

IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

2015 MTWCC 1

WCC No. 2014-3379

DAVID LARSON

Petitioner

vs.

MONTANA STATE FUND

Respondent/Insurer.

ORDER DENYING PETITIONER'S MOTION TO DISMISS WITHOUT PREJUDICE OR ALTERNATIVELY TO VACATE AND PLACE CASE IN ADMINISTRATIVE CLOSURE

Summary: Petitioner moves to dismiss this case without prejudice. He claims that while he currently suffers from an occupational disease, he is not seeking any benefits and argues that this Court does not have subject matter jurisdiction over initial compensability disputes in occupational disease claims. If this Court has jurisdiction, Petitioner alternatively asks that this case be placed in "administrative closure" until such time as he seeks occupational disease benefits. Respondent opposes Petitioner's motion.

Held: Petitioner's motion is denied. Under the plain language of § 39-71-2905(1), MCA (2007), this Court has subject matter jurisdiction regarding disputes over the initial compensability of an occupational disease claim under the grant of "exclusive jurisdiction" to decide disputes under the Workers' Compensation Act and because such disputes concern benefits. This Court does not have the authority to place a case in abeyance indefinitely over an objection.

Topics:

Constitutions, Statutes, Regulations, and Rules: Montana Code Annotated: 39-71-2905. There is no distinction between a case in which a claimant seeks a determination of "liability" and one in which the claimant seeks "benefits." A dispute over "liability" is a dispute over benefits and therefore this Court has jurisdiction under § 39-71-2905, MCA.

Jurisdiction: Dispute. There is no distinction between a case in which a claimant seeks a determination of “liability” and one in which the claimant seeks “benefits.” A dispute over “liability” is a dispute over benefits and therefore this Court has jurisdiction under § 39-71-2905, MCA.

Jurisdiction: Subject Matter Jurisdiction. There is no distinction between a case in which a claimant seeks a determination of “liability” and one in which the claimant seeks “benefits.” A dispute over “liability” is a dispute over benefits and therefore this Court has jurisdiction under § 39-71-2905, MCA.

Jurisdiction: Workers’ Compensation Court. There is no distinction between a case in which a claimant seeks a determination of “liability” and one in which the claimant seeks “benefits.” A dispute over “liability” is a dispute over benefits and therefore this Court has jurisdiction under § 39-71-2905, MCA.

Procedure: Stay of Proceedings. Although this Court may use its inherent authority to control its docket by continuing a case, it cannot place a case in abeyance indefinitely over an objection. The substantial cost of bringing a case to trial does not outweigh an insurer’s right to obtain a timely determination of liability.

¶ 1 Petitioner David Larson claims that he “sustained asbestos related lung disease as a result of exposure to asbestos while employed from 1965 to November, 2008, by Stimson Lumber Co. in Lincoln County, Libby, Montana.”¹ Larson asks this Court to find and conclude that he is suffering from an occupational disease and to order Respondent Montana State Fund (State Fund) to “accept liability for the Petitioner’s occupational disease and be required to pay reasonable medical expenses related to the treatment of the occupational disease.”² Larson also contends that State Fund’s denial of his claim was unreasonable and seeks a penalty under § 39-71-2907, MCA, and attorneys’ fees under §§ 39-71-611 or -612, MCA.

¶ 2 Larson now moves the Court to either dismiss this case without prejudice or to place it in abeyance indefinitely. Larson first argues that he is not seeking benefits and thus this Court does not have jurisdiction over this case under § 39-71-2905, MCA

¹ Petition for Hearing at 1, Docket No. 1.

² Petition for Hearing at 3.

(2007). Larson notes that the 2005 Montana Legislature repealed the Occupational Disease Act and merged the laws for occupational diseases into the Workers' Compensation Act (WCA). According to Larson, under the 2007 WCA, this Court does not have subject matter jurisdiction over the initial compensability of occupational disease claims. Larson maintains that this Court has jurisdiction only over cases involving disputes over benefits and that no benefits are in dispute in this case because his medical bills have apparently been paid under the "Libby Medicare" plan. According to Larson, if this Court does not have jurisdiction, then the statute of limitations has not yet begun running.

¶ 3 State Fund opposes the motion, arguing that if a claimant is seeking a liability determination, he is thereby seeking benefits. State Fund also argues that in his Petition for Hearing Larson is, in fact, explicitly seeking benefits. Thus, State Fund argues that this Court has jurisdiction over this case.

¶ 4 Section 39-71-2905, MCA (1997), states, 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. . . . The judge, after a hearing, shall make a determination of the dispute in accordance with the law as set forth in chapter 71 of this title. If the dispute relates to benefits due to a claimant under chapter 71, the judge shall fix and determine any benefits to be paid and specify the manner of payment. After parties have satisfied dispute resolution requirements provided elsewhere in this chapter, the workers' compensation judge has exclusive jurisdiction to make determinations concerning disputes under chapter 71, except as provided in 39-71-317 and 39-71-516. The penalties and assessments allowed against an insurer under chapter 71 are the exclusive penalties and assessments that can be assessed by the workers' compensation judge against an insurer for disputes arising under chapter 71.

¶ 5 Under this statute, this Court has subject matter jurisdiction to resolve disputes over the initial compensability of an occupational disease claim. This statute's grant of jurisdiction is broader than what Larson claims. The statute specifically and unequivocally states that this Court has "exclusive jurisdiction to make determinations concerning disputes under chapter 71," with two exceptions not applicable here. This Court also agrees with State Fund that there is no distinction between a case in which a claimant seeks a determination of "liability" and a case in which a claimant seeks

“benefits.” A dispute over “liability” — i.e., initial compensability of a claim — is a dispute over benefits, since an insurer that is liable for a claim must pay the benefits to which the claimant is entitled under the WCA. Under § 39-71-2905, MCA, this Court has exclusive jurisdiction over disputes of the initial compensability of an occupational disease claim, even if the insurer will not pay benefits on the claim until some future date.

¶ 6 Moreover, despite Larson’s claim to the contrary, he is seeking benefits. In his Petition for Hearing, Larson specifically asks for medical benefits. He also seeks a penalty against State Fund and his attorneys’ fees, alleging that the State Fund’s denial of benefits was unreasonable. Larson is bound by his pleadings.³ Although Larson’s medical benefits currently appear to be minimal because his lung function is within the normal range, the fact remains that he has incurred and continues to incur medical bills as a result of his alleged occupational disease. It makes no difference that his medical bills have been paid under the Libby Medicare plan, as the Libby Medicare plan is a secondary payer.⁴ Thus, if Larson prevails on the contentions in his Petition for Hearing, State Fund will be liable for these medical benefits. This Court has the jurisdiction to decide whether State Fund is liable for the benefits Larson seeks.

¶ 7 Larson emphasizes that he does not want this case dismissed if this Court has jurisdiction, as any applicable statute of limitations would continue to run. Thus, if this Court has jurisdiction, Larson requests that this Court use its inherent authority to control its docket and place this case in “administrative closure” until such time as he decides to move forward.

¶ 8 State Fund also opposes Larson’s alternative request to vacate the trial in this case and place it into “administrative closure” indefinitely. State Fund argues that it is entitled to a trial to know whether it will be liable for Larson’s occupational disease and that it could be prejudiced if this case were placed in “administrative closure” indefinitely because evidence could be lost over time.

¶ 9 Although this Court may use its inherent authority to control its docket by continuing a case, State Fund is correct that it does not have the authority to place a case in abeyance indefinitely over an objection. In *Baaron v. Montana State Fund*, a case with a similar issue, this Court refused to dismiss a case without prejudice so the claimant could first proceed with a civil case. This Court explained that, like claimants,

³ *Weaver v. Advanced Refrigeration*, 2011 MT 174, ¶ 15, 361 Mont. 233, 257 P.3d 378 (citation omitted).

⁴ 42 U.S.C. § 1395y(b)(2)(A)(ii); 42 U.S.C. § 1395rr-1.

insurers are “entitled to a timely day in Court.”⁵ The Court agrees with State Fund that asbestos cases are complex, in part because the evidence regarding a claimant’s alleged exposure can be more than ten years old due to the latency period of asbestos-related disease.⁶ An indefinite delay could result in the loss of relevant evidence, particularly in cases with last injurious exposure issues. Although the Court recognizes the substantial costs of bringing an asbestos-related disease case to trial, this Court has consistently awarded claimants who prevail in these cases their costs, including their expert witness fees.⁷ Thus, this Court does not find that the substantial costs of bringing a case to trial outweighs an insurer’s right to obtain a timely determination of liability.

¶ 10 Petitioner’s Motion to Dismiss Without Prejudice or Alternatively to Vacate and Place Case in Administrative Closure is **denied**.

DATED this 16th day of January, 2015.

(SEAL)

/s/ DAVID M. SANDLER
JUDGE

c: Laurie Wallace/Jon Heberling/Ethan Welder
Thomas E. Martello
Submitted: December 22, 2014

⁵ *Baarson v. Montana State Fund*, 2003 MTWCC 24, ¶ 5 (citing *Profitt v. Watts*, 140 Mont. 265, 370 P.2d 878 (1962)).

⁶ See, e.g., *Baeth v. Liberty NW Ins. Corp.*, 2014 MTWCC 10 (ruling, in a case tried in 2013, that Petitioner’s exposure to asbestos from 1989 to 1994 while working at the Stimson plywood plant in Libby was the proximate cause of her occupational disease).

⁷ See, e.g., *Baeth v. Liberty NW Ins. Corp.*, WCC No. 2013-3183 (Order Granting Petitioner’s Application for Taxation of Costs, November 5, 2014) (awarding \$20,680.11 in costs to Petitioner, including expert witness fees, in an asbestos case).