

IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

2007 MTWCC 55

WCC No. 2006-1610

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DORIS WOODARDS

Petitioner

vs.

MONTANA INSURANCE GUARANTY ASSOCIATION

Respondent/Insurer.

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

*Appealed to the Montana Supreme Court 03/06/08*

*Appeal Dismissed by Stipulation 07/23/08*

**Summary:** Respondent moved for summary judgment, arguing that because Petitioner is considered retired, she is not entitled to PTD benefits pursuant to § 39-71-710, MCA. Petitioner moved for summary judgment, arguing that Respondent unlawfully retroactively converted her TTD benefits to PPD benefits without notice. Respondent cross-motivated for summary judgment on the notice issue.

**Held:** Petitioner is not entitled to PTD benefits pursuant to § 39-71-710, MCA, and therefore Respondent's motion for summary judgment on this issue is granted. Because Petitioner never met the legal definition of PPD, she was never entitled to PPD benefits. Despite how either party would characterize the payment of these benefits, legally, there could not have been a retroactive "conversion" of benefits to which Petitioner was entitled. The benefits Petitioner received after reaching maximum medical improvement amounted to an overpayment of TTD benefits. Petitioner's motion for summary judgment on the retroactive conversion issue is therefore moot and Respondent is entitled to summary judgment in its favor on this issue.

**Topics:**

**Constitutions, Statutes, Regulations, and Rules: Montana Code Annotated: 39-71-710.** Petitioner was 76 years old and still working at the time of her injury. However, her situation is factually on-point with one of the claimants in *Satterlee v. Lumberman's Mut. Cas. Co.*, 2005 MTWCC 55, who was found not to be entitled to PTD benefits because she was considered retired pursuant to § 39-71-710, MCA. Therefore, Petitioner is not entitled to PTD benefits.

**Benefits: Permanent Total Disability Benefits: Retirement.** Petitioner was 76 years old and still working at the time of her injury. However, her situation is factually on-point with one of the claimants in *Satterlee v. Lumberman's Mut. Cas. Co.*, 2005 MTWCC 55, who was found not to be entitled to PTD benefits because she was considered retired pursuant to § 39-71-710, MCA. Therefore, Petitioner is not entitled to PTD benefits.

**Constitutions, Statutes, Regulations, and Rules: Montana Code Annotated: 39-71-116.** Under the definition of PPD found at § 39-71-116(23), MCA (2001), a claimant who the parties agree from the date of her injury forward has always been totally disabled and has never been able to return to work in any capacity has never been PPD as defined by the statute.

**Benefits: Permanent Partial Disability Benefits: Generally.** Under the definition of PPD found at § 39-71-116(23), MCA (2001), a claimant who the parties agree from the date of her injury forward has always been totally disabled and has never been able to return to work in any capacity has never been PPD as defined by the statute.

**Benefits: Permanent Partial Disability Benefits: Retirement.** A claimant who was 76 years old and still working at the time of her injury and who has been totally disabled from the date of her injury forward is not entitled to PPD benefits.

¶ 1 Respondent Montana Insurance Guaranty Association moves the Court to grant summary judgment in its favor. Respondent argues that no genuine issues of material fact exist and that, as a matter of law, Petitioner is not entitled to permanent total disability (PTD) benefits, temporary total disability (TTD) benefits, or permanent partial disability (PPD) benefits pursuant to §§ 39-71-116(34), -701, -710, MCA, and this Court's ruling in

*Satterlee v. Lumberman's Mut. Cas. Co.*<sup>1</sup> Petitioner has also moved for summary judgment, arguing that Respondent unlawfully retroactively converted Petitioner's TTD benefits to PPD benefits without notice to Petitioner. Respondent then cross-motivated for summary judgment, arguing that the 2001 statutes apply, and that under § 39-71-609, MCA (2001), 14 days' notice is not required when benefits are converted from one form to another.<sup>2</sup>

### STIPULATED FACTS<sup>3</sup>

¶ 2 On or about April 5, 2001, Petitioner suffered an industrial injury involving her knee arising out of and in the course of her employment with Westmont, in Butte, Silver Bow County, Montana. Liability for the injury was accepted and appropriate benefits were paid.

¶ 3 At the time of the injury, Petitioner's employer was enrolled under Compensation Plan No. II of the Montana Workers' Compensation Act and insured by Fremont Indemnity Company.

¶ 4 Fremont Indemnity Company was declared insolvent on July 2, 2003, and has gone into liquidation. Consequently, pursuant to the provisions of the Montana Insurance Guaranty Association Act, Respondent is responsible for any compensable claims against Fremont Indemnity Company.

¶ 5 On March 3, 2005, and in response to a November 3, 2004, letter, Petitioner's treating physician, Dr. Gallagher, declared that Petitioner was at maximum medical improvement (MMI) when he stated that "no further primary medical services are available for the treatment of [Petitioner's] right knee injury."

¶ 6 At the time Dr. Gallagher stated his opinion that Petitioner was at MMI, Petitioner was 80 years old. Based on her age, Petitioner was eligible to receive Social Security retirement benefits and, pursuant to § 39-71-710, MCA, Petitioner was considered to be retired.

¶ 7 Petitioner is unemployable in any capacity.

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<sup>1</sup> *Satterlee*, 2005 MTWCC 55.

<sup>2</sup> Since Petitioner's date of injury falls within the time frame of the 2001 statutes, the 2001 statutes are used. *Buckman v. Montana Deaconess Hosp.*, 224 Mont. 318, 321, 730 P.2d 380, 382 (1986).

<sup>3</sup> Statement of Uncontested Facts.

¶ 8 Petitioner was given a 7% impairment rating.

¶ 9 On October 6, 2005, Respondent gave 14 days' written notice to Petitioner, Petitioner's attorney, and the Department of Labor and Industry that all biweekly compensation benefits would be terminated.

¶ 10 On October 6, 2005, Respondent also sent a letter to Petitioner's counsel, which stated in part:

We believe we have fully satisfied any compensation benefit liability we have to Ms. Woodards. Ms. Woodards was found to be at the point of maximum medical healing by Dr. Gallagher no later than March 3, 2005. . . . From that point forward, she no longer was entitled to any temporary total disability benefits and any benefits payable after that date were considered permanent partial disability benefits.

¶ 11 After her industrial injury, Petitioner was never released to return to work in any capacity. Since the time of her industrial injury, Petitioner has been totally disabled, whether temporarily or permanently.

### ISSUES

¶ 12 Respondent's motion for summary judgment sets forth the following issue of law for determination by this Court:

¶ 12a Whether § 39-71-710, MCA, and this Court's ruling in *Satterlee v. Lumberman's Mut. Cas. Co.*, 2005 MTWCC 55, renders Petitioner ineligible for PTD benefits.

¶ 13 Petitioner's motion for summary judgment sets forth the following issue of law for determination by this Court:

¶ 13a Whether Respondent unlawfully retroactively converted Petitioner's TTD benefits to PPD benefits.

¶ 14 Respondent has cross-motioed for summary judgment on the issue set forth at ¶ 13a.

## DISCUSSION

**Issue One: Whether § 39-71-710, MCA, and this Court's ruling in *Satterlee v. Lumberman's Mut. Cas. Co.*, 2005 MTWCC 55, renders Petitioner ineligible for PTD benefits.**

¶ 15 Respondent argues that under § 39-71-710, MCA, a claimant who is considered to be retired is not entitled to payment of PTD benefits. Respondent points out that in *Satterlee v. Lumberman's Mut. Cas. Co.*,<sup>4</sup> this Court upheld the constitutionality of this statute as it applies to PTD claimants. Respondent contends that since Petitioner is at MMI and is considered to be retired, Petitioner is not entitled to PTD benefits as set forth in § 39-71-710, MCA.<sup>5</sup>

¶ 16 Petitioner responds that if the Court's holding in *Satterlee* is affirmed, then Respondent's motion may be well-taken. Petitioner notes, however, that her particular situation may be factually distinguishable from the claimants in *Satterlee*.<sup>6</sup> Petitioner points out that she was 76 years old and still working at the time of her injury, and that since she was already past the age of retirement at the time of her injury, she was not actually out of the labor market and confined to her social security income at that time.<sup>7</sup>

¶ 17 Petitioner argues that this makes her case distinguishable from three of the four *Satterlee* claimants. However, as Respondent points out in its reply brief, this also means that Petitioner's case is factually on-point with one of the *Satterlee* claimants who was found not to be entitled to PTD benefits because she was considered retired pursuant to § 39-71-710, MCA. Respondent further points out that one of the *Satterlee* claimants was 73 years old on the date of her injury, and therefore similarly situated to Petitioner.<sup>8</sup>

¶ 18 Pursuant to § 39-71-710, MCA, and in light of my previous holding in *Satterlee*, Respondent's motion for summary judgment is well-taken. Respondent's motion for summary judgment on this issue is therefore granted. I conclude that Petitioner is not

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<sup>4</sup> *Satterlee*, 2005 MTWCC 55. This Court's most recent decision in the *Satterlee* case, 2006 MTWCC 36 is currently on appeal to the Montana Supreme Court.

<sup>5</sup> Motion for Summary Judgment at 1, 3.

<sup>6</sup> Petitioner's Response to Motion for Summary Judgment ("Petitioner's Response") at 1.

<sup>7</sup> Petitioner's Response at 2.

<sup>8</sup> Reply Brief in Support of Summary Judgment at 2.

entitled to PTD benefits, as she is considered to be retired under § 39-71-710, MCA, and is not eligible for such benefits.

**Issue Two: Whether Respondent unlawfully retroactively converted Petitioner's TTD benefits to PPD benefits.**

¶ 19 Petitioner moved and Respondent cross-motivated for summary judgment on the issue of whether Respondent unlawfully retroactively converted Petitioner's TTD benefits to PPD benefits.

¶ 20 Petitioner argues that under § 39-71-609, MCA, Respondent could not have retroactively categorized benefits she had already been paid as PPD instead of TTD benefits and thereby terminate her benefits without further payment. Petitioner points out that § 39-71-609(2), MCA, sets forth a specific manner in which TTD benefits may be converted to PPD benefits, and asserts that this procedure was not followed in her case. Petitioner argues that while she "feels she should be entitled to permanent total disability benefits, at the very least the temporary total disability benefits were improperly terminated."<sup>9</sup>

¶ 21 Respondent responds that it is not obligated to give notice prior to converting a claimant's benefits from TTD to PPD. Respondent further argues that once Petitioner reached MMI, her benefits became PPD benefits as a matter of law.<sup>10</sup>

¶ 22 Both parties insist that Petitioner's benefits became, at some point, PPD instead of TTD. From the record before me and the facts to which both parties have stipulated, however, I cannot determine that there was **any** point in time at which Petitioner was PPD.

¶ 23 Section 39-71-116(23), MCA, defines PPD as:

[A] physical condition in which a worker, after reaching maximum medical healing:

- (a) has a permanent impairment established by objective medical findings;
- (b) is able to return to work in some capacity but the permanent impairment impairs the worker's ability to work; and
- (c) has an actual wage loss as a result of the injury.

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<sup>9</sup> Petitioner's Motion for Summary Judgment at 3.

<sup>10</sup> Respondent's Response Brief in Opposition to Motion for Summary Judgment and Cross Motion for Summary Judgment at 4, 6.

¶ 24 The parties have agreed that from the date of her injury forward, Petitioner has always been totally disabled and has *never* been able to return to work in some capacity. Therefore, irrespective of what either party states, Petitioner has never been PPD as defined by the statute. Although Respondent stated in its letter to Petitioner's counsel that it was going to consider benefits paid to Petitioner after MMI to be PPD benefits, Respondent's unilateral characterization of the benefits as PPD cannot countermand the statute. Since Petitioner remained totally disabled after reaching MMI, the benefits which Respondent continued to pay after that point were arguably nothing more than an overpayment of TTD benefits – an overpayment which Respondent has already conceded it is not trying to recoup.

¶ 25 Since Petitioner was never entitled to PPD benefits, Petitioner's argument that Respondent unlawfully converted her TTD benefits to PPD benefits is moot. Therefore, summary judgment on this issue is granted in Respondent's favor.

#### ORDER AND JUDGMENT

¶ 26 Respondent's motion for summary judgment is **GRANTED**.

¶ 27 Petitioner's motion for summary judgment is **DENIED**.

¶ 28 Respondent's cross-motion for summary judgment is **GRANTED**.

¶ 29 Petitioner's Petition for Hearing is **DISMISSED WITH PREJUDICE**.

¶ 30 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.

¶ 31 Any party to this dispute may have twenty days in which to request reconsideration of this Order and Judgment.

DATED in Helena, Montana, this 18<sup>th</sup> day of December, 2007.

(SEAL)

/s/ JAMES JEREMIAH SHEA  
JUDGE

c: Charles G. Adams  
Kelly M. Wills  
Submitted: July 16, 2007