

IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

2007 MTWCC 40

WCC No. 2005-1251

GERALD HEFFNER

Petitioner

vs.

MONTANA STATE FUND

Respondent/Insurer.

ORDER DENYING PETITIONER'S MOTION FOR RECONSIDERATION

Summary: Petitioner moves for reconsideration of this Court's decision that Petitioner failed to meet his burden of proof that he was entitled to benefits.

Held: Petitioner's motion is denied. Petitioner contends the Court failed to properly consider the 1979 workers' compensation statutes regarding his burden of proof. Specifically, Petitioner argues that he established it was medically possible that his injury was causally related to his industrial accident and this constitutes acceptable proof to meet his burden. However, Petitioner failed to meet his burden of proof that his injury was more probably than not caused by his industrial accident. Petitioner further argues the Court erred in excluding certain exhibits. Having revisited the exhibits in question and the rulings on these evidentiary matters, I see no reason to disturb my earlier rulings.

Topics:

Proof: Burden of Proof: Generally. While it is correct that a medical possibility may, along with other evidence, carry Petitioner's burden of proof under the pre-1995 Workers' Compensation Act, it is still the petitioner's burden to prove, **on a more-probable-than-not basis**, that his injury is causally related to his industrial accident.

Proof: Burden of Proof: Generally When viewing the evidence in its totality, the Court was not persuaded that it was more probable than not that Petitioner's injury was causally related to his 1980 industrial accident. In

reviewing the WCC's decisions, the Montana Supreme Court has previously held that when the WCC is not persuaded by the totality of the evidence produced that a causal link exists between an industrial injury and a medical condition for which benefits are sought, the record is sufficient to support the Court's findings. *Giles v. Bozeman Public Schools*, 257 Mont. 289, 294, 849 P.2d 180, 184 (1993).

¶ 1 Petitioner Gerald Heffner moves the Court to reconsider its Findings of Fact, Conclusions of Law and Judgment entered July 13, 2007 (Findings). Boiled down, Petitioner contends the Court erred in its decision in two respects:

(1) Petitioner contends the Court failed to properly apply the 1979 statutes in effect at the time of Petitioner's injury. Specifically, Petitioner argues that he established it was medically possible that his disk herniation was causally related to his 1980 industrial accident and that this was sufficient to meet his burden of proof.

(2) Petitioner contends the Court improperly excluded exhibits.

Issue One: Did the Court fail to properly apply the 1979 statutes?

¶ 2 The gist of Petitioner's argument is that the Court should have found in his favor because, he contends, he established it was medically possible that his disk herniation was causally related to his 1980 industrial accident. Petitioner argues, "A **possibility** is all it takes to get an affirmative decision and ¶41 is in direct conflict with the statutes that were in affect [sic] the date of the injury."¹ Paragraph ¶ 41 of this Court's Findings of Fact, Conclusions of Law and Judgment, reads as follows:

In light of the serious nature of Petitioner's 1980 accident, I believe there is a possibility that Petitioner's L4-L5 disk herniation may somehow be related to his industrial injury. However, when viewing the evidence in its totality, the mere possibility that the herniation is related to the accident is not sufficient to satisfy Petitioner's burden of proof in this case. The first concrete piece of medical evidence indicating a possible herniation at the L4-L5 disk level is Dr. Noyes' January 12, 1988, report, describing a bulging annulus associated with some asymmetrical protrusion or fragment to the right consistent with herniation. Dr. Noyes' observation and the subsequent reports from Dr. Sterling were made nearly eight years after Petitioner's accident. The large fragment repaired by Dr. Nabwangu was not detected

¹ Petitioner's Request For Reconsideration at 2. (Emphasis in original.)

until some twenty-four years after Petitioner's accident. Viewed in its totality, the evidence relating the L4-L5 herniation/fragment to the 1980 industrial accident is too scant to meet Petitioner's burden. I therefore conclude that Petitioner has not proven that his L4-L5 disk herniation and extrusion are the result of his 1980 industrial accident.

¶ 3 As reflected above, I noted that there was a possibility that Petitioner's injury may "somehow be related to his industrial injury." While Petitioner is correct that a medical possibility may, along with other evidence, carry Petitioner's burden of proof under the pre-1995 Workers' Compensation Act,² Petitioner fails to recognize that it is still his burden to prove, **on a more-probable-than-not basis**, that his injury is causally related to his industrial accident. Petitioner's contention that "[a] possibility is all it takes to get an affirmative decision," is an incorrect statement of the law under the Workers' Compensation Act.

¶ 4 Viewing the evidence in its totality, I was not persuaded that it was more probable than not that Petitioner's injury was causally related to his 1980 industrial accident. In reviewing this Court's decisions, the Montana Supreme Court has previously held that when the Workers' Compensation Court is not persuaded by the totality of the evidence produced that a causal link exists between an industrial injury and a medical condition for which benefits are sought, the record is sufficient to support the Court's findings.³ Accordingly, Petitioner's motion for reconsideration of this issue is denied.

Issue Two: Did the Court Improperly Exclude Exhibits?

¶ 5 Petitioner also contends this Court committed error in ¶ 2 of its decision in ruling that certain exhibits were excluded either because they were hearsay, untimely filed, or, in the case of Exhibit 16, excluded pursuant to this Court's ruling of June 24, 2005.⁴ Having reviewed the exhibits in question and my previous rulings on these exhibits, I find no reason to disturb my original rulings on these issues.

ORDER

¶ 6 For the reasons set forth above, Petitioner's motion for reconsideration is **DENIED**.

² *Foster v. Montana Schools Group Ins. Auth.*, 2007 MTWCC 18, ¶ 35.

³ *Giles v. Bozeman Public Schools*, 257 Mont. 289, 294, 849 P.2d 180, 184 (1993).

⁴ Minute Entry No. 3620, Docket Item No. 35.

DATED in Helena, Montana, this 10th day of September, 2007.

(SEAL)

/s/ JAMES JEREMIAH SHEA
JUDGE

c: Gerald Heffner
Bryce R. Floch
Submitted: August 10, 2007