

IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

2011 MTWCC 9

WCC No. 2011-2657

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**SCOTT McLAUGHLIN**

**Petitioner**

**vs.**

**NORTHWESTERN CORPORATION d/b/a NORTHWESTERN ENERGY**

**Respondent/Insurer.**

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ORDER DENYING RESPONDENT'S MOTION TO DISMISS AND MOTION FOR  
SUMMARY JUDGMENT

**Summary:** Respondent moves for dismissal of the Petition for Trial, or alternatively, summary judgment in its favor regarding Petitioner's request for a hiring preference under § 39-71-317(2), MCA. Respondent alleges that Petitioner is not entitled to a hiring preference because the parties settled Petitioner's claim on a disputed liability basis.

**Held:** Section 39-71-317(2), MCA, requires a hiring preference where a worker has suffered a qualifying injury. Since the parties settled Petitioner's claim on a disputed liability basis, whether Petitioner suffered a qualifying injury is a question of fact to be determined by the Court. This case is not appropriate for dismissal nor summary judgment.

**Topics:**

**Constitutions, Statutes, Regulations, and Rules: Montana Code Annotated: 39-71-317.** Where a case is settled on a disputed liability basis and the injury's existence is in contention, whether an injury occurred for purposes of § 39-71-317, MCA, is a disputed fact, precluding dismissal or summary judgment.

**Settlements: Disputed Liability.** Where a case is settled on a disputed liability basis and the injury's existence is in contention, whether an injury

occurred for purposes of the hiring preference statute, § 39-71-317, MCA, is a disputed fact, precluding dismissal or summary judgment.

**Summary Judgment: Disputed Facts.** Where a case is settled on a disputed liability basis and the injury's existence is in contention, whether an injury occurred for purposes of the hiring preference statute, § 39-71-317, MCA, is a disputed fact, precluding dismissal or summary judgment.

¶ 1 Respondent Northwestern Corporation d/b/a Northwestern Energy (Northwestern) moves this Court for dismissal of Petitioner Scott McLaughlin's Petition for Trial, or alternatively, summary judgment in its favor.<sup>1</sup> McLaughlin opposes Northwestern's motion.<sup>2</sup>

¶ 2 McLaughlin filed a Petition for Trial, alleging that Northwestern failed to honor the hiring preference found at § 39-71-317(2), MCA. McLaughlin requests that the Court order Northwestern to place him in his time-of-injury position or another position that is consistent with his physical condition and vocational abilities.<sup>3</sup> Northwestern argues that McLaughlin's petition should be dismissed because his claim was settled on a disputed liability basis. Northwestern contends that no hiring preference can arise from a claim which was settled on a disputed liability basis.<sup>4</sup>

¶ 3 Under § 39-71-317(2), MCA, when an injured worker is capable of returning to work within two years of the date of injury, the worker must be given a preference over other applicants for a comparable vacant position if the position is consistent with the worker's physical condition and vocational abilities. Northwestern argues that it never admitted liability for an injury and therefore the hiring preference statute does not apply.<sup>5</sup> McLaughlin responds that claims settled on a disputed liability basis are not statutorily excepted from a worker's entitlement to a hiring preference under § 39-71-317(2), MCA.<sup>6</sup>

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<sup>1</sup> Respondent's Motion to Dismiss and/or Motion for Summary Judgment and Supporting Memorandum (Opening Brief), Docket Item No. 4.

<sup>2</sup> Petitioner's Brief in Response to Respondent's Motion to Dismiss (Response Brief), Docket Item No. 5.

<sup>3</sup> Petition for Trial, Docket Item No. 1.

<sup>4</sup> Opening Brief at 3.

<sup>5</sup> Opening Brief at 2-3.

<sup>6</sup> Response Brief at 2-3.

¶ 4 While it is true that Northwestern never accepted liability for McLaughlin's alleged injury, what Northwestern asks the Court to do is impute from the disputed liability settlement that an injury **did not** occur. Conversely, McLaughlin asks the Court to impute from the disputed liability settlement that an injury **did** occur and that he therefore should be entitled to the hiring preference. Since the existence of the injury is disputed in the settlement, whether an injury occurred for purposes of § 39-71-317(2), MCA, remains a fact in dispute.

¶ 5 Motions to dismiss are viewed with disfavor and will be granted only where the allegations of the petition or complaint either show that the claimant is not entitled to relief of any sort, or discloses an "insuperable bar" to recovery. For purposes of the motion, all well-pleaded allegations of the petition are deemed true.<sup>7</sup> Alternatively, for the Court to grant summary judgment in Northwestern's favor, Northwestern must establish that no genuine issues of material fact exist and that it is entitled to judgment as a matter of law.<sup>8</sup> In this case, McLaughlin has pled that he suffered an industrial injury or occupational disease while employed at Northwestern.<sup>9</sup> For purposes of Northwestern's motion to dismiss, the Court deems this contention true; therefore Northwestern's motion to dismiss must fail. As for Northwestern's motion for summary judgment, as noted above, whether McLaughlin suffered an industrial injury is a fact in dispute. Therefore, this matter is not appropriate for summary disposition. Northwestern's alternative motion for summary judgment is likewise denied.

#### ORDER

¶ 6 Respondent's motion to dismiss is **DENIED**.

¶ 7 Respondent's motion for summary judgment is **DENIED**.

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<sup>7</sup> *Fleming v. Int'l Paper Co.*, 2005 MTWCC 35, ¶ 4. (Citations omitted.)

<sup>8</sup> ARM 24.5.329; *Farmers Union Mut. Ins. Co. v. Horton*, 2003 MT 79, ¶ 10, 315 Mont. 43, 67 P.3d 285.

<sup>9</sup> Petition for Trial at 1.

DATED in Helena, Montana, this 14<sup>th</sup> day of March, 2011.

(SEAL)

/s/ JAMES JEREMIAH SHEA  
JUDGE

c: Stephen C. Pohl  
Todd A. Hammer  
Submitted: February 8, 2011