IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

1995 MTWCC 34

WCC No. 9501-7210

KENNETH MARTIN

Petitioner

vs.

STATE COMPENSATION INSURANCE FUND

Respondent/Insurer for

GLEN RINDAL

Employer.

Reversed in *Martin v. State Compensation Insurance Fund,* 275 Mont. 190 (1996) (No. 95-290)

SUMMARY JUDGMENT

Summary: Insurer moved for summary judgment, arguing that Workers' Compensation Court lacked jurisdiction to set aside final settlement more than four years after agreement was made.

Held: The four year limitation for reopening final settlement agreements set out in section 92-848(4), R.C.M. 1947 (1975) acts as a statute of limitations on the jurisdiction of the Workers' Compensation Court to set aside a 1980 final settlement agreement, relating to a 1977 injury, more than four years after the agreement was made. Case law relating to full and final compromise agreements is distinguished.

Petitioner, Kenneth Martin (claimant), filed a Petition for Hearing seeking to set aside a final settlement agreement approved by the Division of Workers' Compensation on January 31, 1980. Respondent, State Compensation Insurance Fund (State Fund), has moved to dismiss the petition or in the alternative, for summary judgment. The motion has been briefed and is ready for decision.

Standard of Review

The rules of the Workers' Compensation Court do not specifically provide for motions for summary judgment. They do, however, refer to motions "to dismiss, to quash or ***for summary ruling***," ARM 24.5.316(1). The Supreme Court has approved the practice of borrowing from the Montana Rules of Civil Procedure when this Court's rules do not specifically regulate a procedural matter. *Murer v. State Fund,* 257 Mont. 434, 436, 849 P.2d 1036 (1993). In recent decisions this Court has applied Rule 56, Mont.R.Civ.P., to summary judgment motions. E*.g., Taylor v. State Fund,* WCC No. 9406-7066 (10/21/94); *Steve Wood v. Montana School Groups Ins. Authority,* WCC 9401-6986, Order Granting Partial Summary Judgment (August 12, 1994); *State Compensation Ins. Fund v. Frank Richter,* WCC. No. 9308-6367, Order Denying Summary Judgment (March 4, 1994). It will continue to do so.

Rule 56(c) provides that "[summary] judgment . . . shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Summary judgment is appropriate where the facts, viewed most favorably to the opposing party, nonetheless entitle the moving party to judgment as a matter of law. *Kaseta v. Northwestern Agency of Great Falls,* 252 Mont. 135, 138, 827 P.2d 804 (1992).

Facts

The State Fund's motion for summary judgment is based on the petition and an Affidavit of Linda Robbins. Robbins is a claims adjuster for the State Fund and is familiar with the claim file for the claimant in this case. Attached to her affidavit are copies of the claimant's Petition for Final Settlement, dated January 29, 1980, and the Division of Workers' Compensation Order Approving Final Settlement, dated January 31, 1980. Robbins certifies that the two copies are true and correct copies of the originals which are contained in the claim file. Claimant does not dispute the authenticity of the documents.

The following facts are taken from the paragraphs of the petition which are admitted in the State Fund's response and from the settlement documents. They are therefore deemed to be uncontroverted.

On January 3, 1977, claimant was injured in an industrial accident arising out of and in the course and scope of his employment. At the time he was employed by Glen Rindal, who was insured by the State Fund.

Three years later, on January 29, 1980, the claimant and State Fund entered into a Petition for Final Settlement. The amount of the settlement was $2,025, representing twenty-five (25) weeks of benefits. The final paragraph of the petition reads:

> The claimant hereby petitions the Division of Workers' Compensation with the concurrence of the above named insurer for approval of the proposed final settlement and that the case be finally settled on the basis stated above. It is understood by the claimant and the insurer that under the Workers' Compensation Act an order approving this petition for final settlement may for good cause, be rescinded, altered, or amended by the Division within (4) years from the date this petition is approved.

The petition was then submitted to the Division of Workers' Compensation. On January 31, 1980, the Division issued its Order Approving Final Settlement. The final paragraph of that order reads:

> IT IS ORDERED that the petition for final settlement be approved, and that upon payment of the amount specified in the petition, the claim shall be closed as finally settled. Under the Workers' Compensation Act, **the Division may,** for good cause, rescind, alter or amend this final settlement within four (4) years from the date of the settlement.

In his petition to this Court, claimant requests that the final settlement be reopened and that he be awarded additional benefits. He sets forth the following allegations as supporting his request:

> A dispute exists between the parties. Despite the fact that Claimant suffered a severe injury which required a laminectomy of L4-5 and L5-S1, and despite the fact that this injury had a very substantial effect on the earning capacity of Claimant, whose work history was strictly manual labor, the State Fund settled with the Claimant on a final settlement basis for only 25 weeks of permanent partial disability benefits. The State Fund entered into this settlement with Claimant when Claimant was not represented by an attorney. The settlement, which was for no more than his undisputed impairment rating, was made despite the written memorandum of the State Fund Bureau Chief which noted that "we would never settle the case for this amount if he had the proper advice. . . ." The settle-

> ment was also based on a permanent partial disability rate that was improperly low as documented through information contained in the State Fund's own files.

(Petition for Hearing, ¶ 3.)

Discussion

The State Fund's motion is based on three grounds. It asserts, first, that the Court lacks jurisdiction to set aside the agreement; second, that the claimant's request is barred by the statute of limitations; and, third, that the petition fails to set forth any legal basis for setting aside the settlement. Since the first ground is dispositive, the other two are not considered.

At the time of claimant's injury, authority to rescind, alter or amend a final settlement was found in sections 92-826 and 92-848(4), R.C.M. 1947 (1975), the progenitors to sections 39-71-204 and 39-71-2909, MCA. The sections were enacted in 1975. (1975 Montana Laws, ch. 23, § 40 and ch. 537, § 2.) Section 92-826, R.C.M. 1947 (1975), permitted the Division of Workers' Compensation to rescind, alter or amend a final settlement within four (4) years, providing:

> **Jurisdiction to rescind or amend any order, decision, award, etc.** The *division* shall have continuing jurisdiction over all its orders, decisions, and awards, and may, at any time, upon notice, and after opportunity to be heard is given to the parties in interest, rescind, alter, or amend any such order, decision, or award made by it upon good cause appearing therefor. Provided, that the *division* shall not have power to rescind, alter, or amend any final settlement or award of compensation more than four (4) years after the same has been made, and provided further that the *division* shall not have the power to rescind, alter or amend any order approving a full and final compromise settlement of compensation. Any order, decision, or award rescinding, altering, or amending a prior order, decision, or award, shall have the same effect as original orders or awards.

Section 92-848(4), R.C.M. 1947 (1975), authorized the Workers' Compensation Court to change a final settlement within four (4) years, providing:

> The judge has continuing jurisdiction of cases in which a petition under subsection (1) of this section has been filed, and may, upon the application of any party, review, diminish,

> or increase in accordance with the law on benefits as set forth in Title 92, any benefits awarded or settlement agreements, except for any final settlement or award of compensation more than four (4) years after the settlement has been made and except for any order approving a full and final compromise settlement of compensation, upon the grounds that the disability of the person has changed.

In 1979 the legislature amended both sections, which had by then been recodified as part of the Montana Code Annotated. Section 39-71-204, MCA (1979), was amended to read in relevant part:

> **Rescission, alteration, or amendment by division of its orders, decisions, or awards — limitation — effect.** (1) *Except as provided in subsection (2), the* division shall have continuing jurisdiction over all its orders, decisions, and awards and may, at any time, upon notice, and after opportunity to be heard is given to the parties in interest, rescind, alter, or amend any such order, decision, or award made by it upon good cause appearing therefor.
>
> (2) The division *or the workers' compensation judge* shall not have power to rescind, alter, or amend any final settlement or award of compensation more than 4 years after the same has been *approved by the division. Rescinding, altering, or amending a final settlement within the 4-year period shall be by agreement between the claimant and the insurer. If the claimant and the insurer cannot agree, the dispute shall be considered a dispute for which the workers' compensation judge has jurisdiction to make a determination. Except as provided in 39-71-2908, the* division *or the workers' compensation judge* shall not have the power to rescind, alter, or amend any order approving a full and final compromise settlement of compensation.
>
> (3) Any order, decision, or award rescinding, altering, or amending a prior order, decision, or award shall have the same effect as original orders or awards.

1979 Montana Laws, ch. 63, § 1. Section 39-71-2909, MCA, was amended to read:

> **Authority to review, diminish, or increase awards — limitation.** The judge may, upon the *petition of a claimant or an insurer that the disability of the claimant has changed,*

> review, diminish, or increase, in accordance with the law on benefits as set forth in chapter 71 of this title, any benefits *previously awarded by the judge or benefits received by a claimant through* settlement agreements. *However, the judge may not change* any final settlement or award of compensation more than 4 years after the settlement has been *approved by the division or* any order approving a full and final compromise settlement of compensation.

1979 Montana Laws, ch. 63, § 6.

In a 1986 decision, the Montana Supreme Court construed section 39-71-204(2), MCA, as amended in 1979, as a statute of limitations on the jurisdiction of the Workers' Compensation Court. Referring to the language of section 39-71-204(2), MCA, the Court said:

> In other words, the Workers' Compensation Court has jurisdiction to rescind a final settlement for a period of four years upon a showing of good cause **after which time jurisdiction ceases to exist.** In this case, Holcomb entered into a final settlement with Commercial Union Insurance effective February 5, 1980. He sought to reopen the settlement on May 31, 1984, more than four years after the final settlement order had been entered, claiming the insurance adjuster failed to inform him of the extent of his disability at the time of final settlement.
>
> We hold that pursuant to Section 39-71-204, MCA, the Workers' Compensation Court had no authority or jurisdiction to rescind the final settlement. The court's jurisdiction expired on February 5, 1984, four years from the time of final settlement.

Holcomb v. Low Temp Insulation, 224 Mont. 425, 429-30, 731 P.2d 899 (1986).

The rule ordinarily applicable in workers' compensation cases is that the law in effect at the time of the injury governs the rights of the parties. *Buckman v. Montana Deaconess Hospital,* 224 Mont. 318, 730 P.2d 380 (1986). In *Holcomb* the claimant was injured on January 25, 1979. However, the Supreme Court applied the 1979 legislative amendments, which were not approved until March 12, 1979 (1979 Montana Laws, ch. 63), *after* the injury. There was no discussion of the reasons for applying the later statute, although the rationale for doing so may be supplied by the Court's 1992 decision in *Wolfe v. Webb,* 251 Mont. 217, 226-27, 824 P.2d 240 (1992), which is discussed at length later in this order.

In any event, the result reached in *Holcomb* would have been the same under the 1975 antecedent statutes since the 1975 statutes contained the same four (4) year limitation.

Holcomb has not been overruled or limited. (Indeed it has never been cited in a subsequent Supreme Court decision.) Thus, if the 1975 or 1979 statutes apply in this case, this Court's jurisdiction to modify the final settlement agreement in this case lapsed on January 31, 1984, four (4) years after the Division order approving the agreement.

Citing *Wolfe ,* the claimant asserts that the current versions of sections 39-71-204 and 39-71-2909, MCA, apply to this case and that under the current law the Court has jurisdiction to reopen his settlement.

Wolfe involved a *full and final compromise* settlement agreement which had been approved by the Division of Workers' Compensation on March 8, 1983. The insurer argued that the law in effect at the time of claimant's 1980 injury applied. In 1980, sections 39-71-204 and 39-71-2909, MCA, prohibited the Workers' Compensation Court from changing a full and final compromise settlement agreement. The same was true of the earlier 1975 version of these sections.

In 1987 the legislature repealed the prohibition, *as well as* the four (4) year limitation on reopening final settlements. 1987 Montana Laws, ch. 464, §§ 6 and 62. Section 39-71-204 was amended again in 1989 but that amendment merely substituted "department" for "division." As presently written, sections 39-71-204 and 39-71-2909, MCA, provide in relevant part:

> **39-71-204. Rescission, alteration, or amendment by division of its orders, decisions, or awards — effect — appeal.** (1) The division has continuing jurisdiction over all its orders, decisions, and awards and may, at any time, upon notice, and after opportunity to be heard is given to the parties in interest, rescind, alter, or amend any such order, decision, or award made by it upon good cause appearing therefor.
>
> . . .
>
> (3) If a party is aggrieved by a division order, the party may appeal the dispute to the workers' compensation judge.
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> **39-71-2909. Authority to review, diminish, or increase awards.** The judge may, upon the petition of a claimant or an insurer that the disability of the claimant has changed, review, diminish, or increase, in accordance with the law on benefits as set forth in chapter 71 of this title, any benefits previously awarded by the judge.

The Supreme Court in *Wolfe* held that with the removal of the prohibition against reopening full and final compromise settlements the Workers' Compensation Court has jurisdiction under section 39-71-2905, MCA, to reopen full and final compromise settlements. 251 Mont. at 227. Deeming jurisdiction "procedural" rather than substantive, the Court went on to hold that such jurisdiction applies to full and final compromise settlements entered into prior to 1987. Thus, the Workers' Compensation Court was permitted to exercise jurisdiction over a petition filed in 1990 to reopen a 1983 settlement.

The *Wolfe* decision concerned a full and final compromise settlement. This case involves a final settlement. The question that I must answer is whether the holding or principles of *Wolfe* require the same conclusion with respect to the Workers' Compensation Court's jurisdiction over final settlements.

Initially, there is a fundamental difference in the jurisdictional issue as it pertains to full and final compromise settlements. Prior to their amendment in 1987, the statutes prohibited the Workers' Compensation Court from reopening full and final compromise settlements. In contrast, the statutes conferred jurisdiction on the Court to reopen final settlements, but for only four (4) years.

In *Kienas v. Peterson,* 191 Mont. 325, 624 P.2d 1 (1980), the Supreme Court held that full and final settlement agreements are contracts that are governed by the contract law. It then held that such agreements may be reopened or set aside on account of fraud or mutual mistake of fact. The Court did not discuss limitations on the jurisdiction of the Workers' Compensation Court since the issue was not raised.

In subsequent cases there was discussion among members of the Supreme Court as to jurisdiction to reopen full and final compromise settlements. A majority agreed that at least the Supreme Court had jurisdiction to order reopening of a settlement. The jurisdiction, or lack thereof, of the Workers' Compensation Court was never squarely resolved. *Wolfe* contains a discussion of past decisions regarding the jurisdictional issue. The result reached in *Wolfe* rendered the issue academic and moot.

The fact that the *Wolfe* court only spoke to full and final compromise settlements does not mean that the rationale for its decision does not extend equally to final settlements. However, after carefully considering the matter I have concluded that in fact there is a substantial difference between the provisions governing the two types of agreements and that the difference requires different conclusions regarding application of current jurisdictional statutes.

The old four (4) year limitation for reopening final settlement agreements acted as a statute of limitations on the jurisdiction of the Workers' Compensation Court. As already

mentioned, the Court's jurisdiction over the final settlement at issue in this case ended on January 31, 1984. While the legislature may amend statutes of limitation to revive causes of action that are already barred, *see e.g., Cosgriffe v. Cosgriffe,* 262 Mont. 175, 864 P.2d 776 (1993) (upholding retroactive application of change in statute of limitations applicable to childhood sexual abuse where legislature expressly stated that the statute was to be retroactively applied, 1989 Laws of Montana, ch. 158, §5), changes in statutes of limitations cannot be retroactively applied **unless** the legislature expressly provides for retroactivity. *Penrod v. Hoskinson,* 170 Mont. 277, 281, 552 P.2d 325 (1976).

In this case, not only did the legislature fail to make the amendments abolishing the four (4) year limitation retrospective, it expressly provided that the amendments shall apply only to injuries occurring **after** June 30, 1987. The 1987 amendments to sections 39-71-204 and 39-71-2909 are set forth in §§ 6 and 62 of chapter 464, 1987 Laws of Montana. Section 72 of that chapter provides:

> Section 72. **Applicability.** (1) Sections 8 and 52 through 57 apply retroactively, within the meaning of 1-2-109, to all injuries and diseases, regardless of the date of occurrence. . . .
>
> (2) ***The remaining portions of this act apply only to injuries, diseases, and events occurring after June 30, 1987.*** [Italics and bolding added for emphasis.]

Thus, the amendments at issue were expressly made applicable only to injuries occurring after June 30, 1987. I therefore conclude that under *Holcomb* this Court's jurisdiction to reopen, amend or alter the final settlement agreement ended on January 31, 1984, and that the 1987 amendments removing the four (4) year limitation on jurisdiction do not apply.

In summary, the Court lacks jurisdiction over the petition filed in this case. The State Fund's motion for summary judgment **is granted.**

Judgment

1. The petition in this matter is **dismissed with prejudice**.

2. The parties shall pay their own attorney fees and costs.

3. The JUDGMENT in this case is certified as final for purposes of appeal pursuant to ARM 24.5.348.

Dated in Helena, Montana, this 11th day of May, 1995.

(SEAL)

/s/ Mike McCarter
JUDGE

c: Mr. Stephen D. Roberts
Mr. Charles G. Adams