

IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

1995 MTWCC 57

WCC No. 9503-7262

JOHN A. SCHILLING

Petitioner

vs.

STATE COMPENSATION INSURANCE FUND

Respondent.

ORDER GRANTING MOTION TO STAY

Summary: While criminal charges alleging theft of workers' compensation benefits were already pending against him, claimant filed a petition for hearing before this Court, asking that State Fund be compelled to reinstate temporary total disability benefits. State Fund moves to stay trial on this petition, which has been routinely set for August 1995, until completion of the criminal case, set for jury trial in early September 1995.

Held: Stay granted. Although the 1995 legislature enacted a specific provision authorizing this Court to stay workers' compensation proceedings while a criminal action alleging fraud is pending, whether or not that provision has yet taken effect is immaterial, as the Workers' Compensation Court has inherent authority to set the time for trial. Where the criminal case was commenced many months prior to claimant's petition for hearing, and the criminal trial is set to commence shortly after trial date on this petition, and resolution of the criminal case is likely to impact the workers' compensation proceeding, stay is appropriate.

Topics:

Constitutions, Statutes, Regulations and Rules: Montana Code Annotated: section 39-71-2911, MCA (1995). Although the 1995 legislature enacted a specific provision authorizing this Court to stay workers' compensation proceedings while a criminal action alleging fraud is pending, whether or not that provision has yet taken effect is immaterial, as the Workers' Compensation Court has inherent authority to set the time for trial. Where the criminal case was commenced many months prior to claimant's petition for hearing, and the criminal trial is set to commence shortly

after trial date on this petition, and resolution of the criminal case is likely to impact the workers' compensation proceeding, stay of the WCC trial is appropriate.

Procedure: Stay of Proceedings. Although the 1995 legislature enacted a specific provision authorizing this Court to stay workers' compensation proceedings while a criminal action alleging fraud is pending (section 39-71-2911, MCA (1995)), whether or not that provision has yet taken effect is immaterial, as the Workers' Compensation Court has inherent authority to set the time for trial. Where criminal case against claimant was commenced many months prior to claimant's petition for hearing, and the criminal trial is set to commence shortly after the trial date on this petition, and resolution of the criminal case is likely to impact the workers' compensation proceeding, stay of the WCC trial is appropriate.

This case involves competing court proceedings. On November 23, 1994, a criminal fraud case was filed against claimant in the Thirteenth Judicial District, Yellowstone County. The one count information alleges that petitioner/claimant committed the offense of theft of workers' compensation benefits by misrepresenting his physical condition. A jury trial is scheduled for September 6, 1995.

On March 20, 1995, following the filing of the criminal charge and termination of his benefits, the claimant filed a petition with this Court. The petition seeks a determination that his temporary total disability benefits were wrongfully terminated and that he is entitled to continuing temporary total disability benefits. Obviously, his petition is at odds with the allegations in the criminal information.

Pursuant to its normal scheduling practices, a trial in this case was set for the week of August 14, 1995, in Billings. Respondent, State Compensation Insurance Fund, has moved to stay all proceedings in this case so that the criminal action can be tried first.

The 1995 legislature enacted a specific provision authorizing the Workers' Compensation Court to grant a stay of proceedings if a criminal action alleging fraud has been commenced against a claimant. That provision, adopted as section 1 of Senate Bill 375, was not effective until July 1, 1995. SB 375, § 29. Claimant argues that it cannot be applied in this case since his petition was filed prior to the effective date of the statute.

The Workers' Compensation Court need not look to the 1995 legislation for authority to stay or continue a case. It has inherent authority to set the time of trial, and to set a different date than that originally fixed.

The criminal case was commenced many months prior to claimant's petition in the present case. The trial of that case is set to commence a couple of weeks after the time set for trial in this case. It is likely that a verdict will be rendered in the criminal case prior

to my issuing findings of fact, conclusions of law and judgment in this case. An acquittal may persuade the State Fund to reinstate benefits; a conviction may have preclusive effect on any ruling in this case. For those reasons, I find good cause to **continue** the trial in this matter to the next term of Court in Billings.

Dated in Helena, Montana, this 26th day of July, 1995.

(SEAL)

/s/ Mike McCarter
JUDGE

c: Mr. Brad L. Arndorfer
Mr. Daniel J. Whyte