

IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

2008 MTWCC 8

WCC No. 2007-2003

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ANGIE SIZEMORE

Petitioner

vs.

COPPER KING HOTEL AND CONVENTION CENTER

Respondent.

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ORDER GRANTING RESPONDENT'S MOTION TO DISMISS

*Notice of Appeal Filed by Petitioner, February 20, 2008*  
*Appeal Dismissed With Prejudice, June 17, 2008*

**Summary:** Respondent moved to dismiss Petitioner's petition in which she requested that the Court enforce the reemployment preference of § 39-71-317, MCA, against The Cimarron Group, Inc., which now owns the Copper King Hotel and Convention Center. Petitioner was employed at the Copper King Hotel and Convention Center when it was owned by Allegra Partnership, and Allegra Partnership owned the business on the date of Petitioner's industrial injury.

**Held:** Under § 39-71-317(3), MCA, a claimant's reemployment preference lies with her date-of-injury employer. Since Petitioner's place of employment was owned by Allegra Partnership and not The Cimarron Group, Inc., on the date of her injury, her entitlement to a reemployment preference lies with Allegra Partnership and not The Cimarron Group, Inc. Respondent's motion to dismiss is therefore granted.

**Topics:**

**Constitutions, Statutes, Regulations, and Rules: Montana Code Annotated: 39-71-317.** An employee's rehiring preference lies with her employer at the time the injury occurred, and not with a subsequent employer who purchased the business after the date of injury.

**Constitutions, Statutes, Regulations, and Rules: Montana Code Annotated: 39-71-117.** An “employer” is defined as the company or business entity by which one is employed, and not the physical location where an employee works. Therefore, any rehiring preference would lie with the time-of-injury employer and not with the business entity which subsequently purchased the physical location where the employee was injured.

**Employment: Rehire Preference.** An employee’s rehiring preference lies with her employer at the time the injury occurred, and not with a subsequent employer who purchased the business after the date of injury.

**Re-employment Preference: Generally.** An employee’s rehiring preference lies with her employer at the time the injury occurred, and not with a subsequent employer who purchased the business after the date of injury.

¶ 1 Respondent The Cimarron Group, Inc., moves this Court to dismiss the petition filed in this matter by Petitioner Angie Sizemore on the grounds that Petitioner is not entitled to a reemployment preference with Respondent.<sup>1</sup>

¶ 2 Petitioner’s industrial injury occurred on October 22, 2005, while Copper King Hotel and Convention Center (“Copper King”) was owned and operated by Allegra Partnership. Respondent’s purchase of the Copper King was effective on November 15, 2005, at 11:59 p.m. Respondent argues that since it was not the employer on the day Petitioner was injured, it has no obligation under § 39-71-317, MCA, to extend a reemployment preference to Petitioner.<sup>2</sup>

¶ 3 Petitioner responds that she was injured on the job on October 22, 2005, and continued to work at the Copper King until November 7, 2005, when she sought medical treatment and was taken off work by her treating physician. Petitioner alleges that a job analysis of her time-of-injury position was prepared for her by employees of the Copper King on February 20, 2006. Petitioner further alleges that although she was unable to return to work at that time due to ongoing medical treatment, on May 18, 2006, a letter was written by her vocational provider to Claims Adjuster Denise Jensen which stated that as of that date, Copper King was willing to have her return to her position there. Therefore,

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<sup>1</sup> In her petition in this matter, Petitioner named “Copper King Hotel and Convention Center” as the respondent and her employer. However, as will become evident in the facts set forth below, Petitioner’s employer was never the Copper King Hotel and Convention Center, but rather the business entities which owned it. The actual Respondent in this case, therefore, is The Cimarron Group, Inc., which currently owns and operates the Copper King Hotel and Convention Center.

<sup>2</sup> Motion to Dismiss, with Brief Incorporated. Docket Item No. 12

Petitioner responds, she was still considered an employee at least as late as May 18, 2006, well after Respondent became the owner and operator of the business.<sup>3</sup>

¶ 4 Section 39-71-317(2), MCA, states that when an injured worker is capable of returning to work within two years from the date of injury and has received a medical release to return to work, the worker must be given a preference over other applicants for a comparable position that becomes vacant if the position is consistent with the worker's physical condition and vocational capabilities. However, § 39-71-317(3), MCA, further states that the preference applies **only** to employment with the employer for whom the employee was working **at the time the injury occurred**. Therefore, regardless of whether Petitioner was considered to be an employee after her date of injury, her reemployment preference lies with her employer at the time the injury occurred on October 22, 2005.

¶ 5 As defined in § 39-71-117, MCA, the "employer" is the company or other business entity by which one is employed, and not the physical location where an employee works. It is undisputed that Petitioner's employer at the time of her injury on October 22, 2005, was Allegra Partnership. It is further undisputed that the purchase of the Copper King by The Cimarron Group, Inc., was effective on November 15, 2005. Therefore, Petitioner's reemployment preference under the statute lies with Allegra Partnership and not The Cimarron Group, Inc.

¶ 6 Since Petitioner's entitlement to a reemployment preference is the only issue before the Court, this Order is dispositive of the case, and her petition is therefore dismissed.

#### JUDGMENT

¶ 7 Respondent's motion to dismiss is **GRANTED**.

¶ 8 Petitioner's Petition for Hearing is **DISMISSED**.

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

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

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<sup>3</sup> Petitioner's response. Docket Item No. 9.

DATED in Helena, Montana, this 1st day of February, 2008.

(SEAL)

/s/ JAMES JEREMIAH SHEA  
JUDGE

c: Angie Sizemore  
Patrick T. Fleming  
Submitted: January 10, 2008