

IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

1995 MTWCC 86

WCC No. 9508-7367

PAUL LUGO

Petitioner

vs.

MONTANA HOSPITAL ASSOCIATIONS,
WORKERS' COMPENSATION TRUST

Respondent.

SUMMARY JUDGMENT

Summary: Respondent moved for summary judgment on the question whether unemployment benefits received by a part-time worker are "wages" for purposes of determining average weekly wage and computing workers' compensation benefits.

Held: Under section 39-71-123, MCA (1993), "wages" is defined as the gross remuneration paid in money "for services rendered by an employee." Unemployment benefits cannot be considered compensation for services rendered. Judgment for respondent.

Topics:

Constitutions, Statutes, Regulations and Rules: Montana Code Annotated: section 39-71-123, MCA (1993). Unemployment benefits received by part-time worker are not included in his average weekly wage where statute defines wages as gross remuneration "for services rendered by an employee."

Wages: Average Weekly Wage. Unemployment benefits received by part-time worker are not included in his average weekly wage where section 39-71-123, MCA (1993) defines wages as gross remuneration "for services rendered by an employee."

Wages: Concurrent Employment. Unemployment benefits received by part-time worker are not included in his average weekly wage where section 39-71-123, MCA (1993) defines wages as gross remuneration "for services rendered by an employee."

(SEE FOLLOWING ORDER)

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PAUL LUGO,

Petitioner,

WCC No. 9508-7367

vs.

MONTANA HOSPITALS ASSOCIATION,
WORKERS' COMPENSATION TRUST,

Respondent/Insurer for

COMMUNITY MEDICAL CENTER,

Employer.

FILED

NOV - 1 1995

OFFICE OF
WORKERS' COMPENSATION JUDGE
HELENA, MONTANA

SUMMARY JUDGMENT

This case presents a singular issue of statutory interpretation: Are unemployment benefits received by a part-time worker "wages" for purposes of determining the workers' average weekly wage and computing workers' compensation benefits? Respondent moved for summary judgment and the motion is now granted.

Uncontested Facts

The following facts are admitted by the parties:

1. The petitioner in this matter is Paul Lugo, who is the claimant and will be hereafter referred to as "claimant."
2. On November 1, 1994, claimant suffered a compensable industrial accident while working for Community Medical Center in Missoula.
3. At the time of the injury, Community Medical Center was self-insured through the Montana Hospitals Association Workers' Compensation Trust.
4. A claim for compensation was filed and accepted as compensable.

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5. Claimant was previously employed by Community Medical Center as an EMT. However, he was laid off due to a reduction in force. Thereafter, he took a part-time job as an orderly. He was working part-time as an orderly when he was injured.
6. In addition to the wages claimant was receiving from Community Medical Center at the time of his injury, he was also receiving partial unemployment benefits. Those benefits were paid pursuant to unemployment benefits laws.
7. Claimant's partial unemployment benefits terminated as a result of his injury.
8. In calculating claimant's benefits, Community Medical Center has included claimant's actual wages but refused to include the partial unemployment benefits.
9. If, as a matter of law, the unemployment benefits are not includable in calculating claimant's benefits, then his compensation rate has been properly calculated.

(Source: PETITION FOR TRIAL, RESPONSE TO PETITION, STIPULATION TO AGREED FACTS, and the parties' briefs.)

Discussion

Since the injury occurred in November 1994, the 1993 version of the Workers' Compensation Act applies in this case. *Buckman v. Montana Deaconess Hospital*, 224 Mont. 318, 730 P.2d 380 (1986). All statutory citations in this decision are to the 1993 Act.

Compensation benefits are based on the worker's wages at the time of his injury. Weekly benefits for temporary total and permanent total disability are two-thirds of the worker's "wages received at the time of the injury", subject to a statutory maximum and to an inflationary adjustment. §§ 39-71-701(3) and -702(3), MCA (1993). Permanent partial disability benefits are based in part upon the claimant's "actual wage loss" from the injury.

"Wages" is defined in section 39-71-123, MCA (1993), as follows:

39-71-123. Wages defined. (1) "Wages" means the gross remuneration paid in money, or in a substitute for money, for services rendered by an employee, or income provided for in subsection (1)(d). Wages include but are not limited to:

- (a) commissions, bonuses, and remuneration at the regular hourly rate for overtime work, holidays, vacations, and sickness periods;
- (b) board, lodging, rent, or housing if it constitutes a part of the employee's remuneration and is based on its actual value;

(c) payments made to an employee on any basis other than time worked, including but not limited to piecework, an incentive plan, or profit-sharing arrangement; and

(d) income or payment in the form of a draw, wage, net profit, or substitute for money received or taken by a sole proprietor or partner, regardless of whether the sole proprietor or partner has performed work or provided services for that remuneration.

(2) Wages do not include:

(a) employee expense reimbursements or allowances for meals, lodging, travel, subsistence, and other expenses, as set forth in department rules;

(b) special rewards for individual invention or discovery;

(c) tips and other gratuities received by the employee in excess of those documented to the employer for tax purposes;

(d) contributions made by the employer to a group insurance or pension plan;

or

(e) vacation or sick leave benefits accrued but not paid.

(3) For compensation benefit purposes, the average actual earnings for the four pay periods immediately preceding the injury are the employee's wages, except if:

(a) the term of employment for the same employer is less than four pay periods, in which case the employee's wages are the hourly rate times the number of hours in a week for which the employee was hired to work; or

(b) for good cause shown by the claimant, the use of the four pay periods does not accurately reflect the claimant's employment history with the employer, in which case the insurer may use additional pay periods.

(4) (a) For the purpose of calculating compensation benefits for an employee working concurrent employments, the average actual wages must be calculated as provided in subsection (3).

(b) The compensation benefits for a covered volunteer must be based on the average actual wages in the volunteer's regular employment, except self-employment as a sole proprietor or partner who elected not to be covered, from which the volunteer is disabled by the injury incurred.

(c) The compensation benefits for an employee working at two or more concurrent remunerated employments must be based on the aggregate of average actual wages of all employments, except self-employment as a sole proprietor or partner who elected not to be covered, from which the employee is disabled by the injury incurred.

(5) The compensation benefits and the payroll, for premium purposes, for a volunteer firefighter covered pursuant to 39-71-118 must be based upon a wage of

not less than \$900 a month and not more than 1 ½ times the average weekly wage as defined in this chapter.

The general definition of wages as set forth in subsection (1) is controlling in this case since none of the specific inclusions or exclusions apply. The key language in the subsection is as follows:

(1) "Wages" means the gross remuneration paid in money . . . **for services rendered by an employee** [Emphasis added.]

In construing this language, the Court must give these words their plain meaning; if their meaning is plain and unambiguous, they must be applied as written. *Murer v. State Compensation Mut. Ins. Fund*, 267 Mont. 516, 520, 885 P.2d 428, 430 (1994). The Court cannot amend the plain words of the statute or insert additional terms. *Russette v. Chippewa Cree Housing Authority*, 265 Mont. 90, 93, 874 P.2d 1217, 1219 (1994).

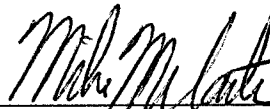
Community Medical Center has cited a number of cases, as well as LARSON'S WORKMEN'S COMPENSATION LAW, as supporting its argument that unemployment benefits are not wages. We need not consider or cite these precedents, for even under the wildest stretch of the imagination unemployment benefits cannot be considered compensation "for services rendered by an employee." Unemployment benefits are paid from an unemployment benefits insurance fund. §§ 39-71-2103(1), -201(11), MCA. Benefits are payable to **unemployed** individuals. § 39-51-201(3), MCA. They are social benefits, not compensation for work.

Judgment for respondent, Community Medical Center.

This judgment is certified as final for purposes of appeal.

Dated in Helena, Montana, this 1st day of November, 1995.

(SEAL)



JUDGE

c: Mr. Andrew F. Scott
Mr. Steven S. Carey
Submitted: October 19, 1995