

IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

2011 MTWCC 22

WCC No. 2010-2545

TONY JOHNSON

Petitioner

vs.

MONTANA STATE FUND

Respondent/Insurer.

ORDER GRANTING RESPONDENT'S MOTION FOR SUMMARY JUDGMENT

**APPEALED TO MONTANA SUPREME COURT - 09/20/11
APPEAL DISMISSED BY STIPULATION – 01/25/12**

Summary: Respondent moved for summary judgment, arguing that Petitioner's petition was untimely pursuant to § 39-71-2905(2), MCA. Petitioner opposed Respondent's motion, arguing that Respondent is equitably estopped from claiming it denied Petitioner's claim and that Respondent could not have effectively denied Petitioner's claim prior to investigation. Alternatively, Petitioner argues that Respondent's subsequent denial letter "reset" the statute of limitations.

Held: Under § 39-71-2905(2), MCA, a claimant must file his petition for hearing within two years after benefits are denied. Petitioner did not do so, and Respondent's motion for summary judgment is granted.

Topics:

Limitations Periods: Claim Filing: Waiver of Time / Estoppel. Petitioner failed to prove the first element of equitable estoppel where he claimed that Respondent misrepresented a material fact when it denied his claim but subsequently investigated it. Respondent sent Petitioner a denial letter in which it clearly stated that while it was denying his claim due to a lack of medical information, it intended to continue its investigation. Therefore, no concealment or misrepresentation occurred.

Limitations Periods: Tolling. Although Petitioner claimed the statute of limitations is tolled because he believes Respondent's denial of his claim was unreasonable, the Court noted that, reasonable or not, Respondent indisputably denied Petitioner's claim on a date certain and neither statutes nor case law provides a distinction between types of denials such that the limitations period would be tolled.

Constitutions, Statutes, Regulations, and Rules: Montana Code Annotated: 39-71-2905. Even though Respondent indicated that it would continue to investigate Petitioner's claim, it denied his claim and consistently maintained its denial from a certain date forward. This denial firmly established the existence of a "dispute over liability" and triggered the two-year statute of limitations found in § 39-71-2905(2), MCA.

Limitations Periods: Petition Filing. Even though Respondent indicated that it would continue to investigate Petitioner's claim, it denied his claim and consistently maintained its denial from a certain date forward. This denial firmly established the existence of a "dispute over liability" and triggered the two-year statute of limitations found in § 39-71-2905(2), MCA.

¶ 1 Respondent Montana State Fund (State Fund) moves this Court for summary judgment in its favor.¹ Petitioner Tony Johnson opposes State Fund's motion.²

¶ 2 State Fund contends that Johnson's claim for benefits is untimely because Johnson failed to file a petition in this Court within two years of State Fund's denial of his occupational disease claim, as required by § 39-71-2905(2), MCA.³ Johnson contends that State Fund is equitably estopped from claiming that it denied his claim on the date of State Fund's initial denial because State Fund failed to investigate the claim prior to denying it. Johnson argues that State Fund's failure to investigate his claim prior to issuing a denial letter nullified the denial. Alternatively, Johnson argues that State Fund's post-denial investigation "reset" the statute of limitations.⁴

¹ Respondent's Brief in Support of Motion for Summary Judgment (Opening Brief), Docket Item No. 8.

² Petitioner's Response to Respondent's Motion for Summary Judgment (Response Brief), Docket Item No. 11.

³ Opening Brief at 3.

⁴ Response Brief.

Undisputed Facts

¶ 3 On April 13, 2007, Johnson filed a First Report of Injury and Occupational Disease with the Montana Department of Labor, Employment Relations Division. State Fund received the document on April 17, 2007.⁵

¶ 4 On May 23, 2007, State Fund denied Johnson's claim for benefits via letter sent to Johnson's counsel of record.⁶ The letter stated in pertinent part:

We currently do not have any information related to the claim and are unable to accept liability. Specifically, we must deny the claim for asbestosis/lung/respiratory problems, as no medical notes or medical information has been received. . . .

We would like to proceed as soon as possible with further investigation of this claim I am requesting any medical information or notes related to the treatment of the claimed condition be forwarded.⁷

¶ 5 Between June 6 and September 27, 2007, Johnson provided State Fund with medical records, a medical release, his work history, and a recorded statement. State Fund's claims adjuster also requested medical records directly from providers during this time.⁸

¶ 6 On August 1, 2008, State Fund sent a letter to Johnson's counsel indicating that the claim remained denied.⁹ That letter stated, in pertinent part, "With no indication that Mr. Johnson suffered a work-related asbestos exposure, his claim remains denied."¹⁰

¶ 7 On January 30, 2009, Johnson's counsel filed a petition for mediation. On March 2, 2009, the parties mediated the claim.¹¹

¶ 8 On July 8, 2010, Johnson filed his Petition for Hearing in this Court.¹²

⁵ Opening Brief at 2; endorsed in Response Brief at 1.

⁶ Opening Brief at 2; endorsed in Response Brief at 1.

⁷ Affidavit of April Pulfrey, Docket No. 9, Ex. C; uncontested by Johnson.

⁸ Response Brief at 2; uncontested by State Fund.

⁹ Opening Brief at 2; endorsed in Response Brief at 1.

¹⁰ Affidavit of April Pulfrey, Ex. D; uncontested by Johnson.

¹¹ Opening Brief at 2; endorsed in Response Brief at 1.

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.¹³ The material facts necessary for disposition of this case are undisputed. Accordingly, this case is appropriate for summary disposition.

¶ 10 State Fund contends that Johnson's Petition for Hearing is untimely because he filed it more than two years after State Fund denied his claim. State Fund contends that it unequivocally denied Johnson's claim on May 23, 2007, but Johnson did not file his petition until July 8, 2010 – more than two years after the denial.¹⁴ State Fund relies upon § 39-71-2905(2), MCA, which states:

A petition for a hearing before the workers' compensation judge must be filed within 2 years after benefits are denied.

¶ 11 Because Johnson filed his petition more than two years after State Fund denied his claim for benefits, State Fund argues that it is entitled to summary judgment in its favor.¹⁵

¶ 12 Johnson presents three arguments in opposition to State Fund's motion: (1) that State Fund is equitably estopped from claiming it denied Johnson's claim on May 23, 2007; (2) that State Fund could not have denied his claim on May 23, 2007, because it had not investigated his claim by that date; and (3) alternatively, that if the May 23, 2007, letter is a denial, that State Fund "reset" the statute of limitations by investigating his claim after it issued its denial.¹⁶

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¹² Opening Brief at 2; endorsed in Response Brief at 1.

¹³ ARM 24.5.329; *Farmers Union Mut. Ins. Co. v. Horton*, 2003 MT 79, ¶ 10, 315 Mont. 43, 67 P.3d 285.

¹⁴ Although the statute of limitations is tolled from the date of the request for mediation through the deadline for both parties to respond to mediation (see *Fleming v. Int'l Paper Co.*, 2005 MTWCC 34, ¶ 24), neither party has set forth these dates. Given the length of time at issue, it does not appear that the tolling of the statute of limitations during this mediation period would place the filing of the Petition for Hearing within two years of the May 23, 2007, letter at issue.

¹⁵ Opening Brief.

¹⁶ Response Brief.

Issue One: Whether State Fund is equitably estopped from claiming that it denied Johnson’s claim on May 23, 2007.

¶ 13 Johnson argues that State Fund is equitably estopped from asserting that it denied his claim on May 23, 2007.

¶ 14 The doctrine of equitable estoppel is designed to prevent one party from unconscionably taking advantage of a wrong while asserting a strict legal right, and will be invoked where “justice, honesty, and fair dealing” are promoted.¹⁷ Six elements are necessary to establish an equitable estoppel claim: (1) the existence of conduct, acts, language, or silence amounting to a misrepresentation or concealment of material facts; (2) the party estopped must have knowledge of these facts at the time of the representation or concealment, or the circumstances must be such that knowledge is necessarily imputed to that party; (3) the truth concerning these facts must be unknown to the other party at the time it was acted upon; (4) the conduct must be done with the intention or expectation that it will be acted upon by the other party, or have occurred under circumstances showing it to be both natural and probable that it will be acted upon; (5) the conduct must be relied upon by the other party and lead that party to act; and (6) the other party must in fact act upon the conduct in such a manner as to change its position for the worse. A party must establish all six elements before the doctrine can be invoked.¹⁸

¶ 15 As to the first element, Johnson asserts that State Fund misrepresented a material fact because its denial of the claim is inconsistent with its subsequent actions investigating the claim. Johnson’s argument does not square with the undisputed facts of the case. On May 23, 2007, State Fund sent Johnson a letter in which State Fund informed Johnson that it was denying his claim due to a lack of medical information, and further informed Johnson that it intended to investigate his claim. State Fund then proceeded to do exactly what it asserted in the May 23, 2007, letter. There was no concealment or misrepresentation. Although State Fund requested additional medical records and expressed a desire to further investigate Johnson’s claim, it unequivocally denied the claim. Having failed to establish the first element of equitable estoppel, I need not consider the remaining elements. Johnson has not proven that the elements of equitable estoppel are met. State Fund is not equitably estopped from claiming that it denied Johnson’s claim via the May 23, 2007, letter in which it asserted it was denying Johnson’s claim.

¹⁷ *Selley v. Liberty Northwest Ins. Corp.*, 2000 MT 76, ¶ 11, 299 Mont. 127, 998 P.2d 156. (Citation omitted.)

¹⁸ *Selley*, ¶ 10. (Citations omitted.)

Issue Two: Whether State Fund could not have denied Johnson’s claim on May 23, 2007, because it had not yet investigated Johnson’s claim.

¶ 16 Johnson argues that State Fund could not have denied his claim on May 23, 2007, because State Fund admitted that it had not yet investigated his claim for benefits. Johnson, citing *Marcott v. Louisiana Pacific Corp.*, argues that this Court has repeatedly held that insurers have an affirmative duty to investigate claims, and that absent investigation, the denial of a claim is unreasonable.¹⁹ Johnson argues, “If an insurer ‘denies’ a claim without completing the required investigation, it must be concluded that the ‘denial’ is invalid or not final”²⁰

¶ 17 Assuming *arguendo* that State Fund unreasonably denied Johnson’s claim by failing to properly investigate it before denial, Johnson’s remedies for an unreasonable denial lie within §§ 39-71-611, -612, and -2907, MCA, which provide for attorney fees and a penalty for unreasonable delay or denial in awarding benefits. Johnson provides no authority in support of his argument that the statute of limitations is tolled because he unilaterally determined that State Fund’s denial was unreasonable. Although *Marcott* reaffirmed the insurer’s affirmative duty to investigate claims and the unreasonableness of denying a claim absent a minimal investigation, it provides no support for Johnson’s argument that an unreasonable denial tolls the statute of limitations.

¶ 18 Reasonable or not, State Fund indisputably denied Johnson’s workers’ compensation claim on May 23, 2007. Johnson’s attempt to craft a distinction between types of denials by arguing that State Fund could not have issued a “final denial” until after it investigated his claim is unsupported.²¹ Neither the statute nor case law provide for such a distinction. Johnson’s argument that the May 23, 2007, denial was invalid or not final is without merit.

Issue Three: Whether State Fund’s post-denial investigation of Johnson’s claim and issuance of a post-investigation denial letter “reset” the statute of limitations.

¶ 19 Johnson argues that State Fund’s second denial letter on August 1, 2008, “reset” the two-year statute of limitations, giving Johnson until August 1, 2010, to file his petition in this Court.²² Relying on *Montana State Fund v. Liberty Northwest Ins. Corp. In Re:*

¹⁹ *Marcott*, 275 Mont. 197, 210, 911 P.2d 1129, 1137 (1996). (Citation omitted.)

²⁰ Response Brief at 6.

²¹ Response Brief at 7.

²² Response Brief at 7.

Laundry,²³ Johnson argues that a new liability determination should trigger a new statute of limitations.²⁴ In *Laundry*, Liberty denied the claimant's (Laundry's) claim for benefits on September 12, 2000, but on November 30, 2000, agreed to pay Laundry's medical bills under a reservation of rights pursuant to § 39-71-615, MCA (1999).²⁵ Liberty later argued that Laundry's claim was time-barred because it was filed more than two years after Liberty's September 12, 2000, denial. This Court held that Laundry's claim could proceed, noting that Liberty's payment of Laundry's medical bills under § 39-71-615, MCA, "place[d] the claim in a status of being neither accepted nor denied."²⁶

¶ 20 *In Re: Laundry* is readily distinguishable from the present case. Although State Fund continued to investigate Johnson's claim after the May 23, 2007, denial, it consistently maintained its denial of Johnson's claim throughout. Unlike *In Re: Laundry*, State Fund paid no benefits to Johnson, whether under a reservations of rights or otherwise. Johnson's claim was never "in a status of being neither accepted nor denied."

¶ 21 In *Boyd v. Zurich American Ins. Co.*, this Court rejected the argument that § 39-71-2905(2), MCA, is tolled until a claimant obtains medical evidence in support of his claim. In *Boyd*, I held that § 39-71-2905(2), MCA, provided the claimant with two years in which to obtain the medical evidence necessary to challenge the insurer's denial of his claim and to file a petition in this Court.²⁷ In its opinion affirming *Boyd*, the Montana Supreme Court noted that the insurer's letter to Boyd's attorney denying coverage for Boyd's shoulder injury claims "firmly established a denial of benefits and the existence of a 'dispute over liability,' thus triggering the 2-year statute of limitations contained in § 39-71-2905(2), MCA"²⁸ In the present case, State Fund's May 23, 2007, letter firmly established a denial of benefits and the existence of a "dispute over liability," thus triggering the two-year statute of limitations contained in § 39-71-2905(2), MCA. Since Johnson did not file his petition within two years of that date, his petition is untimely. State Fund is entitled to summary judgment in its favor.

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²³ 2005 MTWCC 49 (*In re: Laundry*).

²⁴ Response Brief at 8.

²⁵ *In re: Laundry*, ¶ 6.

²⁶ *In re: Laundry*, ¶ 6.

²⁷ *Boyd*, 2009 MTWCC 26, ¶ 8 (*aff'd* 2010 MT 52, 355 Mont. 336, 227 P.3d 1026).

²⁸ *Boyd*, 2010 MT 52, ¶¶ 19-20.

ORDER

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

¶ 23 Pursuant to ARM 24.5.348(2), this Order is certified as final and, for purposes of appeal, shall be considered as a notice of entry of judgment.

DATED in Helena, Montana, this 22nd day of July, 2011.

(SEAL)

/s/ JAMES JEREMIAH SHEA
JUDGE

c: Laurie Wallace/Jon Heberling
Thomas E. Martello
Submitted: February 14, 2011