IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

2007 MTWCC 23

WCC No. 2006-1580

BOBBY EVANS

Petitioner

vs.

LIBERTY NORTHWEST INSURANCE CORPORATION

Respondent/Insurer.

FINDINGS OF FACT, CONCLUSIONS OF LAW AND JUDGMENT

Appealed to the Supreme Court June 29, 2007
Cross-Appeal filed July 5, 2007
Appeal Dismissed per Settlement August 14, 2007

Summary: Petitioner filed occupational disease claims for shoulder, arm, and neck conditions and carpal tunnel syndrome which he alleges developed as a result of years of work in the tire industry. Respondent denied liability, arguing that Petitioner knew or should have known about his carpal tunnel syndrome several years ago and that his claim for benefits is therefore untimely. Respondent further argues that Petitioner's arm, shoulder, and neck conditions are not an occupational disease, but rather an industrial injury and that Petitioner's claim is time-barred because he did not file a claim within 30 days of the incident which Respondent alleges caused these conditions.

Held: Petitioner's carpal tunnel syndrome claim is timely because he neither knew nor should have known he was suffering from carpal tunnel syndrome as a result of an occupational disease until he was diagnosed by a doctor. Petitioner's arm and shoulder conditions, as well as the cervical spondylosis and degenerative disk disease in his neck are occupational diseases and therefore his claim for benefits regarding those conditions is timely. Petitioner's syrinx is not work-related and therefore Respondent is not liable for this condition. The medical evidence also indicates that Petitioner's disk herniation was more probably than not caused by an industrial accident during the week of August 14, 2005. Therefore, Petitioner's November 14, 2005, claim for his disk herniation is untimely pursuant to § 39-71-603(1), MCA. Accordingly, Respondent is not liable for medical

treatment and wage-loss compensation benefits specifically attributable to the herniated disk.

Topics:

Limitation Periods: Claim Filing: Occupational Disease. Although Petitioner had some idea that he might have carpal tunnel syndrome, where he did not have a medical diagnosis or opinion that his condition was work-related and he seemed unaware that his work aggravated his condition, Petitioner does not meet the statutory definition of "knew or should have known." In this case it was only when Petitioner received a formal diagnosis from a doctor did he meet the statutory definition of "knew or should have known." While a claimant may know or should have known he has an occupational disease without a formal diagnosis, in the present case, a lay person's idle speculation is insufficient to support a finding that Petitioner knew or should have known he was suffering from an occupational disease.

Pain. Arm and shoulder symptoms which manifested themselves as "normal aches and pains" which alleviated with rest gave Petitioner no reason to suspect he suffered from a medical condition requiring diagnosis and treatment. Therefore, it was not until the symptoms progressed to a point where the symptoms could no longer be attributed to "normal aches and pains" that Petitioner knew or should have known he was suffering from an occupational disease.

Limitation Periods: Claim Filing: Occupational Disease. Arm and shoulder symptoms which manifested themselves as "normal aches and pains" which alleviated with rest gave Petitioner no reason to suspect he suffered from a medical condition requiring diagnosis and treatment. Therefore, it was not until the symptoms progressed to a point where the symptoms were no longer improving with rest and Petitioner became unable to perform his job duties that Petitioner knew or should have known he was suffering from an occupational disease.

Injury and Accident: Generally. Where one doctor offered no opinion as to the cause of the claimant's disk herniation and another doctor opined that the herniation was likely caused by a tire falling on the claimant's neck and right shoulder, and the claimant testified that while he had experienced arm and shoulder pain for years but only began to experience neck pain after the tire incident, the Court concluded that while the arm and shoulder conditions were attributable to an occupational disease, the disk herniation stems from an industrial injury.

¶ 1 The trial in this matter was held on June 28, 2006, in Billings, Montana. Petitioner Bobby Evans was present and represented by Patrick R. Sheehy. Respondent was represented by Larry W. Jones.

¶ 2 Exhibits: Exhibits 1, 2, and 4 through 6 were admitted without objection. Respondent's relevance objection to Exhibit 3 was sustained.

¶ 3 Witnesses and Depositions: The depositions of Petitioner, Alan Dacre, M.D., and Thomas Johnson, M.D., were submitted to the Court and can be considered part of the record.[1] Petitioner was sworn and testified at trial.

¶ 4 Issues Presented: The Pretrial Order sets forth the contested issues, restated as follows:

> ¶ 4a Whether Respondent is required to pay for necessary medical treatment and wage-loss compensation benefits;
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> ¶ 4b Whether Petitioner is entitled to costs and reasonable attorney fees;
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> ¶ 4c Whether Petitioner is entitled to a 20% penalty, pursuant to § 39-71-2907, MCA; and
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> ¶ 4d Whether Petitioner is entitled to further relief.[2]

At the start of trial, Petitioner conceded that he was not entitled to a penalty. Therefore, that issue will not be discussed further in these findings and conclusions.

FINDINGS OF FACT

¶ 5 Petitioner alleges that he suffered occupational diseases to his neck, shoulders, and wrists during the course of his employment with Tire-Rama in Yellowstone County, Montana.[3]

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[1] Depositions of Dr. Dacre and Petitioner were admitted as Exhibits 4 and 5, respectively.

[2] Pretrial Order at 2-3.

[3] Pretrial Order at 2.

¶ 6 Petitioner filed reports of injury and occupational disease on November 14, 2005, and March 13, 2006.[4]

¶ 7 A dispute exists between the parties as to liability for payment of medical expenses and wage loss from October 30, 2005, forward. Respondent has denied medical benefits and wage-loss compensation.[5]

¶ 8 Except for brief periods of employment, Petitioner has been unable to work since October 30, 2005.[6]

¶ 9 Petitioner began working in the tire business in 1975 or 1976. Although his employers and specific job responsibilities changed, he always performed physical labor. He handled car and truck tires, as well as working with implement tires for large vehicles such as backhoes. He often spent his entire day changing car and truck tires which ranged in weight from about 25 to 130 pounds.[7]

¶ 10 In 1995 or 1996, Petitioner began to notice pain in his arm and shoulder in the evening after work. He filed a workers' compensation claim in 1996 while he was working for Tire-Rama. Petitioner was off work for a few months, but he apparently ceased physical therapy and returned to work without seeking further medical treatment.[8]

¶ 11 Shortly thereafter, Petitioner decided to look for other work in which he would not have to use his arm as much and he went to work for Tire Supply as a truck driver. Petitioner worked for Tire Supply until 2000, and after about a year of unemployment, he returned to Tire-Rama. From 2001 until the latter part of 2004, Petitioner changed tires in the shop at the Grand Avenue tire store in Billings. Petitioner stated that his right shoulder was not handling the work and the pain in his shoulder and arm was worsening. Petitioner applied for a truck-driving position at Tire-Rama's central warehouse, and in April 2005, he quit the Grand Avenue store and was hired at the warehouse.[9]

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[4] Pretrial Order at 2; Ex. 1. Although the Pretrial Order states that Petitioner filed a claim on August 30, 2005, the evidence presented in this case makes clear that this was a typographical error in the Pretrial Order and it is therefore not included as a Finding.

[5] Pretrial Order at 2.

[6] *Id*.

[7] Trial Test.

[8] *Id*.

[9] *Id*.

¶ 12 At the warehouse, Petitioner drove an eighteen-wheeler to pick up and deliver tires to Tire-Rama stores around Montana. Petitioner also made local deliveries and picked up and delivered tires to the recap shop. When Petitioner first accepted the truck-driving job, he did not think it would be hard on his shoulder. However, Tire-Rama's policy was that no one was allowed in the truck except the truck operator. Therefore, Petitioner was responsible for loading and unloading all the tires. Particularly difficult for Petitioner was lifting or stacking heavy truck tires which weighed between 100 and 130 pounds, and which had to be stacked up to 10 tires high in order to fit them all in the truck. Petitioner explained that the stacks were much taller than his head. To get the tires stacked that high, he would roll each tire up onto his chest to build momentum to throw the tire onto the stack.[10]

¶ 13 During the week of August 14, 2005, Petitioner was at the truck center in Missoula, which had an unusually large amount of tires that week. Petitioner had about half of the tires loaded when his pain reached a level where he could not load any more tires. Petitioner's pain extended into his neck. The pain continued to worsen over the next several weeks and he began to develop extreme headaches. Petitioner testified that this pain did not suddenly appear during that week. However, though the pain had been present before, that was the week when it worsened to the point where he could not do his job. Petitioner attempted to rest on the weekends, and he began to stack the tires only 5 or 6 tires high because he could not lift them higher due to his arm, shoulder, and neck pain.[11]

¶ 14 Petitioner testified that he had experienced the shoulder and arm problems for years. However, it was after the incident during the week of August 14, 2005, that he began to experience neck pain.[12] Although he had been able to deal with the shoulder and arm pain up to that point, the neck pain compounded those problems and this incident made Petitioner realize that he would not be able to perform his job due to his shoulder, arm, and neck pain.[13]

¶ 15 Petitioner worked as a truck driver for the central warehouse until October 2005, when the truck driving jobs were eliminated. He returned to his previous position at the Grand Avenue store on October 25, 2005. Petitioner worked two days at the store. His arm and shoulder were bothering him and he had a conflict with the store manager. The

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[10] *Id*.

[11] *Id*.

[12] Petitioner Dep. 14:2-17.

[13] Petitioner Dep. 15:4-17.

general manager offered him a position at another store location, and Petitioner met with that store's manager. The store manager suggested Petitioner take the rest of the week off to rest his arm and report to work the following Monday. Petitioner agreed. However, his arm did not get better with rest, but continued to worsen. On Monday morning, Petitioner phoned the store manager and explained that he was physically unable to perform the job.[14]

¶ 16 Since Petitioner's arm and shoulder were no longer improving with rest, Petitioner went to a doctor, who recommended physical therapy. Petitioner filed a workers' compensation claim on November 14, 2005. Where the claim form asked for date and time of accident, Petitioner wrote "ongoing" because, he explained, his shoulder and arm problems had been ongoing since 1996 and had continually gotten worse. Petitioner testified that there was no specific incident which caused his condition but that the pain worsened over time.[15] Petitioner explained that after the day in August 2005, when he was in too much pain to finish loading tires in Missoula, his arm and shoulder never got better. Prior to that time, if he rested his arm, the pain would lessen. It was also after this incident that he began to experience pain in his neck which progressively worsened over time.[16]

¶ 17 On December 5, 2005, a representative of Respondent conducted a phone interview with Petitioner. When asked for the date of injury, Petitioner replied that it was around August 14.[17] However, Petitioner's counsel pointed out that August 14, 2005, was a Sunday and stipulated that the Missoula incident likely happened another day that week.[18] During the interview, Petitioner explained that his arm and shoulder had bothered him continuously since 1996, and then in August 2005, "I don't know what I did, but whatever I did, I did it."[19]

¶ 18 Petitioner eventually saw orthopedist Thomas Johnson, M.D., who ordered several tests, including a nerve conduction velocity study for Petitioner's right shoulder. From the study results, Dr. Johnson also diagnosed Petitioner with severe carpal tunnel syndrome. Petitioner testified that although he had experienced tingling and burning in his hands for years, he was surprised Dr. Johnson diagnosed him with carpal tunnel syndrome because

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[14] Trial Test.

[15] *Id*.

[16] *Id.*

[17] Ex. 1 at 1 of Petitioner's Dep.

[18] Trial Test.

[19] Ex. 1 at 4-5 of Petitioner's Dep.

that is not the condition for which Petitioner had sought treatment. However, Petitioner further stated, his wife, a medical transcriptionist, had surgery for carpal tunnel syndrome, and she had told him that he had it.[20] Petitioner stated that he had tingling and numbness in his hands for as long as he could remember, but his hands worsened during the time he was employed by Tire-Rama.[21]

¶ 19 Dr. Johnson is a board certified orthopedic surgeon.[22] Dr. Johnson first examined Petitioner on March 6, 2006.[23] Dr. Johnson diagnosed Petitioner with chronic impingement syndrome of the right shoulder, bilateral carpal tunnel syndrome, cervical spondylosis, a herniated disk, and a syrinx of the cervical and thoracic spinal cord.[24] Dr. Johnson opined that Petitioner's carpal tunnel syndrome was a result of working in the tire repair industry.[25] He further opined that Petitioner's chronic impingement syndrome of the right shoulder was due to years of repetitive lifting and heavy working overhead.[26] Dr. Johnson did not have an opinion as to what caused the herniated disk or the syrinx.[27] Dr. Johnson opined that Petitioner's spondylosis was probably due to wear and tear over a long period of time and not due to a single incident.[28] Dr. Johnson further opined that, due to a combination of the carpal tunnel syndrome and Petitioner's shoulder and neck conditions, he is unable to work.[29]

¶ 20 Although Dr. Johnson opined that Petitioner's chronic impingement syndrome was caused by "years of repetitive lifting," he also stated that it was more probable than not that the incident which occurred the week of August 14 "would be responsible" for the chronic impingement syndrome.[30] Regarding this apparent discrepancy, Dr. Johnson clarified that

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[20] Trial Test.

[21] Petitioner Dep. 23:9-15.

[22] Johnson Dep. 5:23 - 6:1.

[23] Johnson Dep. 6:24 - 7:1.

[24] Johnson Dep. 8:12-16.

[25] Johnson Dep. 8:18-22.

[26] Johnson Dep. 8:25 - 9:5.

[27] Johnson Dep. 9:22 - 10:2.

[28] Johnson Dep. 10:18 - 11:2.

[29] Johnson Dep. 12:1-8.

[30] Johnson Dep. 9:6-20.

chronic impingement syndrome develops over time, and the August 14 incident may have aggravated Petitioner's underlying propensity to get impingement syndrome.[31] Dr. Johnson explained that chronic impingement syndrome occurs from the arm repeatedly working overhead, causing the rotator cuff and bursa to get pinched between the head of the humerus and the shoulder blade, and a back-and-forth motion causes it to wear and impinge.[32]

¶ 21 Alan Dacre, M.D., is board certified in orthopedic surgery.[33] On April 24, 2006, he saw Petitioner on referral from Dr. Johnson.[34] Dr. Dacre does not have an opinion regarding the cause of Petitioner's cervical and lower thoracic syrinx.[35] He opined that it is not likely that the syrinx is causing any symptoms.[36] Dr. Dacre opined that Petitioner's moderate disk herniation at C6-7 is consistent with a neck injury and he believes the herniated disk was caused by a tire falling on Petitioner's neck and right shoulder.[37] However, Dr. Dacre also opined that the disk at C6-7 showed degenerative changes consistent with degenerative disk disease ("DDD"), that tire work contributed to the DDD, and that it is more probable than not that Petitioner's DDD predated the incident the week of August 14.[38] Dr. Dacre also agreed it was more than likely that, in light of the worsening of Petitioner's symptoms subsequent to the week of August 14, the activities he performed subsequent to the tire incident in Missoula contributed to Petitioner's condition.[39]

CONCLUSIONS OF LAW

¶ 22 This case is governed by the 2005 version of the Montana Workers' Compensation Act since that was the law in effect at the time of Petitioner's industrial accident.[40]

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[31] Johnson Dep. 13:9-20.

[32] Johnson Dep. 13:23 - 14:2.

[33] Dacre Dep. 3:23 - 4:1.

[34] Dacre Dep. 4:2-13.

[35] Dacre Dep. 5:4-6.

[36] Dacre Dep. 6:12-21.

[37] Dacre Dep. 5:7-16.

[38] Dacre Dep. 7:2-22.

[39] Dacre Dep. 8:2-7.

[40] *Buckman v. Montana Deaconess Hosp.*, 224 Mont. 318, 321, 730 P.2d 380, 382 (1986). The parties do not dispute that the 2005 statutes apply to Petitioner's occupational disease claim as well.

¶ 23 Petitioner bears the burden of proving by a preponderance of the evidence that he is entitled to the benefits he seeks.[41]

¶ 24 Regarding Petitioner's carpal tunnel syndrome, there is no dispute that he has carpal tunnel syndrome and that it is an occupational disease. The only dispute is whether, as Respondent asserts, Petitioner should have known of and reported his condition sooner. Respondent denied liability for Petitioner's carpal tunnel syndrome, asserting that since Petitioner's wife had told him he had it, he should have filed a claim for it sooner.[42] Respondent argues that under § 39-71-601(3), MCA, Petitioner was required to file a claim when he knew or should have known that he had carpal tunnel syndrome and that Petitioner failed to do so. Petitioner argues that he did not actually know he had carpal tunnel syndrome until he was examined by Dr. Johnson in March 2006, when Dr. Johnson diagnosed the condition.

¶ 25 This Court has previously held that awareness of pain, and awareness that the pain is a result of work, does not constitute knowledge that one suffers from an "occupational disease," as defined in § 39-72-102(10), MCA.[43] In *Corcoran v. Montana Schools Group Insurance Authority*, this Court reasoned that the use of the words "harm" and "damage" in § 39-71-102(10), MCA, must "mean something more than suffering mere pain, otherwise, every ache and pain a worker suffers after a hard day at work would constitute an occupational disease." This Court further noted that, without a diagnosis, it may be impossible to ascertain whether the earlier occurrences of pain were due to the disease that was later diagnosed.[44] In *Mack v. Montana State Fund*, the claimant had respiratory problems which he attributed to hay fever, and for which he took over-the-counter medication for years.[45] When he sought medical treatment, he was diagnosed with pulmonary hypertension and Chronic Obstructive Pulmonary Disease.[46] Although Montana State Fund argued that Mack's occupational disease claim was time-barred, this Court disagreed, reasoning that while Mack associated his respiratory symptoms with his

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[41] *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).

[42] Trial Test.

[43] *Corcoran v. Montana Schools Group Ins. Auth.*, 2000 MTWCC 30, ¶ 52. The definition of "occupational disease" formerly found in § 39-72-102(10), MCA, is now codified at § 39-71-116(20), MCA.

[44] *Corcoran*, ¶ 52.

[45] *Mack v. Montana State Fund*, 2005 MTWCC 48, ¶¶ 10-11.

[46] *Mack*, ¶ 13.

employment, Mack was not aware that he suffered from a specific condition which required medical treatment.[47]

¶ 26 However, in *Grenz v. Fire and Casualty of Connecticut*,[48] the Montana Supreme Court affirmed this Court's ruling that the claimant's occupational disease claim was barred by the statute of limitations in § 39-72-403, MCA. In that case, a hearing examiner found that Grenz, who filed his occupational disease claim in 1992, knew by 1988 or earlier that he was suffering from degenerative arthritis and that he believed it was caused by his employment.[49] Grenz had testified that in 1985 or 1986, he knew his doctor felt the type of work he was doing was aggravating his arthritis.[50] Grenz had a medical diagnosis of degenerative arthritis, and was aware that his doctor believed his work aggravated his arthritis, thereby proving to the satisfaction of the Court that Grenz knew or should have known that his condition resulted from an occupational disease.

¶ 27 Petitioner's situation with his carpal tunnel disease is somewhat different from the factual situations in each of these three cases. However, I conclude Petitioner's case has more in common with *Corcoran* and *Mack* than with *Grenz*. Unlike Grenz, Petitioner did not have a medical diagnosis and a doctor's opinion that his condition was work-related. Unlike Corcoran and Mack, Petitioner had some idea that he might be suffering from a specific disease. However, nothing in the record suggests that Petitioner ever sought a medical diagnosis or treatment for the symptoms which his wife speculated was carpal tunnel syndrome. Nor does the record indicate that Petitioner, like Grenz, was aware that his work aggravated this condition. Like Mack, Petitioner "self-treated" – in Petitioner's case by resting on his days off. Moreover, as this Court noted in *Corcoran*, although Petitioner indicated that he experienced these symptoms for years, it is impossible to ascertain even if the earlier symptoms can be attributed to the recently diagnosed carpal tunnel syndrome.

¶ 28 The determination as to whether a claimant "knew or should have known" he or she may be suffering from an occupational disease may not always require a formal diagnosis. In the present case, however, I cannot conclude that a lay person's idle speculation supports a finding that Petitioner knew or should have known that he was suffering from an occupational disease. I therefore conclude that Petitioner knew or should have known that he was suffering from the carpal tunnel syndrome as an occupational disease on

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[47] *Mack*, ¶¶ 18-19.

[48] *Grenz v. Fire & Cas. of Conn.*, 278 Mont. 268, 924 P.2d 264 (1996) or *Grenz, supra*.

[49] *Grenz*, 278 Mont. at 270, 924 P.2d at 266.

[50] *Grenz*, 278 Mont. at 272, 924 P.2d at 267.

March 6, 2006, when Dr. Johnson diagnosed the condition and opined that it was caused by Petitioner's work in the tire industry.

¶ 29 Section 39-71-601(3), MCA, provides that when a claimant seeks benefits for an occupational disease, the claim must be presented in writing to the employer, the employer's insurer, or the Department of Labor and Industry within one year from the date the claimant knew or should have known that his condition resulted from an occupational disease. Petitioner received his diagnosis from Dr. Johnson on March 6, 2006, and filed his occupational disease claim for carpal tunnel syndrome on March 13, 2006. Therefore, Petitioner's claim for carpal tunnel syndrome is not time-barred.

¶ 30 Respondent further argues that Petitioner's shoulder, arm, and neck conditions appear to be the result of an industrial accident during the week of August 14, 2005, and are not an occupational disease, thereby making Petitioner's November 14, 2005, claim untimely pursuant to § 39-71-603, MCA.[51] In light of the evidence presented, I find it necessary to treat Petitioner's neck problems separate from the problems he is experiencing with his arm and shoulders. Petitioner's arm and shoulder symptoms clearly manifested at least as "normal aches and pains" well before the week of August 14, 2005. Petitioner testified that he had pain in his arm and shoulder beginning in 1995 or 1996, and that the pain would get better with rest. Petitioner further testified that it was because of lingering ongoing pain in his arm and shoulder that he sought the truck-driving position, believing it would be easier on his arm and shoulder. It was not until after Petitioner's arm and shoulder reached a point where the pain was no longer improving with rest that he sought medical treatment, at which time Dr. Johnson diagnosed Petitioner with chronic impingement syndrome, which he explained develops over years of repetitive use. As in *Corcoran*, Petitioner believed this to be normal aches and pains and had no reason to suspect he was suffering from a medical condition which required diagnosis and treatment. Therefore, I conclude that Petitioner knew or should have known that he suffered from an occupational disease in his arm and shoulders in October 2005, when the condition of his arm and shoulders could no longer be attributed to "normal aches and pains", they were no longer improving with rest, and Petitioner became physically unable to perform his job duties. Petitioner filed his workers' compensation claim for his arm and shoulder conditions on November 14, 2005, well within the one-year statute of limitations set forth in § 39-71-601(3), MCA. Therefore, his claim for his arm and shoulder conditions is not time-barred and Respondent is liable for necessary medical benefits and wage-loss compensation benefits arising from Petitioner's arm and shoulder conditions.

[51] Pretrial Order at 3. The Pretrial Order erroneously refers to § 39-71-601(1). However, it is clear from the evidence presented that this is a typographical error.

¶ 31 Finally, there is the issue of Petitioner's neck condition, which is not a single condition, but rather several distinct conditions, including a herniated disk at C6-7, cervical spondylosis, DDD, and a syrinx. Neither Dr. Johnson nor Dr. Dacre could offer an opinion as to what caused the syrinx, and Dr. Dacre opined that the syrinx is asymptomatic. Dr. Dacre opined that Petitioner's disk at C6-7 showed degenerative changes consistent with DDD, that tire work contributed to the DDD, and that it is more probable than not that the DDD predated the tire lifting incident which occurred during the week of August 14, 2005. Dr. Johnson opined that Petitioner's spondylosis was probably due to wear and tear over a long period of time, and not due to a single incident.

¶ 32 What is most problematic for me to determine is whether the herniation at C6-7 can properly be characterized as the result of an occupational disease rather than an industrial accident. Dr. Johnson offered no opinion as to the cause of the herniated disk, while Dr. Dacre opined that the herniation is consistent with an injury, and that the herniation was likely caused by a tire falling on Petitioner's neck and right shoulder. Petitioner also testified that while his arm and shoulder pain was ongoing and worsening for years, it was only after the incident during the week of August 14, 2005, that he began to experience neck pain.

¶ 33 From the medical evidence before me, I conclude that Petitioner's syrinx condition is not a result of an occupational disease arising out of his employment, and Respondent is not liable for the syrinx. The medical evidence also demonstrates that Petitioner's cervical spondylosis and DDD both arise from an occupational disease Petitioner suffered as a result of his employment. Respondent is therefore liable to Petitioner for those conditions. However, the medical evidence, as discussed above, leads me to conclude that Petitioner's herniated disk stems from an industrial injury and not an occupational disease. Since the incident which the evidence suggests is responsible for this industrial injury occurred during the week of August 14, 2005, and Petitioner did not file a workers' compensation claim until November 14, 2005, Petitioner's claim for compensation regarding his herniated disk was untimely and therefore barred by the statute of limitations found in § 39-71-603(1), MCA.

¶ 34 As the prevailing party, Petitioner is entitled to his costs.[52] As to the issue of attorney fees, pursuant to § 39-71-611, MCA, an insurer shall pay reasonable attorney fees if the insurer denies liability for a claim for compensation, the claim is later judged compensable by this Court, and this Court determines the insurer's actions in denying liability were unreasonable. Petitioner has not proven that Respondent acted unreasonably in denying liability for this claim and his prayer for attorney fees is therefore denied.

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[52] *Marcott v. Louisiana Pac. Corp.*, 1994 MTWCC 109 (*aff'd after remand at* 1996 MTWCC 33).

JUDGMENT

¶ 35 Respondent is required to pay for necessary medical treatment and wage-loss compensation benefits relating to Petitioner's carpal tunnel syndrome, arm and shoulder condition, cervical spondylosis, and degenerative disk disease.

¶ 36 Respondent is not liable for necessary medical treatment and wage loss compensation benefits relating to Petitioner's syrinx or herniated disk at C6-7.

¶ 37 Petitioner is entitled to his costs.

¶ 38 Petitioner is not entitled to attorney fees.

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

¶ 40 Any party to this dispute may have twenty days in which to request reconsideration from these FINDINGS OF FACT, CONCLUSIONS OF LAW AND JUDGMENT.

DATED in Helena, Montana, this 20th day of June, 2007.

(SEAL)

\s\ James Jeremiah Shea
JUDGE

c: Patrick R. Sheehy
Larry W. Jones
Submitted: June 28, 2006