IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

2005 MTWCC 59

WCC No. 2004-1064

ERIC HOWE

Petitioner

vs.

UNINSURED EMPLOYERS' FUND, MIKE WILMER, and STEVE HOWE

Respondents

IN RE: ROGER KURTZ

Respondent/Claimant.

ORDER DENYING MOTION TO DISMISS

Summary: Respondent, Uninsured Employers' Fund, sought to dismiss the Petition for Appeal for failure to file a timely appeal to mediation. Respondent argued that § 39-71-520(1), MCA (2003), required Petitioner to file for mediation with the mediation unit within ninety days if Petitioner disputed Respondent's determination that he was the employer of the claimant. Although Petitioner did not complete the specific form used by the UEF to appeal a determination, he did send a letter addressed to "Labor & Industry" on January 20, 2004, which expressed his disagreement with Respondent's determination and stated unambiguously that he was not the Claimant's employer. The letter was received by Respondent on January 23, 2004. However, Respondent did not forward the letter to the mediation unit until after the ninety-day period to appeal had expired.

Held: The motion to dismiss is denied. Section 39-71-520(1), MCA (2003), states that a dispute concerning Uninsured Employers' Fund benefits must be appealed to mediation within ninety days. The statute does not specifically address in any way, however, the method by which an appeal is perfected. Petitioner, acting *pro sé*, notified Respondent by letter that he disputed its determination. This letter was addressed to the Department of Labor and Industry and was received by Respondent within the ninety-day period. Although Petitioner did not use the form provided by Respondent, his letter dated January 20, 2004, put Respondent on notice of Petitioner's disagreement and substantively

complied with the requirement of § 39-71-520(1), MCA (2003), to appeal to mediation within ninety days.

Topics:

Uninsured Employers' Fund: Appeal of a UEF Benefit Determination. Section 39-71-520(1), MCA (2003), requires that following a benefits determination by the Uninsured Employers' Fund, an aggrieved party must appeal to mediation within ninety days, otherwise the determination is final. A petitioner may effectively meet the requirements of § 39-71-520(1), MCA (2003), if a petitioner notifies the Uninsured Employers' Fund in writing of his or her disagreement with its decision.

Limitations Periods: UEF Determinations. A *pro sé* petitioner's letter clearly stating his or her disagreement with the Uninsured Employers' Fund determination effectively puts the Uninsured Employers' Fund on notice for purposes of filing a timely appeal to mediation.

¶1 The Uninsured Employers' Fund (UEF) has moved to dismiss the petition of Eric Howe (Petitioner) pursuant to § 39-71-520(1), MCA (2003),[1] which requires a dispute concerning Uninsured Employers' Fund benefits to be appealed to mediation within ninety days from the date of the determination at issue. Specifically, the UEF contends that Petitioner failed to file a petition for mediation with the mediation unit within the ninety-day time period. For the reasons set forth below, the UEF's motion is denied.

Standard of Review

¶2 A motion to dismiss has the effect of admitting all well-pleaded allegations in the petition. In considering the motion, the petition is construed in the light most favorable to the Petitioner and all allegations of fact contained therein are taken as true. Dismissal of the petition is proper only if the Court can conclude that Petitioner would not be entitled to relief based on any set of facts.[2]

Factual Background

¶3 On October 28, 2003, the UEF determined that Petitioner was the employer of Roger Kurtz (Kurtz). The UEF sent a letter to Petitioner on October 28, 2003, informing him of its decision. The letter stated, "[u]nder section 39-71-520 of the Workers' Compensation Act if you do not appeal this determination within 90 days from the date of

[1] Unless otherwise indicated, all statutory citations in this Order are to the 2003 statutes.

[2] *Plouffe v. State,* 2003 MT 62, ¶ 8, 314 Mont. 413, 66 P.3d 316.

this letter this determination is considered final." Petitioner called the UEF on November 21, 2003, and informed a UEF representative that he wished to appeal the UEF's determination. On January 15, 2004, Petitioner called Bernadette Rice, a UEF claims adjuster, and told Ms. Rice that he disputed the UEF's determination that he was Kurtz's employer. Ms. Rice verified that Petitioner possessed a petition for mediation form and also verified that Petitioner understood he needed to file the form with the mediation unit. On January 23, 2004, Ms. Rice received a letter from Petitioner disputing the determination that he was Roger Kurtz's employer. Though the letter set forth in some detail Petitioner's position, it did not include the Petition for Workers' Compensation Mediation Conference form. The UEF then forwarded the letter to the mediation unit on February 13, 2004, eighteen days after the expiration of the appeal deadline.

Discussion

¶4 The UEF argues that Petitioner failed to appeal its determination that he was Kurtz's employer to mediation within ninety days as required by law. The statute at issue in this case reads, in pertinent part:

> A dispute concerning uninsured employers' fund benefits must be appealed to mediation within 90 days from the date of the determination or the date that the determination is considered final.[3]

¶5 The Montana Supreme Court recently discussed the importance of such time limits:

> This Court has long held that the time limits for filing an appeal are mandatory and jurisdictional. *Joseph Eve & Co. v. Allen* (1997), 284 Mont. 511, 514, 945 P.2d 897, 899. Therefore, an appellant has a duty to perfect its appeal in the manner provided by statute. *Joseph,* 284 Mont. at 514, 945 P.2d at 899.[4]

¶6 Section 39-71-520(1), MCA, does not state how a UEF determination is to be "appealed to mediation." Although the UEF argues that "appealed to mediation" means specifically appealed to the mediation unit of the Montana Department of Labor and Industry, this language is not found within the statute itself and this Court declines to simply read such language into the statute.

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[3] § 39-71-520(1), MCA.

[4] *Colmore v. Uninsured Employers' Fund*, 2005 MT 239, ¶ 39, 328 Mont. 441, 121 P.3d 1007.

¶7 "The primary purpose of statutes of limitations is the suppression of stale claims which, with the attendant passage of time, inhibits a party's ability to mount an effective defense . . . ."[5] Moreover, the fundamental policy behind a statute of limitations "is, at its roots, one of basic fairness."[6] The Court is mindful of these general principals when assessing whether Petitioner in the present case met the requirements of this statute of limitations.

¶8 On January 23, 2004, the UEF received a letter from Petitioner disputing the UEF's determination that he was Kurtz's employer. This letter was addressed "TO: LABOR & INDUSTRY 1/20/04." In the letter, Petitioner wrote, in pertinent part:

> Although I do not dispute the fact that Mr. Kurtz was injured on a job that I was working on at the time of his accident, I would however, like to argue the fact that I did not hire him, I did not pay him, and I certainly did not ever agree to any wages on his behalf.

Petitioner went on to state in this letter: "It is not my intention to completely deny all responsibility for the accident, but I do not think that I should be named Mr. Kurtz' employer . . . ."

¶9 In the view of this Court, a letter containing the above language constitutes an appeal of the UEF's determination that Petitioner was Kurtz's employer. To hold otherwise would be to exalt form over substance and to countervail the "basic fairness" that a statute of limitations is designed to foster. Moreover, there can be no serious contention that the UEF is somehow inhibited from mounting an effective defense in the present case since the UEF itself received Petitioner's letter within the ninety-day period although, for whatever reason, did not forward it to the mediation unit for another eighteen days.

¶10 Petitioner's letter to the Department of Labor and Industry qualifies as his appeal to mediation within the meaning of § 39-71-520, MCA. Petitioner addressed his letter generally to the Department of Labor and Industry. The mediation unit is one unit within this department. If Petitioner's letter had been initially routed to the mediation unit instead of the UEF, there would be no doubt that Petitioner had "appealed to mediation" within the prescribed time period. In any event, the fact that the letter was routed instead to the UEF within the ninety-day period certainly put UEF on notice that Petitioner was disputing the UEF's determination that he was Kurtz's employer. The Court recognizes, as the UEF contends, that the Department of Labor and Industry is not a "monolith." Nevertheless, Petitioner's letter was directed to the Department of Labor and Industry, of which the

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[5] *Gomez v. State,* 1999 MT 67, ¶ 25, 293 Mont. 531, 975 P.2d 1258.

[6] *Id.*

mediation unit is a part. It is not as if Petitioner directed his appeal to the Department of Fish, Wildlife & Parks. Petitioner's letter, therefore, satisfies the appeal requirements of § 39-71-520, MCA.

¶11 One of the fundamental tenets of the Montana Worker's Compensation system is that "the system must be designed to minimize reliance upon lawyers and the courts to obtain benefits and interpret liabilities."[7] In the present case, Petitioner, acting *pro sé*, made a good faith effort to timely appeal the UEF's determination. There is no indication that Petitioner proceeded in such a fashion as to abuse the judicial process. Nor does this Court believe that the UEF's interests were prejudiced.

ORDER

¶12 The UEF's motion to dismiss is **denied.**

¶13 Any party to this dispute may have twenty days in which to request a rehearing from this Order Denying Motion to Dismiss.

DATED in Helena, Montana, this 23rd day of December, 2005.

(SEAL)

/s/ James Jeremiah Shea
JUDGE

c: Mr. Scott A. Restum
Mr. Brian P. Fay
Mr. Joseph R. Nevin
Mr. Richard J. Pyfer
Mr. Steve Howe
Submitted: November 23, 2005

[7] § 39-71-105(3), MCA.