

WORKERS' COMPENSATION COURT  
IN AND FOR THE STATE OF MONTANA

RONALD D. LaFOUNTAIN	}	WCC No. 2008-2100
Petitioner,	}	
vs.	}	September 30, 2008
MONTANA STATE FUND	}	10:00 a.m.
Respondent.	}	Bench Ruling

BEFORE THE HONORABLE JAMES JEREMIAH SHEA

The conference call in the above-entitled matter was held on Tuesday, September 30, 2008, at 10:00 a.m., at the Workers' Compensation Court, Helena, Montana.

APPEARANCES:

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For the Petitioner: Ronald D. LaFountain  
Pro Se  
PO Box 27  
Lewistown, Montana 59457

For the Respondent: William Dean Blackaby  
Special Assistant Attorney General  
Montana State Fund  
Helena, Montana 59604

Also Present: Wayne Bunch, Claims Adjuster

Court Reporter: Kim Johnson, RPR

1           BE IT REMEMBERED that on Tuesday, September 30,  
2 2008, in Helena, Montana, before the Honorable James Jeremiah  
3 Shea, Workers' Compensation Judge, the following proceedings  
4 were had and testimony was taken telephonically:

5                           \* \* \* \* \*

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7           THE COURT: Okay, thanks, everyone. We are on the  
8 record in the matter of Mr. LaFountain versus Montana State  
9 Fund, Cause No. 2008-2100. This is the time that I have  
10 scheduled to issue an oral bench ruling in accordance with  
11 ARM 24.5.335.

12           Mr. LaFountain, I'm going to issue my ruling. I want  
13 to make sure, if you have any questions when I am done, I'm  
14 going to give you the chance to ask those then, and I will  
15 answer them as best I can, okay?

16           MR. LaFOUNTAIN: Yep.

17           THE COURT: Okay. Three issues were present for  
18 my decision in this case, and they are: One, is the petitioner  
19 entitled to authorization of bi-level artificial disc replacement  
20 surgery at the Stenum Hospital in Bremen, Germany; Two, is the  
21 petitioner entitled to an increase in his disability rate to \$1,610  
22 per week for all temporary total and permanent partial disability  
23 benefits; and Three, is petitioner entitled to a penalty against  
24 respondent?

25           Taking the issue of Mr. LaFountain's disability rate

1 first, I have concluded that he has not prevailed on this issue.  
2 As a matter of law, Mr. LaFountain cannot be entitled to  
3 temporary total disability or permanent partial disability weekly  
4 benefits in this amount. The maximum weekly benefit available  
5 to injured workers in Montana is set by statute. The statutory  
6 authority is found in Section 39-71-701 (3) per TTD benefits, and  
7 Section 39-71-703 (6) for PPD benefits.

8           Section 39-71-701 (3) states that the maximum  
9 weekly TTD benefits awarded may not exceed the state's  
10 average weekly wage at the time of injury. Section  
11 39-71-703(6) states that the weekly benefit rate for PPD may not  
12 exceed one-half of the state's average weekly wage.

13           At the time of Mr. LaFountain's September 2002  
14 industrial injury, the maximum weekly TTD award was \$473 per  
15 week, and the maximum PPD award was \$236.50 per week.  
16 Therefore, whether or not Mr. LaFountain was earning  
17 significantly higher wages at the time of his industrial injury, by  
18 law, he is not entitled to the amount he seeks.

19           The main issue in this case is whether Mr. LaFountain  
20 is entitled to artificial disc replacement surgery in Germany. The  
21 medical evidence has clearly demonstrated that Mr. LaFountain  
22 has a serious, painful back condition for which Montana State  
23 Fund has accepted liability. Mr. LaFountain and Montana State  
24 Fund has tried to find a medical solution for Mr. LaFountain's  
25 back problems. This has included sending Mr. LaFountain to a

1 number of doctors for consultations, both within Montana and  
2 out of state. Unfortunately, to date, no U.S. doctor has been  
3 able to offer Mr. LaFountain a solution. All have concluded that  
4 at the time of their examinations of Mr. LaFountain, he was not a  
5 surgical candidate. Several doctors indicated, however, that if  
6 Mr. LaFountain's condition changed in the future, he might  
7 become a surgical candidate.

8           The record further demonstrates that Mr. LaFountain  
9 has been diligent in seeking treatment, that he has a good  
10 understanding of his medical condition, and that he is very  
11 motivated to get better and to get back to work. Unfortunately,  
12 I have concluded that Mr. LaFountain has not met his burden of  
13 proof regarding the proposed surgery in Germany. Although  
14 Dr. Vlases, in both the medical records and in a letter he wrote  
15 in August 2007, supports the exploration of this option. The  
16 opinions of the other medical providers who have examined  
17 Mr. LaFountain argue against it.

18           Dr. Vlases is board-certified in internal medicine. On  
19 the other hand, Dr. Schabacker is board-certified in physical  
20 medicine and rehabilitation, and in pain medicine. Dr. Speth is a  
21 board-certified orthopedic surgeon. Neither Dr. Schabacker nor  
22 Dr. Speth recommended that Mr. LaFountain receive the  
23 multilevel artificial disc replacement surgery in Germany. Neither  
24 have any other doctors whose records were presented to this  
25 Court.

1           Furthermore, the records from Stenum Hospital  
2 indicate that, at this point, only Mr. LaFountain's medical records  
3 have been reviewed and he has not been physically examined.  
4 And it is unclear whether Mr. LaFountain would be found to be a  
5 surgical candidate in Germany.

6           While I certainly sympathize with Mr. LaFountain's  
7 condition and I understand his desire to obtain this surgical  
8 treatment, based on the record before me, I am unable to make  
9 such a decision at this time. The medical evidence does show  
10 that Mr. LaFountain has ongoing back pain and that his condition  
11 may at some point warrant surgical intervention by methods  
12 currently available in the United States. It is also possible that  
13 the surgery he desires or a similar procedure may become  
14 available in the United States in the foreseeable future.

15           While my ruling is that Mr. LaFountain has failed to  
16 meet his burden of proof for this specific surgery at this specific  
17 time, my ruling in this case does not preclude Mr. LaFountain  
18 from continuing to seek effective treatment for his back  
19 condition.

20           As Mr. LaFountain has not prevailed on the first two  
21 issues, that resolves the third issue, as well, since a penalty can  
22 only be awarded to a claimant who prevails on his claim.

23           I'm going to issue a judgment that incorporates this  
24 oral bench ruling, and the time for filing a motion for  
25 reconsideration or a notice of appeal will run from the date that

1 the judgment incorporating the bench ruling is issued. So this  
2 concludes my bench ruling.

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1 STATE OF MONTANA )  
2 County of Lewis and Clark ) : SS.

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I, Kimberly Johnson, a Registered Professional Reporter and Notary Public in and for the County of Lewis and Clark, do hereby certify:

That the foregoing cause was taken before me at the time and place herein named, that the foregoing cause was reported by me, and that the foregoing pages contain a true record of the testimony to the best of my ability.

IN WITNESS WHEREOF, I have hereunto set my hand this \_\_\_\_\_ day of \_\_\_\_\_, 2008.

\_\_\_\_\_  
Kimberly E. Johnson  
Registered Professional Reporter  
Notary Public