IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

2010 MTWCC 30

WCC No. 2009-2346

ALLISON CHAPMAN

Petitioner

vs.

TWIN CITY FIRE INS. CO.

Respondent/Insurer.

FINDINGS OF FACT, CONCLUSIONS OF LAW AND JUDGMENT AND ORDER RESOLVING PENDING MOTIONS

APPEALED TO MONTANA SUPREME COURT 12/29/10
DISMISSED WITH PREJUDICE 02/15/11

Summary: Petitioner alleges she suffered an industrial injury to her low back when her employer required her to move her belongings from one workstation to another. Respondent denied liability because it did not believe Petitioner suffered an industrial injury.

Held: The facts demonstrate that Petitioner suffered a compensable industrial injury. However, the facts further demonstrate that Petitioner's injuries are not as severe as she claims, nor did Petitioner prove that the subsequent termination of her employment was related to her industrial injury. Petitioner has proven entitlement to certain medical benefits, but neither to wage-loss benefits nor a penalty.

Topics:

> **Injury and Accident: Generally.** Although Petitioner's testimony was not wholly credible, it was undisputed that she moved her personal possessions from one workstation to another at the direction of her supervisor and subsequently complained of back pain for which she sought medical attention, and that her medical records indicate objective medical findings to support her contention. Petitioner has established that an injury and accident occurred.

Course and Scope: Generally. Petitioner has established that her injury occurred when she was in the course and scope of her employment when she injured her back while changing workstations at her employer's request.

Wages: Wage Loss. Petitioner continued to perform her time-of-injury employment for several months after her industrial accident until she was terminated for performance issues. Although a claimant could arguable demonstrate that attendance issues were related to difficulties from an industrial injury, in the present case, Petitioner was disciplined by her employer for insubordination and disregard for company policies or procedures; she has not demonstrated that these performances issues relate to her industrial injury. Therefore, the Court concluded that Petitioner was terminated from her employment for reasons unrelated to her industrial injury and she therefore is not entitled to TTD benefits.

Employment: Termination of Employment: Generally. Where Petitioner was terminated from her employment for performance issues including insubordination and disregard for company policies or procedures, she has not demonstrated that her termination was related to her industrial injury.

Benefits: Medical Benefits: Reasonableness of Services. Where the Court found that Petitioner exaggerated her condition, it concluded that the insurer was liable for Petitioner's medical treatment up to the point where Petitioner's primary healthcare provider also clearly indicated in her treatment notes that she no longer believed Petitioner's condition to be genuine.

¶ 1 The trial in this matter was held on May 5, 2010, in Great Falls, Montana. Petitioner Allison Chapman was present and represented herself. William O. Bronson represented Respondent Twin City Fire Ins. Co. (Twin City). Claims Adjuster Linda Slavik also attended on behalf of Twin City.

¶ 2 Exhibits: Exhibit 1 was not admitted. Exhibits 2 through 7, 9, 10, 12, 14, 16 through 25, 34, 36 through 38, 42, and 43 were admitted without objection. Petitioner waived her objections to Exhibits 8, 11, 15, 26 through 33, and 35, and these exhibits were admitted. The Court admitted Exhibits 13 and 40 over Respondent's objections. Petitioner withdrew Exhibits 39 and 41. Page 25 of Exhibit 14 was missing from the Court's Exhibit Book. Chapman provided her copy to the Court and the Court will scan the page and forward the same to Chapman.

¶ 3 Witnesses: Joy Corwin, Allison Chapman, Meredeth Swaby, Cathy Gutowski, and Linda Slavik were sworn and testified.

¶ 4 Issues Presented: The Pre-Trial Order sets forth the following issues:[1]

> Issue 1: Whether the Court has jurisdiction at this time over issues concerning the February 2008 claim;
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> Issue 2: Whether Petitioner suffered an accident and injury within the course and scope of her employment on April 6, 2009;
>
> Issue 3: Whether Petitioner is entitled to payment of any indemnity and/or medical benefits; and
>
> Issue 4: Whether Petitioner is entitled to a twenty-percent penalty on any benefits awarded.

¶ 5 At the start of trial, Chapman stipulated that her February 2008 claim had not been mediated. The Court dismissed the claim without prejudice. Therefore, the first issue presented is resolved so far as it pertains to the present case, and Twin City's pending motion on this issue is also moot. The Court has restated the second issue to reflect a single alleged industrial injury. Trial proceeded on the remaining issues.

FINDINGS OF FACT

¶ 6 Chapman was hired as a customer service representative with NEW beginning May 17, 2004.[2] Her job duties consisted of spending most of her work shift on the phone scheduling service for customers.[3]

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[1] Pre-Trial Order at 3.

[2] Ex. 38 at 3.

[3] Chapman Dep. 6:17-23.

¶ 7 Chapman testified at trial. I found Chapman's testimony largely incredible; I believe she has exaggerated the extent of her injuries and I believe she consistently exaggerated and/or dramatized her circumstances. However, the events surrounding her alleged industrial accident are corroborated by two other NEW employees, as set forth below.

¶ 8 Chapman enjoyed her job as a NEW customer service representative. However, she disliked NEW's practice of requiring its employees to change workstations approximately every month or six weeks. Chapman estimated that she was required to change workstations 50 or 60 times during her employment with NEW. Chapman testified that employees were not warned prior to being ordered to change workstations, and she personally never had any warning prior to being ordered to move to a different workstation.[4]

¶ 9 In early 2009, Chapman sought medical treatment for a cervical condition, and she had been referred for a consultation with John G. VanGilder, M.D. On April 6, 2009 -- the day before Chapman's consultation with Dr. VanGilder – Chapman was scheduled to work at NEW from 10 a.m. until 10 p.m. with a break from 3:30 p.m. until 5:30 p.m. Chapman testified that when she returned to her fourth-floor desk at 5:30 p.m., her supervisor gave her a cardboard box and told her that she had 20 minutes to move to a workstation on the third floor. Chapman explained NEW employees would get "written up" if they failed to complete a workstation change within the allotted time. Chapman stated that NEW employees' phone records are clocked to the exact second, and that when her supervisor told her that she had 20 minutes to sign off of her fourth-floor phone and sign in on her third-floor phone, she understood that she had to complete the move in 20 minutes or less or she would face disciplinary action.[5]

¶ 10 Chapman testified that NEW has a cart for moving computers and she asked her supervisor if she could use it. Chapman's supervisor refused. Chapman testified that she began grabbing things out of her desk drawers and taking down things she had taped to the walls and putting them in the box. After filling the box, she intended to take the elevator to the third floor, but the elevator was so slow to arrive that she did not believe she would be able to move her things in 20 minutes if she waited for the elevator with each box. She ran down the stairs to her new workstation on the third floor. She dumped the items from the box onto the floor under the desk and ran back to the fourth floor.[6]

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[4] Trial Test.

[5] Trial Test.

[6] Trial Test.

¶ 11 Chapman testified that she made six trips from the fourth to the third floor and back and carried a total of approximately 100 to 125 pounds of items, 25 to 40 pounds per trip. This included a large amount of personal items as well as troubleshooting books pertaining to her customer service job duties. Chapman testified that she used the elevator one time because it was available, but she made the remaining trips using the stairs. After the sixth trip, she realized she had exceeded the 20-minute deadline. She went to her supervisor and stated that she was experiencing severe back pain and needed to go to the emergency room. Chapman testified that, although she had previously had neck pain, prior to this incident she had never had low-back pain although in 2008 she did receive treatment for "tailbone" pain.[7]

¶ 12 Chapman stated that she was "despondent" about going to the emergency room because she would "incur points" for leaving. Chapman explained that NEW had a "point system" in place in which employees would incur points for certain actions which would stay on their record for six months. If an employee accrued 12 points, NEW would terminate the employee. Chapman knew that leaving before the end of her shift to seek medical attention would cause her to incur two points. Since she already had several points on her record for attendance issues, she could not afford to leave for medical treatment and so she finished her shift. Chapman decided not to seek medical attention after her shift because she had an appointment scheduled with Dr. VanGilder for the following day.[8]

¶ 13 Cathy Gutowski, NEW's human resources manager, testified at trial. I found Gutowski to be a credible witness. Gutowski testified that she has been NEW's human resources manager for over five years and her job duties include overseeing employee relations issues and any other human resources issues including payroll, recruiting, and benefits.[9]

¶ 14 Gutowski agreed that on April 6, 2009, Chapman was required to move from her fourth floor workstation to a workstation on the third floor. Gutowski testified that Chapman knew on April 3, 2009, that she would be required to move on the following Monday because Chapman had sent her several e-mails on April 3 objecting to the move and asking to remain on the fourth floor. Gutowski testified that while she did not know the specific time allotted for Chapman to move from the fourth to the third floor, Chapman may have been allotted 20 minutes. However, Chapman could have used her break time to move some items if she had chosen to do so. Gutowski confirmed

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[7] Trial Test.

[8] Trial Test.

[9] Trial Test.

that Chapman would have incurred "attendance points" if she failed to complete the move in the allotted time. Gutowski admitted that she did not know how many attendance points Chapman had already accrued prior to that date and that it is possible that accruing additional attendance points for failing to complete the move in the allotted time could have put Chapman over the 12-point limit for termination.[10]

¶ 15 Chapman attended her previously-scheduled appointment with Dr. VanGilder on April 7, 2009. Dr. VanGilder's treatment note does not mention low-back pain or a lifting injury the previous day.[11] Chapman testified that Dr. VanGilder was unwilling to discuss her new symptoms on April 7, 2009, and therefore his records do not reflect any discussion of her low-back pain. Chapman stated that Dr. VanGilder told her she would have to return to Aimee Hachigian-Gould, M.D., to get a separate referral for her low back.[12]

¶ 16 When Chapman's pain did not resolve within a few days, she sought medical attention.[13] On April 10, 2009, Chapman went to the emergency room where she was diagnosed with a lumbar strain and given prescriptions for Percocet and prednisone.[14] The emergency room report notes that Chapman was experiencing "an exacerbation of her chronic lower back pain" caused by lifting heavy boxes at work. Moderate muscle spasm of the right and left posterior back with moderate soft tissue tenderness in the right lower, left lower, and lower central lumbar area was noted.[15] Although the medications helped alleviate Chapman's back pain, the pain did not resolve.[16]

¶ 17 On April 20, 2009, Chapman filed a statement of injury with NEW. In it, Chapman alleged that she suffered an injury while "[c]hanging desks [–] being forced to move heavy objects without proper equipment or support."[17] Chapman testified that she did not submit the first report of injury until April 20, 2009, because she believed her pain would resolve on its own. When her pain did not resolve, she filed the report. Chapman acknowledged that, contrary to her trial testimony, her report indicates her

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[10] Trial Test.

[11] Ex. 5 at 1-3.

[12] Trial Test.

[13] Trial Test.

[14] Chapman Dep. 34:15 – 35:22.

[15] Ex. 7 at 6-7.

[16] Chapman Dep. 36:1-5.

[17] Ex. 3.

injury occurred at 5 p.m. on April 5. She explained that, due to a childhood head injury, she often has difficulty remembering details such as dates and times.[18]

¶ 18 Meredith Swaby, NEW's human resources representative, testified at trial. I found her to be a credible witness. Swaby has held her present position for three and a half years. Her job duties include dealing with employee benefits, new hire paperwork, leave-of-absence requests, any issues with paychecks, and managing personnel files. Gutowski is Swaby's supervisor.[19]

¶ 19 Swaby testified that she does not know how much time was allotted for Chapman's workstation change on April 6, 2009, but it would not have been unusual to set a 20-minute time limit. Swaby testified that NEW's policy requires a worker who suffers an on-the-job injury to fill out a form within 24 hours of the injury. In the case of Chapman's alleged April 6, 2009, injury, Chapman did not submit the form until April 20, 2009. Swaby does not know why Chapman delayed submission of this paperwork. When Swaby received and reviewed the form, she noticed that Chapman indicated that her alleged industrial injury had occurred on April 5, 2009. Swaby testified that April 5 was a Sunday and Chapman would normally not have been scheduled to work that day, so she contacted Chapman via e-mail to ask her about the April 5 date.[20]

¶ 20 Swaby was also concerned that Chapman had indicated that her injury occurred after she was forced to move heavy objects without proper equipment or support, because carts are available for employees to use when changing workstations if the employee requests the use of a cart. Swaby explained that the carts are not sitting anywhere that an employee can simply grab a cart; the employee would have to request the cart either through the employee's supervisor or through the facilities department. Swaby further testified that the only items employees are required to move when they change workstations are their personal items. Swaby stated that all the troubleshooting manuals the customer service representatives use are available electronically and are not kept in hard-copy format.[21]

¶ 21 Linda Slavik, claims examiner for Respondent, testified at trial. I found Slavik to be a credible witness. When Slavik received Chapman's first report of injury regarding her April 2009 industrial injury, Slavik began investigating the claim. Slavik first spoke to Swaby. She then requested medical records and attempted to contact Chapman.

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[18] Trial Test.

[19] Trial Test.

[20] Trial Test.

[21] Trial Test.

Slavik initially had difficulty making contact with Chapman because NEW does not allow its employees to receive phone calls and Chapman did not have a home phone. Eventually, Slavik denied Chapman's claim because she determined inadequate medical evidence existed to support Chapman's claim that her condition was work-related.[22]

¶ 22 Slavik testified that her investigation into Chapman's claim revealed other facts which caused her to question the validity of Chapman's claim: according to Swaby, Chapman was only required to move personal items and not "heavy objects" as Chapman had alleged in her report of injury; Chapman did not file the claim until two weeks after the alleged injury; and Chapman was having performance and attendance issues with her job and Slavik suspected that Chapman may have filed an injury claim in retaliation.[23]

¶ 23 On May 20, 2009, Slavik sent a letter to Chapman and stated that although Slavik had been unable to speak with Chapman regarding her claim, she had obtained and reviewed the medical records from Chapman's April 10, 2009, emergency room visit. Slavik stated that she was denying Chapman's claim for workers' compensation benefits at that time because she did not have sufficient medical information to document whether an injury occurred at work or the relationship of Chapman's condition to a work-related injury.[24]

¶ 24 Eventually, Chapman saw Michael J. Matury, D.C., on June 2, 2009. Dr. Matury diagnosed Chapman with a chronic lumbar strain superimposed upon degenerative disk disease. Although Dr. Matury referenced an MRI of the lumbar spine, he did not report the findings.[25]

¶ 25 On June 3, 2009, Chapman saw LaDonna Ladd-Maxwell, MS, APRN, on referral from Dr. Matury.[26] Ladd-Maxwell saw Chapman for a number of ailments including lumbar pain.[27]

¶ 26 On July 3, 2009, Dr. Matury noted that Chapman's lumbar strain had improved slightly.[28]

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[22] Trial Test.

[23] Trial Test.

[24] Ex. 31.

[25] Ex. 6 at 1-2.

[26] Ex. 8 at 1.

[27] Ex. 8 at 3.

¶ 27 On August 27, 2009, Chapman went to the Great Falls Clinic to seek treatment of her low-back pain. Benny E. Brandvold, M.D., examined Chapman and recommended a lumbar MRI.[29] On September 2, 2009, Chapman had an MRI taken of her lumbosacral spine. The radiologist's impression was minimal multilevel degenerative disk bulges and minimal degenerative facet arthropathy with no findings of nerve root impingement in the neutral position. The findings included a minimal annular broad-based disk bulge at L3-4, and mild degenerative facet arthropathy at L4-5.[30] Dr. Brandvold saw Chapman after the MRI and was unable to explain Chapman's low-back complaints.[31]

¶ 28 On September 8, 2009, Ladd-Maxwell noted that Chapman entered her office walking normally but left "acting like her legs were giving away on her and she would try to fall, but she would catch herself in mid fall, walk a few more steps, and do it again." Ladd-Maxwell observed Chapman after she left the office and noted that Chapman was once again walking normally. Ladd-Maxwell noted, "I am beginning to wonder if this patient, in addition to her cervical disc and neck disease, might be malingering or looking for narcotics." Ladd-Maxwell filled Chapman's oxycodone prescription at that appointment, but noted that she would no longer do so.[32]

¶ 29 On October 1, 2009, Ladd-Maxwell noted that Chapman entered the office using crutches, but left walking normally and that Chapman's gait was normal when she was distracted. Ladd-Maxwell noted that Chapman refused a referral to a neurologist and refused interventional pain management, but did agree to try physical therapy.[33] On October 22, 2009, Ladd-Maxwell noted that Chapman arrived using a wheelchair she had purchased in a pawnshop and that Chapman complained of lower extremity pain for which no cause had been found. Ladd-Maxwell noted that MRIs and EMGs had been negative.[34]

¶ 30 Chapman testified that she ceased to treat with Ladd-Maxwell when she saw Ladd-Maxwell's medical notes and learned that Ladd-Maxwell thought Chapman was lying to her.[35] Chapman testified that since October 9, 2009, she has used a wheelchair

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[28] Ex. 6 at 3.

[29] Ex. 14 at 22-24.

[30] Ex. 14 at 17.

[31] Ex. 14 at 25-26.

[32] Ex. 8 at 3.

[33] Ex. 8 at 4.

[34] Ex. 8 at 5.

[35] Chapman Dep. 39:19 – 40:10.

whenever she has to walk any distance. When she shops, she uses her wheelchair if the store does not have motorized carts available. Chapman testified that no doctor prescribed the wheelchair; she purchased it in a pawnshop because she believed it would assist her. Chapman does not use the wheelchair in her home because her home is not wheelchair accessible.[36]

¶ 31 On December 10, 2009, David W. Crossley, P.A., examined Chapman at the Northern Montana Medical Group for complaints of chronic neck and low-back pain. Chapman was seeking referral to a specialist since she had been unable to resolve her back conditions with the medical providers she had seen to date. Crossley noted that Chapman had an "extremely theatrical presentation" with her gait and Crossley's examination largely revealed normal findings. He stated:

> At this point, I do not think there is anything we can offer the patient. She is trying to establish with someone who will accept care for her, provide refills of her medications and refer her for all of the studies that she wants to have done. . . . I informed her that I would not be accepting care for her. . . . There are some things that probably could help her, such as a subacromial injection, a trial of epidural steroids in the neck and the low back, physical therapy, intensive follow up, but I would not be supportive of chronic use of Percocet, which is her goal.[37]

¶ 32 On December 10, 2009, Paul Johnson, M.D., saw Chapman and noted that she complained of chronic back and neck pain with an exacerbation of left-sided lumbar back pain after moving heavy boxes at work. Dr. Johnson noted that Chapman had ceased to attend physical therapy because of a lack of insurance, and that Chapman expressed frustration and was possibly suicidal due to her belief that she could not obtain help to relieve her pain. Dr. Johnson referred Chapman for a lumbar myelogram, and made a referral for evaluation of her chronic pain.[38] On December 17, 2009, Chapman had a CT scan of her lumbar spine without contrast. The radiologist saw no evidence of significant encroachment of the spinal canal or the thecal sac, with moderate intervertebral disk narrowing at L3-4, with ventral osteophytes and evidence of moderate degenerative narrowing, and asymmetric narrowing of the L4-5 intervertebral disk with evidence of mild degenerative change, as well as moderate to significant multilevel facet joint narrowing.[39] A lumbrosacral myelogram on that date

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[36] Trial Test.

[37] Ex. 42 at 1-2.

[38] Ex. 7 at 16.

[39] Ex. 16 at 5-6.

revealed no unusual indentation and no evidence of thecal sac compromise or evidence of nerve root edema, and degenerative change of the lower level facet joints with small osteophytes at L3 and L4.[40] Dr. Johnson saw Chapman for a follow-up appointment on December 30, 2009. He noted that Chapman's myelogram revealed some facet joint arthritis and degenerative disk disease, but no positive findings indicative of a compromised nerve root.[41]

¶ 33 Chapman was terminated from her employment with NEW on January 14, 2010.[42] At the time of her termination, Chapman's job performance was deemed "below average" by her supervisor Gordon McGuire.[43] On NEW's Personnel Action Request form, McGuire noted "unsatisfactory performance" as the reason for her termination.[44] Just prior to Chapman's termination, NEW compiled a Termination Disciplinary Summary Form which listed various issues NEW had encountered with Chapman's job performance, dating back to July 12, 2005. From September 3, 2009, until her termination, Chapman had been disciplined by NEW for attendance three times, quality issues three times, insubordination on one occasion and disregard for company policies or procedures on another.[45] Chapman stated that she does not think her termination was fair because she had over 40 customer commendations during the time she worked at NEW, and she also received commendations from NEW's corporate offices and from some of NEW's clients.[46]

¶ 34 Gutowski testified that Chapman's termination on January 14, 2010, was unrelated to her industrial injury. Gutowski testified that the decision was made to terminate Chapman's employment because Chapman was unable to consistently maintain the company's standards. Gutowski also alleged that Chapman had lied during the course of a company investigation, and that Chapman was simply "not successful in our environment."[47]

¶ 35 On March 22, 2010, Chapman underwent a functional capacity evaluation (FCE) on Dr. Johnson's referral.[48] Chapman reported that in April 2009, "she had to pack up

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[40] Ex. 16 at 7-8.

[41] Ex. 13 at 18.

[42] Ex. 36.

[43] Ex. 38 at 180-81.

[44] Ex. 38 at 170.

[45] Ex. 38 at 175.

[46] Chapman Dep. 53:1-8.

[47] Trial Test.

[48] Ex. 43 at 1.

and move her desk space and manuals which all weighed a lot" and that she had increased back pain after doing so.[49] The evaluator found Chapman to be cooperative and willing to work to maximum ability and concluded that Chapman would be capable of working in a sedentary job for a maximum of two hours per day, five days per week.[50]

¶ 36 Although I question Chapman's credibility, the material facts surrounding Chapman's industrial accident are not disputed by either party that on April 6, 2009, Chapman moved her personal possessions from one workstation to another at the direction of her supervisor and subsequently complained of back pain for which she sought medical attention. Whether Chapman knew ahead of time of the impending move and whether a cart to assist her in moving may have been made available had she requested it through the proper channels is immaterial. Whether the items Chapman moved included troubleshooting manuals or whether the items consisted entirely of personal items is immaterial. Whether Chapman could have elected to move some or all of her items on her own time is likewise immaterial. None of these alternatives change the facts of what actually occurred during Chapman's work shift on April 6, 2009.

MOTION FOR DIRECTED VERDICT

¶ 37 Subsequent to trial, Chapman filed a motion with the Court requesting a directed verdict "on the issue of wage loss."[51] For the reasons set forth denying Chapman's request for wage-loss benefits, her motion for a directed verdict is likewise denied.

CONCLUSIONS OF LAW

¶ 38 This case is governed by the 2007 version of the Montana Workers' Compensation Act (WCA) since that was the law in effect at the time of Chapman's industrial accident.[52]

¶ 39 Chapman bears the burden of proving by a preponderance of the evidence that she is entitled to the benefits she seeks.[53]

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[49] Ex. 43 at 11.

[50] Ex. 43 at 2-3.

[51] Motion for Directed Verdict Issue of Wage Loss, Docket Item No. 83.

[52] *Buckman v. Montana Deaconess Hosp*., 224 Mont. 318, 321, 730 P.2d 380, 382 (1986).

[53] *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).

Issue 1: Whether the Court has jurisdiction at this time over issues concerning the February 2008 claim.

¶ 40 At the start of trial, Chapman stipulated that her February 2008 claim had not been mediated. The Court dismissed the claim without prejudice. Therefore, the first issue presented is resolved so far as it pertains to the present case.[54]

Issue 2: Whether Petitioner suffered an accident and injury within the course and scope of her employment on April 6, 2009.

¶ 41 As set forth in the findings above, there is no dispute that on April 6, 2009, Chapman moved her personal possessions from one workstation to another at the direction of her supervisor and subsequently complained of back pain for which she sought medical attention. While the medical records are set forth in greater detail above, most salient to the present issue is the record from Chapman's April 10, 2009, emergency room visit, in which the examiner noted that Chapman had moderate muscle spasm of the right and left posterior back with moderate soft tissue tenderness in the right lower, left lower, and lower central lumbar area. Section 39-71-119, MCA, defines "injury" and "accident" in pertinent part as internal or external physical harm to the body that is established by objective medical findings caused by an unexpected traumatic incident or unusual strain identifiable by time and place of occurrence, by member or part of the body affected, and caused by a specific event on a single day or during a single work shift. The bare facts of Chapman's case establishes that an injury and accident occurred as the facts demonstrate that during a single work shift, Chapman suffered an injury to her lower back – as established by objective medical findings – while she was moving her possessions from one workstation to another on the order of her supervisor at NEW.

¶ 42 The burden of proving that an employee deviated from the course and scope of her employment is on the employer or workers' compensation insurer.[55] In *Courser v. Darby School District No. 1*,[56] the Montana Supreme Court set forth four factors which the Court is to consider in the totality of all attendant circumstances to determine whether an employee was within the course and scope of her employment at the time of her injury: (1) whether the activity was undertaken at the employer's request; (2) whether the employer, either directly or indirectly, compelled employee's attendance at the activity; (3) whether the employer controlled or participated in the activity; and (4)

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[54] *See* ¶ 5 above.

[55] *Van Vleet v. Montana Ass'n of Counties Workers' Compen. Trust*, 2004 MT 367, ¶ 22, 324 Mont. 517, 103 P.3d 544. (Citation omitted.)

[56] *Courser*, 214 Mont. 13, 692 P.2d 417 (1984).

whether both the employer and employee mutually benefitted from the activity.[57] Applying the *Courser* factors to the present case, I find that Chapman undertook the activity of changing workstations at her employer's request. Furthermore, Chapman's "attendance at the activity" was clearly compelled by her employer and her employer controlled or participated in "the activity": her supervisor met her at her workstation with a cardboard box and ordered her to move her belongings to a different workstation in 20 minutes or less. Finally, I find that both NEW and Chapman benefitted from the activity as NEW apparently had some reason for compelling Chapman to switch workstations and Chapman had no choice but to comply if she wished to keep her job. Therefore, the *Courser* factors are clearly met and I conclude that Chapman was within the course and scope of her employment when she suffered an industrial injury on April 6, 2009.

Issue 3: Whether Petitioner is entitled to payment of any indemnity and/or medical benefits.

¶ 43 Chapman contends that she is entitled to "lost wages." However, the facts in this case demonstrate that Chapman was able to perform her time-of-injury employment after her industrial accident and she continued to do so until she was terminated for performance issues several months later. Although Chapman would have the Court believe her performance issues were somehow related to her industrial injury, she has not met her burden of proof in this regard. Arguably, a claimant could demonstrate that attendance issues were related to pain or other difficulties resulting from an industrial injury; however, I cannot conceive of how NEW's disciplinary actions against Chapman for "insubordination" and "disregard for company policies or procedures" could relate to the effects of her industrial injury. This Court has previously held that an injured worker who is terminated from her employment for reasons unrelated to her industrial injury did not suffer a wage loss as a result of the industrial injury and is therefore not entitled to temporary total disability benefits.[58] Such is the case here. Chapman has not met her burden of proving that she is entitled to indemnity benefits in the present case.

¶ 44 As to Chapman's claim for medical benefits, I have concluded that Chapman suffered an injury in the course and scope of her employment and therefore Twin City is liable for medical benefits. However, as I found above and as the medical records in this case demonstrate, Chapman has exaggerated her condition – even going so far as to confine herself to a wheelchair when no medical provider has prescribed or recommended this by any stretch of the imagination. Under § 39-71-704(1)(a), MCA, after a compensable injury has occurred, an insurer shall furnish reasonable primary medical services for conditions resulting from the injury for those periods as the nature

[57] *Courser*, 214 Mont.at 16-17, 692 P.2d at 419.

[58] *Carey v. American Home Assurance Co.*, 2010 MTWCC 3, ¶ 44.

of the injury or the process of recovery requires. Having considered the facts of the present case, I have concluded that Twin City is liable for the medical treatment sought by Chapman directly relating to her lumbar or low-back condition from her presentation at the emergency room on April 10, 2009, up to and including her October 1, 2009, appointment with Ladd-Maxwell. Although by September 8, 2009, Ladd-Maxwell noted her suspicions that Chapman was exaggerating her complaints or malingering, Ladd-Maxwell nonetheless filled Chapman's narcotics prescriptions and continued to see Chapman as a patient. By the end of the October 1, 2009, appointment, Ladd-Maxwell clearly no longer believed Chapman's condition was genuine, and therefore I do not believe Twin City is liable for additional medical benefits beyond that point, as the additional treatment Chapman sought could no longer be considered reasonable primary medical services under § 39-71-704(1)(a), MCA.

Issue 4: Whether Petitioner is entitled to a twenty-percent penalty on any benefits awarded.

¶ 45 Under § 39-71-2907, MCA, the workers' compensation judge may increase by 20% the full amount of benefits due a claimant if an insurer unreasonably refuses to pay benefits. In the present case, I have concluded that Twin City should have accepted liability for Chapman's workers' compensation claim. However, given Chapman's propensity for exaggeration and dramatic presentation of events, I cannot conclude that it was unreasonable for Twin City to have difficulty discerning the merits of Chapman's underlying claim from Chapman's allegations. Therefore, I decline to award a penalty in this matter.

JUDGMENT

¶ 46 Petitioner suffered an accident and injury within the course and scope of her employment on April 6, 2009.

¶ 47 Petitioner is not entitled to payment of any indemnity benefits.

¶ 48 Petitioner is entitled to payment of certain medical benefits, as set forth above.

¶ 49 Petitioner is not entitled to a 20% penalty on any benefits awarded.

¶ 50 Petitioner's motion for a directed verdict is denied.

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

DATED in Helena, Montana, this 5th day of November, 2010.

(SEAL)

/s/ JAMES JEREMIAH SHEA
JUDGE

c: Allison Chapman
William O. Bronson

Submitted: May 19, 2010