

IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

2005 MTWCC 55

WCC No. 2003-0840

CATHERINE E. SATTERLEE, et al.

Petitioners

vs.

LUMBERMAN'S MUTUAL CASUALTY COMPANY, et al.

Respondents/Insurers.

ORDER DENYING MOTION FOR PARTIAL SUMMARY JUDGMENT

Summary: The petitioners filed a motion for partial summary judgment seeking to have this Court declare section 39-71-710, MCA¹, as it applies to permanent total disability benefits, unconstitutional under the equal protection clause found in Mont. Const., Art. II, § 4. The petitioners also moved for partial summary judgment upon the grounds that section 39-71-710, MCA, unlawfully delegated legislative power to the federal government.

Held: Partial summary judgment is denied. Section 39-71-710, MCA, is constitutional as applied to PTD benefits. There is no violation of Petitioners' right to equal protection. A rational basis exists to justify the disparate treatment of similarly situated classes. Furthermore, there is no unlawful delegation of legislative power.

Topics:

Constitutional Law: Equal Protection. Section 39-71-710, MCA, which terminates PTD benefits to workers receiving social security retirement

¹ The four petitioners in this matter have suffered injuries or occupational diseases in years ranging from 1992 to 2002. Although section 39-71-710, MCA, was amended in 1995, the relevant portion as it pertains to this case has not changed since 1992. Therefore, for purposes of this Court's analysis, section 39-71-710, MCA, will be cited in the body of this opinion without reference to a specific year. Any excerpts of section 39-71-710, MCA, will employ the language from the current statute (2005).

benefits or who are eligible for full social security benefits does not violate the equal protection clause of the Montana Constitution. Unlike PPD benefits, which are designed to compensate the claimant for the permanent loss of physical function, PTD benefits are to be paid only for the claimant's work life. Therefore, even though a rational basis does not exist to terminate PPD benefits when an individual becomes retirement eligible, a rational basis exists for the termination of PTD benefits at such time.

Benefits: Permanent Total Disability. Section 39-71-710, MCA, which terminates PTD benefits to workers receiving social security retirement benefits or who are eligible for social security benefits does not violate the equal protection clause of the Montana Constitution. Unlike PPD benefits, which are designed to compensate the claimant for the permanent loss of physical function, PTD benefits are to be paid only for the claimant's work life.

Constitutions, Statutes, Rules, and Regulations: Montana Code Annotated: Section 39-71-710, MCA, which terminates PTD benefits to workers receiving social security retirement benefits or who are eligible for full social security benefits does not violate the equal protection clause of the Montana Constitution. Unlike PPD benefits, which are designed to compensate the claimant for the permanent loss of physical function, PTD benefits are to be paid only for the claimant's work life. Therefore, even though a rational basis does not exist to terminate PPD benefits when an individual becomes retirement eligible, a rational basis exists for the termination of PTD benefits at such time.

Delegation of Legislative Power: Section 39-71-710, MCA, which provides that PTD benefits terminate upon an individual's receiving social security retirement benefits or eligibility for social security retirement benefits, does not unlawfully delegate legislative power to the federal government. The Legislature may lawfully make a law which delegates a power to determine some fact or state of things upon which the law makes, or intends to make, its own actions depend.

FACTUAL BACKGROUND

¶1 Catherine Satterlee, James Zenahlik, Joseph Foster, and Doris Bowers (hereafter collectively referred to as the petitioners) are workers who have been denied permanent total disability (PTD) benefits because they are considered retired under the definition of retirement created by the Montana Legislature in section 39-71-710, MCA. The petitioners contend that section 39-71-710, MCA, is violative of the Montana Constitution's prohibition

against denial of equal protection. The Montana Supreme Court recently decided the case of *Reesor v. Montana State Fund*, 2004 MT 370, 325 Mont. 1, 103 P.3d 1019 (2004), in which the Court found section 39-71-710, MCA, unconstitutional as it applied to permanent partial disability (PPD) benefits because it violated Reesor's right to equal protection under the Montana Constitution. In light of *Reesor*, this Court must now decide whether section 39-71-710, MCA, is unconstitutional as it applies to PTD benefits.

STANDARDS OF REVIEW

I. Summary Judgment

¶2 Subsection (1)(a) of Rule 24.5.329 of the Workers' Compensation Court Rules 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 petitioners, as the moving parties, bear a two-prong burden of establishing the absence of any genuine issue of material fact and that they are entitled to judgment as a matter of law. *Moore v. Does*, 271 Mont. 162, 895 P.2d 209 (1995). If the petitioners fail to establish either prong, summary judgment must be denied. *Mathews v. Glacier Gen. Assur. Co.*, 184 Mont. 368, 603 P.2d 232 (1979). Here, there are no consequential facts which are in dispute and this matter is ripe for summary judgment.

II. Constitutional Challenge

¶3 The party challenging the constitutionality of a statute bears the heavy burden of proving the statute unconstitutional beyond a reasonable doubt. *Henry v. State Compensation 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, 259 Mont. 147, 150, 855 P.2d 506, 508-09 (1993).

¶4 In this case, the petitioners face that heavy burden. 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 Compensation Ins. Fund*, 2000 MT 321, ¶ 13, 302 Mont. 518, ¶ 13, 15 P.3d 877, ¶ 13. Therefore, this Court must presume that section 39-71-710, MCA, is constitutional and, if in doubt, it must resolve the issue in favor of the respondents. As demonstrated below, the petitioners have not met their burden.

DISCUSSION

I. Section 39-71-710, MCA, is constitutional as it applies to PTD benefits.

¶5 In its entirety, section 39-71-710, MCA, reads as follows:

(1) If a claimant is receiving disability or rehabilitation compensation benefits and the claimant receives social security retirement benefits or is eligible to receive or is receiving full social security retirement benefits or retirement benefits from a system that is an alternative to social security retirement, the claimant is considered to be retired. When the claimant is retired, the liability of the insurer is ended for payment of permanent partial disability benefits other than the impairment award, payment of permanent total disability benefits, and payment of rehabilitation compensation benefits. However, the insurer remains liable for temporary total disability benefits, any impairment award, and medical benefits.

¶6 In *Reesor*, the Montana Supreme Court found that this provision was effectively an age limitation on PPD benefits which was unconstitutional. Specifically, the Court held: “We conclude that the disparate treatment of partially disabled claimants based upon their age, because they are receiving or are eligible to receive social security retirement benefits, is not rationally related to that legitimate governmental interest.” *Id.*, ¶ 19. Obviously, this Court is bound by Montana Supreme Court precedent. Therefore, for this Court to depart from the Supreme Court’s holding in *Reesor*, this present case must be legitimately distinguishable.

II. Montana Constitution, Article II, Section 4, Right to Equal Protection.

¶7 Article II, Section 4, of the Montana Constitution provides that “[n]o person shall be denied the equal protection of the laws.”

¶8 When addressing an equal protection challenge, this Court follows a three-step process. First, the Court must identify the classes involved and determine if they are similarly situated. *Henry v. State Compensation Ins. Fund*, 1999 MT 126, ¶ 27, 294 Mont. 449, ¶ 27, 982 P.2d 456, ¶ 27. Next, the Court must select the appropriate level of scrutiny; strict scrutiny, middle-tier scrutiny, or rational basis. *Id.*, ¶ 29. Finally, the Court must apply the appropriate level of scrutiny to the challenged statute. *Id.*, ¶¶ 32-33

III. The classes involved in the present case are similarly situated.

¶9 In *Reesor*, the petitioner identified the two classes as follows: “(1) PPD eligible claimants who receive or are eligible to receive social security retirement benefits; and (2)

PPD claimants who do not receive and are not eligible to receive social security retirement benefits.” *Reesor*, ¶ 10. The Court adopted the petitioner’s proposed classes and went on to agree that they were similarly situated stating:

We agree with *Reesor*, however, when he asserts that both 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 § 39-71-703, MCA, as their exclusive remedy under Montana law. The claimant’s age, as a result of eligibility to receive social security retirement benefits, is the only identifiable distinguishing factor between the two classes. Furthermore, chronological age and the corresponding eligibility for social security retirement benefits is unrelated to a person’s ability to engage in meaningful employment. Therefore, we conclude the classes are similarly situated for equal protection purposes.

Reesor, ¶ 12.

¶10 In this case, there is no distinguishable difference between the classes adopted in *Reesor* and the PTD classes identified in the present case. In finding the two classes similarly situated, the *Reesor* Court found:

- ¶10a Both classes have suffered work-related injuries;
- ¶10b Both classes are unable to return to their time-of-injury jobs;
- ¶10c Both classes have permanent physical impairment ratings; and
- ¶10d Both classes must rely on § 39-71-703, MCA, as their exclusive remedy under Montana law.

¶11 This Court adopts *Reesor*’s classification and likewise finds the classes in the present case similarly situated. Therefore, for purposes of equal protection analysis, this Court finds the two classes in this case are defined as: (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. Additionally, this Court finds the two classes 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 section 39-71-703, MCA, as their exclusive remedy under Montana law.

IV. Appropriate level of scrutiny.

¶12 In *Reesor*, the Montana Supreme Court stated, “we see no need to depart from our analysis set forth in *Henry* wherein we stated that equal protection claims brought by an

injured worker are generally reviewed pursuant to the rational basis test.” *Reesor*, ¶ 14. This precedent is directly on point as it pertains to the issue of which level of scrutiny to apply in the present case. Accordingly, consistent with the Court’s holdings in *Reesor* and *Henry*, this Court will apply a rational basis test in analyzing the constitutionality of section 39-71-710, MCA.

V. Application of the rational basis test.

¶13 Where two classes are similarly situated and there is unequal treatment between the classes, or where individuals within the class are treated unequally, then a rational basis must be shown to uphold the unequal treatment. The rational basis test requires the government to show: (1) the statute’s objective was legitimate; and (2) the statute’s objective bears a rational relationship to the classification used by the Legislature. If the statute which causes the unequal treatment bears a rational relationship to a legitimate governmental interest, then the constitutional challenge is defeated. *Henry*, ¶ 33.

¶14 The Legislature set forth its objectives and interest in creation of the workers’ compensation system at section 39-71-105, MCA, (2005).

Declaration of public policy. For the purposes of interpreting and applying this chapter, the following is the public policy of this state:

(1) An objective of the Montana workers’ compensation system is to provide, without regard to fault, wage-loss and medical benefits to a worker suffering from a work-related injury or disease. Wage-loss benefits are not intended to make an injured worker whole but are intended to assist a worker at a reasonable cost to the employer. Withing that limitation, the wage-loss benefit should bear a reasonable relationship to actual wages lost as a result of a work-related injury or disease.

¶15 In *Reesor*, the Court concluded, “[a]s clearly pronounced in § 39-71-105(1), MCA, the primary goal of workers’ compensation benefits is to establish a wage replacement for injured workers, certainly a legitimate and appropriate governmental interest.” *Id.*, ¶ 18. However, the Court then went on to conclude that the governmental objective did not bear a rational relationship to the classification used by the Legislature, “the disparate treatment of partially disabled claimants based upon their age, because they are receiving or are eligible to receive social security retirement benefits, is not rationally related to that legitimate governmental interest.” *Id.*, ¶ 19. The majority accordingly held as follows:

Therefore, we conclude that providing PPD benefits to a younger person in *Reesor*’s situation in the amount of \$23,056.25 under the WCA, but limiting *Reesor*’s benefit, based on his age, to only \$2,975 pursuant to § 39-71-710, MCA, violates the Equal Protection Clause found in Article II, Section 4 of the Montana Constitution. There

has been a failure to demonstrate a rational basis for the infringement of such a constitutionally protected right, therefore, we hold that § 39-71-710 is unconstitutional.

Id., ¶ 25.

¶16 The petitioners argue that this case is in all respects the same as *Reesor* with merely a substitution of the term PTD for PPD. However, this Court does not believe the analysis is quite as simple as the petitioners contend. Specifically, when determining whether a rational basis exists for the specific portion of section 39-71-710, MCA, at issue in this case, the Court believes the analysis must differ from the analysis in *Reesor* because the *rationale* for PPD benefits and PTD benefits is different.

¶17 The Montana Supreme Court recognized the very important and real differences between PPD claimants and PTD claimants in *Rausch v. State Compensation Ins. Fund*, 2005 MT 140, 327 Mont. 272, 114 P.3d 192. In that case, the issue was whether allowing impairment awards to PPD claimants, but denying them to PTD claimants pursuant to the 1987 and 1989 versions of the Workers' Compensation Act, violated equal protection. The Court explained the differences between the two benefits as follows:

After the medical assessment, the permanently disabled claimant loses eligibility for TTD benefits and becomes eligible for one of *two significantly different benefit systems*, depending on whether the claimant is able to return to work. The PPD claimant, who is able to return to work, is entitled to wage supplement benefits, which serve to restore the claimant to a pre-accident wage level if the claimant has suffered a decrease in wages upon return to work. Additionally, *the PPD claimant is entitled to an impairment award, which compensates the claimant for the permanent loss of physical function*. This benefit is smaller than the total disability benefit, and is paid over a shorter period of time, but is *designed to compensate a claimant who is able to return to work and re-commence earning a wage*. .

..

In contrast, PTD claimants, who cannot return to work, are not eligible for either wage supplement benefits or an impairment award. Instead, PTD claimants are eligible for a larger benefit which is paid continuously *for the claimant's work life*.

Rausch, ¶¶ 23, 24 (emphasis added).

¶18 In addition to the significant distinctions set forth by the Court in *Rausch*, the PPD benefits are capped at a maximum number of weeks.² This time limitation on PPD benefits helps contain the cost of workers' compensation benefits. Thus, even after *Reesor*, an employer's or insurer's liability for PPD benefits remains limited by the statutory cap set forth in section 39-71-703, MCA.

¶19 PTD benefits, on the other hand, have no such limitation. Unlike the PPD benefits addressed in *Reesor*, PTD benefits, in the absence of section 39-71-710's limitations, would become a lifetime benefit. Herein lies the reasoning for a differing analysis. Eligibility for retirement benefits is a natural cutoff when deciding when to eliminate PTD benefits. PTD benefits have never been intended to be a lifetime benefit. As the Court noted in *Rausch*, "PTD claimants are eligible for a larger benefit which is paid continuously for the claimant's *work life*." *Rausch*, ¶ 24 (emphasis added). For purposes of this Court's analysis, the operative words are "work life."

¶20 The legislative history reveals that when section 39-71-710, MCA, was first enacted in 1981, the proponents of the bill stated that the purpose of the amendment was to provide benefits to those who suffer a loss in their earning capacity, but that it should *not* become a "pension program." Minutes of Senate Bill 64, Labor Relations, January 13, 1981. Since PTD benefits, unlike PPD benefits, carry no limitation on the time by which they may be received, however, a holding that this provision is unconstitutional would result in the pension program that the Legislature specifically intended *not* to create by the enactment of this law.

¶21 The Legislature's decision to terminate an insurer's liability for PTD benefits when a claimant receives or is eligible to receive retirement benefits is rationally related to the government's valid interest in ensuring that employers are able to provide workers' compensation coverage at reasonable rates, thus maintaining the financial viability of the workers' compensation system.

¶22 Although the Montana Supreme Court has stated that reducing costs cannot be the sole justification for treating two classes differently, it has recognized that it may be a justification if there are also independent legitimate distinctions that justify the disparate treatment. See *Heisler v. Hines Motor Co.*, 282 Mont. 270, 283, 937 P.2d 45, 52-53 (1994). For instance, in *Stratemeyer*, *supra*, the issue was whether section 39-71-119, MCA, violated the equal protection clause because it disallowed benefits for workers that had suffered mental injuries with no physical components. The Court noted that a purpose of

² 350 weeks pursuant to section 39-71-703, MCA (1991-2001); 375 weeks pursuant to section 39-71-703 (2003-2005).

the statute would be to provide for injured workers at a reasonable cost. *Stratemeyer*, 259 Mont. at 153, 855 P.2d at 510.

¶23 Like the statute at issue in *Stratemeyer*, section 39-71-710, MCA, does not arbitrarily deny benefits to a class of claimants for the sole purpose of saving the government money. Rather, the statute places a reasonable limitation on PTD benefits in order to contain the cost of the system for employers while ensuring 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.” At the same time, the termination of benefits achieves the rational result of ensuring that PTD benefits do not become the pension program the Legislature never intended to create.

¶24 Although *Reesor* determined that section 39-71-710, MCA, is invalid as to PPD claimants, it is permissible for this Court to decide that the remainder of the statute is constitutional. If an invalid part of a statute is severable from the rest, the portion which is constitutional may stand while the part which is unconstitutional is stricken and rejected. *Newville v. Dep’t of Family Serv.*, 267 Mont. 237, 255, 883 P.2d 793, 804 (1994). Thus “a statute is not totally destroyed because of an improper provision, unless such provision is necessary to the integrity of the statute, or was an inducement to its enactment.” *Id.* “When an unconstitutional portion of the act is eliminated, if the remainder is complete in itself and capable of being executed in accordance with apparent legislative intent, it must be sustained.” *Id.*

¶25 The portion of section 39-71-710, MCA, that terminates an insurer’s liability for PPD benefits when a claimant receives or is eligible for retirement benefits is not necessary to the integrity of the statute. Nor was it an inducement to the enactment of the original statute which, as originally enacted, addressed only the termination of PTD benefits. See § 39-71-710, MCA (1981). The remainder of section 39-71-710, MCA, providing for termination of an insurer’s liability for PTD benefits, therefore, is complete in and of itself and is capable of being executed to the exclusion of that part which has already been ruled unconstitutional. As such, the portion of section 39-71-710, MCA, held invalid in *Reesor* is severable from the remainder of the statute.

VI. Section 39-71-710, MCA, is not an impermissible delegation of the Legislature’s power.

¶26 The petitioners argue that section 39-71-710, MCA, is an impermissible delegation of the Legislature’s authority because the PTD benefits set forth in the statute are keyed to an unspecified retirement age that is defined as that time when the claimant “receives social security retirement benefits or is eligible to receive or is receiving full social security retirement benefits or retirement benefits from a system that is an alternative to social security retirement” The petitioners argue, therefore, that whenever the federal

government changes the social security retirement age, Montana's age limitation on PTD and rehabilitation benefits also changes without any input or control by the Montana Legislature.

¶27 In support of this contention, the petitioners rely on *Lee v. State*, 195 Mont. 1, 635 P.2d 1282 (1981). In *Lee*, the plaintiff brought an action seeking a declaratory judgment that section 61-8-304, MCA, which attempted to impose speed limits according to federal law, was unconstitutional.

¶28 Section 61-8-304, MCA provided as follows:

Declaration of speed limits—exception to the basic rule. The attorney general shall declare by proclamation filed with the secretary of state a speed limit for all motor vehicles on all public streets and highways in the state whenever the establishment of such a speed limit by the state is required by federal law as a condition to the state's continuing eligibility to receive funds authorized by the Federal Aid Highway Act of 1973 and all acts amendatory thereto or any other federal statute. The speed limit may not be less than that required by federal law, and the attorney general shall by further proclamation change the speed limit adopted pursuant to this section to comply with federal law. Any proclamation issued pursuant to this section becomes effective at midnight of the day upon which it is filed with the secretary of state. A speed limit imposed pursuant to this section is an exception to the requirements of 61-8-303 and 61-8-312, and a speed in excess of the speed limit established pursuant to this section is unlawful notwithstanding any provision of 61-8-303 and 61-8-312.

The petitioners' reliance on *Lee* is misplaced.

¶29 In *Lee*, the Court specifically acknowledged that "the legislature has the authority to adopt existing federal statutes or regulations in its enactments."³ The impermissible delegation of legislative authority which the Court struck down in *Lee*, however, was the Legislature's conferring of authority upon the Attorney General to change Montana's speed limits essentially at the direction of the federal government.⁴ Such is not the situation in the present case.

³ *Lee*, 195 Mont. at 8, 635 P.2d at 1286.

⁴ *Id.*

¶30 The Montana Supreme Court explained the difference between what is and what is not an impermissible delegation of legislative authority in *State v. Stark*, 100 Mont. 365, 52 P.2d 890 (1935):

Delegation of power to determine who are within the operation of the law is not a delegation of legislative power. . . .

. . . .
The legislature cannot delegate its power to make a law, but it can make a law to delegate a power to determine some fact or state of things upon which the law makes, or intends to make, its own action depend. To deny this would be to stop the wheels of government. There are many things upon which wise and useful legislation must depend which cannot be known to the lawmaking power, and must, therefore, be a subject of inquiry and determination outside of the halls of legislation.

Id., 100 Mont. at 371-73, 52 P.2d at 892-94 (citations and internal quotations omitted).

¶31 Here, there is no impermissible delegation of power. Unlike the statute in *Lee*, section 39-71-710, MCA, merely uses eligibility for social security retirement benefits, or an alternative system, as guideposts to determine when a PTD claimant should be considered “retired.” Such delegation is both proper and appropriate under Montana law. Otherwise, as the Court warned in *Stark*, the wheels of government may well grind to a halt as the Legislature would be forced to convene every time the social security retirement age changed to amend this statute accordingly. In the interim, those Montana workers who found themselves in the gap would be left with neither retirement benefits nor PTD benefits.

CONCLUSION

¶32 Section 39-71-710, MCA, as applied to PTD benefits is constitutional. The Legislature’s decision to terminate PTD benefits for claimants who are defined as “retired” is rationally related to the legitimate governmental interests of providing PTD benefits to claimants for the time period of their “work life,” maintaining affordable insurance for employers, and continuing to offer comprehensive workers’ compensation benefits to employees at reasonable rates. For the foregoing reasons, therefore, the petitioners’ motion for partial summary judgment is DENIED.

¶33 This ORDER is certified as final for purposes of appeal.

¶34 Any party to this dispute may have twenty days in which to request a rehearing from this Order Denying Motion for Partial Summary Judgment.

DATED in Helena, Montana, this 12th day of December, 2005.

(SEAL)

/s/ James Jeremiah Shea
JUDGE

c: E-Mailed to Satterlee Distribution List (December 12, 2005)
Submitted: October 7, 2005