

IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

2007 MTWCC 56

WCC No. 2007-1855

RICHARD A. SIEBKEN

Petitioner

vs.

LIBERTY NORTHWEST INSURANCE COMPANY

Respondent/Insurer.

ORDER DENYING PETITIONER'S MOTION FOR RECONSIDERATION

Summary: Petitioner asks the Court to reconsider its decision in this matter. It alleges that the Court erred in failing to take into account Montana Supreme Court precedent regarding what constitutes an unexpected traumatic incident or unusual strain. Respondent responds that the issue was not whether Petitioner suffered an unexpected traumatic incident or unusual strain, but whether he reported it in a timely manner. Respondent argues that the Court correctly determined that while Petitioner suffered an unexpected traumatic incident or unusual strain, Petitioner failed to report it to his employer within 30 days as required by § 39-71-603, MCA.

Held: While Petitioner may have suffered a strain which was unusual in its effect, he nonetheless did not report it within 30 days of learning that he had done so. His motion for reconsideration is denied.

Topics:

Constitutions, Statutes, Regulations, and Rules: Administrative Rules of Montana: 24.5.337. Where a matter was submitted and decided on briefs without a trial, Petitioner's "Petition for a New Trial" will be considered as motion for reconsideration as a new trial cannot be granted where no trial occurred.

Constitutions, Statutes, Regulations, and Rules: Administrative Rules of Montana: 24.5.344. Where a matter was submitted and decided on briefs

without a trial, Petitioner's "Petition for a New Trial" will be considered as motion for reconsideration as a new trial cannot be granted where no trial occurred.

Procedure: Reconsideration. Where a matter was submitted and decided on briefs without a trial, Petitioner's "Petition for a New Trial" will be considered as motion for reconsideration as a new trial cannot be granted where no trial occurred.

¶ 1 Petitioner Richard A. Siebken moves the Court to reconsider its Decision and Judgment entered November 27, 2007, in this matter.¹ Respondent Liberty Northwest Insurance Company opposes Petitioner's motion.

¶ 2 Petitioner did not style his motion as a motion for reconsideration. Rather, he captioned his document "Richard Siebken's Petition for a New Trial or Amendment of the Court's Decision and Judgment Dated November 27, 2007."² He then prays for the relief of a new trial followed by a holding that his claim is compensable.

¶ 3 There was no trial in this matter. Petitioner and Respondent stipulated to submitting this matter on briefs with stipulated facts for the Court's ruling on a question of law. Therefore, I am considering this motion as a motion for reconsideration pursuant to ARM 24.5.337 rather than a petition for a new trial pursuant to ARM 24.5.344. Irrespective of how the motion is captioned, I will address the merits of Petitioner's motion.

¶ 4 The core of Petitioner's argument concerns this Court's interpretation of certain incident reports which were filed by Petitioner, who worked as a security guard, and his co-workers on the day they physically subdued a trespasser at their place of employment.³ I reviewed the incident reports and concluded that the reports did not put Petitioner's employer on notice that an "accident" as defined by § 39-71-119(2), MCA, had occurred because these reports did not describe "an unexpected traumatic incident or unusual strain."⁴

¹ *Siebken v. Liberty Northwest Ins. Co.*, 2007 MTWCC 48.

² Docket Item No. 12 ("Petitioner's Motion").

³ *Siebken*, ¶¶ 23-26.

⁴ *Siebken*, ¶ 27.

¶ 5 Petitioner asserts that this Court “failed to reference any of the Montana Supreme Court’s decisions that have defined the meaning of unusual strain set forth in the Workers’ Compensation Act” when the Court concluded that the incident reports at issue did not describe an unexpected traumatic incident or unusual strain.⁵ Petitioner argues that this Court erred in concluding that the incident reports do not describe an unexpected traumatic incident or unusual strain because:

[Petitioner’s] altercation with the trespasser on December 11, 2004, was an unusual strain in its effect. That effect **was not known until May 26, 2006**, when he learned that he had a cervical condition which was caused by that altercation.⁶

¶ 6 In support of his position, Petitioner relies on *Jones v. Bair’s Cafes*,⁷ *Robins v. Ogle*,⁸ *Love v. Ralph’s Food Store, Inc.*,⁹ *Stamatis v. Bechtel Power Corp.*,¹⁰ and *Harmon v. Deaconess Hospital*.¹¹ Petitioner points out that in all of these cases, the Montana Supreme Court found that an unusual strain had occurred. In particular, Petitioner points to language from *Stamatis* in which the court, citing to the then-applicable definition of injury found at § 39-71-119(1), MCA,¹² stated:

We have previously interpreted this language to mean that a claimant can recover if the physical harm suffered is unusual either from the standpoint of cause or effect.¹³

⁵ Petitioner’s Motion at 2.

⁶ Petitioner’s Motion at 4. (Emphasis added.)

⁷ *Jones*, 152 Mont. 13, 445 P.2d 923 (1968).

⁸ *Robins*, 157 Mont. 328, 485 P.2d 692 (1971).

⁹ *Love*, 163 Mont. 234, 516 P.2d 598 (1973).

¹⁰ *Stamatis*, 184 Mont. 64, 601 P.2d 403 (1979).

¹¹ *Harmon*, 191 Mont. 285, 623 P.2d 1372 (1981).

¹² “Injury” or “injured” means: (1) a tangible happening of a traumatic nature from an unexpected cause or unusual strain resulting in either external or internal physical harm and such physical condition as a result therefrom . . . *Stamatis*, 184 Mont. at 69, 601 P.2d at 406.

¹³ *Stamatis*, 184 Mont. at 69-70, 601 P.2d at 406, *citing Love*, 163 Mont. at 242, 516 P.2d at 602; *Robins*, 157 Mont. at 333, 485 P.2d at 695; *Jones*, 152 Mont. at 19, 445 P.2d at 926.

Petitioner argues that in his case, he likewise suffered a strain that was unusual in its effect and that this Court erred in finding his condition noncompensable.

¶ 7 Respondent responds that it agrees with Petitioner that an unusual strain can be unusual in its cause or effect. However, Respondent further responds:

[Respondent] respectfully submits that [Petitioner] missed the point of the unusual strain language in the injury statute as it relates to the statutory 30-day notice requirement. [Respondent's] position is once [Petitioner] knew the incident, which was a normal part of his employment, was in fact an unusual strain that accounted for his neck injury, the effect of receiving that information was that it triggered the running of the statutory 30-day notice requirement.¹⁴

Respondent points out that Petitioner's claim was denied because he failed to meet the notice requirements of § 39-71-603, MCA, and not, as Petitioner alleges, because the strain he suffered was unusual in its effect.

¶ 8 In Petitioner's motion, he asserts that the effect of his unusual strain was not known until May 26, 2006. This fact is not disputed. However, it is also undisputed that Petitioner did not report an accident or injury until July 3, 2006, more than 30 days after he learned that he had suffered an injury. Because Petitioner's July 3, 2006, report was untimely, I noted that, "Ultimately, this case comes down to whether the incident reports which were filed by Petitioner and his co-workers were sufficient to give Petitioner's employer notice which fulfills the requirements of § 39-71-603, MCA."¹⁵ I reviewed all of the reports and determined that they were not sufficient for this purpose.¹⁶ Having failed to meet the notice requirements of § 39-71-603, MCA, therefore, Petitioner's claim was denied as untimely.¹⁷ Accordingly, his motion for reconsideration is also denied.

ORDER

¶ 9 Petitioner's motion for reconsideration is **DENIED**.

¹⁴ Liberty's Brief in Opposition to Petitioner's Petition for a New Trial or Amendment of the Court's Decision and Judgment, Docket Item No. 13 at 1-2.

¹⁵ *Siebken*, ¶ 21.

¹⁶ *Siebken*, ¶ 28.

¹⁷ *Id.*

DATED in Helena, Montana, this 18th day of December, 2007.

(SEAL)

/s/ JAMES JEREMIAH SHEA
JUDGE

c: Bernard J. Everett
Larry W. Jones
Submitted: December 7, 2007