IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

2008 MTWCC 46

WCC No. 2008-2100

FILED

OCT - 8 2008

OFFICE OF
WORKERS' COMPENSATION JUDGE
HELENA, MONTANA

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.

¶ 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.

DOCKET ITEM NO. 23

¶ 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.

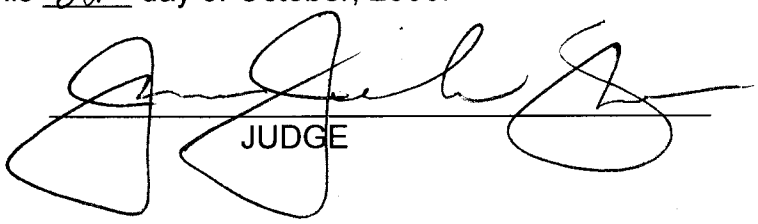
¶ 6 Petitioner is not entitled to an increase in his disability rate to $1,610 per week for all temporary total and permanent partial disability benefits.

¶ 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)



JUDGE

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

1 WORKERS' COMPENSATION COURT
2 IN AND FOR THE STATE OF MONTANA
3

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

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11 BEFORE THE HONORABLE JAMES JEREMIAH SHEA
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13 The conference call in the above-entitled matter was
14 held on Tuesday, September 30, 2008, at 10:00 a.m., at the
15 Workers' Compensation Court, Helena, Montana.
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1 APPEARANCES:

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

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

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9 Also Present: Wayne Bunch, Claims Adjuster

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11 Court Reporter: Kim Johnson, RPR

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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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4 I, Kimberly Johnson, a Registered Professional
5 Reporter and Notary Public in and for the County of Lewis and
6 Clark, do hereby certify:
7 That the foregoing cause was taken before me at the
8 time and place herein named, that the foregoing cause was
9 reported by me, and that the foregoing pages contain a true
10 record of the testimony to the best of my ability.
11 IN WITNESS WHEREOF, I have hereunto set my hand
12 this _____ day of _____, 2008.
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16 Kimberly E. Johnson
Registered Professional Reporter
Notary Public
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