

IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

2012 MTWCC 7

WCC No. 2011-2675

DENNIS PETERSON

Petitioner

vs.

UNINSURED EMPLOYERS' FUND

Respondent/Third-Party Petitioner

vs.

RAMONA McDUNN d/b/a McDUNN'S RIVERVIEW MINI STORAGE

Third-Party Respondent.

FINDINGS OF FACT, CONCLUSIONS OF LAW AND JUDGMENT

Summary: Petitioner contends that he suffered an industrial injury to his shoulder during an encounter with a malfunctioning storage unit door at his workplace. His employer did not have workers' compensation insurance and the UEF denied the claim on the grounds that insufficient evidence supports Petitioner's contentions. Petitioner further contends that the UEF unreasonably denied his claim. The UEF contends that the uninsured employer should indemnify it if the Court determines that Petitioner's claim is compensable.

Held: Petitioner has not met his burden of proof and the UEF is therefore not liable for his claim. The UEF did not unreasonably deny the claim.

Topics:

Constitutions, Statutes, Regulations, and Rules: **Montana Code Annotated. 39-71-119.** Petitioner failed to meet his burden of proof that he sustained an "accident" as defined by § 39-71-119, MCA, where the only evidence supporting his claim was the description in his medical records that a storage unit door fell on him. Due to his cognitive

difficulties, Petitioner was unable to give an accurate accounting of the events that caused his accident. Every other witness testified that the storage unit doors cannot fall down when they are opened, and there was insufficient medical evidence to prove his condition resulted from trauma.

Proof: Burden of Proof: Generally. Petitioner failed to meet his burden of proof that he sustained an “accident” as defined by § 39-71-119, MCA, where the only evidence supporting his claim was the description in his medical records that a storage unit door fell on him. Due to his cognitive difficulties, Petitioner was unable to give an accurate accounting of the events that caused his accident. Every other witness testified that the storage unit doors cannot fall down when they are opened, and there was insufficient medical evidence to prove his condition resulted from trauma.

Injury and Accident: Accident. Petitioner failed to meet his burden of proof that he sustained an “accident” as defined by § 39-71-119, MCA, where the only evidence supporting his claim was the description in his medical records that a storage unit door fell on him. Due to his cognitive difficulties, Petitioner was unable to give an accurate accounting of the events that caused his accident. Every other witness testified that the storage unit doors cannot fall down when they are opened, and there was insufficient medical evidence to prove his condition resulted from trauma.

¶ 1 The trial in this matter began on September 12, 2011, in Great Falls, Montana. On that date, Petitioner Dennis Peterson was present and was represented by Norman L. Newhall. Leanora O. Coles represented Respondent/Third-Party Petitioner Uninsured Employers’ Fund (UEF). UEF claims examiner Bernadette Rice also attended. Third-Party Respondent Ramona McDunn d/b/a McDunn’s Riverview Mini Storage (McDunn) was present and represented by William O. Bronson. On September 30, 2011, trial resumed at McDunn’s Riverview Mini Storage,¹ and then reconvened for testimony at the offices of Norman L. Newhall with the same parties attending as on September 12, 2011. On October 11, 2011, trial continued and concluded at the Workers’ Compensation Court in Helena, Montana. Newhall appeared telephonically to represent Peterson, who did not attend. Coles appeared in person to represent the UEF. Rice also attended. Bronson appeared telephonically to represent McDunn, who did not attend.

¹ Although the parties and the Court viewed the storage facility in person, the visit to the storage facility has not factored into the findings I have made in this case.

¶ 2 Exhibits: I admitted Exhibits 1 through 10, 12, 13, 35, 36, 38, 39, and 41 without objection. I admitted Exhibits 11 and 14 through 34 over Peterson's relevancy objections. I admitted Exhibit 37 over Peterson's relevancy and foundation objections. I denied Peterson's request to admit a summary of his temporary total disability benefits, marked as Exhibit 40, but will consider it for demonstrative purposes only.

¶ 3 Witnesses and Depositions: On September 12, 2011, Peterson, Mary Peterson (Mary), Bernadette Rice, and Michael Anderson, were sworn and testified. On September 30, 2011, Peterson and Mary were recalled and testified. Nancy Anderson Sinclair (Sinclair), Ramona K. McDunn, and Kristen Anderson (Kristen) were sworn and testified. On October 11, 2011, Rice was recalled and testified.

¶ 4 Issues Presented: The Pretrial Order sets forth the following issues:²

Issue One: Whether on July 27, 2010, Petitioner sustained an "accident" resulting in an injury as defined by § 39-71-119, MCA, during the course and scope of employment as defined by § 39-71-407, MCA.

Issue Two: Whether Petitioner is entitled to benefits under the Workers' Compensation Act as a result of the July 27, 2010, industrial injury.

Issue Three: Whether the Uninsured Employers' Fund has acted reasonably in its handling of Petitioner's claim.

Issue Four: Whether Third-Party Respondent Ramona McDunn d/b/a McDunn's Riverview Mini Storage is obligated to indemnify the UEF for all benefits paid or payable by the UEF to Petitioner pursuant to §§ 39-71-504, -541, MCA.

Issue Five: Whether Petitioner is entitled to reasonable costs, penalties, and attorney fees in accordance with § 39-71-611, MCA, and/or § 39-71-612, MCA.

FINDINGS OF FACT

¶ 5 On or around August 5, 2010, Peterson filed a First Report of Injury (FROI) for an injury he allegedly sustained on July 27, 2010, while working for Ramona McDunn d/b/a McDunn's Riverview Mini Storage.³ On the FROI, Peterson claimed that while at work on July 27, 2010, he injured his right shoulder, arm, wrist, and hand "lifting an overhead

² Pretrial Order, Issues to be Determined by the Court at 4, Docket Item No. 21.

³ Pretrial Order, Uncontested Facts, at 1.

(garage type) door [and] it jammed, coming back down – causing right shoulder to pop - entire right arm.”⁴

¶ 6 Peterson has a history of cognitive difficulties, including episodes of amnesia.⁵ In 2005, Peterson had a brain aneurysm surgically removed.⁶ Peterson continued to experience severe headaches and balance problems after the surgery, and he reported ongoing problems with blackouts. His wife Mary described these blackouts as a sudden onset of non-responsiveness which last for a few seconds at a time.⁷ In February 2009, Deborah D. Dover, M.D., diagnosed Peterson with post-concussive syndrome with daily headache, cognitive dysfunction, and mood disturbance.⁸

¶ 7 On July 27, 2010, Emily A. Comstock, PA-C, saw Peterson at the Great Falls Clinic. Comstock noted:

This 59-year-old gentleman comes to the clinic today with complaints of right shoulder pain. He was at work this morning lifting a garage door when it fell down on to his right shoulder. He felt a pop about his right shoulder at the time of injury. Since that time, he has had excruciating pain about the joint and limited range of motion. The pain does at times radiate down the entire length of the right arm. He has experienced numbness and tingling about the arm. . . . He denies any history of prior injury or surgery affecting the right shoulder joint.⁹

¶ 8 Comstock found that Peterson had exquisite tenderness with palpation over the distal portion of the right clavicle extending into the right acromioclavicular joint, with less pronounced discomfort with palpation over the right humeral head and no significant discomfort with palpation over the right scapula. She found some limits to range of motion and diagnosed him with a right shoulder sprain and took him off work.¹⁰

¶ 9 A radiology report from July 27, 2010, contains an impression of “Mild right acromioclavicular joint degenerative disease without significant change compared to

⁴ Ex. 1.

⁵ Ex. 22 at 1.

⁶ Ex. 32 at 20-21.

⁷ Ex. 22 at 46-47.

⁸ Ex. 22 at 54-55.

⁹ Ex. 10 at 8.

¹⁰ Ex. 10 at 8-9.

February 3, 2009.” Findings included mild hypertrophic changes in the acromioclavicular joint.¹¹

¶ 10 On July 29, 2010, Peterson saw Terrance J. Sweeney, M.D., for a follow-up appointment and reported that he believed his shoulder pain was worsening. Dr. Sweeney diagnosed Peterson with a persistent right shoulder sprain, “[q]uestion internal derangement to the shoulder joint,” and ordered an MRI.¹²

¶ 11 On August 6, 2010, Peterson’s employment at McDunn’s was terminated.¹³

¶ 12 McDunn was an uninsured employer within the meaning of § 39-71-501, MCA, at the time of Peterson’s alleged industrial injury.¹⁴ On August 12, 2010, the UEF put McDunn on notice of Peterson’s claim for benefits and McDunn’s potential liability for medical and compensation benefits if Peterson’s claim was found compensable.¹⁵

¶ 13 On August 16, 2010, Cody Gill, UEF Field Auditor, provided claims examiner Bernadette Rice with a contact report after he spoke with Peterson’s wife Mary. Mary informed him that on July 27, 2010, Peterson arrived at work and intended to sweep out a storage unit. When he tried to open the unit’s door, the door stuck and then fell back onto him. Gill asked Mary to find out which specific storage unit Peterson had been opening when he was injured. Mary agreed to ask Peterson, but informed Gill that Peterson might not be able to provide the information due to his cognitive difficulties.¹⁶

¶ 14 On September 9, 2010, the UEF denied Peterson’s claim for benefits.¹⁷ In the denial letter, Rice stated that the UEF was denying Peterson’s claim because he had failed to prove that he had suffered an industrial injury on July 27, 2010. Rice noted that the UEF had not been able to confirm that Peterson was working on a storage unit on July 27, 2010, and that Peterson had not provided the number of the unit he alleged he was working on so that the UEF could inspect the door.¹⁸

¶ 15 Peterson testified at trial. Due to Peterson’s cognitive difficulties, it was apparent that intermittently throughout his testimony Peterson had little to no understanding of the

¹¹ Ex. 10 at 11.

¹² Ex. 10 at 12-13.

¹³ Ex. 6.

¹⁴ Pretrial Order, Uncontested Facts, at 2.

¹⁵ Pretrial Order, Uncontested Facts, at 2.

¹⁶ Ex. 8.

¹⁷ Pretrial Order, Uncontested Facts, at 2.

¹⁸ Ex. 9.

proceedings or of the questions posed to him by counsel and by this Court. On multiple occasions, counsel directed Peterson to refer to specific exhibits in responding to questions, and I observed Peterson answer counsel's inquiries while not being on the correct exhibit page. Although Peterson may have occasionally understood some questions and answered appropriately, I cannot determine with any certainty which questions Peterson understood and which he did not. I therefore cannot give his testimony any weight and must disregard it in reaching my findings and conclusions in this case.

¶ 16 Medical records indicate that Peterson had a previous injury to his right shoulder. On September 27, 2002, he sought treatment for injuries sustained when a fleeing shoplifter knocked him into an electric cart at the store where Peterson worked at the time. Dr. Sweeney noted that Peterson exhibited tenderness in his right shoulder with slight crepitus on range of motion. Dr. Sweeney stated, "I do not detect an obvious tear of the rotator cuff but there may be a significant injury because of his discomfort on range of motion and tenderness." Dr. Sweeney diagnosed Peterson with a contusion sprain of the right shoulder, "[q]uestion injury to the rotator cuff."¹⁹ On February 3, 2009, Peterson sought treatment after a fall. James H. Asthalter, D.O., diagnosed Peterson with a contusion sprain of his right shoulder. Dr. Asthalter noted tenderness in the right shoulder, but full range of motion and no tenderness over the acromioclavicular joint.²⁰ A radiology report from that day noted degenerative changes at the acromioclavicular joint and contained an impression of acromioclavicular degenerative osteoarthritis.²¹

¶ 17 On January 7, 2011, Jeffrey R. Kessler, M.D., wrote a report following an MRI of Peterson's right shoulder. Dr. Kessler's impression was: marked hypertrophic change in the acromioclavicular joint with mass effect along the supraspinatus musculotendinous junction; "[c]annot exclude" minimal partial-thickness tear along the bursal surface of the supraspinatus tendon; and the suggestion of irregularity with a possible partial tear involving the biceps labral complex.²²

¶ 18 On February 4, 2011, Nicholas D. Bonfilio, M.D., assessed Peterson as having impingement syndrome and asymptomatic acromioclavicular joint arthrosis in the right

¹⁹ Ex. 10 at 1.

²⁰ Ex. 10 at 3.

²¹ Ex. 10 at 4.

²² Ex. 10 at 33-34.

shoulder.²³ A radiology report from that date indicates findings of a moderate degree of degenerative change in the AC joint in both shoulders, right greater than left.²⁴

¶ 19 On May 12, 2011, Gregg D. Pike, M.D., evaluated Peterson for shoulder pain. Dr. Pike noted that Peterson had previously had surgery on his left shoulder, and while his left shoulder was doing well, Peterson now had difficulties with his right shoulder since getting hit with an overhead door at work. Dr. Pike examined Peterson's right shoulder and found rotation strength hindered by pain and tenderness at the bicipital groove and at the AC joint. Dr. Pike reviewed x-rays and the MRI of Peterson's right shoulder. He saw some AC joint arthritis on the x-ray. On the MRI, he saw some irregularity to the labrum, potentially consistent with some tendinosis or a partial tear. Dr. Pike further found AC joint arthritis.²⁵

¶ 20 Mary Peterson testified at trial. Although I had issues with some elements of her testimony, I found her testimony to be credible for the most part.

¶ 21 Mary has had a durable power of attorney over Peterson's affairs since November 2008.²⁶ Mary testified that she acquired power of attorney over Peterson's affairs because his brain surgery and other medical conditions have impacted his ability to handle his own affairs. Mary testified that, among other conditions, Peterson suffers from a complex migraine syndrome which causes him to exhibit seizure-like or stroke-like symptoms. She further testified that Peterson's cognitive abilities deteriorate in stressful situations and he is unable to respond appropriately at times. His memory is poor and he sometimes responds appropriately in a conversation but has no memory of the exchange afterwards.²⁷

¶ 22 Mary testified that she worked at McDunn's from approximately 2002 through approximately 2007 although she continued to help out on an informal basis. Mary and McDunn were friends and she regularly visited McDunn for social purposes. Mary testified that McDunn struggled with alcoholism. Mary stated that McDunn's health prevented her from managing her business' paperwork. Mary testified that her assistance with McDunn's storage business included preparing payroll reports.²⁸

²³ Ex. 10 at 36-37.

²⁴ Ex. 10 at 38.

²⁵ Ex. 10 at 61-62.

²⁶ Ex. 3.

²⁷ Trial Test.

²⁸ Trial Test.

¶ 23 Mary testified that she personally opened and closed some of the storage unit doors during the time she worked for McDunn's. Mary stated that the door mechanism is such that the doors cannot fall down; however, sometimes a door can jam while it is being rolled up. Mary testified that Peterson's medical records which indicate he was injured by a storage unit door falling down are incorrect. Mary further testified that when Peterson described his industrial accident as being a storage unit door falling down, what actually happened was that the door jammed and Peterson pushed against it to try to release it.²⁹

¶ 24 On June 21, 2010, Mary visited McDunn at her home on the grounds of the storage facility and found her in a very poor state of health. After McDunn was hospitalized, her mother Kristen Anderson (Kristen) became more involved with the business' financial transactions.³⁰

¶ 25 Mary testified that in 2009 and 2010, Peterson was McDunn's only employee. In the time period immediately preceding McDunn's hospitalization, Mary calculated Peterson's wages and told McDunn the amount. McDunn then wrote Peterson's paycheck. After McDunn became hospitalized, Mary wrote out a wage earnings slip for Peterson and Kristen wrote Peterson's paycheck.³¹

¶ 26 Mary has no firsthand knowledge of what occurred at McDunn's on July 27, 2010. Mary testified that she learned about the industrial accident from Peterson. Mary testified that she attended Peterson's medical examination on July 27, 2010, but at the time she did not recall that he had previously injured his shoulder on two occasions. Mary testified that Peterson has not worked since he left McDunn's on July 27, 2010. Mary testified that at the time of trial, Peterson had chronic pain in his shoulder and was unable to lift anything. She stated that Peterson's shoulder catches and pops and he has difficulty showering and shaving.³²

¶ 27 McDunn testified at trial. I found her testimony credible insofar as she testified that, due to her significant health problems, she has little recollection of the months surrounding Peterson's injury claim. McDunn admitted that to the best of her knowledge, she had no workers' compensation insurance policy in place on July 27, 2010. McDunn could not recall the timeframe in which she had no workers' compensation insurance. She could not recall when Peterson began to work for her business. McDunn testified that she got along well with Peterson, but she could not

²⁹ Trial Test.

³⁰ Trial Test.

³¹ Trial Test.

³² Trial Test.

speak to whether he was a good employee because she had little memory of his work at her business. She was unclear as to his specific job duties although she knew he cleaned the office and performed minor maintenance duties around the facility.³³

¶ 28 McDunn testified that she has not returned to her home at the storage facility since she left by ambulance on June 21, 2010. McDunn was not present at the time of Peterson's alleged industrial accident.³⁴

¶ 29 Kristen testified at trial. I found her to be a credible witness. Kristen has had a durable power of attorney over her daughter McDunn's affairs since January 2010.³⁵ Kristen testified that she handled McDunn's affairs after McDunn was hospitalized in June 2010. Kristen was not present at the storage facility at the time of Peterson's alleged industrial accident.³⁶

¶ 30 Several letters signed by McDunn were offered into evidence. An August 27, 2010, letter recommends Peterson "for any job that he applies for," asserting that he worked in a management position at McDunn's business and that he was a reliable employee who ran the business.³⁷ At trial, Mary admitted that she prepared this letter and took it to McDunn in the rehabilitation unit where she was receiving treatment, asking her to sign it.³⁸ McDunn testified that she does not recall Mary asking her to provide a recommendation for Peterson and she does not know if she would have done so.³⁹

¶ 31 Another August 27, 2010, letter states that McDunn signed the FROI for Peterson's July 27, 2010, claim, and, "I am not questioning that the injury occurred while Dennis was working for me . . . during his scheduled work hours."⁴⁰ At trial, Mary admitted that she also prepared this letter and asked McDunn to sign it. Mary testified that at the time she asked McDunn to sign the letter, she knew McDunn had indicated on the FROI that she was questioning Peterson's industrial injury claim.⁴¹ McDunn

³³ Trial Test.

³⁴ Trial Test.

³⁵ Ex. 4.

³⁶ Trial Test.

³⁷ Ex. 25.

³⁸ Trial Test.

³⁹ Trial Test.

⁴⁰ Ex. 26.

⁴¹ Trial Test.

testified that she did not recall signing this letter, although it appeared to be her signature.⁴²

¶ 32 A letter dated August 29, 2010, and signed by McDunn states that she is hospitalized and unable to manage her affairs and that Kristen is handling her affairs.⁴³ Another letter, dated and signed August 29, 2010, asserts, among other claims, that McDunn did not sign Peterson's FROI, and that she was unaware of Peterson's claim until her mother told her about it in August.⁴⁴ McDunn testified that she does not recall signing either letter and she does not know who wrote them, but admitted that the signatures appeared to be hers.⁴⁵ Kristen testified that she wrote both August 29, 2010, letters.⁴⁶

¶ 33 McDunn also apparently signed a letter sometime prior to August 5, 2010, which asserts that she has "concerns" about Peterson's claim. This letter alleges various discrepancies about Peterson's alleged July 27, 2010, industrial injury.⁴⁷ McDunn testified that the signature on this document appears to be hers, but she has no recollection of signing the letter and she does not know who prepared it.⁴⁸ From McDunn's testimony at trial, it is apparent that she has no recollection of signing any of these letters. I believe she would have signed anything either Mary or Kristen asked her to sign whether or not she comprehended the content of the document. I give no weight to any of the McDunn letters in evidence.

¶ 34 Michael Anderson (Michael) testified at trial. I found him to be a credible witness. Michael is McDunn's brother and Kristen's son. Michael currently owns and operates the storage facility formerly owned by McDunn. Michael has owned the business since August 6, 2010. Prior to purchasing the business, Michael assisted Kristen in attempting to organize the business' affairs for McDunn. Michael testified that since he has become the owner, he is personally involved in the maintenance of the facility and he has personally inspected every vacant storage unit.⁴⁹

¶ 35 Michael testified that the first time he spoke to Peterson after the alleged industrial accident, Peterson told Michael that a door fell on him in Building A. Michael

⁴² Trial Test.

⁴³ Ex. 27.

⁴⁴ Ex. 28.

⁴⁵ Trial Test.

⁴⁶ Trial Test.

⁴⁷ Ex. 31.

⁴⁸ Trial Test.

⁴⁹ Trial Test.

reminded Peterson that the storage units in Building A do not have overhead doors. Peterson then told Michael that the accident occurred on the odd-numbered side of the “C” unit, but he could not identify specifically where it occurred. Michael testified that in the “C” unit, the storage doors are spring-loaded roll doors that operate similar to a pull-down window shade. Michael stated that a person has to physically pull the door down and it slides on a track on each side of the door opening. When a door is lifted, it coils around a shaft overhead. Michael testified that in his experience, the doors do not fall down.⁵⁰ Michael testified that, based upon the records he has of the storage units, no storage units needed to be cleaned or inspected at the end of July 2010 on the odd-numbered side of the “C” unit.⁵¹

¶ 36 Rice testified at trial. I found her to be a credible witness. Rice testified that after she received the FROI for the July 27, 2010, industrial accident, she asked Gill to investigate Peterson’s claim. Rice explained that if Peterson had provided information as to which storage unit door allegedly fell on him, the UEF could have examined that door to determine if it was defective and if it could have fallen in the manner that Peterson described. Rice testified that she was not only unable to ascertain which specific storage unit Peterson was working on at the time of his industrial accident, but she was unable to ascertain whether he had been working on any storage units at all on the morning of July 27, 2010. Rice testified that she also had concerns about the validity of Peterson’s claim because he had asserted that he had no previous shoulder injuries but his medical records indicated that he had previously injured his right shoulder on two occasions.⁵²

¶ 37 At trial, much testimony was taken regarding the events surrounding another workers’ compensation claim filed by Peterson for an incident that occurred on May 10, 2010. The issues before this Court concern only Peterson’s July 27, 2010, claim. I have not made any findings regarding the alleged May 10, 2010, industrial accident because it is not relevant to the issues before the Court in the present matter.

CONCLUSIONS OF LAW

¶ 38 This case is governed by the 2009 version of the Montana Workers’ Compensation Act since that was the law in effect at the time of Peterson’s alleged industrial accident.⁵³

⁵⁰ Trial Test.

⁵¹ Trial Test.

⁵² Trial Test.

⁵³ *Buckman v. Montana Deaconess Hosp.*, 224 Mont. 318, 321, 730 P.2d 380, 382 (1986).

¶ 39 Peterson bears the burden of proving by a preponderance of the evidence that he is entitled to the benefits he seeks.⁵⁴ For the reasons set forth in Issue One below, I conclude Peterson has not met his burden.

ISSUE ONE: Whether on July 27, 2010, Petitioner sustained an “accident” resulting in an injury as defined by § 39-71-119, MCA, during the course and scope of employment as defined by § 39-71-407, MCA.

¶ 40 Section 39-71-119, MCA, states, in pertinent part:

- (1) “Injury” or “injured” means:
 - (a) internal or external physical harm to the body that is established by objective medical findings;
 -
- (2) An injury is caused by an accident. An accident is:
 - (a) an unexpected traumatic incident or unusual strain;
 - (b) identifiable by time and place of occurrence;
 -
 - (d) caused by a specific event on a single day or during a single work shift.
 -
- (4) “Injury” or “injured” does not include a disease that is not caused by an accident.

¶ 41 From the medical evidence presented, it is clear that Peterson has objective medical findings regarding his right shoulder condition. However, it is unclear whether those findings are degenerative in nature or – if they are traumatic in nature – whether they occurred as the result of this alleged industrial accident. The only evidence supporting Peterson’s claim of an industrial accident is Peterson’s description as reported in the medical records: specifically that he was struck in the right shoulder when a storage unit door fell on him. Peterson was unable to identify which door allegedly fell on his right shoulder. Peterson was unable to substantiate his claim that he was in fact cleaning out a storage unit that morning. Every other witness who testified regarding the doors at the storage facility, including Peterson’s wife Mary, testified that the storage unit doors cannot fall down when they are opened. While Peterson’s healthcare providers noted that he injured his right shoulder when an overhead door fell on him, there is no indication that the doctors relied on anything other than Peterson’s account of events. Having listened to Peterson’s testimony, I do not

⁵⁴ *Ricks v. Teslow Consol.*, 162 Mont. 469, 512 P.2d 1304 (1973); *Dumont v. Wickens Bros. Constr. Co.*, 183 Mont. 190, 598 P.2d 1099 (1979).

believe he is capable of relating an accurate account of events due to his significant cognitive deficits.

¶ 42 Since it is clear from the evidence that the industrial accident could not have occurred in the manner Peterson described, along with a lack of medical evidence to indicate that Peterson's present right shoulder condition is the result of a traumatic event, I conclude that Peterson has not met his burden of proof on the issue of whether he sustained an "accident" within the meaning of § 39-71-119, MCA.

ISSUE TWO: Whether Petitioner is entitled to benefits under the Workers' Compensation Act as a result of the July 27, 2010, industrial injury.

¶ 43 Since, as set forth above, I concluded that Peterson has not met his burden of proof regarding whether he sustained an "accident" resulting in an injury during the course and scope of his employment, I further conclude that he is not entitled to benefits under the Workers' Compensation Act as a result of that alleged industrial injury.

ISSUE THREE: Whether the Uninsured Employers' Fund has acted reasonably in its handling of Petitioner's claim.

¶ 44 I conclude the UEF acted reasonably in its handling of Peterson's claim.

ISSUE FOUR: Whether Third-Party Respondent Ramona McDunn d/b/a McDunn's Riverview Mini Storage is obligated to indemnify the UEF for all benefits paid or payable by the UEF to Petitioner pursuant to §§ 39-71-504, -541, MCA.

¶ 45 Since the UEF is not liable for Peterson's claim, this issue is moot.

ISSUE FIVE: Whether Petitioner is entitled to reasonable costs, penalties, and attorney fees in accordance with § 39-71-611, MCA, and/or § 39-71-612, MCA.

¶ 46 Since Peterson is not the prevailing party, he is not entitled to his costs, attorney fees, or a penalty.⁵⁵

JUDGMENT

¶ 47 On July 27, 2010, Petitioner did not sustain an "accident" resulting in an injury as defined by § 39-71-119, MCA, during the course and scope of employment as defined by § 39-71-407, MCA.

⁵⁵ §§ 39-71-611, -2907, MCA.

¶ 48 Petitioner is not entitled to benefits under the Workers' Compensation Act as a result of the alleged July 27, 2010, industrial injury.

¶ 49 The Uninsured Employers' Fund has acted reasonably in its handling of Petitioner's claim.

¶ 50 Third-Party Respondent Ramona McDunn d/b/a McDunn's Riverview Mini Storage is not obligated to indemnify the UEF for all benefits paid or payable by the UEF to Petitioner pursuant to §§ 39-71-504, -541, MCA.

¶ 51 Petitioner is not entitled to reasonable costs, penalties, and attorney fees in accordance with § 39-71-611, MCA, and/or § 39-71-612, MCA.

¶ 52 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.

DATED in Helena, Montana, this 5th day of March, 2012.

(SEAL)

/s/ JAMES JEREMIAH SHEA
JUDGE

c: Norman L. Newhall
Leanora O. Coles
William O. Bronson
Submitted: October 11, 2011