

IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

2014 MTWCC 3

WCC No. 2013-3193

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TARA McCOY

Petitioner

vs.

TRAVELERS CASUALTY & SURETY COMPANY

Respondent/Insurer.

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ORDER GRANTING RESPONDENT'S MOTION FOR SUMMARY JUDGMENT

**Summary:** Respondent moved for summary judgment in this matter, arguing that jurisdiction lies in North Dakota since Petitioner was injured while working there. Petitioner objected and contends that this Court has jurisdiction over her claim under § 39-71-402(1), MCA.

**Held:** Petitioner was not employed in Montana at the time of her industrial injury and therefore this Court does not have jurisdiction over her claim under § 39-71-402(1), MCA. Respondent's motion for summary judgment is therefore granted.

**Topics:**

**Statutes and Statutory Interpretation: Applicable Law.** Since the date of injury controls the disposition of a claim, in rare circumstances, the timing of an industrial injury relative to the effective date of an amendment to applicable statutes may cause different versions of the WCA to apply on a per-statute basis. In this instance, Petitioner was injured on April 22, 2013, and the 2013 version of § 39-71-402, MCA, was in effect on that date; however, no other 2013 amendments were yet in effect and therefore the 2011 version of the remainder of the WCA applied.

**Constitutions, Statutes, Regulations, and Rules: Montana Code Annotated: 39-71-402.** Where § 39-71-402, MCA, was amended with an effective date of March 20, 2013, and Petitioner's industrial injury occurred on April 22, 2013, the Court applied the 2013 version of § 39-71-402,

MCA, to her claim, while otherwise applying the 2011 version of the WCA to the case.

**Constitutions, Statutes, Regulations, and Rules: Montana Code Annotated: 39-71-402.** Since no Montana employment existed at the time Petitioner suffered an industrial injury in North Dakota, the Court concluded Petitioner did not temporarily leave Montana “incidental to” Montana employment. While Petitioner may have had the subjective intention to return to Montana at some point in the future, she did not leave the state “incidental to” an employment which no longer existed. Therefore, this Court had no jurisdiction over her workers’ compensation claim.

**Employment: Montana Employment.** Since no Montana employment existed at the time Petitioner suffered an industrial injury in North Dakota, the Court concluded Petitioner did not temporarily leave Montana “incidental to” Montana employment. While Petitioner may have had the subjective intention to return to Montana at some point in the future, she did not leave the state “incidental to” an employment which no longer existed. Therefore, this Court had no jurisdiction over her workers’ compensation claim.

**Employment: Existence.** Since no Montana employment existed at the time Petitioner suffered an industrial injury in North Dakota, the Court concluded Petitioner did not temporarily leave Montana “incidental to” Montana employment. While Petitioner may have had the subjective intention to return to Montana at some point in the future, she did not leave the state “incidental to” an employment which no longer existed. Therefore, this Court had no jurisdiction over her workers’ compensation claim.

**Jurisdiction: Workers’ Compensation Court.** Since no Montana employment existed at the time Petitioner suffered an industrial injury in North Dakota, the Court concluded Petitioner did not temporarily leave Montana “incidental to” Montana employment. While Petitioner may have had the subjective intention to return to Montana at some point in the future, she did not leave the state “incidental to” an employment which no longer existed. Therefore, this Court had no jurisdiction over her workers’ compensation claim.

¶ 1 Respondent Travelers Casualty & Surety Company (Travelers) moves this Court for summary judgment in its favor on the issue of whether this Court has subject matter

jurisdiction to adjudicate Petitioner Tara McCoy's claim against Travelers' insured.<sup>1</sup> Travelers contends that jurisdiction over McCoy's claim properly rests in North Dakota because McCoy was injured while working in Minot, North Dakota. McCoy opposes Travelers' motion, contending that this Court has jurisdiction over her claim pursuant to § 39-71-402(1), MCA (2011).<sup>2</sup>

### Undisputed Facts<sup>3</sup>

¶ 2 Financial Health Resources, Inc. (FHR) is a privately held Florida-based corporation with corporate offices located in Orlando, Florida.

¶ 3 McCoy, born in 1975, has considered herself a permanent resident of Great Falls, Montana, since November 2008.

¶ 4 FHR is engaged in the business of providing accounts receivables management to the health care industry in various states. These services include providing personnel to health care facilities to facilitate acquisition of benefits, including Medicaid, for uninsured and underinsured patients.

¶ 5 On or about February 1, 2012, FHR entered into a certain Entitlement and Self-Pay Management Agreement with Benefis Health Systems (Benefis) in Great Falls (the Benefis Contract), to provide receivables management and Medicaid representatives to facilitate acquisition of benefits for Benefis' patients.

¶ 6 In May 2012, McCoy responded to an advertisement for a Medicaid Processing Representative for FHR. McCoy was subsequently interviewed by FHR representative Denise Garcia at Benefis Hospital in Great Falls.

¶ 7 On or about May 21, 2012, after interviewing with Garcia, FHR hired McCoy that same day to work as a Medicaid representative pursuant to the Benefis Contract. There was no written employment contract, although there was an oral contract of employment.

¶ 8 On or about November 1, 2012, Benefis gave notice that it was exercising its option to terminate the contract with FHR, and the parties thereafter executed a Fourth

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<sup>1</sup> Respondent's Motion for Summary Judgment and Supporting Brief (Opening Brief), Docket Item No. 11.

<sup>2</sup> Petitioner's Response to Respondent's Motion for Summary Judgment (Response Brief), Docket Item No. 15. Although McCoy cited to the 2011 version in her brief, as noted in ¶ 47 of this Order, § 39-71-402, MCA, was amended prior to McCoy's injury. Therefore, pursuant to *Fleming v. Int'l Paper Co.*, 2008 MT 327, ¶ 26, 346 Mont. 141, 194 P.3d 77, the 2013 version of § 39-71-402, MCA, applies to McCoy's claim.

<sup>3</sup> On September 30, 2013, the parties filed a joint Statement of Stipulated Facts, Docket Item No. 19. Their statement is incorporated here with its citations to the record omitted.

Addendum to the Benefis Contract describing the terms and services FHR would provide while its work at Benefis was concluding.

¶ 9 Pursuant to Benefis' termination of the Benefis Contract and the Fourth Addendum thereto, FHR would not receive new patient accounts for administration after December 31, 2012.

¶ 10 On or about December 1, 2012, FHR contracted with Trinity Health Systems (Trinity) to provide services at Trinity facilities pursuant to a certain Medicaid/Medical Assistance Agreement for Trinity dated December 1, 2012 (the Trinity Contract).

¶ 11 On or about December 17, 2012, FHR's President and Chief Executive Officer, Brian Wasserman, e-mailed McCoy and six other FHR employees an offer of employment and gave them "first shot" at "two (2) openings for" FHR's "newest client in Minot, North Dakota." The offer included "a two bedroom apartment and utilities . . . ."

¶ 12 McCoy was included among the addressees of Mr. Wasserman's December 17, 2012, e-mail due to the quality of her performance while working at Benefis, because the Benefis Contract was concluding, and because FHR did not have additional work for McCoy in Montana.

¶ 13 McCoy initially rejected the offer of work at Trinity and "indicated she would not take the job . . . ."

¶ 14 The parties continued to negotiate, and "FHR continued to incentivize McCoy to take the job" by offering "long-term employment in Florida . . . a furnished apartment [in Minot, and] paying travel for her move and relocation expenses."

¶ 15 At no time after McCoy was hired on May 21, 2012, did she fill out a new job application, nor did she complete a new W-4 or have any gap in her wages. McCoy, however, responded to Mr. Wasserman's e-mail offering work at Trinity in North Dakota, exchanged e-mails and spoke with him regarding her interest in continuing to work for FHR in the position offered at Trinity and the terms of employment for the work in North Dakota. FHR continued McCoy on payroll in the week prior to McCoy's move while she packed and prepared for the move to North Dakota so she would not have to use PTO time.

¶ 16 McCoy was also offered and did receive \$13 per hour to work in North Dakota compared to the \$11 per hour that she earned in Montana.

¶ 17 While McCoy was reluctant to accept the offer of employment at Trinity in Minot, she agreed to accept a position as a Medicaid representative at Trinity for six to eight months.

¶ 18 If McCoy found after working for six to eight months at Trinity that she enjoyed that employment, FHR would have allowed her to continue in that job subject to the terms of the Trinity Contract.

¶ 19 If after six to eight months McCoy decided that she did not want to continue working at Trinity for FHR, FHR would have considered her for employment in its corporate offices in Florida or other states where FHR had contracts to provide similar services to health care facilities.

¶ 20 If McCoy had declined the offer of employment at Trinity, she would have been laid off as FHR did not have additional work for her at Benefis or elsewhere in Montana, nor did it have any openings in other states.

¶ 21 McCoy began work for FHR on or about May 21, 2012, and her “last day to work at Benefis was January 25, 2013.”

¶ 22 McCoy gave her landlord notice and vacated her apartment in Great Falls.

¶ 23 To facilitate the move to North Dakota, Mr. Wasserman agreed to pay for a U-Haul and auto transport, which were put on a company credit card. McCoy was also given an FHR check for \$500 for fuel expenses. The total expenses exceeded \$500, and McCoy received a reimbursement check for the excess amount.

¶ 24 McCoy moved to Minot to begin work on the Trinity Contract in late January and early February 2013.

¶ 25 McCoy moved kitchen utensils, household goods, clothing, hygienic essentials, two beds and dressers, bedding, her son's toys, two televisions, DVDs, and a curio cabinet into the Minot apartment, but left the majority of her personal property in storage in Montana, e.g., bookshelves, a table, many boxes of household and kitchen items, knick-knacks, a couch, chairs, lamps, dressers, her son's toys, bedroom items, clothing, her son's motor scooter, bikes, sports equipment, and holiday decorations.

¶ 26 McCoy left Great Falls on Thursday, January 31, 2013, and arrived in Minot on February 1, 2013. She and her son stayed at the Staybridge on the night of arrival and on February 2, 2013, moved into an apartment which was associated with Trinity Hospital at 511 Valley Street in Minot.

¶ 27 McCoy never signed a rental agreement or lease for the apartment where she lived while in North Dakota, which was leased under FHR's name.

¶ 28 McCoy began work at Trinity pursuant to the Trinity Contract on or about February 4, 2013.

¶ 29 After McCoy began working in North Dakota on February 4, 2013, she “did some occasional work on the Benefis accounts,” e.g., she would receive calls from Denise Campbell regarding cases she had handled while at Benefis, she continued to speak with “Paige” from Social Security regarding FHR’s Benefis accounts, and she continued to receive occasional calls for FHR’s Benefis accounts until she stopped working in June 2013.

¶ 30 While residing in North Dakota, McCoy applied for Medicaid/Healthy Steps medical coverage for her son, asserted she was a North Dakota resident, listed her place of residence as 511 Valley Street in Minot, and stated she had lived in North Dakota since February 1, 2013.

¶ 31 McCoy has not asserted North Dakota residency for any purpose other than to obtain Medicaid/Healthy Steps medical coverage for her son.

¶ 32 On April 22, 2013, McCoy injured her knee while working at Trinity Healthcare East in Minot.

¶ 33 At the time of injury, McCoy resided at Valley Apartments, 511 Valley Street, Apartment 1, in Minot.

¶ 34 Neither Mr. Hall or Tricore, Mr. Wasserman, nor any other persons employed by FHR contacted the Montana Department of Labor and Industry (DOLI) or North Dakota Workforce Safety Insurance (NDWSI) to obtain a certificate of extraterritorial coverage prior to the April 22, 2013, injury.

¶ 35 McCoy never had any intention of living in North Dakota other than temporarily for six to eight months in order to set up the FHR account with Trinity in Minot, although she had the option of staying on at Trinity or pursuing other work with FHR in its Florida office or in other states where FHR had contracts.

¶ 36 McCoy filed Montana income tax returns from 2009 through 2012; her 2002 Suzuki car has been registered in Montana since 2008; she has maintained a Montana P.O. Box address in Ulm and Great Falls since 2008, and she has had Montana state income tax withheld from her FHR paychecks, even while working in North Dakota.

¶ 37 McCoy’s job status sheet dated June 2013 indicates that she was employed by FHR since May 21, 2012.

¶ 38 Per Benefis’ termination of the Benefis Contract and the Fourth Addendum, FHR received no new files related to that project after December 31, 2012. While some FHR employees continued work in Montana while completing obligations on open files, by the end of February 2013, FHR had vacated its office space at Benefis, and all

remaining work related to the Benefis Contract after that time was conducted from FHR's offices in Florida. As of July 31, 2013, FHR had concluded all work on the Benefis project and returned all documentation and files pertaining to that project to Benefis.

¶ 39 Since McCoy began work at Trinity, FHR did not enter into any contracts for additional work in Montana. FHR does not have any immediate prospects for contracts with health care facilities in Montana and does not have a Montana position for McCoy at this time or for the foreseeable future.

¶ 40 Travelers' workers' compensation policy with FHR, information page, ¶ 3.A. indicates workers' compensation insurance under Part One of the policy applied to the laws of Montana, Nevada, Indiana, Illinois, Georgia, and Florida, but did not list North Dakota workers' compensation law as applicable under any part of the policy.

¶ 41 Upon learning of McCoy's injury, FHR's Mr. Wasserman and Tricore's Mr. Hall learned that FHR did not have workers' compensation coverage for its employees in North Dakota with Travelers or NDWSI, and Mr. Hall set about acquiring NDWSI coverage retroactive to February 1, 2013.

¶ 42 McCoy maintains that coverage existed under the workers' compensation policy with Travelers for her injury in North Dakota pursuant to the extraterritorial application provisions of § 39-71-402(1), MCA (2011).<sup>4</sup>

¶ 43 Tricore's Mr. Hall filed a First Report of Injury in regard to McCoy's knee injury with NDWSI, and McCoy has elected to pursue coverage for her injury with Travelers pursuant to § 39-71-402(1), MCA, as explained in McCoy's Response Brief.

#### Analysis and Decision

¶ 44 For the Court to grant summary judgment, the moving party must establish that no genuine issues of material fact exist and the moving party is entitled to judgment as a matter of law.<sup>5</sup> The material facts necessary for disposition of this case are undisputed. Accordingly, this case is appropriate for summary disposition.

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<sup>4</sup> See *supra* note 2; see *infra* ¶¶ 46-48.

<sup>5</sup> ARM 24.5.329; *Farmers Union Mut. Ins. Co. v. Horton*, 2003 MT 79, ¶ 10, 315 Mont. 43, 67 P.3d 285.

¶ 45 McCoy concedes that her industrial injury occurred in Minot, North Dakota. She acknowledges that, in order for Montana workers' compensation law to apply to her claim, her case must fall under § 39-71-402, MCA.<sup>6</sup>

¶ 46 It is well-established that the version of the Workers' Compensation Act (WCA) which is in effect on the date of injury controls the disposition of a claim.<sup>7</sup> Typically, this is a straightforward determination. This case presents a rare circumstance, however, because of the timing of McCoy's injury relative to the effective date of certain amendments made to § 39-71-402, MCA – the statute that is ultimately dispositive of this motion.

¶ 47 Section 39-71-402, MCA, was amended with an effective date of March 20, 2013. McCoy was injured on April 22, 2013. Therefore, the 2013 version of § 39-71-402, MCA, was in effect on the date of McCoy's injury. At the outset of oral argument, therefore, I informed counsel that in light of the effective date of § 39-71-402, MCA, I believed the 2013 version of § 39-71-402, MCA, applies to McCoy's claim. I further advised counsel that applying the 2013 version of § 39-71-402, MCA, meant that the 2007 Montana-North Dakota Reciprocal Agreement (MNDRA) would not apply to McCoy's claim because the applicability provision of HB 82<sup>8</sup> stated that the 2013 version of § 39-71-402, MCA, "applies to agreements entered into on or after [the effective date of this act]." Since the existing MNDRA was entered into prior to the effective date of the 2013 version of § 39-71-402, MCA, it does not apply to this claim. After a lengthy discussion, counsel for both parties agreed and stipulated that the 2013 version of § 39-71-402, MCA, applies to McCoy's claim and the 2007 MNDRA does not.

¶ 48 Although the 2013 version of § 39-71-402, MCA, applies to this claim, no other 2013 amendments to the WCA were in effect on the date of McCoy's injury. Therefore, aside from § 39-71-402, MCA, McCoy's claim is controlled by the 2011 version of the WCA.

¶ 49 Travelers argues that McCoy has no basis to bring a North Dakota industrial injury under Montana law given the facts of her claim.<sup>9</sup> McCoy responds that she was hired in Montana, is a Montana resident, and did not establish a residence in North Dakota, and therefore she is entitled to workers' compensation coverage under the Montana WCA even though her industrial injury occurred in North Dakota.<sup>10</sup> Travelers

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<sup>6</sup> Response Brief at 5.

<sup>7</sup> *Buckman v. Montana Deaconess Hosp.*, 224 Mont. 318, 321, 730 P.2d 380, 382 (1986).

<sup>8</sup> H.B. 82, 2013 Leg., 63rd Sess. (Mont. 2013). HB 82 is the bill which amended § 39-71-402, MCA.

<sup>9</sup> Opening Brief at 5-6.

<sup>10</sup> Response Brief at 7-9.

replies that, whether or not McCoy intended to remain in North Dakota permanently, she nonetheless resided there at the time of her industrial injury.<sup>11</sup>

¶ 50 Under § 39-71-402(1)(a), MCA, in the absence of an agreement under subsection (2), if a worker employed in Montana who is subject to the provisions of this chapter temporarily leaves Montana incidental to that employment and receives an injury arising out of and in the course of employment, the provisions of this chapter apply as though the worker were injured in Montana. In the present case, the parties have stipulated that no agreement under subsection (2) exists which applies to McCoy's claim.<sup>12</sup> McCoy contends that she is a Montana worker who temporarily left the state incidental to her employment and therefore the provisions of the WCA apply to her industrial injury even though the injury occurred in North Dakota.<sup>13</sup> Travelers maintains that McCoy worked and resided in North Dakota at the time of her industrial accident and therefore Montana workers' compensation law does not apply to her claim.<sup>14</sup>

¶ 51 Travelers argues that, in the absence of a reciprocal agreement, the parties must look to the language of § 39-71-402(1)(a), MCA.<sup>15</sup> Travelers points to *McGaha v. Greyhound Lines, Inc.*<sup>16</sup> and argues that under the analysis this Court used in *McGaha*, McCoy cannot be said to have temporarily left Montana incidental to her employment.<sup>17</sup> In *McGaha*, this Court reasoned that § 39-71-402(1), MCA, has three requirements: (1) there must be Montana employment; (2) leaving Montana must be temporary; and (3) leaving Montana must be incidental to the Montana employment.<sup>18</sup>

¶ 52 In McCoy's case, I do not find that she meets these requirements. First, at the time McCoy's industrial injury occurred, no Montana employment existed. As the undisputed facts indicate, McCoy accepted a new position with the employer which commenced after her Montana job position ceased to exist. Moreover, by the time of McCoy's North Dakota injury, not only had her Montana position with the employer ceased to exist, but her employer had ceased to exist in Montana. By the end of February 2013, FHR vacated its office space at Benefis, and all remaining work related

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<sup>11</sup> Respondent's Reply Brief in Support of Motion for Summary Judgment (Reply Brief), Docket Item No. 17, at 3.

<sup>12</sup> See Minute Book Hearing No. 4495 (Oral Argument), Docket Item No. 20.

<sup>13</sup> Response Brief at 5-6.

<sup>14</sup> Opening Brief at 1.

<sup>15</sup> Oral Argument.

<sup>16</sup> WCC No. 8502-2890 (July 1, 1986), *aff'd*, 226 Mont. 345, 735 P.2d 521 (1987).

<sup>17</sup> Oral Argument.

<sup>18</sup> *McGaha* at 7.

to the Benefis Contract after that time was being wrapped up from FHR's offices in Florida. It is axiomatic that no Montana employment can exist without a Montana employer.

¶ 53 In the event McCoy terminated her employment with FHR and returned to Montana, her leaving Montana could be considered temporary. However, § 39-71-402(1)(a), MCA, requires that the worker temporarily leaves Montana "incidental to that [Montana] employment." As noted above, McCoy left Montana to take a job in North Dakota because her Montana job had ceased to exist. Therefore, irrespective of McCoy's subjective intent to return to Montana at some point in the future, she obviously did not leave Montana *incidental* to a Montana job that no longer existed.

¶ 54 McCoy's situation contrasts markedly with McGaha's. In *McGaha*, the claimant worked as an "extra board" bus driver for Greyhound Lines, Inc., and had been stationed in Missoula for the previous four years. At the time of his industrial injury, McGaha lived in Clinton, Montana, with his wife and children. In February 1983, he was "bumped" out of his Missoula position by a senior driver, and he in turn "bumped" a driver in Salt Lake City. McGaha traveled to Salt Lake City and stayed overnight with friends less than 24 hours before his industrial accident and he did not establish any permanent address there. After McGaha was released from the hospital following his industrial injury, he returned to his home in Clinton. The Court found that McGaha had no interest in Utah other than the trip which resulted in his injury, and that McGaha intended to return to his home in Montana after his work in Utah.<sup>19</sup>

¶ 55 In McCoy's case, she and her son vacated their rented apartment in Great Falls and relocated to an apartment leased by her employer in Minot. She began to work in Minot on February 4, 2013, and suffered an industrial injury on April 22, 2013. While the Court found that McGaha had no other interest in Utah and that he intended to return to his home in Montana, the same cannot be said for McCoy, who set up a home in North Dakota and represented herself as a resident of North Dakota when she obtained health insurance for her son.

¶ 56 I therefore conclude that under § 39-71-402(1), MCA, this Court has no jurisdiction over McCoy's claim. Travelers' motion for summary judgment is therefore granted.

#### ORDER

¶ 57 Respondent's motion for summary judgment is **GRANTED**.

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<sup>19</sup> *Id.* at 4-5.

¶ 58 Pursuant to ARM 24.5.348(2), this Order is certified as final and, for purposes of appeal, shall be considered as a notice of entry of judgment.

DATED in Helena, Montana, this 6<sup>th</sup> day of February, 2014.

(SEAL)

/s/ JAMES JEREMIAH SHEA  
JUDGE

c: Richard J. Martin  
Dave Whisenand

Submitted: October 4, 2013