

IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

1995 MTWCC 36

WCC No. 9501-7204

WILLIAM L. MAGGS, SR.

Petitioner

vs.

STATE COMPENSATION INSURANCE FUND

Respondent.

ORDER GRANTING MOTION TO DISMISS 1988 CLAIM

Summary: Insurer moves to dismiss claim for benefits from injury for which claimant failed to file a written claim within one year of the industrial accident. Claimant asserts that his supervisor's threat of termination if he filed a claim for compensation estops the insurer from raising the one-year statute of limitations set out in section 39-71-601(1), MCA.

Held: Under section 39-71-601(2), MCA (1989), the Department of Labor and Industry is the exclusive forum for presentment of claimant's estoppel arguments. While the Workers' Compensation Court may judicially review the Department's determination, it lacks jurisdiction to conduct a de novo hearing into claimant's estoppel arguments. Thus, the petition with respect to the 1988 claim is dismissed.

Topics:

Constitutions, Statutes, Regulations and Rules: section 39-71-601, MCA (1989). Under section 39-71-601(2), MCA (1989), the Department of Labor and Industry is the exclusive forum for presentment of claimant's argument that the insurer is estopped from relying on the one-year statute of limitations for claim filing. While the Workers' Compensation Court may judicially review the Department's determination, it lacks jurisdiction to conduct a de novo hearing into claimant's argument that the insurer is estopped where his supervisor allegedly threatened him with termination if he filed a workers' compensation claim.

Limitations Periods: Claim Filing: Estoppel. Under section 39-71-601(2), MCA (1989), the Department of Labor and Industry is the exclusive forum for presentment of claimant's argument that the insurer is estopped from relying on the one-year statute of limitations for claim filing. While the Workers' Compensation Court may judicially review the Department's determination, it lacks jurisdiction to conduct a de novo hearing into claimant's argument that the insurer is estopped where his supervisor allegedly threatened him with termination if he filed a workers' compensation claim.

Jurisdiction: Estoppel. Under section 39-71-601(2), MCA (1989), the Department of Labor and Industry is the exclusive forum for presentment of claimant's argument that the insurer is estopped from relying on the one-year statute of limitations for claim filing. While the Workers' Compensation Court may judicially review the Department's determination, it lacks jurisdiction to conduct a de novo hearing into claimant's argument that the insurer is estopped where his supervisor allegedly threatened him with termination if he filed a workers' compensation claim.

Estoppel and Waiver: Equitable Estoppel. Under section 39-71-601(2), MCA (1989), the Department of Labor and Industry is the exclusive forum for presentment of claimant's argument that the insurer is estopped from relying on the one-year statute of limitations for claim filing. While the Workers' Compensation Court may judicially review the Department's determination, it lacks jurisdiction to conduct a de novo hearing into claimant's argument that the insurer is estopped where his supervisor allegedly threatened him with termination if he filed a workers' compensation claim.

Procedure: Motion to Dismiss. Dismissal on statute of limitations grounds is appropriate "when the complaint on its face establishes that the claim is barred by the statute of limitations, and the usual requirement that such a defense be affirmatively pled need not be followed." See, *Beckman v. Chamberlain*, 673 P.2d 480, 482 (1983).

Statutes and Statutory Interpretation: Procedural. Where *Wolfe v. Webb*, 251 Mont. 217, 226-227 (1992) holds that a statute changing the forum authorized to resolve a particular dispute is a procedural change applying to cases that arose prior to the change, the 1989 statute applies to claimant's 1991 claim, with that statute conferring original jurisdiction on the Department of Labor and Industry to resolve claimant's argument that the insurer is estopped from relying on the one-year claim-filing statute of limitations of section 39-71-601, MCA (1989).

Statutes and Statutory Interpretation: Retroactive. Where *Wolfe v. Webb*, 251 Mont. 217, 226-227 (1992) holds that a statute changing the forum authorized to

resolve a particular dispute is a procedural change applying to cases that arose prior to the change, the 1989 statute applies to claimant's 1991 claim, with that statute conferring original jurisdiction on the Department of Labor and Industry to resolve claimant's argument that the insurer is estopped from relying on the one-year claim-filing statute of limitations of section 39-71-601, MCA (1989).

Statutes and Statutory Interpretation: Applicable Law. Where *Wolfe v. Webb*, 251 Mont. 217, 226-227 (1992) holds that a statute changing the forum authorized to resolve a particular dispute is a procedural change applying to cases that arose prior to the change, the 1989 statute applies to claimant's 1991 claim, with that statute conferring original jurisdiction on the Department of Labor and Industry to resolve claimant's argument that the insurer is estopped from relying on the one-year claim-filing statute of limitations of section 39-71-601, MCA (1989).

The petitioner in this case, William L. Maggs, Jr. (claimant), seeks workers' compensation benefits for industrial accidents he alleges occurred on November 30, 1988 and August 27, 1991. According to his Petition for Hearing, he injured his lower back both times. His petition discloses that he did not file a written claim for the 1988 injury until July 8, 1991, approximately two years and seven months later. His claim for the second injury was timely filed.

The State Compensation Insurance Fund (State Fund), has moved to dismiss the claim respecting the November 30, 1988 injury. It argues that the Court lacks jurisdiction to extend the time for filing of a written claim.

Factual Background

Where a motion to dismiss alleges a failure to state a claim (Rule 12(b)(6), Mont.R.Civ.P.), the review of the Court is limited to the face of the complaint, *Gebhardt v. D.A. Davidson & Co.*, 203 Mont. 384, 389, 661 P.2d 855 (1983), and the allegations in the complaint must be construed in a light most favorable to the petitioner, *Farris v. Hutchinson*, 254 Mont. 334, 335, 838 P.2d 374 (1992). While those restrictions are inapplicable to a Rule 12(b)(1) challenge to the subject matter jurisdiction of the Court, *Gatecliff v. Great Republic Life Ins. Co.*, 744 P.2d 29 (Ariz. App. 1987), in this case the moving party has offered no evidence in support of its motion. Therefore, the only facts considered by the Court in connection with the present motion are those alleged in the Petition for Hearing.

According to the petition, claimant was injured on November 30, 1988, while employed by Transcisco Rail Services (Transcisco). (Petition for Hearing at 1.) Claimant reported his accident to his supervisor on the following day but the supervisor threatened

to fire claimant if he filed a claim for compensation. Therefore, claimant did not file a written claim at that time.

Approximately eleven (11) months later, claimant quit his job with Transcisco for reasons unrelated to this November 1988 injury. (*Id.* at 3.) Claimant then filed a claim for compensation on July 8, 1991, over two and a half years after the injury and more than a year and a half after he left Transcisco's employ. (*Id.* at 2.) The claim was denied by Transcisco's insurer, the State Fund.

Claimant now seeks a determination that the State Fund is liable for his 1988 injury and for medical expenses related to the injury. He asserts that his supervisor's threat of termination estops the State Fund from raising the twelve-month statute of limitations prescribed in section 39-71-601(1), MCA, as an affirmative defense to his 1988 claim.

Since the face of the petition reveals that claimant's written claim was made after the twelve-month filing period had expired, the State Fund asks the Court to dismiss the petition. It argues that section 39-71-601(2), MCA, gives the Department of Labor and Industry exclusive jurisdiction to extend the time for filing a written claim and that the Court therefore lacks jurisdiction to consider claimant's estoppel argument.

Discussion

Dismissal is appropriate where the allegations of the complaint disclose some insuperable bar to relief. *Varco-Pruden v. Nelson*, 181 Mont. 252, 255, 593 P.2d 48 (1979); *Wheeler v. Moe*, 163 Mont. 154, 161, 515 P.2d 679, 683 (1973). Thus, dismissal on statute of limitations grounds is appropriate "when the complaint on its face establishes that the claim is barred by the statute of limitations, and the usual requirement that such a defense be affirmatively pled need not be followed." *Beckman v. Chamberlain*, 673 P.2d 480, 482 (Mont. 1983). A lack of jurisdiction is certainly an insuperable bar.

Section 39-71-601(1), MCA, provides that an injured worker must file a written claim for compensation within twelve months of the injury:

39-71-601. Statute of limitation on presentment of claim --waiver. (1) In case of personal injury or death, all claims must be forever barred unless signed by the claimant or the claimant's representative and presented in writing to the employer, the insurer, or the department, as the case may be, within 12 months from the date of the happening of the accident, either by the claimant or someone legally authorized to act on the claimant's behalf.

On its face, the petition reveals that the 1988 claim was untimely under this section.

The issue presently before the Court, however, is not whether the claim was untimely -- in his petition the claimant concedes that it was -- but whether the Court can consider claimant's allegation that the State Fund is legally estopped from raising a statute of limitations defense. The State Fund argues that under section 39-71-601(2), MCA, the Department of Labor and Industry is the exclusive forum for presentment of claimant's estoppel arguments.

On the date of the claimant's injury, subsection (2) provided:

(2) The division may, upon a reasonable showing by the claimant of lack of knowledge of disability, waive the time requirement up to an additional 24 months.

§ 39-71-601(2), MCA (1987). In 1989 the legislature amended the statute by substituting the Department of Labor and Industry for the Division of Workers' Compensation and by adding latent injury and equitable estoppel as grounds for granting a waiver. 1989 Montana Laws, ch. 613, § 64. As amended, subsection (2) presently provides:

(2) The department may waive the time requirement up to an additional 24 months upon a reasonable showing by the claimant of:

- (a) lack of knowledge of disability;
- (b) latent injury; or
- (c) equitable estoppel.

§ 39-71-601(2), MCA (1989).

The Workers' Compensation Court is a court of limited jurisdiction and has authority to hear only those cases designated by the legislature. Its jurisdiction is generally governed by section 39-71-2905, MCA, which provides in relevant part:

39-71-2905. Petition to workers' compensation judge. 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 petition in this case involves a matter of benefits. But, as expressly provided by the section, jurisdiction over benefit disputes is tied to the dispute resolution requirements of chapter 71.

The dispute resolution requirements referenced in section 39-71-2905, MCA, are found in part 24. Section 39-71-2401, MCA, provides in relevant part:

39-71-2401. Disputes — jurisdiction — settlement requirements — mediation. (1) A dispute concerning benefits arising under this chapter or chapter 72, other than the disputes described in subsection (2), must be brought before a department mediator as provided in this part. If a dispute still exists after the parties satisfy the mediation requirements in this part, either party may petition the workers' compensation court for a resolution.

(2) A dispute arising under this chapter that does not concern benefits or *a dispute for which a specific provision of this chapter gives the department jurisdiction must be brought before the department.*

(3) *An appeal from a department order may be made to the workers' compensation court.*

...

(Bold in original; italics added for emphasis.) This section is plain on its face and must be applied as written. *Holly Sugar v. Department of Revenue*, 252 Mont. 407, 412, 830 P.2d 76 (1992). It requires that whenever the Workers' Compensation Act confers jurisdiction in the Department over a particular dispute, that dispute **must** in the first instance be pursued before the Department. In such cases, the Court's role is limited to judicial review of the Department's decisions.

Section 39-71-601(2), MCA, expressly grants the Department jurisdiction to determine whether an insurer is equitably estopped from invoking the statute of limitations as a bar to a claim. It is a *specific provision*. The Workers' Compensation Court is limited to judicial review of Department decisions granting or refusing to extend the limitations period.

Unresolved by the foregoing discussion is whether a different result is required in light of the fact that equitable estoppel was added to section 39-71-601(2) in 1989, a year after the claimant's injury. That question was answered in *Wolfe v. Webb*, 251 Mont. 217, 226-27, 824 P.2d 240 (1992), which held that a statute changing the forum authorized to resolve a particular dispute is purely procedural and applies to cases which arose prior to the change. Thus, the jurisdictional provisions enacted in 1989 apply in this case.

Conclusion and Order

The Department of Labor and Industry has exclusive, original jurisdiction to determine whether the State Fund is estopped from asserting a statute of limitations defense to claimant's request for benefits. While the Workers' Compensation Court may judicially review Department decisions granting or denying extensions of filing period, it lacks jurisdiction to conduct a de novo hearing into claimant's allegations concerning estoppel. Those allegations must be brought before the Department pursuant to section 39-71-601(2), MCA. Therefore, this petition with respect to the alleged 1988 injury is **dismissed**.

That portion of the claimant's petition which concerns his alleged 1991 injury is not affected by this Order and will be set for trial.

Dated in Helena, Montana, this 16th day of May, 1995.

(SEAL)

/S/ Mike McCarter

JUDGE

c: Mr. John Houtz
Mr. Charles G. Adams