

IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

1995 MTWCC 47

WCC No. 9504-7275

PAUL MONTGOMERY

Appellant

vs.

DEPARTMENT OF LABOR AND INDUSTRY

Respondent.

DECISION ON APPEAL

Summary: Employee of Water Quality Bureau, Department of Health and Environmental Sciences, appealed Department of Labor and Industry's dismissal of his request for classification as a regular and not temporary employee of the Bureau.

Held: Where appellant has raised no claim for Workers' Compensation or Occupational Disease Benefits, the Department corrected dismissed his request for reclassification. Appeal dismissed.

Topics:

Appeals (To Workers' Compensation Court): Issues Considered. Appeal from order of Department of Labor and Industry dismissed where appellant raised no issue of benefits under the Workers' Compensation or Occupational Disease Acts before the Department, but rather requested reclassification as a regular and not temporary employee of state agency, evidently for use in pursuing other claims.

Jurisdiction: Subject Matter Jurisdiction. Appeal from order of Department of Labor and Industry dismissed where appellant raised no issue of benefits under the Workers' Compensation or Occupational Disease Acts before the Department, but rather requested reclassification as a regular and not temporary employee of state agency, evidently for use in pursuing other claims.

This is an appeal from a decision of the Department of Labor and Industry (Department) dismissing appellant's Petition for Declaratory Ruling. Finding no merit to the appeal, the decision of the Department is **affirmed** and this appeal is **dismissed**.

Factual and Procedural Background

On June 16, 1994, the appellant, Paul Montgomery (Montgomery), filed a Petition for Declaratory Ruling with the Department. Montgomery alleges that he "labored at the Water Quality Bureau (Bureau), Department of Health and Environmental Sciences from January, 1993 to March, 1994," and that during that time he was reported as an employee of Express Services for purposes of workers' compensation insurance. (See Petition for Declaratory Ruling at ¶ 2, page 1.) Express Services is apparently a "temporary service contractor" which furnishes "temporary employees" to other employers. See § 39-71-116(27) and (29), MCA. Montgomery's petition requests that the Department find that he was a regular employee of the Bureau and not a temporary employee.

Montgomery's petition does not allege that he has any claim under the Workers' Compensation Act or the Occupational Disease Act. Paragraph 5 states that he is seeking a ruling concerning his employment status so he can seek additional wages and benefits from the Bureau:

5. Petitioner contends that he was a state employee because his employment situation with the Department of Health and Environmental Sciences failed to meet the definition of temporary worker as given in 39-71-116(29), MCA. That this situation, in turn, **leads to the conclusion that he was not compensated according to the statutes and rules of state employee compensation.** And, because he was incorrectly compensated for his labor, his Workers' Compensation was underpaid. [Emphasis added.]

In an Order Refusing to Assume Jurisdiction, issued March 17, 1995, the Department declined jurisdiction over the petition. The Order states that "a check of the Department's records reveals that no claim for workers' compensation benefits has been filed under Mr. Montgomery's social security number."

Discussion

In dismissing Montgomery's petition, the Department relied on *Alaska Pacific Assurance Co. v. L.H.C., Inc.*, 191 Mont. 120, 622 P.2d 224 (1981). In that case the Supreme Court sanctioned an insurance company for abusing the court system by presenting issues in the Workers' Compensation Court which were properly decided by a

district court. The action brought in the Workers' Compensation Court was clearly aimed at circumventing a district court ruling.

The same is true in this case. Montgomery has not alleged any claim for workers' compensation or occupational disease benefits. It is apparent from his petition that he seeks a ruling concerning his employment status to enhance other claims. Those claims should be pursued in the forum that has jurisdiction over them.

Montgomery's allegation concerning possible underpayment of premiums by the State on account of his alleged misclassification may raise an issue between the State and its insurer, but he has no standing to pursue it.

The decision of the Department of Labor and Industry is **affirmed** and this appeal is **dismissed**.

Dated in Helena, Montana, this 15th day of June, 1995.

(SEAL)

/S/ Mike McCarter

JUDGE

c: Mr. Paul Montgomery - Certified Mail
Mr. Robert J. Campbell
Ms. Melanie A. Symons