IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

2010 MTWCC 6

WCC No. 2010-2440

GLEN MURPHY

Petitioner

vs.

MONTANA STATE FUND

Respondent/Insurer.

FILED

MAR - 9 2010

OFFICE OF
WORKER'S COMPENSATION JUDGE
HELENA, MONTANA

DECISION AND JUDGMENT

Summary: Petitioner sought a lump-sum conversion of his permanent total disability benefits.

Held: In a bench ruling, the Court concluded that Petitioner is entitled to a lump-sum conversion of his permanent total disability benefits.

¶1 The trial in this matter was held on February 26, 2010, in the Workers' Compensation Court, Helena, Montana. Petitioner Glen Murphy was present and represented himself. Respondent Montana State Fund was represented by Greg E. Overturf.

¶2 Exhibits: Exhibits 1 through 59 were admitted without objection.

¶3 Witnesses and Depositions: The depositions of Mr. Murphy, Scott Degnan, Richard Whitman, Ph.D., and Patricia A. LaHaie, M.D., were taken and submitted to the Court. Mr. Murphy, LeeAnne Murphy, Jesse Murphy, Calvin Erb, Delane Hall, and Andy Anderson were sworn and testified. Upon stipulation of the parties, Susan McRae, CPA, testified by telephone.

¶4 Issues Presented: The Pretrial Order states the following contested issue of law:[1]

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[1] Pretrial Order at 2.

DOCKET ITEM NO. 26

¶ 4a Is Mr. Murphy entitled to a lump-sum conversion of his permanent total disability benefits?

¶5 After considering the trial testimony, depositions, exhibits, and the arguments of the parties, I ruled pursuant to ARM 24.5.335 that Mr. Murphy is entitled to a lump-sum conversion of his permanent total disability benefits. The transcript of the bench ruling shall constitute the Court's Findings of Fact and Conclusions of Law.

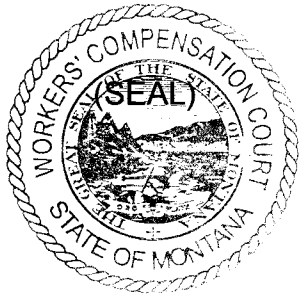
JUDGMENT

¶6 For the reasons set forth in the bench ruling, a transcript of which is attached, I find that Mr. Murphy is entitled to a lump-sum conversion of his permanent total disability benefits.

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

¶8 Any party to this dispute may have twenty days in which to request reconsideration from this Decision and Judgment.

DATED in Helena, Montana, this 9th day of March, 2010.



JUDGE

c: Glen Murphy
Greg E. Overturf
Attached: Copy of Bench Ruling
Submitted: February 26, 2010

FILED
MAR 03 2010
OFFICE OF
WORKERS' COMPENSATION JUDGE
HELENA, MONTANA

1 WORKERS' COMPENSATION COURT
2 IN AND FOR THE STATE OF MONTANA
3

GLEN MURPHY, Petitioner, vs. MONTANA STATE FUND, Respondent.	WCC No. 2010-2440 February 25, 2010 Bench Ruling

ORIGINAL

BEFORE THE HONORABLE JAMES JEREMIAH SHEA

The trial in the above-entitled matter was held on Friday, February 25, 2010, at 9:00 a.m., at the Workers' Compensation Court, Helena, Montana.

DOCKET ITEM NO. 23

1 APPEARANCES:

2

3 For the Petitioner: Glen Murphy
Pro Se
4 PO Box 215
Custer, Montana 59024
5

6 For the Respondent: Greg E. Overturf
Special Assist. Attorney General
7 Montana State Fund
PO Box 4759
8 Helena, Montana 59604

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10 Court Reporter: Kim Johnson, RPR
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1 BE IT REMEMBERED that on Friday, February 25,
2 2010, in Helena, Montana, before the Honorable James Jeremiah
3 Shea, Workers' Compensation Judge, the following proceedings
4 were had:
5 * * * * * * * * * *
6
7 THE COURT: In the case of Glen Murphy versus
8 Montana State Fund, Cause No. 2010-2440, I am prepared to
9 issue a bench ruling pursuant to ARM 24.5.335.
10 The facts in this case are largely undisputed. The
11 issue before the Court is whether Mr. Murphy is entitled to a
12 lump sum conversion of his total disability benefits. Under
13 Section 39-71-741(1)(c)(i)(C), Montana Code Annotated, a lump
14 sum conversion of PTD benefits must be the exception. The
15 conversion must be approved by the Department or by this
16 Court, and it may be given only in certain circumstances. In this
17 case, it may be given only if Mr. Murphy has demonstrated a
18 financial need that relates to a self-employment venture that is
19 considered feasible under criteria set forth by the Department.
20 Those criteria are set forth at ARM 24.29.1202. I find
21 that Mr. Murphy has provided the information required
22 sufficiently to allow me to evaluate his request for a lump sum
23 for a self-employment venture under the Department's criteria.
24 I have read the depositions of Mr. Murphy,
25 Dr. LaHaie, Scott Degnan, and Richard Whitman, which were

1 submitted for the Court's consideration. I have also reviewed
2 the exhibits filed in this case. The court has heard the
3 telephonic testimony of Susan McRae and live testimony of
4 Mr. Murphy, Mrs. Murphy, Jesse Murphy, Cal Erb, Delane Hall,
5 and Andy Anderson.
6 Just -- I'll treat all of the live witnesses in a lump sum.
7 I found all of the witnesses to be credible. I don't think there
8 was any real challenge to any of the credibility of any of the
9 witnesses, anyway.
10 It is indisputable that Mr. Murphy was a successful,
11 motivated, and highly skilled feed lot manager prior to his
12 industrial injury. Prior to his injury, Mr. Murphy would have had
13 an excellent chance of success at running the feed lot operation
14 he now desires to purchase. The question is whether he still has
15 -- that is still the case in light of the ongoing effects of the head
16 injury he sustained on June 23, 2007.
17 The petitioner, Mr. Murphy, bears the burden of
18 proving that a lump sum conversion is in his best interest. It is
19 my opinion that he has done so in this case.
20 Mr. Murphy has represented himself well, including
21 preparing the exhibits, the testimony, and the pretrial order. His
22 witnesses have testified to their faith in his ability to successfully
23 manage the feed lot he wants to purchase. The main concern
24 raised about Mr. Murphy's ability to do this job was raised by
25 Dr. LaHaie, who noted that Mr. Murphy cannot multitask and has

1 difficulty completing tasks in a distracting environment.
2 However, Dr. LaHaie further testified that Mr. Murphy is able to
3 perform any job duties which he knew prior to -- which he knew
4 how to do prior to his industrial injury, and the evidence
5 demonstrates that Mr. Murphy was an accomplished feed lot
6 manager prior to his industrial injury and that he knew how to
7 perform all aspects of this job.
8 Dr. LaHaie noted Mr. Murphy's proposal is his, quote,
9 "best chance to succeed in business, to do something he has
10 done before, but in a situation where he hopefully will be able to
11 have time to do it." That's the end of Dr. LaHaie's quote.
12 Dr. LaHaie added that Mr. Murphy has always taken
13 time to perform his job properly and that he is diligent in
14 completing jobs. Dr. LaHaie noted that Mr. Murphy's difference
15 in processing things is problematic in employment situations, but
16 not so problematic if he is self-employed where he can give
17 himself the time he needs to complete tasks. She opined that if
18 he has the time and he has backup and people checking his
19 work, he can successfully operate a feed lot.
20 In spite of his industrial injury, Mr. Murphy has
21 demonstrated that he is able to organize and analyze complex
22 information. I personally don't know how long it took him to
23 prepare his trial materials or the extent of the assistance he
24 received in doing so, but it has been pointed out by Dr. LaHaie
25 and Delane Hall in the job analysis he has prepared, as a

1 self-employed person, Mr. Murphy would have the ability to
2 delegate tasks, take longer to perform his job duties, and seek
3 assistance whenever necessary.
4 The evidence in this case indicates that Mr. Murphy
5 has good insight into the limitations his injury has placed upon
6 him, and not only is he willing to delegate tasks and seek
7 assistance as necessary, but it is clear he has the support of
8 friends, family, and business associates who are willing to give
9 Mr. Murphy whatever assistance he requires.
10 Certainly, I'm no expert in feed lot management. I
11 have given quite a bit of weight to the testimony of the experts
12 in this case, and I am particularly persuaded by the deposition
13 testimony of Mr. Degnan who, as Mr. Murphy's loan officer, has
14 formed a trusting, ongoing business relationship with him.
15 Often when a petitioner asks the Court to convert
16 benefits into a lump sum, the petitioner presents financial plans
17 which are highly speculative. They tell the Court that if they
18 receive the lump sum, then this is how they plan on spending it.
19 In Mr. Murphy's case, he has come fully prepared having
20 identified a business to purchase, sought financial backing, and
21 formulated a reasonable business plan, in my judgment. From
22 his years in the cattle industry, Mr. Murphy has cultivated
23 relationships which he can call upon to help him in this new
24 venture.
25 Susan McRae, CPA, testified that if Mr. Murphy

1 remains on bi-weekly benefit payments, he will likely not be able
2 to adequately provide for his family on a future basis.
3 However -- ongoing basis. However, she opined that based on
4 her knowledge of Mr. Murphy's managerial and financial skills
5 that, if he were to purchase a feed lot without a mortgage, that
6 he has the skill necessary to operate it in a profitable manner.
7 Ms. McRae testified that her personal knowledge of Mr. Murphy
8 is that he has been very successful at operating business
9 ventures. She opined that a lump sum conversion of
10 Mr. Murphy's benefits would be in his best interests.
11 Ms. McRae further noted that she is concerned that if the
12 Murphy family is without health insurance, they could suffer a
13 catastrophic financial situation if any of the family members were
14 to suffer a significant illness or injury.
15 Mr. Murphy's wife, LeeAnne, testified that if the family
16 were to purchase this feed lot, it would allow the family to live
17 close to town and would also allow the Murphys to provide
18 structure, supervision, and educational opportunities for Nova,
19 their youngest daughter who requires extra care.
20 Mrs. Murphy believes that a family-owned business
21 will provide Nova with the best opportunity to learn necessary
22 life skills. Mrs. Murphy further testified that since Mr. Murphy
23 had lost his job due to his industrial injury, the family has had
24 difficulty affording health insurance, and the projected increase
25 from the income from the feed lot would allow the family to

1 obtain health insurance.

2 Mr. Murphy's adult son, Jesse, also testified at trial.
3 Jesse testified that he believes Mr. Murphy's injury has made him
4 less confident in his rapid decision-making ability, and he
5 observed that Mr. Murphy has become adept at seeking input
6 and information, doing internet research, and consulting other
7 people prior to making decisions. While this may take him
8 longer to reach a decision, it allows Mr. Murphy to make sound
9 decisions which will be beneficial to his business.

10 Jesse's testimony indicates that he fully supports
11 Mr. Murphy's proposed business venture, that he is available to
12 assist Mr. Murphy in ensuring the success of the operation, and
13 that he believes that his father is capable of successfully running
14 this business.

15 Cal Erb also testified. Mr. Erb has known Mr. Murphy
16 for many years and, in his dealings with Mr. Murphy, he has
17 found him to be extremely honest. He was very concerned
18 about Mr. Murphy's well being when Mr. Murphy was no longer
19 able to continue working at his time-of-injury job because he
20 could tell that Mr. Murphy was unhappy and distressed about
21 being unable to work. He testified that he has seen Mr. Murphy
22 become energized by planning the purchase of this feed lot, and
23 that he believes Mr. Murphy would benefit from being able to
24 return to work.

25 Mr. Erb opined that, from his observations, he

1 believes that it is unhealthy for Mr. Murphy and for his family for
2 Mr. Murphy to continue to be unemployed and not engaged in
3 meaningful work. Mr. Erb also testified that he buys and sells
4 cattle, and that he has previously placed cattle under
5 Mr. Murphy's care. He stated that he would not hesitate to place
6 cattle with Mr. Murphy again, if Mr. Murphy is managing a feed
7 lot. He further noted that in the cattle industry, a person's
8 reputation is extremely important in determining the success of
9 that person's business and that Mr. Murphy has an excellent
10 reputation for integrity in business dealings. Mr. Erb added that
11 Mr. Murphy's attention to detail is a huge asset in allowing him
12 to operate a feed lot profitably.
13 Delane Hall testified that he believes Mr. Murphy has
14 the skills necessary to be a self-employed feed lot operator. He
15 stated that one concern he has is that it would be problematic
16 for Mr. Murphy to have to work inside the pens with cattle
17 because of the danger of reinjury. However, Mr. Hall
18 investigated the particular feed lot Mr. Murphy wants to buy, and
19 he determined this feed lot is set up so that the operation can be
20 managed from outside the pens.
21 Mr. Hall noted that Mr. Murphy has issues with
22 distractibility and the need to take extra time to do tasks in ways
23 which are prohibitive in a competitive employment environment.
24 He further noted that these issues are less problematic,
25 however, in a self-employment situation because Mr. Murphy will

1 be able to take the time he needs to complete complex tasks.
2 Ultimately, Mr. Hall opined that this feed lot proposal is a viable
3 employment option for Mr. Murphy.
4 Mr. Murphy testified regarding his plans for the feed
5 lot and discussed the limitations he has experienced as a result
6 of his industrial injury. It is undisputed that Mr. Murphy has
7 suffered permanent impairment as a result of his injury, and it
8 appears unlikely that Mr. Murphy would be successful in working
9 as an employee at a feed lot owned by someone else. However,
10 I'm impressed that Mr. Murphy, with his attention to detail and
11 his understanding of his present limitations, has considered ways
12 to accommodate his limitations while competently running his
13 own business. Notable examples of this include his plans to
14 vaccinate cattle with a vaccination gun from outside the pens,
15 his plan to situate his office so as to minimize distractions, and
16 his plan to increase the cattle population gradually to give
17 himself time to evaluate the business before operating at full
18 capacity.
19 With the support of his family, his friends, and
20 business associates, I am convinced that Mr. Murphy has a
21 feasible self-employment venture. He has an excellent chance of
22 succeeding in this venture, in my opinion, and I believe it is in
23 his best interests for him to receive a lump sum payment of his
24 workers' compensation benefits so that he may try.
25 Section 39-71-105, MCA, sets forth the public policy of

1 this state regarding the workers' compensation system.
2 Subsection 3 of that statute states: A worker's removal from the
3 work force because of a work-related injury has negative impact
4 on the worker, the worker's family, the employer, and the
5 general public. Therefore, an objective of the workers'
6 compensation system is to return a worker to work as soon as
7 possible. I'm referencing the public policy here because I
8 believe it is particularly relevant to this case and the reasons
9 behind Mr. Murphy's request for a lump sum payment of his
10 benefits.
11 Mr. Murphy's projections for his business indicate that
12 he believes he can earn more annually than he receives in
13 bi-weekly benefits, and I am persuaded that he is correct. Plus,
14 he will have a saleable asset when he retires.
15 In addition to the financial soundness of his plan, I
16 find that under the public policy of this state and regarding
17 Mr. Murphy in particular, he, his family, and community will
18 benefit by his return to work, not just in a financial sense, but
19 also because the intangible benefits that will occur from
20 Mr. Murphy being gainfully employed from the job he has done
21 basically his entire life.
22 So that is my ruling. That's my bench ruling.
23 * * * * * * * * * *
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1 STATE OF MONTANA)
2 County of Lewis and Clark) : SS.
3
4 I, Kimberly Johnson, a Registered Professional
5 Reporter and Notary Public in and for the County of Lewis and
6 Clark, do hereby certify:
7 That the foregoing cause was taken before me at the
8 time and place herein named, that the foregoing cause was
9 reported by me, and that the foregoing pages contain a true
10 record of the testimony to the best of my ability.
11 IN WITNESS WHEREOF, I have hereunto set my hand
12 this 8th day of March, 2010.
13
14
15 Kimberly E. Johnson
16 Kimberly E. Johnson
Registered Professional Reporter
Notary Public
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KIMBERLY E JOHNSON
NOTARY PUBLIC for the
State of Montana
Residing at Helena, Montana
My Commission Expires
March 19, 2012

KIMBERLY E. JOHNSON NOTARIAL SEAL STATE OF MONTANA