experienced on February 26, 2009, the results on her MRI report, and with no intervening event, the fall was more probably than not the cause of her low-back condition.¹⁸ Additionally, he testified that an annular tear will cause immediate pain but that once the tear is no longer in an inflammatory state, the pain will dissipate rapidly, but the tear may never heal.¹⁹

¹⁰ Gray Dep. 8:17 - 9:22; Gray Dep. Ex. 1.

¹¹ Trial Test.; Ex. 6 at 4; Gray Dep. 11:12 - 12:13.

¹² Trial Test.; Gray Dep. 13:2-23.

¹³ Gray Dep. Ex. 3.

¹⁴ Trial Test; Ex. 6 at 4.

¹⁵ Gray Dep. 13:5-8; 25:18-22; 57:16 - 58:11.

¹⁶ Gray Dep. Ex. 2, ¶ 5.

¹⁷ Gray Dep. Ex. 2, ¶ 6.

¹⁸ Gray Dep. 24:17 - 25:10.

¹⁹ *Id.* at 37:9-14.

¶ 14 Patrick Danaher, D.O., performed an epidural steroid injection on Hardie on April 23, 2010,²⁰ and on December 15, 2010, he performed a discography on her lumbar spine from L3-S1.²¹ In a follow-up visit on March 22, 2011, Dr. Danaher wrote:

In reviewing Shawna's entire medical record kept her[e] at the Advanced Pain and Spine Institute, it would appear that her pain first began when she sustained a fall in February of 2009. With conservative care, she had some improvement in her low back pain, but it flared later in the year and has continued to the present time. I am not aware through review of the record or in taking the patient's history today of any other injury to Shawna's low back. I presume that her annular tears are likely the result of her fall in February of 2009.²²

¶ 15 Troy Warling, FNP, is a registered nurse licensed in Montana who has worked as a nurse practitioner since June 2005, primarily in the field of pain management.²³ He saw Hardie on three occasions in January and February 2010 at the Advanced Pain Centers of Montana, upon referral of her surgeon, Elizabeth Suh, M.D. Warling's primary objective was to get better control of Hardie's back and leg pain prior to her laparoscopic cholecystectomy (gallbladder) surgery.²⁴ Warling last saw Hardie in December 2011.²⁵ Hardie did not mention her fall at work in February 2009 to Warling,²⁶ and he could not state within a reasonable degree of medical probability whether her fall was the cause of her back condition.²⁷ However, he also stated that a person would be aware of an annular tear immediately after it occurred,²⁸ and that the MRI findings of December 22, 2009, could be the result of a slip and fall on ice such as Hardie experienced in February 2009.²⁹

²⁰ Ex. 12 at 1-2.

²¹ *Id.* at 12-14.

²² *Id.* at 16.

²³ Warling Dep. 6:6-15.

²⁴ *Id.* at 9:17-24; Ex. 13.

²⁵ Warling Dep. 39:23-25.

²⁶ Warling Dep. 12:23 -14:17.

²⁷ *Id.* at 28:4-10.

²⁸ Warling Dep. 29:10-14.

²⁹ Warling Dep. 34:5-18; 35:20-24.

¶ 16 After learning the results on her MRI of December 2009, Hardie contacted State Fund regarding treatment for her low back.³⁰ State Fund denied liability following receipt of certain medical information from Hardie's treating physicians.³¹

¶ 17 By May 2010, Hardie was treating with a number of physicians for her low-back pain, and began relating her fall at work as the cause of her pain.³² By June 2010, she was in severe pain with tingling and numbness in her left foot and impingement of the left side sciatic nerve.³³ Hardie continues to receive treatment for her low-back pain on a conservative basis.³⁴

CONCLUSIONS OF LAW

¶ 18 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 Hardie's industrial accident.³⁵

ISSUE ONE: Whether Petitioner suffered an injury to her low back due to her slip and fall during the course and scope of her employment with Opportunity Resources, Inc., of February 26, 2009.

¶ 19 Hardie bears the burden of proving by a preponderance of the evidence that she is entitled to the benefits she seeks.³⁶ "Causation is an essential element to an entitlement to benefits and the claimant has the burden of proving a causal connection by a preponderance of the evidence."³⁷ I conclude that Hardie has met her burden.

¶ 20 Under § 39-71-407(2)(a) through (i), MCA, an insurer is liable for an injury if the injury is established by objective medical findings and if the injured worker establishes that it is more probable than not that the claimed injury occurred. Section 39-71-119, MCA, defines "injury," in pertinent part, as internal or external physical harm to the body that is established by objective medical findings and is caused by an accident.

³⁰ Trial Test.

³¹ Ex. 2 at 12.

³² Ex. 11 at 1; Ex. 7 at 13.

³³ Ex. 7 at 15.

³⁴ Trial Test.

³⁵ *Buckman v. Montana Deaconess Hosp.*, 224 Mont. 318, 321, 730 P.2d 380, 382 (1986).

³⁶ *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).

³⁷ *Grenz v. Fire and Cas. of Conn.*, 250 Mont. 373, 380, 820 P. 2d 742, 746 (1991), citing *Brown v. Ament*, 231 Mont. 158, 163, 752 P. 2d 171, 174 (1988).

¶ 21 Section 39-71-116(19), MCA, defines objective medical findings as “medical evidence, including range of motion . . . or other diagnostic evidence, substantiated by clinical findings.”

¶ 22 The evidence presented in this case is straightforward. Hardie slipped and fell in her employer’s parking lot with coworker Pulling witnessing her on the ground after her fall on February 26, 2009. The mechanics of the fall Hardie described were such that her feet went out from beneath her and she fell directly onto her buttocks. Pulling’s testimony supported Hardie’s description of her fall. Hardie immediately felt pain in her low back, had a bruise, and limped for days afterwards. She promptly reported the incident to her employer, and although her back pain dissipated over the ensuing months, she complained of back pain related to her fall to Pulling and to her massage therapist, Romanelli.

¶ 23 Although failing to relate her sudden recurrence of low-back pain to her fall at work some five months post-injury, Dr. Gray explained this may have been due to the myriad of other health issues confronting Hardie in 2009 and 2010, including thyroid surgery in July 2009 and gallbladder surgery in early 2010.

¶ 24 Hardie testified that there was no intervening event that could account for her back condition other than the fall at work on February 26, 2009. Dr. Gray, Hardie’s treating physician, attributes her low-back condition, including a torn annulus and bulging disk, to her fall at work in February 2009, on a more probable than not basis. Dr. Danaher “presumed” that Hardie’s annular tear in her lumbar spine was the likely result of her fall in February 2009. Although Warling did not offer a causation opinion, he testified that a fall such as Hardie described could be the cause of her positive findings of an annular tear and herniated disk revealed on her December 2009 MRI.

¶ 25 For all the foregoing reasons, I conclude that Hardie has proven by a preponderance of the evidence that her low-back injury with objective medical findings of an annular tear and bulging disk in her lumbar spine are the result of her slip and fall accident of February 26, 2009, at work in the course and scope of her employment.

ISSUE TWO: If the Court finds that Petitioner suffered an injury on February 26, 2009, whether Petitioner’s low-back condition was either caused or aggravated by the February 26, 2009, industrial injury, entitling her to medical and indemnity benefits for her low-back condition.

¶ 26 Having resolved Issue One in the affirmative, I conclude Hardie is entitled to medical and indemnity benefits related to her low-back condition.

JUDGMENT

¶ 27 Petitioner suffered an injury to her low back as a result of her slip and fall accident on February 26, 2009. She is entitled to medical and indemnity benefits resulting from her injury and low-back condition.

¶ 28 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.

DATED in Helena, Montana, this 20th day of November, 2012.

(SEAL)

/s/ JAMES JEREMIAH SHEA
JUDGE

c: Christopher D. Helmer/Robert K. Ogg
Thomas E. Martello
Submitted: March 27, 2012