

IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

2005 MTWCC 20

WCC No. 2004-1133

STEVEN L. REDMOND

Petitioner

vs.

MONTANA STATE FUND

Respondent/Insurer.

DECISION AND PARTIAL SUMMARY JUDGMENT

Summary: The claimant filed a claim for osteoarthritis of his toes in 1993 and his claim was accepted as an occupational disease. Thereafter, his osteoarthritis progressed to other parts of his body. The insurer denied liability with respect to the progression and urges that the claimant was required to file a new claim for each new body part affected and that his claims for other body parts are barred by the statute of limitations.

Held: The 1993 claim was for the disease of osteoarthritis and encompasses any progression of that disease. The claimant was not required to file new claims with respect to other parts of the body subsequently affected by the disease.

Topics:

Claims: Occupational Disease. A claim for an occupational disease encompasses any subsequent progression of the disease. Separate claims need not be filed as other parts of the body are affected by the disease.

Claims: Sufficiency. A claim for an occupational disease encompasses any subsequent progression of the disease. Separate claims need not be filed as other parts of the body are affected by the disease.

¶1 This matter is submitted upon the parties by joint motion for summary judgment. They have stipulated to the facts to be considered by the Court.

Stipulated Facts

¶2 Steven L. Redmond (hereafter “Redmond”) is currently 52 years of age (DOB: April 5, 1952).

¶3 Redmond graduated from high school in 1970 and has not received any post-high school education.

¶4 For the past thirty-plus years, Redmond has worked full time as a “pressman” for various printing companies, as follows:

<u>Company</u>	<u>Approximate Dates</u>
Artcraft Printers	September 2001 - present
Fenske Printing	1984 - 2001
Eagle Printing	1982 - 1984
Empire Printing	1971 - 1982

¶5 For purposes of this proceeding, Fenske and Artcraft Printers were insured under Plan 3 of the Montana Workers’ Compensation Act during Redmond’s employment.

¶6 Redmond’s job as a pressman involves operating, maintaining, and cleaning a large printing press. It includes “loading” the press with large reams of paper, putting ink in fountain rollers, installing the image-producing plates on round cylinders, and operating the press. At the end of each printing job or at the time of a color change, the pressman is required to manually clean the existing ink from the fountain and roller by using rags, solvent, and an “ink” knife which is similar to a putty knife.

¶7 Redmond has been diagnosed with osteoarthritis (a/k/a degenerative arthritis or degenerative joint disease). For purposes of this proceeding, the parties agree that the medical records establish that Redmond’s osteoarthritis is aggravated by the physical requirements of his employment as a pressman.

¶8 Redmond has been diagnosed as having osteoarthritis in numerous parts of his body. Both the symptoms attributable to osteoarthritis and the diagnosis of osteoarthritis have occurred at different times.

¶9 In August of 1993, while Redmond was employed by Fenske Printing, he filed a claim for compensation relating to osteoarthritis bone spurs located on the big toes of both feet. That claim (03-1994-02782-5) was accepted as compensable under the Occupational

Disease Act by the Montana State Fund (State Fund), and compensation and medical benefits owing were paid. On May 9, 1997, Redmond underwent surgery (fusion) on both greater toes and returned to full-time work in 1997.

¶10 In December of 2003, while employed by Artcraft Printers, Redmond filed a claim with the State Fund for osteoarthritis in parts of his body other than his feet.

Stipulated Issue

¶11 Did Redmond's timely filing of a claim for compensation relating to osteoarthritis in his toes in 1993 satisfy the requirements of section 39-72-403 (1993), MCA, for the osteoarthritic conditions which later appeared in other parts of his body? Stated another way: once a claimant timely files a claim for compensation relating to an occupational disease condition, is the claimant required to file a claim each time the same condition manifests itself in another part or parts of the body?

Discussion

¶12 Both parties agree as to the facts and that summary judgment is appropriate. Therefore, discussion of summary judgment standards is unnecessary and the Court will proceed to address the issue raised by their stipulation.

¶13 The claimant in this case suffers from osteoarthritis aggravated by his job as a pressman. The quirk in this case is the fact that the osteoarthritis manifested itself initially in his toes, for which he filed a claim, and then years later progressed to other parts of his body. The State Fund argues that the 1993 claim filed by the claimant for his toes covers his toes only and that he was required to file separate claims with respect to different parts of his body when they became affected by the osteoarthritis. It then argues that it is not liable for osteoarthritis in other parts of the claimant's body other than his toes because he did not file claims with respect to the other body parts within the time permitted under section 39-72-403, MCA, (1993). The Court disagrees.

¶14 When the claimant filed his initial claim in August of 1993, occupational disease was defined as follows:

"Occupational disease" means harm, damage, or death as set forth in 39-72-119(1) arising out of or contracted in the course and scope of employment and caused by events occurring on more than a single day or work shift. The term does not include a physical or mental condition arising from emotional or mental stress or from a nonphysical stimulus or activity.

§ 39-72-102(10), MCA (1993). Osteoarthritis is "characterized by degenerative and

sometimes hypertrophic changes in the bone and cartilage of one or more joints and a progressive wearing down of apposing joint surfaces with consequent distortion of joint position usually without bony stiffening -- called also *degenerative arthritis, degenerative joint disease, hypertrophic arthritis.*" Merriam-Webster Medical Dictionary. As the definition indicates, and as the parties' own description of the condition indicates, the condition is a degenerative one, meaning that it is progressive. Thus, the harm and damage is continuous and progressive. It is not frozen in time as the State Fund seems to contend, nor can it be chopped up into discrete pieces or diseases as it manifests itself over time in different joints of the body. The 1993 claim encompassed the disease, not just the specific symptoms the claimant was suffering from at the time, hence the State Fund continues to be liable for the consequences of the disease so long as those consequences are causally related to the occupational exposure.

¶15 *Kastens v. State Compensation Ins. Fund*, 1998 MTWCC 41, cited by the State Fund is inapposite to the present question. That case involved which version of the statute of limitations applied. The claimant in that case suffered from carpal tunnel syndrome diagnosed in 1992. Under section 39-72-403, MCA (1991), the claimant was required to file a claim "within 2 years from the date the claimant knew or should have known that his total disability condition resulted from an occupational disease." I held in that case that the statute applied since the claimant was diagnosed with an occupational disease in 1992 but that it commenced running only upon total disability. "The two-year limitation is not triggered by claimant's awareness that he or she suffers from an OD: it is triggered only when the claimant is *totally disabled* **and** is aware that his or her *total disability* is caused by an OD." (*Kastens* at ¶ 17.) Nothing I said in that decision touches on the issue in this case, that issue being what is encompassed by the occupational disease for which a claim has been timely submitted.

¶16 *Corcoran v. Montana School Group Ins. Authority*, 2000 MTWCC 30, cited by the State Fund, also does not address the issue at hand. In that case I held that the statute of limitations applicable to the occupational disease did not commence running until the claimant was aware she was suffering from an occupational disease. While the decision discusses "harm and damage" as used in the definition section of the Occupational Disease Act, *see 14¶ above*, I simply stated that the "terms must mean something more than suffering mere pain, otherwise every ache and pain a worker suffers after a hard day at work would constitute an occupational disease." *Corcoran*, ¶ 52. That is a far cry from saying that after being diagnosed with an occupational disease and filing a claim with respect to the disease, a claimant is required to recognize any progression of the disease as a new, distinct disease for which he must file a new claim. In *Corcoran*, I pointed out that disease is typically understood as "a particularly **destructive process in an organ or organism.**" *Id.* Indeed, the emphasis in that decision was on the *diagnosis*, not the symptoms of the disease. Emphasis added.

¶17 To better illustrate the point being made in this case, suppose the claimant developed occupational cancer and the primary cancer was diagnosed as an occupational disease. Then the cancer metastasized and spread to other parts of his body. If the State Fund's arguments prevailed, the cancers in the other parts of the body would be treated as separate diseases and the claimant required to file separate claims.

¶18 The State Fund's concern that claimant may recover for conditions unrelated to his work is unfounded. The claimant must still show that the particular osteoarthritic condition is causally related to his occupational disease, just as the claimant in the cancer example would have to show that cancers in other parts of his body were secondary to his primary cancer. In this case, if a particular joint of the claimant's body was not affected by the claimant's work and osteoarthritis in that particular joint arose without any contribution of his work, the State Fund would not be liable for the treatment of or disability arising from osteoarthritis of that joint.

CONCLUSION AND SUMMARY JUDGMENT

¶19 As set forth in the facts of this case, the claimant in this case is suffering from a single disease – osteoarthritis. The condition is a progressive one affecting additional parts of his body over time. His initial claim in August of 1993 encompassed osteoarthritis and any progression of that disease to other parts of his body unless the involvement of the other parts occurred independently of and are unrelated to any occupational exposure. Partial summary judgment is entered accordingly.

¶20 Since the State Fund raises concerns that some of the affected parts of the body may not be related to the claimant's occupational exposure, and the Court was not requested to address relatedness or causal connection, that matter must be resolved by trial.

DATED in Helena, Montana, this 14th day of April, 2005.

(SEAL)

/s/ MIKE McCARTER
JUDGE

c: Mr. Victor R. Halverson
Mr. Greg E. Overturf
Submitted: April 4, 2005