

IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

2005 MTWCC 42

WCC No. 2004-1039

JOHN STROM

Petitioner

vs.

MONTANA MUNICIPAL INSURANCE AUTHORITY

Respondent/Insurer.

FINDINGS OF FACT, CONCLUSIONS OF LAW AND JUDGMENT

Summary: The claimant seeks additional medical and disability benefits on account of an April 1, 1999 work-related injury to his low back.

Held: The claimant's 1999 low-back injury was a strain that fully resolved by the summer of 1999. His back problems in 2000 and thereafter, including a bulging disk which impinged on the S1 nerve root were more likely the result of new injuries and were unrelated to his 1999 injury. He is therefore not entitled to additional medical or disability benefits.

Topics:

Causation: Medical Condition. An insurer is liable only for medical conditions which are causally related to a work-related injury.

Proof: Burden of Proof: Causation. The claimant bears the burden of persuading the Court by a preponderance of the evidence that his medical condition and disability are causally related to his work-related injury.

Causation: Medical Condition. Where the physician tendering an opinion on the relatedness of a medical condition to a work-related injury is unable to relate the condition to the injury and the medical evidence further demonstrates that the work-related injury fully resolved and that there were subsequent incidents associated with his medical complaints, the Court finds

that there is no causal connection between the subsequent condition and the work-related injury.

¶1 The trial in this matter was held in Great Falls, Montana, on July 12, 2005. The petitioner was present and represented by Mr. Cameron Ferguson. The respondent was represented by Mr. Oliver H. Goe.

¶2 Exhibits: Exhibits 1 through 15 were admitted without objection.

¶3 Witnesses and Depositions: The petitioner, Elizabeth Ann Taylor, Lori Anderson, and Lea Marie Strom testified at trial. The parties submitted depositions of the petitioner, Gwen Carter, Lea Strom, and Lee Finney, M.D., to the Court for its consideration.

¶4 Issues Presented: The Court restates the issues as follows:

¶4a Whether the petitioner's low-back condition and treatment after May 20, 1999, are related to his April 1, 1999 workers' compensation injury.

¶4b Whether the petitioner is entitled to additional workers' compensation benefits with respect to his April 1, 1999 workers' compensation injury.

¶5 Having considered the Pretrial Order, the testimony presented at trial, the demeanor and credibility of the witnesses, the depositions and exhibits, and the arguments of the parties, the Court makes the following:

FINDINGS OF FACT

¶6 The petitioner (hereinafter "claimant") injured his low back on April 1, 1999, while working as a custodian for the Great Falls Public Library.

¶7 At the time of his injury, the Great Falls Public Library was insured by the Montana Municipal Insurance Authority (MMIA). A claim for compensation was submitted to MMIA, which accepted liability for the claim and paid certain medical benefits.

¶8 The claimant's injury occurred when he was pulling a bucket filled with water out of a sink. (Ex. 1.) He felt pain in his lower-left back. (*Id.*)

¶9 After leaving work on April 1, 1999, the claimant went to the Great Falls Immediate Care Center, which is part of the Great Falls Clinic. (Ex. 5–10.) The medical note for that date states that the claimant complained of left low-back pain but denied "any numbness, tingling, or weakness in his extremities." The diagnosis was "[l]ow back pain." (Ex. 5-13.)

¶10 The claimant was seen again at the Great Falls Immediate Care Center on April 5, 1999. On that date, he was still complaining of left low-back pain but again denied “numbness, tingling or weakness in the extremities.” (Ex. 5-14.)

¶11 The claimant was thereafter seen by Dr. Mark H. Nicholson on April 13 and May 20, 1999. (Ex. 5-15.) On both occasions, the claimant reported low-back pain. Dr. Nicholson’s office note for the April 13th visit suggests that the claimant may have been experiencing some leg pain above his knee, stating, “[t]he pain has not radiated below the knees”; however, in his May 20th office note, Dr. Nicholson reported the claimant denied radiating pain and that some pain in “his buttock that was a problem 1 ½ months ago is no longer a problem.” The office notes for both dates find no straight leg raising pain and rule out disk herniation or radiculopathy. The diagnosis on April 13th was “[l]ow back pain.” On May 20th, the diagnosis was “[l]umbago,” which is “usually painful rheumatism involving muscular and fibrous tissue of the lower back region.” *Merriam-Webster Online Medical Dictionary* (2002).

¶12 The claimant did not thereafter seek medical care for his low back until April 15, 2000.

¶13 Meanwhile, on July 12, 1999, he sought medical treatment for chronic headaches from Dr. James D. Hinde, a physiatrist. Dr. Hinde took a medical history from the claimant, who reported he had injured his back on April 1, 1999, but that his injury had totally resolved:

Low back injury work related late March or April of this year which caused him to have pain for approximately 10 weeks. **He states he’s had complete recovery since.** . . . He never missed work.

(Ex. 12-2 (emphasis added).) There is no further mention of the back injury in several followup visits with Dr. Hinde in 1999 and early 2000. (Ex. 12-5 to 12-10.)

¶14 On April 15, 2000, the claimant again sought medical care for low-back pain. His complaints, however, were different than in 1999 and he identified a new event as triggering his complaints. Specifically, he complained of pain in his right-lower back, whereas his work-related injury complaints had been in his left-lower back. Further, he complained of pain radiating down his right leg into the calf. With regard to the genesis of his complaints, the examining physician recorded:

He [claimant] states that he has a history of back problems. . . . [He] was doing well up until last night, when he went bowling. He suddenly developed a sharp, stabbing pain occurring in the right buttock, radiation and pain.

(Ex. 2-4.)

¶15 In a May 5, 2000 medical visit, the claimant reported that he had a “three month history of back pain. States that this occurred when he lifted a large snowball and hurt his low back.” (Ex. 5-23.)

¶16 The claimant continued to have radicular pain into his right leg and subsequently saw several specialists. The medical records of two of those specialists – Dr. Dale M. Schaefer, a neurosurgeon, and Dr. Ronald M. Peterson, who specializes in occupational and sports medicine – identify the genesis of his 2000 back complaints as an incident involving the building of a snowman in February of 2000. On July 25, 2000, Dr. Schaefer recorded:

I saw Mr. Strom in neurosurgery office today for evaluation of a chief complaint of what is currently right buttock pain. . . . He first started having radicular pain in February of this year. **He was building a snowman for his daughter lifting a heavy ball of snow that he estimates weighed about 170 lb.** He didn't have a great deal of pain at the time but the next morning he had severe pain radiating into the buttock posterior thigh and into the calf.
...

(Ex. 9-1 (emphasis added).) On June 13, 2001, Dr. Peterson recorded:

He [claimant] is being seen today for mid and lower back symptoms.

Mr. Strom states that he had similar pain in 1999 while working that lasted **three months**. There was no physical therapy at that time, x-rays were taken of his lower back and he was told that he had a “narrow disc”. **Following treatment he denies having any restriction in activity or recurrence of mid or lower back pain.**

In February 2000, he had recurrent pain in his mid and lower back while making a snowman with his daughter. This pain became more concentrated in his right lower back, with occasional radiation into the middle of his right thigh.

(Ex. 7-1 (emphasis added).)

¶17 An MRI on June 29, 2000, disclosed “eccentric to the right side protrusion of the intervertebral disc” at the L5-S1 level which “should [sic] selectively impinge upon the right

S1 [nerve] root.” (Ex. 2-6.) Dr. Schaefer commented that the protrusion “is probably where he is symptomatic.” (Ex. 9-1.)

¶18 The claimant suffered further exacerbations of his back condition on June 13, 2000, when he lifted a generator (Ex. 5-26) and in the summer of 2003 while helping dig out a basement. (Ex. 2-46.)

¶19 Ultimately, on November 13, 2003, Dr. Lee Finney, a neurosurgeon, performed a lumbar laminotomy and decompression of the right S1 nerve root. (Finney Dep., Ex. 1 – Operative Report for 11/13/03.)

¶20 On March 1, 2004, Dr. Finney wrote a letter to the claimant’s counsel opining that the claimant’s surgery was “directly related to the workman’s compensation injury of April 1st, 1999” (Finney Dep., Ex. 1.) However, the opinion was based only on the history provided to the doctor by the claimant and his attorney and selected medical records furnished to him by the claimant’s attorney. (Finney Dep. at 58-59; Finney Dep., Ex. 1 – February 25, 2004 letter of Cameron Ferguson to H. Lee Finney, M.D.) Counsel for the respondent provided Dr. Finney with more complete medical records. After reviewing them, Dr. Finney concluded that the claimant’s injury fully resolved in 1999. (Finney Dep. at 64-65, 67.) He further testified that he saw no findings in the 1999 medical records indicating a radiculopathy and agreed that in 1999 the claimant had suffered only a lumbosacral sprain. (*Id.* at 66.) He further noted that the claimant had been without apparent pain for ten months prior to lifting the snowman. (*Id.* at 67.) The first indication in the medical records that the claimant was suffering from radiculopathy was “a hint” in a medical record for the claimant’s June 14, 2000 visit (*id.* at 68); a visit which occurred right after the claimant lifted a generator. Ultimately, Dr. Finney testified that he could not relate the claimant’s need for surgery in 2003 to his April 1, 1999 injury. (*Id.* at 70, 75.)

¶21 The claimant’s case that his back condition in 2000 and thereafter and his 2003 surgery related to his 1999 work-related injury rests on his testimony that he had continuous, unresolved back and leg pain following the 1999 accident and that it only worsened with the subsequent incidents. I did not find his testimony in this regard credible and the witnesses he presented to bolster his testimony in this regard did not provide any credible support for his claim of unresolved back and leg pain.

¶22 I am therefore unpersuaded that the claimant’s back problems in 2000 and thereafter and his need for the 2003 surgery are related to his April 1, 1999 industrial accident. It is more likely that he suffered only a back strain in 1999, which fully healed by the early summer of 1999, and that in 2000 he suffered a new injury or injuries to his disk at the L5-S1 level.

CONCLUSIONS OF LAW

¶23 This case is governed by the 1997 version of the Montana Workers' Compensation Act since that was the law in effect at the time of the claimant's industrial accident. *Buckman v. Montana Deaconess Hosp.*, 224 Mont. 318, 321, 730 P.2d 380, 382 (1986).

¶24 The claimant bears the burden of proving by a preponderance of the evidence that he is entitled to the benefits he seeks. *Ricks v. Teslow Consol.*, 162 Mont. 469, 512 P.2d 1304 (1973); *Dumont v. Wickens Bros. Constr. Co.*, 183 Mont. 190, 598 P.2d 1099 (1979).

¶25 Insurers are responsible only for medical expenses and disability which are causally related to a work-related injury. As said in *Hash v. Montana Silversmith*, 256 Mont. 252, 257, 846 P.2d 981, 983 (1993), "[c]ausation is an essential element to benefit entitlement. The claimant has the burden to prove a causal connection by a preponderance of the evidence." The claimant in the present case has failed to carry his burden as the evidence shows that his April 1, 1999 work-related injury was a strain which fully resolved by early summer in 1999 and that he suffered a new, more serious disk injury or injuries in 2000 as a result of specific, non-work related lifting incidents.

JUDGMENT

¶26 The claimant is not entitled to further medical or disability benefits with respect to his April 1, 1999 injury, which fully resolved by the summer of 1999. His petition is **dismissed with prejudice**.

¶27 This JUDGMENT is certified as final for purposes of appeal.

¶28 Any party to this dispute may have twenty days in which to request a rehearing from these Findings of Fact, Conclusions of Law and Judgment.

DATED in Helena, Montana, this 22nd day of July, 2005.

(SEAL)

/s/ Mike McCarter
JUDGE

c: Mr. Cameron Ferguson
Mr. Oliver H. Goe
Submitted: July 12, 2005