

IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

2006 MTWCC 39

WCC No. 2006-1722

DOUGLAS B. HARTER

Petitioner

vs.

LIBERTY NORTHWEST INSURANCE CORPORATION

Respondent/Insurer.

*Appealed to Supreme Court December 18, 2006
Appeal Dismissed May 23, 2007*

FINDINGS OF FACT, CONCLUSIONS OF LAW AND JUDGMENT

Summary: Petitioner petitioned to reopen his settlement with Respondent. Petitioner alleged that Respondent committed fraud in settling Petitioner's claim and asked the Court to award past and future workers' compensation benefits.

Held: Petitioner is not entitled to reopen his settlement. Respondent did not commit fraud when it settled Petitioner's claim. No mutual mistake of fact exists. Petitioner is not entitled to any further workers' compensation benefits.

Topics:

Settlements: Reopening: Mutuality of Mistake. Even if the Court accepted Petitioner's testimony that his physician informed him that his knee locking would cease at some point, Petitioner could not prevail. Respondent was neither aware of Petitioner's locking knee on the date of settlement, nor knew of any statement by Petitioner's physician that his knee would cease to lock in the future. Therefore, no *mutual* mistake of fact exists to justify setting aside the settlement.

¶ 1 The trial in this matter was held on November 13, 2006, in Plains, Montana. Petitioner Douglas B. Harter was present and represented himself. Respondent was represented by Larry W. Jones.

¶ 2 Exhibits: Exhibits 1 through 23 were admitted without objection.

¶ 3 Witnesses and Depositions: The deposition of Dr. Maurice Brown was taken and submitted to the Court. Petitioner and Joanne Hanson were sworn and testified at trial.

¶ 4 Issues Presented: The Court restates the following contested issues of law found in the Final Pretrial Order:

¶ 4a Whether Petitioner is entitled to re-open his settlement with Respondent.

¶ 4b Whether Respondent committed fraud in settling Petitioner's claim.

¶ 4c Whether Respondent is liable for claimed future wage loss or medical benefits under the Workers' Compensation Act.

¶ 4d Whether Respondent is liable to Petitioner for claimed retroactive wage loss or medical benefits under the Workers' Compensation Act.

¶ 4e Whether Respondent is liable to Petitioner in the future.¹

¶ 5 At the close of the bench ruling, the Court announced it would subsequently issue written findings of fact and conclusions of law. The following findings and conclusions are in accordance with that ruling, which came on December 6, 2006.

FINDINGS OF FACT

¶ 6 On September 13, 2004, Petitioner suffered an injury in the course and scope of his employment with Western Building Center.²

¶ 7 At the time of Petitioner's injury, Western Building Center was insured by Respondent.³

¹Final Pretrial Order at 3.

² *Id.* at 2.

³ *Id.*

¶ 8 Respondent accepted liability for Petitioner's claim, and Petitioner entered into a settlement with Respondent that was approved by the Employment Relations Division on February 6, 2006.⁴

¶ 9 Petitioner was represented by attorney Garry D. Seaman when Petitioner entered into the settlement with Respondent.⁵

¶ 10 In the present case, Petitioner acted pro sé.⁶

¶ 11 Petitioner testified that he had knee locking before the settlement agreement and that he was told by Dr. Brown that the locking would go away.⁷

¶ 12 Petitioner testified that he had been having knee locking from July 2005 through the date of settlement and continues to have knee locking today.⁸

¶ 13 However, on December 28, 2005, Dr. Brown noted the Petitioner "denies instability." Furthermore, Dr. Brown wrote, "No catching, clicking or locking was noted during repeated knee range of motion with varus/valgus stress and internal/external rotation."⁹

¶ 14 Petitioner alleged in the Final Pretrial Order and testified at trial that he believed Respondent committed fraud when it settled the case with Petitioner. At trial, Petitioner testified that he believed Respondent and Dr. Brown were working hand-in-hand to release Petitioner from workers' compensation benefits and declare Petitioner at maximum medical improvement.¹⁰

¶ 15 The Court finds Petitioner's testimony, generally, to be credible in that the Court does not find that Petitioner was attempting to mislead the Court or that his testimony was fabricated. However, with respect to the alleged statements which Petitioner testified were made by Dr. Brown concerning Petitioner's knee locking and the prognosis that this condition would improve, these statements simply are not supported in any way by any

⁴ *Id.*

⁵ *Id.*

⁶ *Id.*; Trial Test.

⁷ Trial Test.

⁸ *Id.*

⁹ Ex. 18 at 1.

¹⁰ Final Pretrial Order at 3; Trial Test.

objective evidence. Therefore, although Petitioner's testimony, standing alone, may suffice to establish this fact, the Court finds when viewing the evidence in its entirety, that it is most probable that Petitioner either misunderstood or misheard Dr. Brown's statements. With respect to Petitioner's belief that Respondent engaged in fraudulent activity and that Respondent and Dr. Brown were somehow working "hand-in-hand" to end Petitioner's workers' compensation benefits and declare Petitioner at maximum medical improvement, the Court does not doubt the sincerity of Petitioner's belief. Again, however, the Court finds no empirical evidence to support this claim and, accordingly, finds that Respondent did not engage in fraud in the settling of Petitioner's claim.

CONCLUSIONS OF LAW

¶ 16 This case is governed by the 2003 version of the Montana Workers' Compensation Act since that was the law in effect at the time of Petitioner's industrial accident.¹¹

¶ 17 Petitioner bears the burden of proving by a preponderance of the evidence that he is entitled to the benefits he seeks.¹²

¶ 18 Settlement agreements are contracts and must be construed and enforced as such.¹³

¶ 19 A settlement agreement may be reopened where the parties were operating under a mutual mistake of fact. However, the mistake must be a common misconception about a vital fact upon which their bargain was based.¹⁴

¶ 20 In order to prevail in the present case, Petitioner bears the burden of proving that a mutual mistake of fact existed among the parties at the time of settling Petitioner's claim¹⁵ or that Respondent committed fraud in the settling of Petitioner's claim. The Court finds no evidence to support either theory. Although Petitioner testified that his knee was locking prior to the settlement agreement and that he was informed by Dr. Brown that the locking

¹¹ *Buckman v. Montana Deaconess Hosp.*, 224 Mont. 318, 321, 730 P.2d 380, 382 (1986).

¹² *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).

¹³ *South v. Transportation Ins. Co.*, 275 Mont. 397, 401, 913 P.2d 233, 235 (1996).

¹⁴ *Harrison v. Liberty Northwest Ins. Corp. and Stillwater Mining Co.*, 2006 MTWCC 22, ¶ 45.

¹⁵ Petitioner did not specifically allege mutual mistake of fact as a basis for reopening his settlement with Respondent. However, Petitioner did testify that he settled his claim under the mistaken belief that his knee locking would improve. In light of this testimony, and because Petitioner was pro se, the Court believes it appropriate to address the merits of whether a mutual mistake of fact occurred in the settling of Petitioner's claim.

would cease at some point in time, this testimony is contradicted by Dr. Brown's notes as referenced above at ¶ 13. Moreover, even if the Court were to accept Petitioner's testimony in contravention of the documentary evidence, Petitioner still could not prevail. The evidence in this case demonstrates that Respondent was neither aware of Petitioner's locking knee on the date of settlement, nor knew of any statement by Dr. Brown to Petitioner that the knee would cease to lock in the future. Therefore, there can be no **mutual** mistake of fact to justify setting aside the settlement.

¶ 21 With respect to Petitioner's allegations of fraud on the part of the Respondent, the Court has found no evidence to support such a finding.

¶ 22 Petitioner has failed to meet his burden of proof in this case. He is not entitled to reopening of his settlement and he is not entitled to further benefits.

JUDGMENT

¶ 23 Judgment is entered in favor of Respondent.

¶ 24 This JUDGMENT is certified as final for purposes of appeal.

¶ 25 Any party to this dispute may have twenty days in which to request reconsideration from these FINDINGS OF FACT, CONCLUSIONS OF LAW AND JUDGMENT.

DATED in Helena, Montana, this 11th day of December, 2006.

(SEAL)

/s/ James Jeremiah Shea
JUDGE

c: Douglas B. Harter
Larry W. Jones
Submitted: November 22, 2006