

IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

2005 MTWCC 48

WCC No. 2005-1231

GERALD MACK

Petitioner

vs.

MONTANA STATE FUND

Respondent/Insurer.

FINDINGS OF FACT, CONCLUSIONS OF LAW AND JUDGMENT

Summary: Over a period of approximately seven years (1991-1998) while working on a farm and ranch, the claimant experienced sneezing, a stuffy nose, runny eyes, chest tightness, and a cough whenever exposed to grain dust and hay. His symptoms were relieved by over-the-counter medications and therefore temporary. He sought no medical care at the time. However, over the years he experienced increasing shortness of breath and in 2004 he was hospitalized with pulmonary hypertension and obstructive lung disease. He then submitted a claim for occupational disease benefits. The claim was denied based on the one-year limitations period found in section 39-72-403, MCA (2003), and for lack of a causal connection between his current condition and his work.

Held: The claim was timely filed as the claimant did not recognize he had an occupational disease while working. The testimony of his treating pulmonologist provides persuasive evidence that his work exposure to grain dust and hay permanently aggravated and worsened his lung condition. He is therefore entitled to benefits.

Topics:

Limitations Periods: Occupational Disease. The one-year limitations period in section 39-72-403, MCA (1995-2003), does not begin to run until the claimant recognizes he suffers from a specific and permanent medical condition requiring medical treatment. Taking over-the-counter medications which provide symptomatic relief of symptoms does not constitute medical treatment and the claimant's association of symptoms which are relieved by

over-the-counter medications to his work does not constitute knowledge that he is suffering from an occupational disease.

Occupational Disease: Causation. Causation is found where the treating pulmonologist provides persuasive and reasoned testimony that the cumulative effect of the claimant's work exposure to grain dust caused permanent obstructive lung disease.

¶1 The trial in this matter was held in Great Falls, Montana, on June 2, 2005. The petitioner was present and represented by Ms. Sara R. Sexe. The respondent was represented by Mr. David A. Hawkins.

¶2 Exhibits: Exhibits 1 through 27 were admitted without objection.

¶3 Witnesses and Depositions: Petitioner, Robert Noel, Laura Mack, and Robert Grasseschi, M.D. testified. In addition the parties filed depositions of the petitioner and Dr. T. Shull Lemire for the Court to consider.

¶4 Issues Presented: The Court restates the issues as follows:

¶4a Whether the petitioner's claim is timely.¹

¶4b Whether the petitioner's current pulmonary conditions are causally related to his exposure to grain dust while working for Noel Ranch.

¶5 Having considered the Pretrial Order, the testimony presented at trial, the demeanor and credibility of the witnesses, the depositions and exhibits, and the arguments of the parties, the Court makes the following:

FINDINGS OF FACT

¶6 The petitioner, Gerald Mack (claimant), who is 43 years old, suffers from severe obstructive lung disease and requires supplemental oxygen twenty-four hours a day. He is unable to work.

¹This issue is not specifically raised in the issues set out in the Pretrial Order. Whether the issue stated in the Pretrial Order is broad enough to encompass the timeliness of the claim, timeliness is argued by the State Fund in its trial brief. Finding the argument without merit, the Court does not need to address whether the timeliness issue is properly raised.

¶7 The claimant's prior work was in ranching, farming, and excavating. Until 1991 he worked on various ranches in Montana, Wyoming, and Oregon. His ranch work involved working with livestock, primarily cattle. His exposure to grains was limited to the grains in bags of horse feed.

¶8 In 1991 the claimant went to work for Noel Farms in Montana. Noel Farms grows wheat, barley, and oats (grain), which is the "farm" side of its operations. It also has cattle and grows hay – the ranching side of operations. The claimant was hired primarily for the farm operations. His duties while working for Noel Farms included repairing farm machinery, driving grain trucks during harvest, emptying grain from trucks, hauling grain to market, combining on occasion, and cleaning grain bins. He also did some feeding and bedding of cattle, herding, and fencing.

¶9 While working at Noel Farms, the claimant repeatedly had runny eyes, sneezing, and sinus congestion, tightness in his chest, some shortness of breath, and coughing. He experienced these symptoms principally when working with grains, and to a lesser extent when working around hay.

¶10 The claimant attributed his symptoms to hay fever. He treated it with Primatene spray and tablets, and with Sinex nasal spray. Primatene is an over-the-counter bronchodilator often used to treat asthma.

¶11 The claimant did not seek medical treatment for his symptoms as he felt better after taking over-the-counter medication and a night's sleep. He attributed his shortness of breath when doing physical labor to being "older and heavier."

¶12 The claimant ceased working for Noel Farms in 1998 and started an excavation business.

¶13 By 2002 the claimant's shortness of breath was more pronounced and noticeable. Then in early 2004, while in Nevada, he contracted what he believed to be a cold. He had difficulty breathing and his legs swelled. Upon his return to Montana he sought medical care and was diagnosed with pulmonary hypertension and Chronic Obstructive Pulmonary Disease (COPD). His pulmonary hypertension has subsided with medical care, however, he continues to have impaired breathing. As noted earlier, he requires supplemental oxygen twenty-four hours a day.

¶14 Dr. T. Shull Lemire, a pulmonologist, examined the claimant at the request of the Department of Labor and Industry and pursuant to section 39-72-602, MCA (2003). Dr. Lemire agreed that the claimant's exposure to grain dust at least temporarily aggravated his underlying "reactive airway/asthma" but opined that it did not permanently worsen his condition.

¶15 Dr. Robert Grasseschi, a board certified pulmonologist, has been treating the claimant for his condition in consultation with other physicians. He testified that the claimant's exposure to grain dust during his work at Noel Farms caused acute inflammation of his airways and that his repeated exposures led to chronic, irreversible inflammation and obstructive airway disease. Dr. Grasseschi testified personally at trial. I found his testimony reasoned and am persuaded by it. I therefore find that the claimant's work for Noel Farms permanently led to progressive obstructive lung disease which gradually worsened over time and manifested itself acutely in early 2004. Accordingly, I find that the claimant suffers from an occupational disease attributable to his employment.

CONCLUSIONS OF LAW

¶16 The diagnosis of the claimant's condition and its relatedness to his employment occurred in 2004, thus the 2003 version of the Occupational Disease Act applies to his claim.

¶17 The Montana State Fund (State Fund) urges that the claimant's claim for benefits is barred under section 39-72-403, MCA, which in 2004 provided in relevant part, "(1) When a claimant seeks benefits under this chapter, the claimant's claims for benefits must be presented in writing to the employer, the employer's insurer, or the department within 1 year from the date the claimant knew or should have known that the claimant's condition resulted from an occupational disease. " Prior to 1995 the limitations period was two years and required not only knowledge of the occupational disease but also total disability.² The claimant's employment overlapped the changes, hence at least after July 1, 1995, the same provision that was in effect in 2003 applied to his occupational disease claim.

¶18 The State Fund argues in substance that the claimant was aware in the 1990s that he was suffering from an occupational disease because he was aware that his symptoms were triggered by his exposure to grain dust. It cites *Corcoran v. MSGIA*, 2000 MTWCC 30. *Corcoran*, however, does not support its argument. In that case, the Court pointed out that the claimant must know more than the mere fact that pain or some other symptom is associated with work:

¶52 Awareness of pain, and awareness that the pain is a result of work does not constitute knowledge that one suffers from an "occupational disease," as that term is defined in the Occupational Disease Act. Section 39-72-102(10), MCA (1995-99), defines occupational disease as follows:

²The two-year period was reduced to one year and the total disability element eliminated by 1995 Mont. Laws, ch. 243, § 25.

(10) "Occupational disease" means harm, damage, or death as set forth in 39-71-119(1) arising out of or contracted in the course and scope of employment and caused by events occurring on more than a single day or work shift. The term does not include a physical or mental condition arising from emotional or mental stress or from a nonphysical stimulus or activity.

The key words in the section are "harm" and "damage". In the context of the Occupational Disease Act, both terms must mean something more than suffering mere pain, otherwise, every ache and pain a worker suffers after a hard day at work would constitute an occupational disease. That sort of construction of the terms would be absurd and contrary to common sense. Rather, the terms indicate something more significant, such as a condition requiring medical diagnosis and treatment. Construing the words in that manner is consistent with another of the commonly understood meanings of disease as "a particular destructive process in an organ or organism, with a specific cause and characteristic symptoms."(4) (Webster's New World Dictionary and Thesaurus, CD ROM Ver. 1.0 (1997).) Moreover, lacking a working diagnosis or medical work up, it may be impossible to say whether earlier pain of the same body was due to the disease which was later diagnosed.

¶53 I therefore construe the limitations period set out in section 39-72-403, MCA (1995-99), as commencing when the worker has some specific knowledge of a specific pathological condition stemming from employment and requiring diagnosis or treatment. . . .

Corcoran, ¶s 52-53.

¶19 In this case, the claimant certainly associated his symptoms with his work, however, he was not aware that he was suffering from a specific pathological condition which required medical treatment. Taking over-the-counter drugs for symptomatic relief of runny nose, chest tightness, and cough no more constitutes medical treatment than taking aspirin for pain arising after a hard day's work. I therefore hold that the claimant did not have the requisite knowledge to trigger the running of the one-year limitation period set out in section 39-72-403, MCA, until 2004. His claim was therefore timely.

¶20 The claimant must still establish that his lung condition is causally related to his employment. § 39-72-408, MCA. He has borne his burden of proof as I am persuaded by Dr. Grasseschi's testimony and opinions concerning the relationship of his current condition to his exposure to grain dust during his employment.

¶21 The claimant is entitled to his costs.

JUDGMENT

¶22 The claimant is suffering from an occupational lung disease caused by his exposure to grain dust and hay while employed by Noel Farms between 1991 and 1998. The insurer for Noel Farms, the Montana State Fund, is liable for his lung disease and shall pay appropriate medical and indemnity benefits. The Court makes no determination as to the specific benefits due and retains jurisdiction over this matter to make such determination in the event the parties are unable to agree on benefits.

¶23 The claimant is entitled to his costs.

¶24 This JUDGMENT is certified as final for purposes of appeal.

¶25 Any party to this dispute may have twenty day in which to request a rehearing from these Findings of Fact, Conclusions of Law and Judgment.

DATED in Helena, Montana, this 12th day of August, 2005.

(SEAL)

MIKE McCARTER
JUDGE

c: Ms. Sara R. Sexe
Mr. David A. Hawkins
Submitted: June 2, 2005