

IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

2008 MTWCC 3

WCC No. 2007-1955

MONTANA STATE FUND

Petitioner/Insurer

vs.

RANDALL SIMMS

Respondent/Claimant.

ORDER DENYING RESPONDENT'S MOTION TO DISMISS

Summary: Respondent moved to dismiss Petitioner's Petition for Declaratory Ruling on the grounds that this Court lacks the jurisdiction to reopen its Order and Judgment Dismissing with Prejudice more than a year and a half after it was entered. Petitioner responds that, pursuant to § 39-71-2909, MCA, this Court may review, diminish, or increase awarded benefits which were allegedly obtained through fraudulent representations.

Held: Respondent bases its motion upon *State Comp. Ins. Fund v. Chapman*. *Chapman* was decided under a previous version of § 39-71-2909, MCA, which did not include fraud or deception as grounds upon which this Court could review an award of benefits. Since the current version of the statute permits the Court to do so, the Court has the jurisdiction to consider Petitioner's Petition for Declaratory Ruling. Respondent's motion to dismiss is therefore denied.

Topics:

Constitutions, Statutes, Regulations, and Rules: Montana Rules of Civil Procedure - by Section: Rule 60(b). In situations alleging fraud or deception, this Court need no longer look to Mont. R. Civ. P. 60(b) because § 39-71-2909, MCA, as amended in 1995, now covers situations in which fraud or deception is alleged. Therefore under § 39-71-2909, MCA, this Court has the jurisdiction to consider a petition for declaratory ruling which alleges a claimant fraudulently obtained benefits.

Constitutions, Statutes, Regulations, and Rules: Montana Code Annotated: 39-71-2909. In situations alleging fraud or deception, this Court

need no longer look to Mont. R. Civ. P. 60(b) because § 39-71-2909, MCA, as amended in 1995, now covers situations in which fraud or deception is alleged. Therefore under § 39-71-2909, MCA, this Court has the jurisdiction to consider a petition for declaratory ruling which alleges a claimant fraudulently obtained benefits.

Fraud: Generally. In situations alleging fraud or deception, this Court need no longer look to Mont. R. Civ. P. 60(b) because § 39-71-2909, MCA, as amended in 1995, now covers situations in which fraud or deception is alleged. Therefore under § 39-71-2909, MCA, this Court has the jurisdiction to consider a petition for declaratory ruling which alleges a claimant fraudulently obtained benefits.

Declaratory Judgment: Grounds. In situations alleging fraud or deception, this Court need no longer look to Mont. R. Civ. P. 60(b) because § 39-71-2909, MCA, as amended in 1995, now covers situations in which fraud or deception is alleged. Therefore under § 39-71-2909, MCA, this Court has the jurisdiction to consider a petition for declaratory ruling which alleges a claimant fraudulently obtained benefits.

¶ 1 Respondent Randall Simms moves this Court to dismiss the Petition for Declaratory Ruling filed by Petitioner Montana State Fund. Respondent argues that this Court lacks jurisdiction to rule in this matter. I have concluded that this Court has the jurisdiction to make a determination in this matter and Respondent's motion is denied for the reasons set forth below.

¶ 2 Respondent argues that in *State Comp. Ins. Fund v. Chapman*¹ the Montana Supreme Court held that under § 39-71-2909, MCA, this Court does not have jurisdiction to reopen a judgment based on fraud. Since Petitioner bases its Petition for Declaratory Ruling on allegations that Respondent fraudulently misrepresented his physical condition, Respondent argues that this Court lacks the jurisdiction to entertain the petition.² Petitioner responds that subsequent to the Supreme Court's ruling in *Chapman*, § 39-71-2909, MCA, was amended by the legislature to specifically include fraud or deception as grounds upon which this Court could modify benefits previously awarded.

¶ 3 *Chapman* was decided under the 1979 statutes. Section 39-71-2909, MCA (1979), reads:

The judge may, upon the petition of a claimant or an insurer that the disability of the claimant has changed, review, diminish, or increase, in accordance with the law on benefits as set forth in chapter 71 of this title, any benefits

¹ *Chapman*, 267 Mont. 484, 885 P.2d 407 (1994).

² Motion to Dismiss and Brief in Support, Docket Item No. 5.

previously awarded by the judge or benefits received by a claimant through settlement agreements. . . .

¶ 4 In 1995, the legislature amended § 39-71-2909, MCA, and has not amended it since. Section 39-71-2909, MCA, presently reads:

The judge may, upon the petition of a claimant or an insurer that the disability of the claimant has changed **or that the claimant received benefits through fraud or deception**, review, diminish, or increase, in accordance with the law on benefits as set forth in chapter 71 of this title, any benefits previously awarded by the judge. An insurer's petition alleging that the claimant received benefits through fraud or deception must be filed within 2 years after the insurer discovers the fraud or deception.³

¶ 5 In *Chapman*, the Supreme Court reversed this Court's determination that it had the authority to set aside its previous judgment and order the claimant's attorney to repay attorney fees and costs.⁴ The State Compensation Insurance Fund argued that this Court had the authority to set aside the judgment pursuant to §§ 39-71-204(2), -2905, -2909, and 25-11-102, MCA (1979). The Supreme Court concluded that none of these statutes provided a basis for setting aside a judgment in this Court.⁵ Petitioner has correctly observed, however, that § 39-71-2909, MCA, was amended after *Chapman* was decided.

¶ 6 In determining that § 39-71-2909, MCA, did not give this Court the authority to set aside a judgment, the Supreme Court in *Chapman* looked to the language of the statute and determined that it was a "change of condition" statute which gave this Court continuing authority to review, diminish, or increase an award of benefits only upon a finding that the "disability of the claimant has changed." Looking to Larson's, *Workers' Compensation Law* § 81.32(a), the Supreme Court quoted, "In a change-of-condition reopening proceeding, the issue before the Board is sharply restricted to the question of extent of improvement or worsening of the injury on which the original award was based."⁶ The Supreme Court then reasoned that because fraud and not a change in the claimant's condition was alleged, this Court could not find the authority to set aside its judgment.⁷ The Supreme Court further stated:

Although we conclude that the Workers' Compensation Court had no specific statutory authority to set aside its judgment based on a petition filed

³ Emphasis added.

⁴ *Chapman*, 267 Mont. at 486, 885 P.2d at 408.

⁵ *Chapman*, 267 Mont. at 487, 885 P.2d at 409.

⁶ *Chapman*, 267 Mont. at 488, 885 P.2d at 410.

⁷ *Id.*

18 months after the judgment was entered, we agree that under some circumstances the court may have inherent equitable power to do so. However, even the court's equitable power is not without limitation and must be subject to predictable rules if the finality of judgments is to mean anything.⁸

¶ 7 The Supreme Court then looked to the Montana Rules of Civil Procedure and determined that Mont. R. Civ. P. 60(b) provided guidance in the absence of statutory authority in the Workers' Compensation Act. Because Mont. R. Civ. P. 60(b)(2) limits motions to set aside judgments on the basis of fraud to 60 days from the entry of judgment, the Supreme Court concluded that since two years had passed since the entry of judgment, this Court lacked the authority to set it aside.⁹

¶ 8 The Court need no longer look to Mont. R. Civ. P. 60(b), however, because § 39-71-2909, MCA, as amended in 1995, now covers situations such as the present one in which fraud or deception is alleged. Therefore, I conclude this Court has the jurisdiction to consider Petitioner's Petition for Declaratory Ruling under the current version of § 39-71-2909, MCA.

ORDER

¶ 9 Respondent's motion to dismiss is DENIED.

¶ 10 Any party to this dispute may have twenty days in which to request reconsideration from this Order.

DATED in Helena, Montana, this 9th day of January, 2008.

(SEAL)

/s/ JAMES JEREMIAH SHEA
JUDGE

c: Thomas E. Martello
Bradley J. Luck
Geoffrey C. Angel
Submitted: October 18, 2007

⁸ *Chapman*, 267 Mont. at 489-90, 885 P.2d at 411.

⁹ *Chapman*, 267 Mont. at 490, 885 P.2d at 411.