

IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

2006 MTWCC 44

WCC No. 2006-1647

SCOTT PALMER

Petitioner

vs.

SAFECO

Respondent/Insurer.

ORDER GRANTING RESPONDENT'S MOTION FOR SUMMARY JUDGMENT

Summary: Respondent moved for summary judgment regarding Petitioner's request for ongoing medical benefits, arguing that because Petitioner had not used his benefits for more than 60 consecutive months, his benefits terminated pursuant to § 39-71-704(1)(e), MCA (1997). Petitioner responded that the statute should be tolled because he was receiving medical treatment for difficulties which he was unaware stemmed from his industrial accident at the time of treatment.

Held: Because § 39-71-704(1)(e), MCA (1997), is a statute of repose, it cannot be tolled. Therefore, Respondent's motion for summary judgment is granted.

Topics:

Constitutions, Statutes, Regulations, and Rules: Montana Code Annotated: 39-71-704. Statutory language which terminates a cause of action on a date certain and independent of the accrual of a cause of action is a statute of repose. Since § 39-71-704(1)(e), MCA, meets these criteria, it is a statute of repose.

Limitations Periods: Statute of Repose. Statutory language which terminates a cause of action on a date certain and independent of the accrual of a cause of action is a statute of repose. Since § 39-71-704(1)(e), MCA, meets these criteria, it is a statute of repose.

Constitutions, Statutes, Regulations, and Rules: Montana Code Annotated: 39-71-704. Although Petitioner argued that the termination of his benefits pursuant to § 39-71-704(1)(e), MCA, after 60 consecutive months of non-use should be tolled because he was receiving medical treatment for difficulties which he was unaware stemmed from his industrial accident, the statute in question is not a statute of limitations but a statute of repose and cannot be tolled by the courts, but only by legislative mandate.

Limitations Periods: Statute of Repose. Although Petitioner argued that the termination of his benefits pursuant to § 39-71-704(1)(e), MCA, after 60 consecutive months of non-use should be tolled because he was receiving medical treatment for difficulties which he was unaware stemmed from his industrial accident, the statute in question is not a statute of limitations but a statute of repose and cannot be tolled by the courts, but only by legislative mandate.

Limitations Periods: Tolling. Although Petitioner argued that the termination of his benefits pursuant to § 39-71-704(1)(e), MCA, after 60 consecutive months of non-use should be tolled because he was receiving medical treatment for difficulties which he was unaware stemmed from his industrial accident, the statute in question is not a statute of limitations but a statute of repose and cannot be tolled by the courts, but only by legislative mandate.

¶ 1 Pursuant to ARM 24.5.329, Respondent moves this Court for summary judgment in its favor regarding Petitioner's request for ongoing medical benefits. For the reasons set forth below, Respondent's motion is granted.¹

STATEMENT OF UNDISPUTED FACTS

¶ 2 The parties agree the following facts are undisputed:

¶ 2a On or about August 9, 1998, Petitioner suffered an industrial injury involving a spider bite arising out of and in the course of his employment with Anderson Glass in Great Falls, Cascade County, Montana.²

¹ On August 23, 2006, the parties appeared via conference call on this matter, at which time the Court, having read the briefs, informed the parties that Respondent's motion for summary judgment would be granted. (Minute Book Hearing No. 3739.) This written Order contains the facts and the Court's analysis in reaching its decision.

² Motion for Summary Judgment and Supporting Brief, Statement of Uncontested Facts ("Uncontested Facts"), ¶ 1.

¶ 2b As a result of the bite, Petitioner developed cellulitis in his right leg along with some lymphangitis.³

¶ 2c Liability for the injury was accepted by Respondent.⁴

¶ 2d Following the industrial injury, Petitioner received medical treatment for the spider bite and resulting right leg cellulitis between August 8, 1998, and January 27, 1999.⁵

¶ 2e Medical benefits were paid by Respondent for the medical treatment Petitioner received between August 8, 1998, and January 27, 1999.⁶

¶ 2f For a period of more than 60 consecutive months – between January 27, 1999, and March 18, 2004 – Respondent did not provide any medical benefits related to treatment of the industrial injury and no medical benefits were requested by Petitioner during this time.⁷

¶ 2g By letter dated December 20, 2004, Respondent denied Petitioner’s request for medical benefits for the medical treatment he received in 2004, explaining that medical benefits had not been used for a period of more than 60 consecutive months and Petitioner’s medical benefits had terminated pursuant to the provisions of § 39-71-704(1)(e), MCA (1997).^{8, 9}

¶ 3 In his response brief,¹⁰ Petitioner offers, by way of affidavit and attached medical records exhibits, additional facts concerning his medical treatment subsequent to January 27, 1999. Respondent does not dispute these facts, but argues that they are immaterial

³ Uncontested Facts, ¶ 2.

⁴ Uncontested Facts, ¶ 3.

⁵ Uncontested Facts, ¶ 4.

⁶ Uncontested Facts, ¶ 5.

⁷ Uncontested Facts, ¶ 6.

⁸ Uncontested Facts, ¶ 7.

⁹ Any reference to statutes cited from the Montana Code will employ the language from the 1997 version, unless specifically citing to another year.

¹⁰ Petitioner’s Answer Brief in Opposition to Respondent’s Motion for Summary Judgment (“Response”).

to the issue at hand.¹¹ The Court finds it beneficial to include the following facts which Petitioner offers in support of his argument against Respondent's motion for summary judgment.

¶ 3a On July 2, 2000, Petitioner went to Benefis Healthcare Emergency Room. It is noted that he had edema in his lower extremities. He was unaware that this was related to his workers' compensation claim.¹²

¶ 3b On October 14, 2001, Petitioner saw Dr. Travis Buzzard regarding a lump in his groin. He was unaware that this was related to his workers' compensation claim.¹³

¶ 3c On August 4, 2003, Dr. Buchanan noted edema in Petitioner's right shin and ankle. He was unaware that this was related to his workers' compensation claim.¹⁴

¶ 3d On March 18, 2004, Petitioner saw Dr. Martin due to right thigh and groin pain. He was diagnosed with right lower extremity cellulitis with associated groin rash by Dr. Krause on September 23, 2004, and he was hospitalized for cellulitis September 24-27, 2004.¹⁵

¶ 3e In November 2004, Dr. Rohrer advised Petitioner that his edema and cellulitis conditions were related to his workers' compensation claim. Petitioner then submitted his 2004 medical bills to Respondent.¹⁶ Respondent denied payment, as set forth in ¶ 2g, above.

ISSUE

¶ 4 The issue presented for the Court's determination is whether Petitioner's failure to use his medical benefits for a period of more than 60 consecutive months causes those benefits to terminate pursuant to § 39-71-704(1)(e), MCA.¹⁷

¹¹ Respondent's Reply Brief in Support of Motion for Summary Judgment ("Reply") at 3-4.

¹² Response, Additional Uncontested Facts, ¶ 4.

¹³ Response, Additional Uncontested Facts, ¶ 5.

¹⁴ Response, Additional Uncontested Facts, ¶ 6.

¹⁵ Response, Additional Uncontested Facts, ¶¶ 7-9.

¹⁶ Response, Additional Uncontested Facts, ¶ 10.

¹⁷ Motion for Summary Judgment and Supporting Brief ("Motion") at 1.

DECISION

¶ 5 Summary judgment is appropriate where undisputed facts demonstrate that a party is entitled to judgment as a matter of law.¹⁸ In the present case, the parties have agreed that the essential facts necessary for summary disposition are undisputed.

¶ 6 It is undisputed that Petitioner did not use his medical benefits for 60 consecutive months. At issue is whether those benefits have terminated pursuant to § 39-71-704(1)(e), MCA, which states, “Except for the repair or replacement of a prosthesis furnished as a result of an industrial injury, the benefits provided for in this section terminate when they are not used for a period of 60 consecutive months.”

¶ 7 Respondent directs the Court’s attention to *Wiard v. Liberty Northwest Ins. Corp.*,¹⁹ in which this Court described this provision, commonly referred to as the “60-month rule,” as plain and unambiguous. The Court held that Wiard’s benefits had terminated when he did not use them for 60 months, although the claimant argued that he was unaware of the 60-month rule and that his insurer failed to warn him that he was in danger of losing his benefits.²⁰ Respondent argues that the 60-month rule operates the same in this case as it did in *Wiard* and that, as a matter of law, Petitioner’s medical benefits terminated when they were not used for 60 consecutive months.²¹

¶ 8 Respondent further argues that the 60-month rule is a statute of repose and thus an absolute time limit on benefits. Respondent points out that in *Hardgrove v. Transportation Ins. Co.*,²² the Montana Supreme Court reiterated that, unlike statutes of limitations, statutes of repose cannot be tolled.

¶ 9 Petitioner asserts that he received medical treatment after January 27, 1999, but before September 23, 2004, for medical problems which were later attributed to his industrial accident. However, Petitioner contends he was unaware at the time of treatment that these conditions were related to his industrial injury.²³ Petitioner argues that when a

¹⁸ *Lewis v. Nine Mile Mines, Inc.*, 268 Mont. 336, 340, 886 P.2d 912, 914 (1994).

¹⁹ *Wiard v. Liberty Northwest Ins. Corp.*, 2001 MTWCC 31 (*aff’d Wiard v. Liberty Northwest Ins. Corp.*, 2003 MT 295, 318 Mont. 132, 79 P.3d 281).

²⁰ *Wiard*, 2001 MTWCC 31, ¶¶ 10-11.

²¹ Motion at 5.

²² *Hardgrove v. Transportation Ins. Co.*, 2004 MT 340, 324 Mont. 238, 103 P.3d 999.

²³ See ¶¶ 3a-3d, above.

claimant is unaware that his condition is caused by his work, the time limits for filing a claim are tolled.²⁴

¶ 10 Ultimately, this case turns on whether § 39-71-704(1)(e), MCA, is a statute of limitations or a statute of repose. In *Hardgrove*, the Montana Supreme Court reasoned: “A legislature can make clear it intends a statute to be a statute of repose if the statutory period for bringing the claim can lapse before the cause of action accrues.”²⁵ Following this reasoning, the Court determined that § 39-72-403(3), MCA (1983), was a statute of repose. The pertinent language in that statute states: “[N]o claim to recover benefits under this chapter may be maintained unless the claim is properly filed within 3 years after the last day upon which the claimant . . . actually worked for the employer”²⁶ The Court reasoned that this language terminated the cause of action on a date certain and independent of the accrual of the cause of action and is, therefore, a statute of repose.²⁷

¶ 11 In the case before this Court, § 39-71-704(1)(e), MCA, likewise terminates the cause of action on a date certain and independent of the accrual of the cause of action. Therefore, § 39-71-704(1)(e), MCA, is a statute of repose.

¶ 12 As the Montana Supreme Court further explained in *Hardgrove*, unlike statutes of limitations, statutes of repose cannot be tolled by the courts, but may only be tolled by legislative mandate.²⁸ Although Petitioner argues that the 60-month rule should be tolled in his case because he was unaware that his medical difficulties stemmed from his industrial injury, the implicated statute cannot be tolled by this Court. Respondent’s motion for summary judgment is therefore granted.

JUDGMENT

¶ 13 For the foregoing reasons, Respondent’s motion for summary judgment is **GRANTED**.

¶ 14 This JUDGMENT is certified as final for appeal.

²⁴ Response at 3-5, citing *Montana State Fund v. Murray*, 2005 MT 97, ¶ 29, 326 Mont. 516, 111 P.3d 210; *McGuin v. State Comp. Ins. Fund*, 1999 MTWCC 82; *Killebrew v. Larson Cattle Co.*, 254 Mont. 513, 839 P.2d 1260 (1992); *Bodily v. John Jump Trucking, Inc.*, 250 Mont. 274, 819 P.2d 1262 (1991).

²⁵ *Hardgrove*, ¶ 8 (citation omitted).

²⁶ § 39-72-403(3), MCA (1983).

²⁷ *Hardgrove*, ¶ 9.

²⁸ *Hardgrove*, ¶ 10 (citing *Joyce v. Garnaas*, 1999 MT 170, ¶¶ 13-14, 295 Mont. 198, 983 P.2d 369).

¶ 15 Any party to this dispute may have twenty days in which to request reconsideration from this Order Granting Respondent's Motion for Summary Judgment.

DATED in Helena, Montana, this 22nd day of December, 2006.

(SEAL)

/s/ James Jeremiah Shea
JUDGE

c: J. Kim Schulke
Kelly M. Wills
Submitted: August 22, 2006