

IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

2008 MTWCC 20

WCC No. 2007-1931

LEROY RACH

Petitioner

vs.

MONTANA STATE FUND

Respondent/Insurer.

ORDER GRANTING RESPONDENT'S MOTION FOR SUMMARY JUDGMENT

Summary: Respondent moved for summary judgment based on the grounds that no medical opinion was rendered by any physician which causally linked Petitioner's heart condition to his alleged industrial injury.

Held: Because Petitioner has failed to prove any causal link of his heart condition to his alleged accident, Respondent's motion for summary judgment is granted.

Topics:

Constitutions, Statutes, Regulations, and Rules: Montana Code Annotated: 39-71-119. Under § 39-71-119(5), MCA, Petitioner's heart condition can be causally attributed to his employment only if his work-related accident is the primary cause of the condition. Although his treating physician opined that the blunt force trauma he allegedly suffered at work caused a torn cord in his heart, Petitioner's treating physician retracted her opinion when further diagnostic testing revealed that Petitioner did not have a torn cord. With no medical opinion to support his contention, Petitioner's heart condition cannot be causally attributed to his employment under § 39-71-119(5), MCA.

Causation: Medical Condition. The Workers' Compensation Act provides specific guidance on the element of causation when the alleged injury is a heart condition. Based on test results, Petitioner's treating physician initially

opined that the blunt force trauma Petitioner allegedly suffered at work caused a torn cord. However, she further stated that a more specific diagnostic test could conclusively diagnose the condition. When presented with test results which did not support her diagnosis, the treating physician concluded Petitioner did not suffer a torn cord and rescinded her opinion that his heart condition was caused by his employment. Therefore, Petitioner has no basis for his contention that his heart condition is work-related.

Proof: Causation. The Workers' Compensation Act provides specific guidance on the element of causation when the alleged injury is a heart condition. Based on test results, Petitioner's treating physician initially opined that the blunt force trauma Petitioner allegedly suffered at work caused a torn cord. However, she further stated that a more specific diagnostic test could conclusively diagnose the condition. When presented with test results which did not support her diagnosis, the treating physician concluded Petitioner did not suffer a torn cord and rescinded her opinion that his heart condition was caused by his employment. Therefore, Petitioner has no basis for his contention that his heart condition is work-related.

¶ 1 Respondent Montana State Fund moves this Court to grant summary judgment against Petitioner Leroy Rach on the grounds that no medical opinion has been rendered by any physician which causally links Petitioner's heart condition to his claimed injury.

SUMMARY JUDGMENT

¶ 2 For summary judgment to be granted, the moving party must establish that no genuine issues of material fact exist and that the moving party is entitled to judgment as a matter of law.¹ The parties in this matter have met this criteria.

¹ ARM 24.5.329; *Farmers Union Mut. Ins. Co. v. Horton*, 2003 MT 79, ¶ 10, 315 Mont. 43, 67 P.3d 285.

STATEMENT OF THE FACTS^{2 3}

¶ 3 On September 8, 2006, Respondent received a written first report of injury filed by Petitioner alleging that he suffered a torn valve in his heart at 3 p.m. on April 10, 2006. Petitioner alleged the torn heart valve resulted from a fall while working as a security guard for Grizzly Security Armored Express, Inc.⁴

¶ 4 At the time of the alleged injury, Grizzly Security was insured by Respondent.⁵

¶ 5 Grizzly Security contested Petitioner's allegations and conducted an investigation. Respondent denied Petitioner's claim.⁶

¶ 6 On July 31, 2006, Dr. Eve Gillespie, Petitioner's treating physician, stated the following in her medical report:

Assessment:

1. Congestive heart failure: The causes are likely multifactorial. He has diabetes, had been drinking alcohol heavily until last September, may have had a myocardial infarction, and also had trauma to the thorax, which could have caused a ruptured cord and mitral valve prolapse. He has severe left ventricular dysfunction and severe mitral regurgitation.
2. Possible coronary disease: ECG is consistent with anterior infarct. He has been having epigastric pain, which could be anginal.
3. Hyperlipidemia in past, now with low cholesterol. This may be due to hepatic congestion and early liver dysfunction. LFT's are ok. PT and PTT should be checked.

² Motion for Summary Judgment with Supporting Brief at 2 (Motion); Respondent's Reply Brief in Support of its Motion for Summary Judgment at 1-3 (Reply Brief).

³ Dr. Eve Gillespie's deposition was taken after Respondent filed its motion for summary judgment but prior to Petitioner's response to Respondent's motion for summary judgment. In his response brief, Petitioner addressed portions of Dr. Gillespie's deposition which he contended supported his opposition to Respondent's motion. Petitioner also attached select pages of Dr. Gillespie's deposition to his brief. In its reply brief in support of its motion for summary judgment, Respondent set forth pertinent excerpts from Dr. Gillespie's deposition in a supplemental statement of facts. On April 24, 2008, the Court initiated a conference call with counsel for the parties to discuss the additional facts which were set forth in Respondent's reply brief and to afford Petitioner the opportunity to either address or contradict them. Petitioner's counsel stated that he did not question the accuracy of the facts set forth in Respondent's reply brief. (Docket Item No. 37.)

⁴ Ex. 1 to Motion.

⁵ Affidavit of Wayne Bunch attached to Motion.

⁶ Motion at 2.

4. Insurance status: [Petitioner] needs TEE, Cath, and valve repair, as well as aggressive medical management at this early stage. We discussed options, and he was referred to MASH today.
5. Diabetes: uncontrolled.⁷

¶ 7 Dr. Gillespie is a cardiologist who is board-certified in cardiovascular medicine and internal medicine.

¶ 8 During her deposition, Dr. Gillespie initially went beyond her prior written report (set forth above) to the point of being supportive of Petitioner's claim that his alleged fall at work led to his present heart condition.

¶ 9 Dr. Gillespie's support for Petitioner's claim, however, was premised upon a specific method of injury – i.e., that the alleged fall ruptured the mitral valve heart cord – which, in turn, led to the regurgitation of his mitral valve.

¶ 10 Dr. Gillespie further clarified that once torn, a mitral valve heart cord will not grow back together.

¶ 11 Dr. Gillespie's opinion that Petitioner's mitral valve cord was torn was premised upon her review of a transthoracic echocardiogram (TTE).

¶ 12 Dr. Gillespie acknowledged, however, that a TTE is not the most detailed echocardiogram that can be conducted since it has to be read through a number of body structures. Dr. Gillespie explained that a more detailed test for determining whether the fall resulted in a torn mitral valve cord would be a transesophageal echocardiogram (TEE).

¶ 13 In fact, Dr. Gillespie testified that the TEE was the "determinative" echocardiogram and that if a TEE came back showing no evidence of a torn heart cord it "would trump" the findings premised upon the TTE.⁸

¶ 14 After being presented with the results of a transesophageal echocardiogram (conducted months after the alleged injury and after Petitioner's heart condition became symptomatic) which found no ruptured mitral valve heart cord, Dr. Gillespie reversed her medical opinion.

¶ 15 In fact, at page 46 of her deposition, Dr. Gillespie made the following representation:

⁷ Ex. 3 at 2 to Motion.

⁸ Gillespie Dep. 44:8-24.

Based on the transesophageal echocardiogram that showed no ruptured mitral valve cord, there would be no basis in my opinion for a Workmen's (sic) Comp case related to damage to a mitral valve in trauma at work.

DISCUSSION

¶ 16 Petitioner's alleged injury occurred on April 10, 2006. Therefore, the 2005 version of the Workers' Compensation Act applies.⁹

¶ 17 Causation is an essential element to an entitlement to benefits and Petitioner has the burden of proving a causal connection by a preponderance of the evidence.¹⁰

¶ 18 The Workers' Compensation Act provides further guidance on the element of causation in the present case because Petitioner's injury is a heart condition. Section 39-71-119, MCA, reads, in pertinent part:

(5) (a) A cardiovascular, pulmonary, respiratory, or other disease, cerebrovascular accident, or myocardial infarction suffered by a worker is an injury only if the accident is the primary cause of the physical condition in relation to other factors contributing to the physical condition.

(b) "Primary cause", as used in subsection (5)(a), means a cause that, with a reasonable degree of medical certainty, is responsible for more than 50% of the physical condition.

¶ 19 At her deposition, Petitioner's treating physician, Dr. Gillespie, stated that she had diagnosed Petitioner with congestive heart failure.¹¹ She opined that his heart failure was probably caused by an abnormality on his mitral valve called a torn cord.¹² Dr. Gillespie initially opined – based upon a reasonable degree of medical certainty – that the blunt force trauma Petitioner allegedly suffered at work caused the torn cord.¹³ Dr. Gillespie based her opinion of Petitioner's diagnosis of a torn cord on a transthoracic echocardiogram taken of

⁹ *Buckman v. Montana Deaconess Hosp.*, 224 Mont. 318, 321, 730 P.2d 380, 382 (1986).

¹⁰ *Grenz v. Fire and Cas. of Conn.*, 250 Mont 373, 380, 820 P.2d 742, 746, citing *Brown v. Ament*, 231 Mont 158, 163, 752 P.2d 171, 174 (1988).

¹¹ Gillespie Dep. 7:24 - 8:3

¹² Gillespie Dep. 8:17-22.

¹³ Gillespie Dep. 11:25 - 12:6.

Petitioner.¹⁴ However, she stated that a transthoracic echocardiogram could not conclusively prove the diagnosis of a torn cord and that only a transesophageal echocardiogram could actually prove such existence.¹⁵

¶ 20 Until her deposition, Dr. Gillespie was unaware that Petitioner had undergone a transesophageal echocardiogram. During her cross-examination, she was presented with the transesophageal echocardiogram for her review.¹⁶ Upon reviewing the results of the transesophageal echocardiogram, Dr. Gillespie acknowledged that it reflected that Petitioner had not suffered any injury to his mitral valve cord.¹⁷ Dr. Gillespie further testified:

Based on the transesophageal echocardiogram that showed no ruptured mitral valve cord, there would be no basis in my opinion for a Workmen's (sic) Comp case related to damage to a mitral valve in trauma at work.¹⁸

¶ 21 Petitioner argues that Dr. Gillespie's opinion does not eliminate the possibility that he "could" have suffered an injury as a result of the accident, albeit not a torn mitral valve cord. Petitioner argues that he "could very well have bruised his heart, not known about it, began to suffer the residual effects of a bruised heart, and managed to function for several months before he deteriorated to the point that he had to move from the state of Montana due to his progressively declining health."¹⁹ Petitioner's argument as to how his condition "could" be causally related to the alleged industrial accident is insufficient to sustain his claim. Not only does Petitioner not have a medical opinion substantiating that his accident was the "primary cause" of his heart condition, he has no medical opinion based on objective medical findings establishing causation at all. Based upon the facts as presented to this Court, Petitioner has no basis for benefits regarding his heart condition.

¶ 22 At a conference call initiated by the Court on April 24, 2008,²⁰ Petitioner requested additional time for the purpose of obtaining an additional medical opinion in support of his

¹⁴ Gillespie Dep. 8:23 - 9:9.

¹⁵ Gillespie Dep. 9:6-9.

¹⁶ Gillespie Dep. 45:2-8.

¹⁷ Gillespie Dep. 44:8 - 45:22.

¹⁸ Gillespie Dep. 46:9-13.

¹⁹ Respondent's Response to Motion for Summary Judgment at 3-4.

²⁰ See Footnote No. 3, above.

claim. Respondent objected. In light of the ample time that Petitioner had to obtain a medical opinion and the previous extensions that were stipulated to by Respondent, I denied Petitioner's request and the motion was deemed submitted.

JUDGMENT

¶ 23 Respondent's motion for summary judgment is GRANTED.

¶ 24 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 29th day of April, 2008.

(SEAL)

/s/ JAMES JEREMIAH SHEA
JUDGE

c: S. Charles Sprinkle
Daniel B. McGregor
Submitted: April 24, 2008