

IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

2008 MTWCC 46

WCC No. 2008-2100

RONALD D. LaFOUNTAIN

Petitioner

vs.

MONTANA STATE FUND

Respondent/Insurer.

JUDGMENT

Summary: Petitioner suffered an industrial injury on September 17, 2002. Respondent accepted liability and paid benefits. Petitioner contends that he is entitled to payment of lost wages at the rate of \$1,610 per week. Petitioner further contends that Respondent should authorize him to travel to Germany for a surgical procedure which is not available in the United States. Respondent contends that Petitioner has been paid indemnity benefits at the correct rate, and that he is not entitled to travel for surgery.

Held: Petitioner is not entitled to the amount of wage-loss benefits he seeks as a matter of law. Although Petitioner satisfied the Court that he is in pain from his industrial injury and that he is motivated to improve his condition and return to work, Petitioner did not meet his burden of proof regarding his entitlement to the specific treatment he desires.

Topics:

Constitutions, Statutes, Regulations, and Rules: Montana Code Annotated: 39-71-701. Although Petitioner was earning significantly higher wages at the time of his industrial injury, by law, he is only entitled to the maximum weekly TTD award as set by statute.

Constitutions, Statutes, Regulations, and Rules: Montana Code Annotated: 39-71-703. Although Petitioner was earning significantly higher wages at the time of his industrial injury, by law, he is only entitled to the maximum weekly PPD award as set by statute.

Benefits: Medical Benefits: Out-of-State Treatment. Petitioner has been seen by multiple U.S. doctors who have all concluded he is not currently a surgical candidate. Petitioner has been diligent in seeking treatment, has a good understanding of his medical condition, and is motivated to get better and get back to work. Although Petitioner wants the insurer to cover the expenses associated with his receiving a multi-level disc replacement surgery in Germany, Petitioner has not met his burden of proof that he is entitled to this specific surgery at this time.

¶ 1 The trial in this matter was held on September 3, 2008, in Helena, Montana. Petitioner Ronald D. LaFountain was present and represented himself. Respondent Montana State Fund was represented by William Dean Blackaby.

¶ 2 Exhibits: Exhibits 1 through 14 were admitted without objection. Exhibit 15 was admitted over Respondent's objections. Exhibit 20 to Dr. Steven Speth's deposition is part of Exhibit 2. The exhibits marked during the deposition of Dr. Speth are contained in a separate exhibit notebook and were considered by the Court.

¶ 3 Witnesses and Depositions: Petitioner was sworn and testified at trial. The depositions of Dr. Steven Speth, Dr. Michael Schabacker, and Petitioner were stipulated to by the parties and were considered part of the record after they were filed with the Court.

¶ 4 At the close of trial on September 3, 2008, I advised the parties that after the depositions were filed and the matter was submitted, the Court would contact the parties and inform them how the Court intended to proceed. This matter was deemed submitted on September 8, 2008, after the depositions were filed with the Court. The parties were contacted shortly thereafter and informed that the Court would reconvene on September 30, 2008, to issue an oral bench ruling in accordance with ARM 24.5.335. On that date, the Court made oral findings of fact and conclusions of law. The Court informed the parties that the oral bench ruling would be incorporated into a judgment, and that the judgment would not be final and appealable until it was reduced to writing. A transcript of the Court's bench ruling will be attached to the final judgment in this matter. Therefore, in accordance with the Court's bench ruling, the following judgment is entered.

JUDGMENT

¶ 5 Petitioner is not entitled to authorization of bi-level artificial disk replacement surgery at the Stenum Hospital in Bremen, Germany.

¶ 6 Petitioner is not entitled to an increase in his disability rate to \$1,610 per week for all temporary total and permanent partial disability benefits.

¶ 7 Petitioner is not entitled to a penalty against Respondent.

¶ 8 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.

DATED in Helena, Montana, this 8th day of October, 2008.

(SEAL)

/s/ JAMES JEREMIAH SHEA
JUDGE

c: Ronald D. LaFountain
William Dean Blackaby
Submitted: September 8, 2008
Attachment: Transcript of bench ruling entered on September 30, 2008