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THE WORKERS' COMPENSATION COURT IN THE STATE OF MONTANA
WCC No. 2003-0840

CATHERINE E. SATTERLEE, Petitioner, v. LUMBERMAN'S MUTUAL CASUALTY COMPANY, Respondent/Insurer.	WC Claim No. 788CU041791 **STATE FUND'S MOTION FOR PARTIAL SUMMARY JUDGMENT AND MEMORANDUM IN SUPPORT**
JAMES ZENAHLIK, Petitioner, v. MONTANA STATE FUND, Respondent/Insurer.	WCC Claim No. 03-1977-06362-9
JOSEPH FOSTER, Petitioner, v. MONTANA STATE FUND, Respondent/Insurer.	WCC Claim No. 3-95-17425-3

DORIS BOWERS, Petitioner, v. PUTNAM & ASSOCIATES, Respondent/Insurer.	WCC Claim No. 290044312000

Montana State Fund ("State Fund") hereby moves for an Order granting it partial summary judgment, resolving the remaining issues in Petitioners Catherine Satterlee's, James Zenahlik's, and Joseph Foster's (referred to collectively as "Satterlee's") Second Amended Petition. Because of the doctrine of the law of the case, this Court's previous orders, denying Satterlee's Motion for Partial Summary Judgment on December 12, 2005, and granting State Fund's Motion for Partial Summary Judgment on November 15, 2006, provide the analytical framework to decide the remaining allegations and thus completely dispose of this case. In addition, Satterlee's statutory claims are without legal support. There remain no material disputed facts, and State Fund is entitled to judgment as a matter of law. This motion is supported by the following memorandum.

I. INTRODUCTION

The Supreme Court's dismissal of Satterlee's appeal does not take this case back to square one. Most of the issues have been decided. Two questions remain: whether Montana Code Annotated § 39-71-710 violates Satterlee's right to due process, and whether § 39-71-710 unconstitutionally or impermissibly discriminates against Satterlee based on her age. The Court's prior analysis is sufficient to resolve these last issues.

II. PROCEDURAL BACKGROUND

The Court is well aware of the twists and turns of this litigation. For present purposes, we begin with Satterlee's Motion for Partial Summary Judgment which sought a ruling that § 39-71-710 was unconstitutional. Pet'rs Mot. Partial Summ. J., Feb. 18. 2005. In support of such assertion, Satterlee maintained only two bases of alleged constitutional deficiency: a violation of equal protection and impermissible delegation of legislative authority. Presumably, the other grounds pled in the Second Amended Petition were effectively abandoned (or properly considered subsumed by equal protection analysis). That was the reason that all parties and the Court focused almost two years of briefing, argument and appeal efforts on the substantive direction chosen by Satterlee.

To the surprise of all involved, the Montana Supreme Court dismissed, on procedural grounds, Satterlee's appeal of this Court's decision that § 39-71-710 does not violate Satterlee's right to equal protection under the Montana Constitution, nor is it an illegal delegation of legislative authority. The Supreme Court held that this Court had not properly certified these issues for appeal, and therefore its rulings were not ripe for review. *Satterlee v. Lumberman's Mut. Cas. Co.*, 2007 MT 325, ¶ 19, _____ Mont. _____, ¶ 19, _____ P.3d _____, ¶ 19. In its opinion, the Supreme Court stated that there were still two outstanding issues based on the assertions of the Second Amended Petition.[1] *Satterlee*, ¶ 17.

In the constitutional challenge she chose not to pursue previously, Satterlee alleges that § 39-71-710 is invalid because "it violates the state and federal guarantees of protection against age discrimination as set forth in § 4, Article II, Montana Constitution (1972), Title 49 of the Montana Code Annotated, the Fourteenth Amendment to the United States Constitution, and the statutes and codes of the United States." Second Am. Pet. ¶ 19(d), Aug. 12, 2004. Next, Satterlee claims that § 39-71-710 is unconstitutional because "it violates the state and federal guarantees of due process of law as set forth in § 17, Article II, Montana Constitution (1972), and the Fourteenth Amendment to the United States Constitution." Second Am. Pet. ¶ 19(c).

III. STATE FUND IS ENTITLED TO SUMMARY JUDGMENT ON THE REMAINING CLAIMS

The State Fund is entitled to summary judgment on all remaining issues. All are questions of law to be decided by the Court, and there are no disputed material facts that would preclude entry of summary judgment. (State Fund relies for its compliance with Administrative Rule of Montana 24.5.329(3) on the statements of uncontroverted facts filed with its prior briefing.[2]) This Court's previous decisions—the law of this case—establish that § 39-71-710 is rationally related to a legitimate state interest. That

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[1] The Supreme Court did not identify equal protection under the federal constitution as an outstanding issue, even though the parties briefed the issue only under the Montana Constitution. However, for the reasons explained below, the Court's Montana equal protection analysis decides the federal claim as well.

[2] The State Fund incorporates by reference its previously filed statement of facts (which adopted and agreed with Satterlee's statement of facts noted in her briefing). *See* Mont. State Fund's Statement Additional Uncontroverted Facts, Aug. 8, 2005. The State Fund also incorporates by reference its prior briefing related to Satterlee's Motion for Partial Summary Judgment.

holding suffices to resolve all constitutional claims that remain in this litigation. In addition, Satterlee's statutory claims are unsupportable.

A. The Law of the Case Controls the Disposition of All Remaining Constitutional Claims.

Despite the parties' full briefing at the Supreme Court, this case has not moved a step forward since this Court issued its November 15, 2006 Order. The result of the Supreme Court's dismissal is that the parties must pick up right where they left off, without unnecessarily or inappropriately rehashing previously decided issues. The Court has already expressly decided two of the four questions of law raised in Satterlee's Second Amended Petition, and the parties are bound in this litigation by the law of the case, which is sufficient to decide the remaining constitutional issues.

The law of the case doctrine expresses the practice of courts to refuse to reopen what has been decided. The law of the case binds the parties on those issues that the court has previously resolved. *McCormick v. Brevig*, 2007 MT 195, ¶ 38, 338 Mont. 370, ¶ 38, 169 P.3d 352, ¶ 38. "Under the law of the case doctrine, a court is ordinarily precluded from reexamining an issue previously decided by the same court, or a higher court, in the same case. For the law of the case doctrine to apply, the issue in question must have been decided explicitly or by necessary implication in the previous disposition." *Hydrick v. Hunter*, 500 F.3d 978, 986 (9th Cir. 2007) (internal quotations and citations omitted). The purpose of the doctrine is "to promote judicial economy and prevent the never-ending litigation of a single case." *See Calcaterra v. Mont. Res.*, 2001 MT 193, ¶ 10, 306 Mont. 249, ¶ 10, 32 P.3d 764, ¶ 10, *overruled on other grounds by Essex Ins. Co. v. Moose's Saloon, Inc.*, 2007 MT 202, 338 Mont. 423, 166 P.3d 451 (citation omitted). These principles should guide disposition of this matter.[3]

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[3] In a recent ruling, Judge Molloy put the matter of rehashing decided issues into proper context: "[W]here litigants have once battled for the court's decision, they should neither be required, nor without good reason permitted, to battle for it again. This policy is grounded in the need for litigation to come to an end. Courts may reopen litigation in instances of error, an intervening change in law, new evidence on remand, changed circumstances, or manifest injustice. None of those factors apply." *Burton v. State Farm Mut. Automobile Ins. Co.*, No. CV 00-94-M-DWM, slip op. at 4 (D. Mont. 2006) (internal citations and quotations omitted). In denying a request to amend a complaint and ignore prior rulings on substantive issues, the Court went on to indicate that attempts to readdress resolved issues are unduly prejudicial to the parties and "run afoul of judicial economy, and simply ignore this Court's previous holding." *Burton*, slip op. at 5. The same rationale applies here.

This Court has decided five relevant, substantive issues in its previous orders. First, § 39-71-710 does not violate Satterlee's right to equal protection of laws under the Montana Constitution, article II, section 4, because the statute bears a rational relationship to a legitimate state interest. *Satterlee v. Lumberman's Mut. Cas. Co.*, 2005 MTWCC 55, ¶¶ 4, 32 ("*Satterlee I*"); *Satterlee v. Lumberman's Mut. Cas. Co.*, 2006 MTWCC 36, ¶ 7 ("*Satterlee II*"). Second, § 39-71-710 is not an improper delegation of legislative authority. *Satterlee I*, ¶ 31. Third, additional discovery on the issue of the cost of various scenarios to the State Fund is unnecessary. The Court stated that summary judgment on the statute's constitutionality was granted without specific reference to or reliance on State Fund's financial figures. *Satterlee II*, ¶¶ 3-7. Fourth, the two "classes" at issue in this dispute are "(1) PTD eligible claimants who receive or are eligible to receive social security retirement benefits; and (2) PTD claimants who do not receive and are not eligible to receive social security retirement benefits." This Court has already determined that the two classes are similarly situated, because both classes have suffered work-related injuries, are unable to return to their time-of-injury jobs, have permanent physical impairment ratings, and must rely on Montana Code Annotated § 39-71-702 for their exclusive remedy under Montana law. *Satterlee I*, ¶ 11. And finally, the Court has decided the standard for finding the statute unconstitutional on summary judgment, which will be discussed more extensively below.

The Supreme Court stated that Satterlee has two remaining challenges, based on due process and age discrimination. The Supreme Court's effort to insure the presentation of a complete record on appeal did not breathe life into the arguments effectively abandoned by Satterlee, nor order the parties to relitigate decided issues. It is respectfully submitted that both of these issues as framed by Satterlee in her Second Amended Petition are subsumed in this Court's holding on equal protection. As such, though the issues are stated differently, this Court's ruling on the equal protection claim provides the necessary and sufficient analysis to decide the remaining issues. Having decided that a permissible rational basis exists for § 39-71-710, the Court has completed the required analysis to grant State Fund summary judgment on the remaining constitutional claims.

B. State Fund Is Entitled to Summary Judgment on All Remaining Issues.

The Court laid out the standards for summary judgment and a constitutional challenge to a statute in its Order at ¶¶ 2-4 (*Satterlee I*). Workers' Compensation Court Rule 24.5.329(i)(a) provides that, a "party may . . . move for a summary judgment in the party's favor upon all or any part of a claim or defense." The State Fund, as the moving party here, bears a two-prong burden of establishing the absence of any genuine issue of material fact and that it is entitled to judgment as a matter of law. *Moore v. Does* (1995), 271 Mont. 162, 895 P.2d 209. If the State Fund fails to establish either prong,

summary judgment must be denied. *Mathews v. Glacier Gen. Assurance Co.* (1979), 184 Mont. 368, 603 P.2d 232. The Court found there were no consequential facts in dispute in its November 15, 2006 Order, and that this matter was ripe for summary judgment. There remain no genuine issues of material fact, as the positions of the parties have not changed and once again, the Court is faced with questions of law.

A party challenging the constitutionality of a statute bears the heavy burden of proving the statute unconstitutional beyond a reasonable doubt. *Henry v. State Comp. Ins. Fund,* 1999 MT 126, ¶ 11, 294 Mont. 449, ¶ 11, 982 P.2d 456, ¶ 11. The constitutionality of a legislative enactment is prima facie presumed, and every intendment in its favor will be presumed, unless its unconstitutionality appears beyond a reasonable doubt. The question of constitutionality is not whether it is possible to condemn, but whether it is possible to uphold the legislative action which will not be declared invalid unless it conflicts with the constitution, in the judgment of the court, beyond a reasonable doubt. *Stratemeyer v. Lincoln County* (1993), 259 Mont. 147, 150, 855 P.2d 506, 508-509. Every possible presumption must be indulged in favor of the constitutionality of a legislative act, and if any doubt exists, it must be resolved in favor of the constitutionality of the legislative act. *Powell v. State Comp. Ins. Fund*, 2000 MT 321, ¶ 13, 302 Mont. 518, ¶ 13, 15 P.3d 877, ¶ 13. Therefore, the WCC must presume that § 39-71-710 is constitutional; if in doubt, it must resolve the issue in favor of State Fund. *Satterlee I*, ¶ 3.

When reviewing a matter for constitutional deficiencies, the Court may not allow its decision to be swayed by personal judgment regarding the subject matter of the legislation:

> What a court may think as to the wisdom or expediency of the legislation is beside the question and does not go to the constitutionality of the statute. We must assume that the Legislature was in a position and had the power to pass upon the wisdom of the enactment, and in the absence of an affirmative showing that there was no valid reason behind the classification, we are powerless to disturb it.

State v. Safeway Stores, Inc. (1938), 106 Mont. 182, 76 P.2d 81, 87; *see also Meech v. Hillhaven W., Inc.* (1989), 238 Mont. 21, 776 P.2d 488; *McClanathan v. Smith* (1980), 186 Mont. 56, 66, 606 P.2d 507, 513; *Calvert v. City of Great Falls* (1969), 154 Mont. 213, 219, 462 P.2d 182, 185; *State ex rel. Hammond v. Hager* (1972), 160 Mont. 391, 399, 503 P.2d 52, 56.

The Montana Supreme Court made it clear in the very first challenge to legislative efforts in establishing a Workers' Compensation Act that great leeway would be provided such benefit enactments.

> The causes, from an historical point of view, impelling the enactment of Workmen's Compensation Laws, and the object to be served by them, have heretofore been stated somewhat at length by this court . . . .
>
> To every thinking person the object sought commends itself not only as wise from an economic point of view, but also as eminently just and humane . . . .
>
> Under these circumstances, the rule that an act of the Legislature will not be declared invalid because it is repugnant to some provision of the Constitution, unless its invalidity is made to appear beyond a reasonable doubt, applies with peculiar force.

Shea v. North-Butte Mining Co. (1919), 55 Mont. 522, 179 P. 499, 501. Our Court takes the position that "[t]he legislature is simply in a better position to develop the direction of economic regulation, social and health issues." *Stratemeyer*, 855 P.2d at 510. This is consistent with the holding of *Ingraham v. Champion International* (1990), 243 Mont. 42, 48, 793 P.2d 769, 772 (in Montana, "[t]he power of the legislature to fix the amounts, time and manner of payment of workers' compensation benefits is not doubted."); *Cunningham v. Northwest Improvement Co.* (1911), 44 Mont. 180, 119 P. 554 (the legislature has the right to regulate and provide for benefits in cases of injury or death).

This approach is consistent with that employed by the U.S. Supreme Court:

> In areas of social and economic policy, a statutory classification that neither proceeds along suspect lines nor infringes fundamental constitutional rights must be upheld against equal protection challenge if there is any reasonably conceivable state of facts that could provide a rational basis for the classification. . . . "The [United States] Constitution presumes that, absent some reason to infer antipathy, even improvident decisions will eventually be rectified by the democratic process and that judicial intervention is generally unwarranted no matter how unwisely we may think a political branch has acted."

F.C.C. v. Beach Commc'ns, Inc., 508 U.S. 307, 313-314 (1993) (citations omitted).

Montana also recognizes a lack of perfection in a statute does not render it a violation of constitutional guarantees:

> To a certain extent, nearly all legislation sets forth classifications regarding applicability, benefits and recipients; the fact that some of these classifications are imperfect does not necessarily mandate a conclusion that they violate the equal protection clause.

Gulbrandson v. Carey (1995), 272 Mont. 494, 503, 901 P.2d 573, 579 (citing *Arneson v. State* (1993), 262 Mont. 269, 272-273, 864 P.2d 1245, 1248). It is respectfully submitted that the application of the noted standards, especially in light of and consistent with the rigorous analysis already engaged in by the Court, defeat any of the constitutional challenges listed in the Amended Petition.

1. Montana Code Annotated § 39-71-710 does not impermissibly discriminate against Satterlee based on age.

Throughout this litigation, State Fund has maintained that § 39-71-710's distinctions depend on eligibility for retirement benefits—based on work history and year of birth—and not age. The statute is definitional in nature; it defines when an injured worker is no longer in the work force. This Court agreed with this position when it defined the classes in its 2005 Order and outlined the rationale for its holding.

The Court could have defined the classes as PTD claimants who were 65 and older and those who were not, or old claimants versus young claimants, but it recognized that the age of a claimant is secondary to the statutory fact of whether he or she is eligible for retirement benefits.[4] Likewise, it focused on work life and not age when it considered the constitutional challenge. The "statute ensures that PTD claimants are compensated commensurately with the wages they were earning when they left the workforce for what otherwise would have been their remaining 'work life.' PTD benefits thus do not become the pension program the Legislature never intended to create." Order Den. Pet'rs Mot. Allow Disc. & Granting Resp'ts Cross-Mot. Par. Summ. J. 4, Nov. 15, 2006. Therefore, the Court has already decided that the statute does not distinguish based on age. Satterlee's age discrimination claim is a non-starter.

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[4] Satterlee argued for and accepted the same classifications based on eligibility for retirement benefits. Pet'rs Mot. Partial Summ. J. 6-7.

However, even assuming arguendo that the statute as age-based, the State Fund would be entitled to summary judgment on Satterlee's claim.[5] She claims that § 39-71-710 is unconstitutional because "it violates the state and federal guarantees of protection against age discrimination as set forth in § 4, Article II, Montana Constitution (1972), Title 49 of the Montana Code Annotated, the Fourteenth Amendment to the United States Constitution, and the statutes and codes of the United States." Second Am. Pet. ¶ 19(d). Age discrimination as protected by the Montana and United States Constitutions require no additional analysis to the rational review already performed by the Court in its consideration of Satterlee's equal protection claim. *Satterlee I*, ¶¶ 13-25. A constitutional age discrimination claim is considered by federal and Montana courts as synonymous with an equal protection claim, because a petitioner alleges unequal treatment based solely on age. *See Gregory v. Ashcroft*, 501 U.S. 452 (1991); *Vance v. Bradley*, 440 U.S. 93, 99 (1979); *Mass. Bd. of Ret. v. Murgia*, 427 U.S. 307 (1976); *Taylor v. Rancho Santa Barbara*, 206 F.3d 932 (9th. Cir. 2000); *Arneson*, 864 P.2d 1245. Under neither federal nor Montana constitutional law is age a "suspect classification," subjecting legislation affecting the class to strict scrutiny.

The U.S. Supreme Court has repeatedly held that age is not a suspect classification, such that government action responsive to age would be subject to heightened scrutiny. *See Gregory*, 501 U.S. at 473; *Bradley*, 440 U.S. at 102-103 n.20, 108-112; *Murgia*, 427 U.S. at 317. Age classifications, unlike governmental conduct based on race or gender, are not so rarely relevant to the achievement of any legitimate state interest that laws grounded in such considerations are assumed to reflect prejudice and antipathy. *Kimel v. Fla. Bd. of Regents*, 528 U.S. 62, 83 (2000) ("Older persons, again, unlike those who suffer discrimination on the basis of race or gender, have not been subjected to a history of purposeful unequal treatment. [. . .] Old age also does not define a discrete and insular minority because all persons, if they live out their normal life spans, will experience it." *Kimel*, 528 U.S. at 83 (citations and quotations omitted). *See also Taylor*, 206 F.3d 932 (federal Fair Housing Act and California's Mobilehome Residency Law permitting mobile home parks to refuse to rent to tenants aged under 55 years did not deprive plaintiffs of equal protection).

Likewise, the Montana Constitution does not identify age as a factor for heightened protection in article II, section 4, Montana Constitution (1972), which enumerates several suspect classifications: "Neither the state nor any person, firm, corporation, or institution shall discriminate against any person in the exercise of his civil

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[5] Of course, assuming the statute's classifications are age-based and proceeding with legal analysis based on that assumption would violate the law of the case doctrine because this Court has already decided that the classifications are based upon eligibility to receive retirement benefits.

or political rights on account of *race, color, sex, culture, social origin or condition, or political or religious ideas.*" (Emphasis added.)

Therefore, states may discriminate on the basis of age without offending the Fourteenth Amendment or article II, section 4, if the age classification in question is rationally related to a legitimate state interest. "The rationality commanded by the Equal Protection Clause does not require States to match age distinctions and the legitimate interests they serve with razorlike precision." *Kimel*, 528 U.S. at 83.; *Arneson*, 864 P.2d at 1248 ("To a certain extent, nearly all legislation classifies or sets forth classifications of applicability, benefits and recipients. If some of these classifications are imperfect they do not necessarily violate the equal protection clauses.").

Therefore, under both the state and federal constitutions, in order to determine whether § 39-71-710 discriminates impermissibly based on age, the WCC must subject the statute to rational basis review. Under rational basis review, the Court will not overturn government action unless the varying treatment of different groups or persons is so unrelated to the achievement of any combination of legitimate purposes that the Court could only conclude that the government's actions were irrational. *Kimel*, 528 U.S. at 84. That is precisely the analysis the Court carried out in its earlier orders, when it held that § 39-71-710 is rationally related to a legitimate state interest. *Satterlee I*, ¶¶ 13-25. Because the Court has already decided that the statute passes that test, it need not repeat its analysis in depth.

The Montana Supreme Court recently considered the rational relationship standard in a substantive due process claim, and when the statute passed the test, the Court did not repeat the analysis in order to dispose of the equal protection claim. *Yurczyk v. Yellowstone County*, 2004 MT 3, ¶ 31, 319 Mont. 169, ¶ 31, 83 P.3d 266, ¶ 31 ("In assuming that the Yurczyks' equal protection rights were not violated, the County again argues that the regulation had a rational relationship to the welfare of the community. Because we have already addressed and disposed of that issue, we will not revisit it.").

Because Satterlee's constitutional age discrimination claims are disposed of by the Court's analysis of her equal protection claims, the only remaining age discrimination allegations are those theoretically based on Title 49 of Montana Code Annotated and "the statutes and codes of the United States." Second Am. Pet. ¶ 19(d). Title 49 of Montana Code Annotated contains the Montana Human Rights Act, which prohibits various specific acts of discrimination, as well as generally stating that the right to be free from discrimination based on age is a civil right. Mont. Code Ann. § 49-1-102 (2007). The Montana Human Rights Act and proceedings incident thereto are inapplicable to benefit determinations under the Montana Workers' Compensation Act.

This Court has exclusive jurisdiction to make such determinations. Mont. Code Ann. § 39-71-2905; *Petak v. Cmty. Med. Ctr.*, 1998 MTWCC 21 ("After parties have satisfied dispute resolution requirements provided elsewhere in this chapter, the workers' compensation judge has exclusive jurisdiction to make determinations concerning disputes under chapter 71, except as provided in 39-71-317 and 39-71-516."); *Bohmer v. Uninsured Employer's Fund*, 1994 MTWCC 6 ("This is a specialized Court with expertise in making such determinations. *Cf. Profitt v. J.G. Watts Construction Co.*, 140 Mont. 265, 273, 370 P.2d 878 (1962). With the exception of independent actions commenced pursuant to sections 39-71-515 and 516, its authority to determine the amount of benefits, . . . is unaffected. However, the legislature has spoken and its mandate must be followed."). Thus the exclusive jurisdiction of this Court over the present action preempts application of Title 49 to § 39-71-710. *See* Mont. Code Ann. § 49-2-210(2) ("A person is not subject to penalties under this chapter if compliance with the provisions of this chapter would cause the person to violate the provisions of another state law.").

Regardless, the Court's previous orders make it clear that entitlement to benefits under § 39-71-710 is based on work history and not age; therefore, there is no improper discrimination that brings the statute within the ambit of the Human Rights Act. Finally, even if the Court considers Satterlee's Title 49 claims, they fail. The State Fund, as a quasi-state entity, appears to be subject to § 49-2-308, which reads:

> (1) It is an unlawful discriminatory practice for the state or any of its political subdivisions:
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> (a) to refuse, withhold from, or deny to a person any local, state, or federal funds, services, goods, facilities, advantages, or privileges because of race, creed, religion, sex, marital status, color, age, physical or mental disability, or national origin, *unless based on reasonable grounds.*

Mont. Code Ann. § 49-2-308 (2007) (emphasis added).

The pivotal language is "unless based on reasonable grounds." Again, the State Fund denies that § 39-71-710 is age-based. But even if it were, such a classification would not violate the MHRA as long as it was based on reasonable grounds. The Montana Supreme Court has not independently analyzed "reasonable" in this context, except to recognize that permission to discriminate "on reasonable grounds" distinguishes this provision of the Human Rights Act from others in which discrimination is never permitted, reasonable grounds or no. *Thompson v. Bd. of Trs., Sch. Dist. No. 12* (1981), 192 Mont. 266, 269-270, 627 P.2d 1229, 1231 ("[T]the word 'employment' is not

mentioned in the statute which allows for a possibly discriminatory practice if it is 'based on reasonable grounds.' On that distinction, . . . insofar as 'employment' is concerned, the legislature has not provided a justification basis for a discriminatory practice in employment on 'reasonable grounds.'"). This Court's previous Order determined that there was a rational, i.e., reasonable, basis for the retirement provisions of § 39-71-710. Therefore, the law of the case has already provided the analysis sufficient to determine Satterlee's state statutory age discrimination claim.

Finally, Satterlee has alleged an age discrimination claim based on "the statutes and codes of the United States." Second Am. Pet. ¶ 19(d). The only federal statutes dealing specifically with age discrimination are the Age Discrimination Act of 1972 (42 U.S.C. §§ 6101-6107); the Age Discrimination in Employment Act of 1967 (ADEA) (29 U.S.C. § 621, et seq.); and § 188 of the Workforce Investment Act of 1998 (WIA) (20 U.S.C. § 9201). None of these statutes is relevant to an analysis of § 39-71-710. Both the ADEA and WIA deal specifically with employment, which is not the issue here. The more general ADA prohibits discrimination on the basis of age in programs or activities receiving federal financial assistance. 42 U.S.C. § 6101 (2007). It is likewise inapplicable. The State Fund is entitled to summary judgment on Satterlee's federal statutory grab bag claim.

2. Montana Code Annotated § 39-71-710 does not violate Satterlee's right to due process.

Section § 39-71-710 does not violate Satterlee's rights to due process, as found in either the Montana Constitution, article II, section 17, or the United States Constitution's Fourteenth Amendment. The wording of both constitutions is the same: "No person shall be deprived of life, liberty, or property without due process of law." The guarantee of due process has both a procedural and a substantive component. *Montanans for Justice v. State ex rel. McGrath*, 2006 MT 277, ¶ 29, 334 Mont. 237, ¶ 29, 146 P.3d 759, ¶ 29. Satterlee's Second Amended Petition alleges a generic due process violation, but her demand for relief seeks an order specifically finding a substantive due process violation. As a result, the State Fund will assume that is the intent of her allegations.

Generally, substantive due process analysis applies when state action is alleged to unreasonably restrict an individual's constitutional rights. *Montanans for Justice*, ¶ 29. Substantive due process prohibits the State from taking unreasonable, arbitrary or capricious action. *Powell*, ¶¶ 28-29. "[A] statute enacted by the legislature must be reasonably related to a permissible legislative objective" to comply with the requirements of substantive due process. *Powell*, ¶ 29. *See also Bustell v. AIG Claims Serv., Inc.*, 2004 MT 362, ¶ 11, 324 Mont. 478, ¶ 11, 105 P.3d 286, ¶ 11 ("Substantive

due process primarily examines the underlying substantive rights and remedies to determine whether restrictions . . . are unreasonable or arbitrary when balanced against the purpose of the legislature in enacting the statute.") (citation omitted).

The Montana Supreme Court has repeatedly stated that the rational basis test is the proper standard for reviewing features of the Workers' Compensation Act. The right to receive workers' compensation benefits is not a fundamental right; nor does the Act infringe upon the rights of a suspect class. *Bustell*, 105 P.3d 286; *see also Heisler v. Hines Motor Co.* (1997), 282 Mont. 270, 279, 937 P.2d 45, 50 (citing *Stratemeyer*, 855 P.2d at 509). Under the rational basis test, the question is whether a legitimate governmental objective bears some identifiable rational relationship to a discriminatory classification. This Court has already held that § 39-71-710 passes that test, and therefore, the State Fund is entitled to summary judgment on this claim.

Finally, Satterlee's federal substantive due process claim also yields to summary judgment in State Fund's favor. Federal courts have held that benefits are not a fundamental right, and age is not a suspect classification, making § 39-71-710 subject to rational review under federal law as well. In *Collier*, the Second Circuit Court of Appeals considered a similar scenario to this case—whether the requirement of having worked a certain number of quarters in order to receive Social Security Disability Insurance ("SSDI") and Medicare violated the plaintiff's substantive due process rights. The Court concluded that Congress could create classifications in its distribution of scarce resources. When distributing benefits, the legislature has wide latitude to create classifications. *Collier v. Barnhart*, 473 F.3d 444, 449 (2007) ("[T]he Due Process Clause can be thought to interpose a bar only if the statute manifests a patently arbitrary classification, utterly lacking in rational justification."); *see also Butler v. Apfel*, 144 F.3d 622, 625 (1998) (substantive due process challenge to denial of claim for Social Security benefits subject to rational basis review). The U.S. Supreme Court reached a similar result in *City of Dallas v. Stanglin*, 490 U.S. 19 (1989) (upholding, on rational basis review, a city ordinance against a claim that it unconstitutionally infringed the rights of persons between the ages of 14 and 17). This Court has already held that a rational basis exists for § 39-71-710's classification system. Therefore, the State Fund is entitled to summary judgment on this claim.

IV. CONCLUSION

Satterlee challenged the constitutionality of § 39-71-710's termination of PTD benefits upon workers becoming entitled to retirement benefits and leaving the workforce. The matter was extensively briefed and argued. This Court properly found that Satterlee could not meet the very high threshold for declaring a properly enacted benefit scheme constitutionally deficient. It determined that a rational basis existed for

the Legislature's desire to refrain from continuing PTD benefits to claimants after they leave the workforce thereby transforming the workers' compensation total disability benefit package into a pension plan.

Satterlee sought and received reconsideration of the Court's position. The Court reiterated the basis for its decision and found, properly, that additional discovery was unnecessary and would not modify the foundation for upholding the constitutionality of the statute. Satterlee then appealed these decisions as though she was satisfied that no further decisions would be made in this matter by this Court.

The action is now back before this Court on an unexpected, but apparently necessary, procedural ground. Regardless, the additional bases for claiming § 39-71-710 is unconstitutional, age discrimination and a violation of substantive due process, have no merit and were effectively negated by the Court's initial rigorous examination of the statute.

The uncontroverted facts necessary to grant summary judgment remain the same. The pertinent law, either determined previously and constituting the law of the case, or otherwise clearly applicable, requires judgment in favor of § 39-71-710's constitutional validity. Prompt resolution, reinstatement of the appeal process and finalization of the statutory challenge is in the best interest of the system.

DATED this 14th day of January, 2008.

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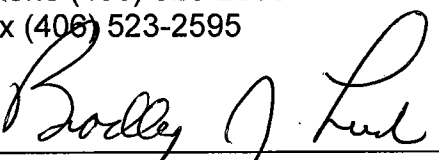
By 
Bradley J. Luck

CERTIFICATE OF MAILING

I, the undersigned, of GARLINGTON, LOHN & ROBINSON, PLLP, Attorneys for Respondent/Insurer, Montana State Fund, hereby certify that on this 14 day of January, 2008, I mailed a copy of the foregoing STATE FUND'S MOTION FOR PARTIAL SUMMARY JUDGMENT AND MEMORANDUM IN SUPPORT, postage prepaid, to the following:

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