IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

2010 MTWCC 17

WCC No. 2009-2391

RUDOLPH (MARK) PETRITZ

Petitioner

vs.

MONTANA STATE FUND

Respondent/Insurer.

FINDINGS OF FACT, CONCLUSIONS OF LAW AND JUDGMENT

Summary: Petitioner suffered a myocardial infarction while at work on July 6, 2009. Petitioner alleges that his work activities were unusually strenuous and caused the myocardial infarction. Respondent argues that Petitioner has failed to prove under § 39-71-119(5)(a), MCA (2009), that his work activities were the primary cause of his condition.

Held: Petitioner has not proven that it is more probable than not that his work activities were the primary cause of his myocardial infarction. Petitioner's treating physician testified that he could not say with a reasonable degree of medical certainty that Petitioner's exertion at work caused his myocardial infarction. An independent medical opinion from a physician who specialized in cardiovascular disease and interventional cardiology was that Petitioner's myocardial infarction was due to coronary atherosclerosis and his work activities were not the primary cause. The only medical opinion that Petitioner's work exertion was the primary cause of his condition came from a non-treating physician who specialized in neurology.

Topics:

> **Constitutions, Statutes, Regulations, and Rules: Montana Code Annotated: 39-71-119.** On an 85-degree day, a sheet metal worker was installing a piece of duct work onto an assembly which weighed several hundred pounds when the jack holding the duct work in place became snagged and twisted the assembly. The worker lifted one end of the duct work and held it while other workers freed the jack. The incident qualifies

as an unusual strain and therefore constitutes an accident as defined by the statute.

Injury and Accident: Unexpected Strain or Injury. On an 85-degree day, a sheet metal worker was installing a piece of duct work onto an assembly which weighed several hundred pounds when the jack holding the duct work in place became snagged and twisted the assembly. The worker lifted one end of the duct work and held it while other workers freed the jack. The incident qualifies as an unusual strain and therefore constitutes an accident as defined by the statute.

Physicians: Treating Physician: Weight of Opinions. The claimant suffered a myocardial infarction. His treating physician is a board-certified interventional cardiologist who specializes in angioplasty. A neurologist who is not board-certified in any specialty and who never examined the claimant disagreed with the treating physician's opinion as to the cause of the claimant's myocardial infarction. The Court concluded that the treating physician's opinion is entitled to greater weight, not only because he is the treating physician, but because he is more qualified than the other physician both through his training and educational background and because he actually examined the claimant.

Physicians: Conflicting Evidence. The claimant suffered a myocardial infarction. His treating physician is a board-certified interventional cardiologist who specializes in angioplasty. A neurologist who is not board-certified in any specialty and who never examined the claimant disagreed with the treating physician's opinion as to the cause of the claimant's myocardial infarction. The Court concluded that the treating physician's opinion is entitled to greater weight, not only because he is the treating physician, but because he is more qualified than the other physician both through his training and educational background and because he actually examined the claimant.

Physicians: Qualifications. A board-certified interventional cardiologist who specializes in angioplasty is more qualified to render an opinion on the cause of a claimant's myocardial infarction than a neurologist who is not board-certified.

Constitutions, Statutes, Regulations, and Rules: Montana Code Annotated: 39-71-119. Although the Court concluded that the claimant suffered an "accident" as defined in § 39-71-119(2)(a), MCA, because the

incident which occurred at work qualified as an unusual strain, the Court nonetheless concluded that the claimant's myocardial infarction was not compensable because he did not meet the higher burden of § 39-71-119(5), MCA, where the medical evidence presented did not support a conclusion that, within a reasonable degree of medical certainty, his work-related activities were more than 50% responsible for his myocardial infarction.

Medical Conditions (by Specific Condition): Heart Attack. Although the Court concluded that the claimant suffered an "accident" as defined in § 39-71-119(2)(a), MCA, because the incident which occurred at work qualified as an unusual strain, the Court nonetheless concluded that the claimant's myocardial infarction was not compensable because he did not meet the higher burden of § 39-71-119(5), MCA, where the medical evidence presented did not support a conclusion that, within a reasonable degree of medical certainty, his work-related activities were more than 50% responsible for his myocardial infarction.

¶1 The trial in this matter was held on February 11, 2010, at the Workers' Compensation Court in Helena, Montana. Petitioner Rudolph (Mark) Petritz (Petritz) was present and represented by Michael J. McKeon, Jr., and Michael J. McKeon. Greg E. Overturf represented Respondent Montana State Fund (State Fund).

¶2 Exhibits: Exhibits 1 through 16 were admitted without objection.

¶3 Witnesses and Depositions: The depositions of Dane E. Sobek, M.D., and Carlos P. Sullivan, M.D., were submitted to the Court. The Court admitted Dr. Sobek's deposition by agreement of the parties. Dr. Sullivan's deposition was admitted over State Fund's objection. Petritz and Patricia Hunt (Hunt) were sworn and testified at trial.

¶4 Issues Presented: The Final Pretrial Order states the following contested issues:

¶ 4a Is Petitioner entitled to Workers' Compensation benefits and medical benefits from the Montana State Fund?

¶ 4b Petitioner's entitlement to Attorney's Fee and Costs.

¶ 4c Respondent Objects to the qualifications of Plaintiff's expert witness, Dr. Carlos Sullivan.[1]

FINDINGS OF FACT

¶5 Petritz testified at trial. I found him to be a credible witness. Petritz is a journeyman sheet metal worker. He has worked for Metal Works of Montana for approximately 15 years. Petritz testified that he usually does heavy commercial work installing duct work for heating, air conditioning, and ventilation.[2]

¶6 Petritz has worked as a sheet metal worker for approximately 40 years, with the last 20 years being mainly heavy commercial work. Petritz testified that he gets a fair amount of exercise and that he is active in his spare time, enjoying activities such as fishing. Petritz testified that he is in good physical condition.[3]

¶7 Petritz testified that prior to July 6, 2009, he did not have heart problems, but had been receiving treatment for asthma and allergies for approximately five years.[4]

¶8 On July 6, 2009, Petritz was installing duct work inside a newly-constructed building on the Montana State University campus in Bozeman. Petritz testified that the segments were large, awkward, and heavy, so he was installing them in pieces with mechanical assistance. The temperature was approximately 85 degrees and he was sweating. Although the weather had been warm for several days, he had previously been working on lower, cooler floors of the building.[5]

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[1] Final Pretrial Order at 1-2.

[2] Trial Test.

[3] Trial Test.

[4] Trial Test.

[5] Trial Test.

¶9 Petritz testified that while he was assembling the duct work, one piece twisted when the jack holding it in place became snagged. The assembled duct work weighed several hundred pounds. Petritz lifted one end of the duct work and held it while other workers freed the jack. Petritz felt "something pop" in his chest while he was holding the duct work. The workers moved the jack and he set the duct work down on it. Petritz's chest felt sore. He decided to take a break and get a drink of water.[6]

¶10 Petritz went for water. He was sweating profusely. He returned to his work site and resumed his job duties, but he continued to feel poorly. Petritz believed he was having an asthma attack. He told a coworker that he was going to deal with his asthma and he walked to his truck, where he took his asthma medication. Petritz sat in his truck for a while, but his symptoms did not improve. He returned to the work site and told his coworker that he wanted to go to the emergency room. An apprentice from the job site transported him there.[7]

¶11 At the hospital, emergency room personnel informed Petritz that he was having a heart attack. Petritz was immediately taken in for surgery. He learned afterward that the surgeon found two clogged arteries in Petritz's heart.[8]

¶12 Dane E. Sobek, M.D., is an interventional cardiologist[9] licensed to practice in Montana.[10] He is board-certified in cardiology and practices general and interventional cardiology in Bozeman, where he has hospital privileges.[11] Dr. Sobek testified that he has seen thousands of patients in his cardiology practice.[12] He explained that interventional cardiology uses percutaneous techniques to deal with coronary disease or blockages in the arteries that feed the heart muscle. Dr. Sobek stated that interventional cardiologists use special equipment to access the region through a patient's arm or leg rather than opening the chest in a surgical procedure. Dr. Sobek explained that the primary task of an interventionalist is angioplasty, or opening up blocked arteries which limit blood flow to the heart muscle.[13]

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[6] Trial Test.

[7] Trial Test.

[8] Trial Test.

[9] Sobek Dep. 4:16-18.

[10] Sobek Dep. 6:25 – 7:2.

[11] Sobek Dep. 5:17-23; 7:3-5.

[12] Sobek Dep. 5:24 – 6:4.

[13] Sobek Dep. 6:9-21.

¶13 Dr. Sobek first saw Petritz on July 6, 2009, in the emergency room.[14] Petritz's myocardial infarction had already been diagnosed with an electrocardiogram (EKG).[15] Dr. Sobek reviewed the information he had on Petritz and saw three risk factors for a heart attack: borderline hypertension, tobacco abuse, and a family history of coronary disease.[16] Dr. Sobek explained that risk factors are things which put individuals at a higher risk for developing coronary disease than individuals of the same age and gender who do not have those factors present.[17]

¶14 Dr. Sobek informed Petritz that he had a blocked artery leading to his heart muscle.[18] Dr. Sobek prepared to perform a coronary angioplasty for primary percutaneous coronary intervention (PCI), which is the procedure used for the treatment of an acute, 100% occluded artery.[19] Dr. Sobek testified that at that point, he was not absolutely certain that Petritz had a 100% occluded artery, but he considered it to be a very high likelihood.[20]

¶15 When Dr. Sobek explored Petritz's coronary blood vessels, he discovered that Petritz had a 100% occluded vessel in the distal circumflex and atherosclerosis, or plaque buildup, in other blood vessels.[21] Dr. Sobek explained that atherosclerosis does not "develop[] overnight" but develops throughout one's lifetime.[22] Dr. Sobek opined that the 100% occluded distal circumflex was the cause of Petritz's symptoms.[23]

¶16 Dr. Sobek placed an intracoronary stent at the site of the occlusion in order to open the artery and establish blood flow to the section of the heart muscle that was obstructed.[24] Dr. Sobek also found a very tight lesion in Petritz's right coronary artery. Dr. Sobek placed a stent in the right coronary artery two days after Petritz's first

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[14] Sobek Dep. 10:10-12.

[15] Sobek Dep. 11:23 – 12:4.

[16] Sobek Dep. 12:23 – 13:2.

[17] Sobek Dep. 17:13 – 18:2.

[18] Sobek Dep. 13:3-24.

[19] Sobek Dep. 14:13-22.

[20] Sobek Dep. 14:23 – 15:1.

[21] Sobek Dep. 16:10-25.

[22] Sobek Dep. 17:9-11.

[23] Sobek Dep. 17:1-4.

[24] Sobek Dep. 18:9-16.

surgery.[25] Dr. Sobek opined that leaving this second blockage would have put Petritz at risk for a second myocardial infarction.[26]

¶17 On September 15, 2009, Dr. Sobek wrote to Petritz's counsel and stated, in pertinent part:

> Your letter requests that I give you an opinion on whether it was more probable than not that the unusual strain Mark of work [sic] on the day of his infarct was responsible for more than 50% of the physical condition for which I treated him. It is impossible for me to render an opinion in this regard. Myocardial infarctions are fairly random events. These types of events can occur under exertion as well as at rest. I cannot, with any degree of confidence, assign a percentage of responsibility to Mark's situation.[27]

¶18 Petritz had previously been diagnosed with borderline hypertension.[28] Dr. Sobek stated that it is difficult to determine all the factors which contributed to Petritz's myocardial infarction. He stated that atherosclerotic disease is generally not caused by a single factor. Risk factors put individuals at higher risk. Acute heart attacks occur when plaques become unstable or rupture. Dr. Sobek stated that plaque instability or ruptures tend to be random events. In Petritz's case, Dr. Sobek opined that his family history, his history of smoking, his history of using smokeless tobacco, and his blood pressure all put him at increased risk for developing atherosclerosis. Dr. Sobek could not opine whether Petritz's specific activities on any specific day led to his myocardial infarction.[29] Dr. Sobek testified that he could not opine to a reasonable degree of medical probability that Petritz's exertion at work on July 6, 2009, was the primary cause of his myocardial infarction.[30]

¶19 Carlos P. Sullivan, M.D., is a neurologist practicing in Butte.[31] Dr. Sullivan is not board-certified in any field.[32] Dr. Sullivan testified that he spent a year completing an internship at the Hennepin County General Hospital, in Minneapolis, Minnesota,

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[25] Sobek Dep. 25:6-20.

[26] Sobek Dep. 27:24 – 28:3.

[27] Ex. 4 at 12.

[28] Ex. 5 at 1.

[29] Sobek Dep. 31:24 – 33:8.

[30] Sobek Dep. 33:13-19.

[31] Sullivan Dep. 6:6-12.

[32] Sullivan Dep. 11:18-23.

beginning in 1967.[33] He spent that year as a rotating intern in the emergency room, pediatrics, orthopedics, and general surgery.[34] After completing that internship, he spent a year in internal medicine at the same hospital.[35] While studying internal medicine, he focused on nonsurgical specialties including gastroenterology, hematology, and cardiology.[36] He later completed a neurology residency.[37]

¶20 Dr. Sullivan testified that he had experience with myocardial infarctions during his residency, and that it was also part of the residency he completed in neurology.[38] Dr. Sullivan stated that from July 1974 until the present, he has diagnosed myocardial infarctions, but that whenever he sees a cardiac or blood pressure problem, he consults a cardiologist if one is available.[39]

¶21 Dr. Sullivan estimated that from 1974 until his deposition on January 22, 2010, he has seen fewer than 10 patients with acute myocardial infarctions in his practice.[40] Dr. Sullivan stated that the last time he performed a procedure such as a catheterization of blood vessels would have been in 1977 or 1978.[41] He has never performed a catheterization involving the blood vessels inside the heart.[42] He has never placed a stent in a blood vessel of the heart.[43] Dr. Sullivan acknowledged that he does not have the training necessary to perform these procedures; however, he added that he has the requisite knowledge and experience to diagnose coronary conditions.[44]

¶22 State Fund objected to the admission of Dr. Sullivan's testimony and medical opinions, arguing that he is not qualified to render an expert opinion in the present case. I admitted Dr. Sullivan's testimony, noting that State Fund's objections to Dr. Sullivan's qualifications go to the weight and not the admissibility of his testimony and medical opinions.

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[33] Sullivan Dep. 6:22-23.

[34] Sullivan Dep. 7:11-12.

[35] Sullivan Dep. 6:23-25.

[36] Sullivan Dep. 7:13-15.

[37] Sullivan Dep. 7:2-3.

[38] Sullivan Dep. 7:19 – 8:17.

[39] Sullivan Dep. 9:10-19.

[40] Sullivan Dep. 16:20 – 17:10.

[41] Sullivan Dep. 29:24 – 30:6.

[42] Sullivan Dep. 31:2-5.

[43] Sullivan Dep. 32:22-25.

[44] Sullivan Dep. 33:1-9.

¶23 Dr. Sullivan opined that the lifting incident Petritz described to him was "unusual."[45] Dr. Sullivan further opined that Petritz's work was more probably than not the cause of his myocardial infarction.[46] On October 7, 2009, Dr. Sullivan sent a letter to Petritz's counsel in which he stated:

> My opinion is a definite yes that his work was more probable than not responsible for more than 50% of having a myocardial infarction while at work on July 6, 2009. Attached are two articles from the "New England Journal of Medicine", Vol 329:1677-1683 that support my opinion.[47]

¶24 Dr. Sullivan testified that he relied upon two articles which he believed to be reliable and authoritative and which supported his conclusions. He identified them as two December 2, 1993, articles from The New England Journal of Medicine entitled "Triggering of Acute Myocardial Infarction by Heavy Physical Exertion – Protection Against Triggering by Regular Exertion" and "Physical Exertion as a Trigger of Acute Myocardial Infarction."[48]

¶25 Dr. Sullivan testified that he only has the abstract of one of these articles. He did not read the entire article because he did not feel it was necessary to do so.[49] Dr. Sullivan testified that he did not actually rely on these articles in reaching his opinions about Petritz's condition.[50] Dr. Sullivan explained that after he concluded that Petritz's work caused his myocardial infarction, he decided that he needed to find "something" to support his conclusions since he is not board-certified.[51]

¶26 Dr. Sullivan stated that while a layperson reading the first article might think it distinguishes people who have very small amounts of exercise and their increased risk of a heart attack due to strenuous activity, from active people, this is a wrong interpretation.[52] Dr. Sullivan stated that a person has to have a medical background in order to interpret the articles, and that since he has a medical background, he can interpret the articles.[53]

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[45] Sullivan Dep. 19:13-18.

[46] Sullivan Dep. 24:7-13.

[47] Ex. 7 at 1.

[48] Sullivan Dep. 25:3-23; Ex. 7 at 1.

[49] Sullivan Dep. 33:22 – 34:8.

[50] Sullivan Dep. 37:9-11.

[51] Sullivan Dep. 37:13-25.

[52] Sullivan Dep. 36:2-9.

[53] Sullivan Dep. 37:1-4.

¶27 When Dr. Sullivan saw Petritz on October 7, 2009, he did not perform a physical examination.[54] He testified that he knows Petritz had a physically strenuous job, but he does not know how many hours per week Petritz worked, nor for how many years he had done this type of work.[55] Dr. Sullivan stated that it was "absolutely" not a sedentary job.[56] Dr. Sullivan further testified that he was unaware what, if any, types of activities Petritz engaged in outside of work.[57] He agreed that Petritz got "regular exercise" performing his job duties.[58] Dr. Sullivan further admitted that both articles he cited indicated that people who have regular physical exertion have a lower relative risk of having an exertion-induced heart attack than sedentary people.[59]

¶28 Dr. Sobek disagrees with Dr. Sullivan's opinion that Petritz's work was more probably than not more than 50% responsible for his myocardial infarction.[60] He further stated that he does not believe the articles Dr. Sullivan cited support Dr. Sullivan's conclusion because those articles pertain to patients who were habitually sedentary and were thus more at risk for developing a myocardial infarction with heavy physical exertion. Dr. Sobek opined that Petritz is a very active person who does not fit that profile.[61]

¶29 On January 8, 2010, John Joseph Perry, M.D., F.A.C.C., submitted an independent peer review of Petritz's medical records. Dr. Perry is board-certified by the American Board of Internal Medicine in cardiovascular disease and interventional cardiology. Among the items Dr. Perry reviewed were Dr. Sobek's records and Dr. Sullivan's opinion letter and the two articles he cited. Dr. Perry opined:

> 1. The myocardial infarction suffered by Mr. Petritz was due to coronary atherosclerosis. This is supported by the finding that he had multiple partially obstructive lesions in his coronary tree based on his angiography. One of these lesions was severe enough to result in coronary angioplasty and stenting subsequent to his myocardial infarction.

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[54] Sullivan Dep. 28:12-15.

[55] Sullivan Dep. 34:20 – 35:11.

[56] Sullivan Dep. 35:12-14.

[57] Sullivan Dep. 35:15-23.

[58] Sullivan Dep. 35:24 – 36:1.

[59] Sullivan Dep. 44:8-23.

[60] Sobek Dep. 34:14-22.

[61] Sobek Dep. 35:5-24.

2. Plaque rupture may have been precipitated by his work but was not a primary cause. This would not be considered a causal event but a potentially precipitating event. It is virtually certain that Mr. Petritz would have had a myocardial infarction at some time regardless of work. The amount of effort which he expended at work was something typical for his level of work, was not unusual by his report in his statement. There is a statistical probability that his activities at work assisted in precipitating the event but were not causal thereof. It was not considered a "primary cause."[62]

¶30 Patricia Hunt, claims examiner for State Fund, also testified at trial. I found Hunt to be a credible witness. Hunt testified that she investigated Petritz's claim, but ultimately denied it after interviewing Petritz, speaking with his employer, and reviewing Petritz's medical records. One fact Hunt relied on in deciding to deny the claim was that Petritz's medical records indicated that he had arteriosclerosis with one artery 100% blocked and a second artery 70% blocked. Hunt therefore concluded that Petritz's heart condition was an ongoing, progressive disease and not the result of a single incident at work.[63]

CONCLUSIONS OF LAW

¶31 This case is governed by the 2009 version of the Montana Workers' Compensation Act since that was the law in effect at the time of Petitioner's industrial accident.[64]

¶32 Petitioner bears the burden of proving by a preponderance of the evidence that he is entitled to the benefits he seeks.[65]

¶33 Under § 39-71-119(5), MCA, a myocardial infarction suffered by a worker is an injury only if the accident is the primary cause of the physical condition in relation to other factors contributing to the physical condition. "Primary cause" in this context means a cause that, with a reasonable degree of medical certainty, is responsible for more than 50% of the physical condition.

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[62] Ex. 12 at 4.

[63] Trial Test.

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

[65] *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).

¶34 There is some dispute as to whether Petritz suffered an "accident" as defined in § 39-71-119(2)(a), MCA, which requires "an unexpected traumatic incident or unusual strain" and therefore an "accident." The incident as described by Petritz qualifies as an unusual strain and therefore constitutes an accident as defined by the statute. Nevertheless, I must conclude that Petritz's myocardial infarction is not compensable because he has not met the higher burden an injured worker must meet to prove the compensability of a myocardial infarction under § 39-71-119(5), MCA.

¶35 The Court has medical opinions from Drs. Sobek, Sullivan, and Perry. As set forth in my Findings above, Dr. Sobek could not say with a reasonable degree of medical certainty that Petritz's exertion at work that day caused his myocardial infarction. Dr. Sullivan opined that it was more probable than not that Petritz's work – or his unusual work activity – caused his myocardial infarction. Dr. Perry opined that Petritz's myocardial infarction was due to coronary atherosclerosis, that his work activities were not the primary cause, and that there is a statistical probability that his activities at work assisted in precipitating the event but were not causal.

¶36 As a general rule, the opinion of a treating physician is accorded greater weight than the opinions of other expert witnesses. However, a treating physician's opinion is not conclusive. To presume otherwise would quash the role of the fact finder in questions of an alleged injury. As the finder of fact, this Court remains in the best position to assess witnesses' credibility and testimony.[66]

¶37 Dr. Sobek is Petritz's treating physician. As he testified in his deposition, Dr. Sobek is a board-certified interventional cardiologist. His specialty is angioplasty. He treated Petritz during his myocardial infarction and has provided his follow-up care.

¶38 Dr. Sullivan is not Petritz's treating physician. As he testified in his deposition, he has never examined Petritz. Dr. Sullivan is not a cardiologist, but is a neurologist, and he is not board-certified in any specialty. Dr. Sullivan testified that he has had some experience in cardiology, particularly in the early 1970s.

¶39 Dr. Perry is board-certified in Internal Medicine with specialties in cardiovascular disease and interventional cardiology. He performed an independent peer review of Petritz's medical records, including the opinions from Dr. Sullivan.

[66] *EBI/Orion Group v. Blythe*, 288 Mont. 356, ¶¶ 12-13, 957 P.2d 1134 (1998).

¶40 In *Johnson v. Liberty Northwest Ins. Corp.*, this Court found the opinions of a treating physician more persuasive than the opinion of another medical expert because of his superior background and experience and an extensive practice of treating similarly-afflicted patients.[67] I find the present case to be similar. In this case, the opinion of Petritz's treating physician Dr. Sobek is entitled to greater weight than the opinion of Dr. Sullivan. Dr. Sobek is more qualified to render an opinion in this case. He is a board-certified cardiologist while Dr. Sullivan is not. Furthermore, Dr. Sullivan has never physically examined Petritz and he bases his medical conclusions on articles which are not relevant to Petritz's situation. The articles discuss the role unusual exertion plays in causing myocardial infarctions in sedentary people. The facts demonstrate that Petritz is not a sedentary person. Therefore, the studies these articles discuss are not relevant to the present case.

¶41 I further considered the records review performed by Dr. Perry, whose board certifications indicate that his qualifications are more similar to Dr. Sobek than to Dr. Sullivan. I found Dr. Perry's opinions as expressed in his January 2010 peer review, to be entitled to greater weight than the opinions of Dr. Sullivan based on Dr. Perry's superior qualifications in the field of cardiology.

¶42 Having weighed the opinions of the various expert medical witnesses, and taking all the evidence presented into consideration, including Petritz's testimony and his pre-infarction medical records, I conclude that Petritz has not met his burden of proof in alleging that his work-related activities are the cause of his July 6, 2009, myocardial infarction. The medical evidence presented simply does not support a conclusion that, within a reasonable degree of medical certainty, his work-related activities were more than 50% responsible for his myocardial infarction.

¶43 Since Petritz is not the prevailing party, he is not entitled to his attorney fees or costs.[68]

JUDGMENT

¶44 Petritz is not entitled to workers' compensation benefits from Montana State Fund.

¶45 Petritz is not entitled to his attorney fees and costs.

¶46 Respondent's objection to the qualifications of Petritz's expert witness goes to weight, not admissibility.

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[67] *Johnson*, 2009 MTWCC 20, ¶ 86.

[68] § 39-71-611, MCA.

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

DATED in Helena, Montana, this 10th day of June, 2010.

(SEAL)

/s/ JAMES JEREMIAH SHEA
JUDGE

c: Michael J. McKeon, Jr.
Michael J. McKeon
Greg E. Overturf
Submitted: February 11, 2010