

IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

2005 MTWCC 5

WCC No. 2004-1147

MICHELLE (WALKER) KUTZLER

Petitioner

vs.

MONTANA STATE FUND

Respondent/Insurer.

ORDER AND JUDGMENT DISMISSING PETITION

Summary: The petitioner filed a petition two days prior to the running of the two-year statute of limitations, § 39-71-2905(2), MCA (2001), but without having either requested or completed mediation. Respondent moves to dismiss for lack of jurisdiction but requests that dismissal be with prejudice since the two-year statute of limitations expired after the filing of the faulty petition but before the petitioner requested mediation.

Held: The Court lacks jurisdiction over the petition since mediation has not been completed. Because it lacks jurisdiction over the petition, it cannot consider the merits of a statute of limitations defense, therefore dismissal is without prejudice.

Topics:

Jurisdiction: Mediation. Workers' Compensation Court lacks jurisdiction over a petition for workers' compensation benefits where the parties have not completed mandatory mediation. *Preston v. Transportation Ins. Co.*, 2004 MT 339, §§ 39-71-2905 and -2408(1), MCA (2001).

Jurisdiction: Mediation. While in some past cases the Workers' Compensation Court has simply stayed proceedings where mediation is incomplete, henceforth all petitions where mandatory mediation has not been completed will be dismissed.

Constitutions, Statutes, Rules, and Regulations: Montana Code Annotated: § 39-71-2905, MCA (2001). Workers' Compensation Court lacks jurisdiction over a petition for workers' compensation benefits where the parties have not completed mandatory mediation.

Jurisdiction: Dismissal. Where a court lacks jurisdiction over a petition, it must dismiss the petition on that basis and cannot consider other possible defenses raised by the respondent.

¶1 Respondent Montana State Fund (State Fund) moves to dismiss the Petition for Hearing for lack of jurisdiction on account of the petitioner's (claimant) failure to mediate her claim prior to filing her petition.

Factual Background

¶2 The petition herein was filed October 8, 2004. It alleges that the claimant suffered an industrial injury on September 24, 2002; that she filed a claim for compensation with the State Fund; and that the State Fund denied her claim for compensation on October 10, 2002.

¶3 In its response to the petition, the State Fund alleged that the claimant had not mediated her claim and that this Court therefore lacked jurisdiction over the petition. It subsequently filed a Motion to Dismiss and Brief in Support based on lack of jurisdiction. The motion was supported by an Affidavit of Cindy Hawkins, a paralegal for the State Fund, authenticating copies of various attached documents, including the October 10, 2002 letter denying the claim. Also attached was a request for mediation made by the claimant on November 18, 2004 – more than a month after the filing of the Petition for Hearing. In her response to the motion to dismiss, the claimant does not dispute the fact that she did not file for mediation until November 18, 2004.

Discussion

¶4 Unlike a motion to dismiss for failure to state a claim, a court may consider evidence outside the pleadings in connection with a motion to dismiss for lack of jurisdiction, see *Minuteman Aviation, Inc. v. Swearingin*, 237 Mont. 207, 212, 772 P.2d 305, 308 (1989). Thus, consideration of the affidavit with attached exhibits tendered by the State Fund is appropriate. The affidavit and documents are not disputed, so no evidentiary hearing is necessary.

¶5 The critical fact for the motion is the claimant's failure to complete the mediation process prior to the filing of her petition. Indeed, she had not even filed for mediation prior to the filing of the petition.

¶6 Mediation is a prerequisite to the filing of a petition for benefits with the Workers' Compensation Court. Section 39-71-2401(1), MCA (2001), provides:

Disputes – jurisdiction – settlement requirements – mediation.

(1) A dispute concerning benefits arising under this chapter or chapter 72, other than the disputes described in subsection (2), must be brought before a department mediator as provided in this part. If a dispute still exists after the parties satisfy the mediation requirements in this part, either party may petition the workers' compensation court for a resolution.

Section 39-71-2408(1), MCA (2001), provides:

Mandatory, nonbinding mediation. (1) Except as otherwise provided, in a dispute arising under chapter 71 or 72 of this title, the insurer and claimant shall mediate any issue concerning benefits and the mediator shall issue a report following the mediation process recommending a solution to the dispute **before either party may file a petition in the workers' compensation court.**

(Emphasis added.) Section 39-71-2905, MCA (2001), provides in relevant part:

Petition to workers' compensation judge – time limit on filing. (1)

A claimant or an insurer who has a dispute concerning any benefits under chapter 71 of this title may petition the workers' compensation judge for a determination of the dispute **after satisfying dispute resolution requirements otherwise provided in this chapter.**

(Emphasis added.)

¶7 These provisions are explicit and non-ambiguous: Until mediation is completed, the Workers' Compensation Court lacks jurisdiction over a dispute involving benefits. *Preston v. Transportation Ins. Co.*, 2004 MT 339, ¶ 36.

¶8 The present dispute involves benefits. Therefore, the Court lacks jurisdiction over the petition. Lacking jurisdiction, the petition must be dismissed.

¶9 The State Fund argues that the current petition should be dismissed with prejudice because it is now barred by the statute of limitations. The statute of limitations defense is based on section 39-71-2905(2), MCA (2001), which provides, “[a] petition for hearing before the workers' compensation judge must be filed within 2 years after benefits are denied.” In this case, the limitations period for the claim ran as of October 10, 2004. Since this Court does not have jurisdiction of the October 8, 2004 petition, it is questionable

whether that petition tolls the limitations period. And, while the limitations period is tolled during the pendency of any mediation claim, *Preston*, ¶ 49, it is also questionable whether it is tolled by the filing of a request for mediation after the two-year limitations period has already run. In any event, the State Fund's statute of limitations defense raises a significant question as to whether the claim set forth in the petition is barred in any event.

¶10 However, since the Court lacks jurisdiction over the petition, it has no authority to consider the defense. "Once a court determines that it lacks jurisdiction, then it can take no further action in the case other than to dismiss it." *Thompson v. Crow Tribe of Indians*, 1998 MT 161, ¶ 12, 289 Mont. 358, 962 P.2d 577. I therefore conclude that the petition must be dismissed but without prejudice to refiling it after mediation is complete. Any statute of limitations defense can only be considered only after mediation is completed and a new petition is filed.

¶11 In dismissing the present petition, the Court recognizes that in the past some petitions have merely been held in abeyance rather than dismissed where mediation is incomplete. This practice has simply saved the petitioner from having to refile a petition and the Court from having to open a new court file upon completion of mediation. However, in the future, all petitions which are filed before completion of mandatory mediation will be dismissed. While it may be more convenient to simply stay proceedings until mediation is completed, the failure to complete mediation is a jurisdictional defect and the appropriate remedy is dismissal. The mediation requirement is notorious and there is no excuse for failing to comply with it.

ORDER AND JUDGMENT

¶12 Judgment is hereby entered **dismissing the petition without prejudice**. No determination is made as to a statute of limitations defense since the Court is presently without jurisdiction to consider the defense.

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

DATED in Helena, Montana, this 26th day of January, 2005.

(SEAL)

/s/ Mike McCarter
JUDGE

c: Mr. Marvin L. Howe
Mr. David A. Hawkins
Submitted: January 24, 2005