

IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

2009 MTWCC 23

WCC No. 2009-2219

JUDY SCHRECKENDGUST

Petitioner

vs.

MONTANA SCHOOLS GROUP INSURANCE AUTHORITY

Respondent/Insurer.

**ORDER GRANTING RESPONDENT'S MOTION TO STRIKE,
GRANTING RESPONDENT'S MOTION FOR SUMMARY JUDGMENT,
AND DENYING PETITIONER'S CROSS-MOTION FOR SUMMARY JUDGMENT**

Summary: Montana Schools Group Insurance Authority moved for summary judgment on the grounds that Petitioner Judy Schreckendgust failed to file her claim in this Court within two years of MSGIA's denial of benefits, as required by § 39-71-2905, MCA. Schreckendgust contended that the parties agreed that she could seek treatment from her treating physician and MSGIA reneged on this agreement. Schreckendgust cross-motioned for summary judgment against MSGIA for "failing to uphold the agreement." In purported support of her contention that MSGIA had accepted liability for Schreckendgust to treat with her treating physician, Schreckendgust submitted the department mediator's report for the Court's consideration. MSGIA moved to strike the mediator's report and all references to the report pursuant to § 39-71-2410, MCA.

Held: MSGIA's motion to strike is granted. Section 39-71-2410, MCA, requires that, but for limited exceptions, all proceedings before the department mediator are confidential. This case does not fall within one of those exceptions. Regarding the cross-motions for summary judgment, § 39-71-2905, MCA, requires that a petition for hearing before the Workers' Compensation Judge be filed within two years after benefits are denied. MSGIA denied Schreckendgust's claim on May 18, 2005, and Schreckendgust did not file her petition in this Court until January 16, 2009, nearly three years and eight months after benefits were denied. Schreckendgust's claim is therefore time-barred pursuant to § 39-71-2905, MCA. Accordingly, MSGIA's motion for summary judgment is granted and Schreckendgust's cross-motion for summary judgment is denied.

Topics:

Constitutions, Statutes, Regulations, and Rules: Montana Code Annotated: 39-71-2410.

The Court granted Respondent's motion to strike Petitioner's references to the department mediation in her brief, and the mediator's report which Petitioner attached as an exhibit. No exception to the confidentiality provisions of § 39-71-2410, MCA, exists for Petitioner's mediation references and it is not this Court's prerogative to create such an exception by judicial fiat.

Mediation: Confidentiality. The Court granted Respondent's motion to strike Petitioner's references to the department mediation in her brief, and the mediator's report which Petitioner attached as an exhibit. No exception to the confidentiality provisions of § 39-71-2410, MCA, exists for Petitioner's mediation references and it is not this Court's prerogative to create such an exception by judicial fiat.

¶ 1 Respondent Montana Schools Group Insurance Authority (MSGIA) moved for summary judgment on the grounds that Petitioner Judy Schreckendgust (Schreckendgust) failed to file her claim in this Court within two years of MSGIA's denial of benefits, as required by § 39-71-2905, MCA. In response to MSGIA's motion, Schreckendgust contended that the parties agreed that Schreckendgust could seek treatment from her treating physician and later reneged on this agreement. Schreckendgust then cross-motioned for summary judgment against MSGIA for "failing to uphold the agreement."¹

¶ 2 In purported support of her contention that MSGIA had accepted liability for Schreckendgust to treat with her treating physician, Schreckendgust submitted the department mediator's report for the Court's consideration. MSGIA moved to strike the mediator's report and all references to the report pursuant to § 39-71-2410, MCA. Because MSGIA's motion to strike impacts the facts that may be considered regarding the cross-motions for summary judgment, I will address the motion to strike first.

MOTION TO STRIKE

¶ 3 MSGIA contends that Schreckendgust's references in her brief to the department mediation, as well as the mediator's report which Schreckendgust attached as an exhibit to her brief, are inadmissible pursuant to § 39-71-2410, MCA. This statute provides as follows:

¹ Petitioner's Response to Respondent's Motion for Summary Judgment and Cross Motion for Summary Judgment at 2.

39-71-2410. Limitations on mediation proceedings. (1) Except as may be necessary for the workers' compensation court to rule on issues arising under 39-71-2401(4)(c) or 39-71-2411(7)(c), mediation proceedings are:

- (a) held in private;
 - (b) informal and held without a verbatim record; and
 - (c) confidential.
- (2) All communications, verbal or written, from the parties to the mediator and any information and evidence presented to the mediator during the proceeding are confidential.
- (3) A mediator's files and records are closed to all but the parties.
- (4) (a) A mediator may not be called to testify in any proceeding concerning the issues discussed in the mediation process.
(b) Neither the mediator's report nor any of the information or recommendations contained in it are admissible as evidence in any action subsequently brought in any court of law.
- (5) Notwithstanding subsections (1) through (4), a mediator may issue a report and the parties and the mediator may be required to attend a conference before the workers' compensation court as set forth in 39-71-2411.

¶ 4 Schreckendgust does not argue that either of the exceptions set forth in § 39-71-2410(1), MCA, apply to the present case. Rather, Schreckendgust argues that the Court should vitiate the confidentiality mandates of § 39-71-2410, MCA, and allow the mediation report into evidence because "it clearly outlines that there was an agreement made during mediation."² Whether the mediation report "clearly outlines" an agreement as Schreckendgust suggests is both debatable and beside the point. The Legislature did not see fit to codify Schreckendgust's proposed exception to the confidentiality provisions of § 39-71-2410, MCA, and it is not this Court's prerogative to create such an exception by judicial fiat. MSGIA's motion to strike the mediator's report and all references to the report is granted.

CROSS-MOTIONS FOR SUMMARY JUDGMENT

Undisputed Material Facts

¶ 5 In light of my ruling on MSGIA's motion to strike, the undisputed material facts are as follows:

² Petitioner's Response to Respondent's Reply/Answer to Petitioner's Answer and Cross Motion for Summary Judgment and Motion to Strike at 2.

- ¶ 5a Schreckendgust originally filed a claim for injuries to her left shoulder, neck, and back arising out of events occurring on December 11, 2002.
- ¶ 5a On May 18, 2005, MSGIA denied liability for all future treatment under Schreckendgust's claim.
- ¶ 5b On January 16, 2009, Schreckendgust filed her current petition in this Court regarding her entitlement to further medical benefits.

Analysis and Decision

¶ 6 This case is governed by the 2001 version of the Montana Workers' Compensation Act since that was the law in effect at the time of Schreckendgust's injury.³

¶ 7 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.⁴ The material facts necessary for disposition of this case are undisputed. Accordingly, this case is susceptible to summary disposition.

¶ 8 Section 39-71-2905, MCA, requires that a petition for hearing before the Workers' Compensation Judge must be filed within two years after benefits are denied. MSGIA denied Schreckendgust's claim for all future treatment under her claim on May 18, 2005. Schreckendgust did not file her petition in this Court until January 16, 2009, nearly three years and eight months after benefits were denied. Schreckendgust's claim is therefore time-barred pursuant to § 39-71-2905, MCA. Accordingly, MSGIA's motion for summary judgment is granted and Schreckendgust's cross-motion for summary judgment is denied.

ORDER AND JUDGMENT

¶ 9 MSGIA's motion to strike is GRANTED.

¶ 10 MSGIA's motion for summary judgment is GRANTED.

¶ 11 Schreckendgust's cross-motion for summary judgment is DENIED.

¶ 12 Pursuant to ARM 24.5.348(2), this Order and Judgment is certified as final and, for purposes of appeal, shall be considered as a notice of entry of judgment.

³ *Buckman v. Montana Deaconess Hosp.*, 224 Mont. 318, 321, 730 P.2d 380, 382 (1986).

⁴ ARM 24.5.329; *Farmers Union Mut. Ins. Co. v. Horton*, 2003 MT 79, ¶ 10, 315 Mont. 43, 67 P.3d 285.

DATED in Helena, Montana, this 23rd day of July, 2009.

(SEAL)

/s/ JAMES JEREMIAH SHEA
JUDGE

c: Garry D. Seaman
Oliver H. Goe/Jason B. Jewett
Submitted: July 2, 2009