

IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

2012 MTWCC 25

WCC No. 2012-2948

MARY B. KLINKAM

Petitioner

vs.

MACo WORKERS' COMPENSATION TRUST

Respondent/Insurer.

ORDER DENYING PETITIONER'S REQUEST FOR BENEFITS
UNDER § 39-71-610, MCA

Summary: Petitioner appeals the determination by the Department of Labor & Industry, Employment Relations Division, denying her request for benefits under § 39-71-610, MCA. The Department denied Petitioner's request on the grounds that Petitioner's benefits were converted to permanent partial disability benefits and not terminated as the statute requires.

Held: Petitioner admits that she continues to receive compensation benefits; therefore, her compensation benefits have not been terminated. Rather, her benefits have been converted from one type of compensation benefit to a different type of compensation benefit. Pursuant to § 39-71-610, MCA, Petitioner does not qualify for "additional biweekly compensation benefits."

Topics:

Constitutions, Statutes, Regulations, and Rules: Administrative Rules of Montana: 24.5.314. ARM 24.5.314 provides for appeals in letter form from a determination by the Department of Labor & Industry regarding additional benefits pursuant to § 39-71-610, MCA. Under the rule, the Court initially addresses such appeals informally through a telephone conference involving all parties, unless one of the parties objects.

Constitutions, Statutes, Regulations, and Rules: Montana Code Annotated: 39-71-610. A proceeding before this Court pursuant to the terms of § 39-71-610, MCA, is a new proceeding and is not subject to mediation. It is therefore a proceeding *de novo*.

Constitutions, Statutes, Regulations, and Rules: Montana Code Annotated: 39-71-610. Petitioner sought review of a Department of Labor & Industry (DOLI) ruling denying her additional benefits under § 39-71-610, MCA, which provides that, upon termination of biweekly benefits, the DOLI may order an insurer to pay additional benefits. However, Petitioner admitted that she was still receiving compensation benefits, only of a different type. A conversion of benefits from one type to another does not qualify a claimant for “additional biweekly compensation benefits” under the statute.

¶ 1 Petitioner Mary B. Klinkam filed an appeal of a determination by the Department of Labor & Industry, Employment Relations Division (Department) dated April 19, 2012, denying her petition to invoke the provisions of § 39-71-610, MCA.

¶ 2 Klinkam’s appeal letter cited ARM 24.5.314, providing for appeals in letter form from a determination by the Department regarding additional benefits pursuant to § 39-71-610, MCA. Under ARM 24.5.314(1), the Court initially addresses such appeals informally through a telephone conference involving all parties, unless one of the parties objects in accordance with ARM 24.5.314(2).

¶ 3 Since no party objected to an informal resolution, the Court held a telephonic hearing on June 25, 2012, in which Klinkam appeared, representing herself. Norman H. Grosfield represented MACo Workers’ Compensation Trust (MACo). MACo claims examiner Liz Krzan also attended.

¶ 4 After reviewing Klinkam’s submissions and hearing argument of the parties, including Klinkam’s admission on the record that she was currently receiving permanent partial disability benefits, I issued a bench ruling that, under a strict reading of § 39-71-610, MCA, Klinkam’s benefits were not terminated and therefore, she was not entitled to additional benefits under the statute.

DISCUSSION

¶ 5 This case is governed by the 2005 version of the Montana Workers' Compensation Act since that was the law in effect at the time of Klinkam's injury.¹

¶ 6 The injured worker bears the burden of proving by a preponderance of the evidence that she is entitled to the benefits she seeks.²

¶ 7 A proceeding before this Court pursuant to the terms of § 39-71-610, MCA, is "a new proceeding and is not subject to mediation." It is therefore a proceeding *de novo*.³

¶ 8 Klinkam seeks benefits pursuant to the foregoing § 39-71-610, MCA, which states, in pertinent part:

If an insurer terminates biweekly compensation benefits and the termination of compensation benefits is disputed by the claimant, the department may, upon written request, order an insurer to pay additional biweekly compensation benefits

¶ 9 The rules of statutory construction state that "the office of the judge is simply to ascertain and declare what is in terms or in substance contained therein, not to insert what has been omitted, or to omit what has been inserted."⁴

¶ 10 Klinkam admits that she continues to receive compensation benefits; therefore, her compensation benefits have not been terminated. Rather, her benefits have been converted from one type of compensation benefit to a different type of compensation benefit. Pursuant to § 39-71-610, MCA, Klinkam does not qualify for "additional biweekly compensation benefits."

ORDER

¶ 11 Petitioner's request for additional biweekly compensation benefits under § 39-71-610, MCA, is **DENIED**.

¹ *Buckman v. Montana Deaconess Hosp.*, 224 Mont. 318, 321, 730 P.2d 380, 382 (1986); Klinkam appeal letter at 1: "DOI 11/15/2005."

² *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).

³ See *Smith v. State Comp. Ins. Fund*, 2000 MTWCC 9, ¶ 22.

⁴ § 1-2-101, MCA; See also *Kessel v. Liberty Northwest Ins. Corp.*, 2007 MT 305, ¶ 18, 340 Mont. 92, 172 P.3d 599.

¶ 12 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.

¶ 13 Any party to this dispute may have twenty days in which to request reconsideration from this Order.

DATED in Helena, Montana, this 10th day of July, 2012.

(SEAL)

/s/ JAMES JEREMIAH SHEA
JUDGE

c: Mary B. Klinkam
Norman H. Grosfield
Submitted: June 25, 2012