IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

2012 MTWCC 24

WCC No. 2011-2730

ROBERT MORSE

Petitioner

vs.

LIBERTY NORTHWEST INSURANCE CORP.

Respondent/Insurer.

ORDER DENYING RESPONDENT'S PETITION FOR NEW TRIAL AND DENYING RESPONDENT'S REQUEST FOR AMENDMENT TO FINDINGS OF FACT AND CONCLUSIONS OF LAW

Summary: Respondent petitioned for a new trial and requested amendment to the findings of fact and conclusions of law the Court issued in this matter. Respondent contended that the Court reached issues beyond the issue presented by the parties for resolution, the Court erred in determining that Respondent's insured acted as its agent when it accepted Petitioner's accident report, and the Court erroneously found that Petitioner's industrial accident occurred on a specific date. Petitioner objected to Respondent's contentions of error.

Held: The Court's decision did not exceed the scope of the issue presented in the Pretrial Order. The Court correctly concluded that the employer acted as Respondent's agent when it accepted Petitioner's accident report. Finally, the Court determined that Respondent's belief that the Court found a date certain for Petitioner's industrial accident to be in error. Respondent's petition and request are therefore denied.

¶ 1 Respondent Liberty Northwest Insurance Corp. (Liberty) moves this Court for a new trial and requests amendment to the findings of fact and conclusions of law the Court issued in this case.[1] Liberty argues that it is entitled either to a new trial or to

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[1] See *Morse v. Liberty Northwest Ins. Corp.*, 2012 MTWCC 16.

amendment of the issued findings of fact and conclusions of law pursuant to ARM 24.5.344.[2] Petitioner Robert Morse objects to Liberty's motion and request.[3]

¶ 2 Liberty sets forth three alleged errors which it asks the Court to rectify: the issue presented for trial; the Court's determination of agency; and the date of December 5, 2006. Liberty's arguments regarding each of these matters is set forth more fully below.

I. The Issue Presented for Trial

¶ 3 Liberty argues that this Court incorrectly identified the issue the parties set forth in the Pretrial Order. Liberty notes that in its decision, the Court set forth the issue to be determined as: "Is Respondent liable for payment of workers' compensation or occupational disease benefits to Petitioner?"[4] Liberty contends that this issue does not correspond with the issue the parties set forth in the Pretrial Order. In the Pretrial Order, the parties stated the issue as:

> Whether the insurer is liable for payment of workers' compensation or occupational disease benefits to the Petitioner. The parties are not asking the Court to determine the nature and extent of liable [sic] if the Court finds the insurer does not have a 30 day or 1 year claim filing defense. The issue of the nature and extent of liability, if any, is reserved.[5]

¶ 4 Ultimately, in *Morse*, I ordered, "Respondent is liable for payment of workers' compensation or occupational disease benefits to Petitioner."[6] I determined that Liberty did not have a one-year claim filing defense. I concluded Liberty was liable for Morse's claim.[7] I made no findings or conclusions as to the nature or extent of such liability, but only concluded – as requested by the parties – whether such liability existed. In its brief, Liberty argues, "The only issue before the Court was whether either the 30 day notice or 1 year claim filing defense was available to Liberty."[8] The difficulty with

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[2] Petition for New Trial and/or Request for Amendment to Findings of Fact and Conclusions of Law (Opening Brief), Docket Item No. 32.

[3] Petitioner's Objection and Supporting Brief to Petition for New Trial and/or Amendment to Decision (Response Brief), Docket Item No. 35.

[4] *Morse*, ¶ 4.

[5] Pretrial Order at 2-3.

[6] *Morse*, ¶ 46.

[7] *Morse*, ¶ 45.

[8] Opening Brief at 2.

Liberty's position is, as Liberty notes in its brief, the Pretrial Order supersedes the pleadings and governs the course of trial. The issue the parties presented was whether Liberty was liable, while further asking the Court not to make rulings on the nature and extent of Liberty's liability. Liberty now asks the Court to restate the issue as something akin to, "Does Respondent have either a 30-day or one-year claim filing defense available?" Or perhaps two issues: "Is Petitioner's claim untimely under the 30-day notice requirement of § 39-71-603, MCA?" and "Is Petitioner's claim untimely under the one-year claim filing limitation found in § 39-71-601, MCA?" In reviewing the decision in this matter, those do indeed appear to be the issues the Court addressed. I made no findings or conclusions regarding the nature or extent of Morse's entitlement to any particular benefits. I fail to see how I could have construed the issue presented more narrowly and therefore see no grounds upon which to grant Liberty's petition for a new trial or request for amendment on this issue.

II. The Court's Determination of Agency

¶ 5 Liberty further argues that this Court erroneously determined that Morse's employer (Beall) acted as Liberty's agent in accepting Morse's reports of his industrial injuries. Liberty argues that Beall could not have been Liberty's agent because Liberty contends that no evidence indicates that Beall consented to act on Liberty's behalf and that Liberty controlled how Beall handled claim filing. Liberty asks:

> Where is there evidence that Liberty knew that Morse fell as he claims, that it knew Hazen filled out a claim on behalf of Morse as claimed and placed it in a desk as they claim? How do you consent to something you do not know about?[9]

¶ 6 Morse responds that under § 39-71-601, MCA, an injured worker may file a first report of injury (FROI) with his employer, the insurer, or the department, and that regardless of whether one characterizes the relationship between an insurer and an employer as one of agency or a unique relationship created by statute and administrative rules, Morse still met the filing requirements of § 39-71-601, MCA.[10]

¶ 7 As I noted in the underlying decision, by accepting the responsibility for injury reporting and claims filing, Beall stood in the place of Liberty in dealing with injured workers and acted as Liberty's agent.[11] Liberty did not need to know that Beall's

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[9] Opening Brief at 4.

[10] Response Brief at 2.

[11] *Morse*, ¶ 37.

employee accepted and misplaced Morse's injury report in order to have consented to Beall's accepting injury reports on Liberty's behalf. Liberty argues that it should be held harmless for the employer's mistakes in a situation where the injured worker indisputably did everything he was asked to do in reporting an industrial accident to his employer.

¶ 8 Under Liberty's argument, an employer could accept a report – and an injured worker could fulfill his reporting obligations under § 39-71-601, MCA – and the employer could then ***deliberately*** fail to file the report with the insurer with the result being that the injured worker's claim would be denied. As *Lund v. St. Paul Fire & Marine Ins. Co.* demonstrates, an insurer is liable for an employer's actions where they interfere with an injured worker's ability to pursue a workers' compensation claim.[12] In the present situation, this means that when Morse reported his industrial accident to Beall and Beall accepted his report, Beall acted on behalf of Liberty and Morse satisfied his reporting obligations.

III. December 5, 2006

¶ 9 Finally, Liberty argues that this Court erred in making a finding that Morse's first industrial injury occurred on December 5, 2006. Liberty further raises an argument regarding whether Morse was at maximum medical improvement (MMI) from his first industrial injury prior to his second industrial injury.[13]

¶ 10 In *Morse*, after hearing the witness' testimony, I found that Morse experienced two slip-and-fall accidents at work. Neither Morse nor any other witness could pinpoint with any certainty the date of Morse's accidents. However, the pertinent witnesses agreed that the first fall occurred in the late fall or early winter of 2006 and that the second occurred approximately eight weeks after the first. Morse filed a FROI on December 5, 2009, thus making the date of December 5, 2006, a critical date in determining whether this filing was timely. In light of the evidence presented, I determined that Morse had not met his burden of proving that his first industrial accident occurred after December 5, 2006, but that he had proven that his second – which occurred eight weeks after the first – more probably than not occurred after December 5, 2006, given that the first occurred in the "late fall or early winter of 2006."[14] Liberty is mistaken that this Court found a first date of injury of December 5, 2006, as it made no such finding.

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[12] *Lund*, 2001 MTWCC 62, ¶ 8.

[13] Opening Brief at 5-6.

[14] *Morse*, ¶¶ 28-30.

¶ 11 As to Liberty's arguments regarding whether Morse reached MMI between his first and second industrial accidents, I do not address this argument as it goes beyond the scope of the issue the parties asked the Court to determine at trial. As noted above, in the underlying decision, I made no findings or conclusions as to the nature or extent of such liability, but only concluded – as requested by the parties – as to whether such liability existed. I decline to extend the scope of my ruling here.

ORDER

¶ 12 Respondent's petition for new trial is **DENIED**.

¶ 13 Respondent's request for amendment to findings of fact and conclusions of law is **DENIED**.

¶ 14 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 10th day of July, 2012.

(SEAL)

/s/ JAMES JEREMIAH SHEA
JUDGE

c: R. Russell Plath
Larry W. Jones
Submitted: May 21, 2012