

IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

2022 MTWCC 10

WCC No. 2022-6084

SENTRY INSURANCE COMPANY

Insurer/Appellant

vs.

BURT GODAT

Appellee.

**ORDER AFFIRMING ORDER REINSTATING BENEFITS
PENDING A HEARING (PER 39-71-610, MCA)**

Summary: The insurer appeals an order from the DLI awarding interim TTD benefits under § 39-71-610, MCA. The insurer argues that the DLI erred because the claimant's low back condition is an entirely new condition and that it cannot possibly be liable for TTD benefits for claimant's low back condition under his compensable leg injury claim.

Held: The DLI correctly awarded interim TTD benefits under the claimant's compensable leg injury claim. The claimant's treating physician opined that claimant's low back condition was caused by the sequelae of his leg injury. It is established Montana law that when the sequelae of an industrial injury causes an injury or disease to another body part, the insurer is liable for the injury or disease to the other body part.

¶ 1 Sentry Insurance Company (Sentry) appeals an order from the Department of Labor & Industry (DLI) in which it awarded Appellee Burt Godat interim temporary total disability (TTD) benefits under § 39-71-610, MCA.

¶ 2 Pursuant to ARM 24.5.314, Sentry and Godat agreed to an “informal resolution” of Sentry’s appeal.¹ Therefore, on August 10, 2022, this Court conducted a hearing with counsel, via Zoom.

STANDARD OF REVIEW

¶ 3 This Court reviews *de novo* an order from the DLI regarding benefits under § 39-71-610, MCA.²

FACTS

¶ 4 On March 12, 2020, Godat broke his leg in the course of his employment.

¶ 5 Sentry accepted liability for Godat’s injury. Sentry paid Godat TTD benefits for those times he had a total wage loss because of his injury.

¶ 6 In January 2022, Godat reached maximum medical improvement for his leg injury.

¶ 7 Godat’s treating physician, Eric Sigmond, MD, released Godat to his time-of-injury job, which did not require stair climbing.

¶ 8 In May 2022, Godat’s job changed, and he was required to walk up and down stairs.

¶ 9 On May 18, 2022, Godat saw Eric M. English, MD, at the Emergency Room, complaining that he had been suffering from sciatic pain for two weeks. Godat reported that he “did not have any acute injury that hurt his back,” but that he had been climbing stairs at work. Dr. English thought that it was “doubtful” that the sequelae of Godat’s broken leg was the cause of his sciatic pain.

¶ 10 Godat could not work. However, Sentry refused to reinstate TTD benefits.

¶ 11 Godat followed up with Dr. Sigmond on July 11, 2022. Dr. Sigmond disagreed with Dr. English’s causation opinion; Dr. Sigmond noted:

¹ Rule 24.5.314 provides as follows:

ADJUDICATION OF INTERIM BENEFIT CLAIMS UNDER 39-71-610, MCA.

(1) Appeals of determinations by the Department of Labor and Industry regarding interim benefits under 39-71-610, MCA, may be presented to the court in letter form. The court initially addresses such appeals informally through telephone conference involving all parties.

(2) If any party objects to informal resolution of a dispute under 39-71-610, MCA, the court holds a formal evidentiary hearing on an expedited basis. Such hearing may be conducted through telephone conference if all parties agree. If requested by any party, the court promptly holds an in-person hearing in Helena or, at the court’s discretion, in some other venue at a date and time set by the court.

² *Hartford Fire Ins. Co. v. Hostetter*, 2013 MTWCC 14, ¶ 2 (citation omitted).

Burt Godat is a 58yr old male who presents today with continued left leg pain, but also new symptoms of bilateral leg radicular pain and complaints of numbness in the soles of both feet. The patient had been released to full duty, which I understood at the time to be the job that he had been performing during his recovery, which involves significant rest periods. Apparently, that because I did not specifically limit stair climbing in the note, assuming there would be none with his job, he was placed on stair climbing, which started to aggravate both his leg pain, but also started new symptoms of low back pain and radicular pain down bilateral legs. The patient comes to us quite frustrated because he has been placed on injured leave and is not receiving an income. This is an unfortunate situation that was not intended when releasing him to full work duty. The patient has not yet had a functional capacity evaluation, and at this point, it is extremely frustrating because he is definitely not fully recovered; but, he has plateaued in terms of the leg pain now, **and forcing him to climb stairs at work has caused him aggravation of his low back, which was a significant possibility given the fact of the prolonged consistent left leg pain and swelling from his work injury.**³

Dr. Sigmond diagnosed, “Bilateral lumbar radiculopathy caused by stair climbing and increased activity beyond what was intended from the work release.”

¶ 12 On June 2, 2022, Godat’s lawyer sent Dr. Sigmond a letter asking whether Godat’s sciatica was caused by the sequelae of his broken leg, or was an occupational disease, or was “simply degenerative issues.” Dr. Sigmond opined that Godat’s “tibia & fibula [fracture] w/ chronic limp aggravated low back pain & sciatica.” Dr. Sigmond explained, “When I released Mr. Godat to ‘full duty’ it was to a job that did not involve stair climbing. Stair climbing aggravated his low back.”

¶ 13 On July 27, 2022, the DLI granted Godat’s request for interim TTD benefits under § 39-71-610, MCA. The Compliance Specialist reasoned, *inter alia*, that Godat had presented *prima facie* evidence that his sciatica was caused by the sequelae of his broken leg.

LAW AND ANALYSIS

¶ 14 Section 39-71-610, MCA, states:

If an insurer terminates biweekly compensation benefits and the termination of compensation benefits is disputed by the claimant, the department may, upon written request, order an insurer to pay additional biweekly compensation benefits prior to a hearing before the workers’ compensation

³ Emphasis added.

court or prior to mediation, but the biweekly compensation benefits may not be ordered to be paid under this section for a period exceeding 49 days or for any period subsequent to the date of the hearing or mediation. A party may appeal this order to the workers' compensation court. A proceeding in the workers' compensation court brought pursuant to this section is a new proceeding and is not subject to mediation. If after a hearing before the workers' compensation court it is held that the insurer was not liable for the compensation payments ordered by the department, the insurer has the right to be reimbursed for the payments by the claimant.

¶ 15 This Court considers four factors to determine if a claimant is entitled to interim benefits under § 39-71-610, MCA: (1) Was liability for the claim accepted? (2) Were benefits paid, especially for a significant time period? (3) Has the claimant demonstrated he will suffer significant financial hardship if interim benefits under § 39-71-610, MCA, are not ordered? (4) Has the claimant tendered a strong *prima facie* case for reinstatement of the benefits he seeks?⁴

¶ 16 Sentry challenges each factor on the grounds that the Compliance Specialist “failed to distinguish between the original claim and a new low back claim filed in July 2022.” Sentry argues that Godat’s low back condition is an entirely new condition and that it cannot possibly be liable for TTD benefits for Godat’s low back condition under his leg injury claim. Thus, it argues that the Compliance Specialist erred in granting Godat interim TTD benefits under his leg injury claim.

¶ 17 However, Godat is correct that if his bilateral lumbar radiculopathy was caused by the sequelae of his leg injury, then Sentry will be liable for TTD benefits under his leg injury claim. Montana law provides, “when the sequelae of an industrial injury causes an injury or disease to another body part, the insurer is liable for the injury or disease to the other body part.”⁵ The Compliance Specialist applied this law and correctly decided that Dr. Sigmond’s opinion that Godat’s bilateral radiculopathy was caused by the sequelae of his compensable leg injury was sufficient evidence to award interim TTD benefits to Godat under his leg injury claim.

¶ 18 Sentry also argues that the Compliance Specialist erred in giving weight to Dr. Sigmond’s causation opinion, and that this Court should not give it any weight, because it is unpersuasive. Sentry argues that Dr. English’s causation opinion is better

⁴ *Larson v. Liberty Nw. Ins. Corp.*, 2017 MTWCC 15, ¶ 20.

⁵ *York v. MACO Workers’ Comp Trust*, 2019 MTWCC 1, ¶ 66 (citing *Suzor v. Int’l Paper Co.*, 2017 MTWCC 17, ¶ 23). See also *Pulliam v. Liberty Mut. Ins. Co.*, 1994 MTWCC 117 (ruling that insurer was liable for claimant’s new back injury caused by fall, which was caused by her leg buckling, which was a result of her industrial injury); *Uffalussy v. St. Patrick Hosp. & Health Scis. Ctr.*, 2007 MTWCC 45, ¶¶ 70-72 (ruling that insurer was liable for claimant’s cognitive problems because her industrial back injury caused balance and gait difficulties, which, in turn, caused her to fall and hit her head); *Lanes v. Mont. State Fund*, 2007 MTWCC 39, *aff’d*, 2008 MT 306, 346 Mont. 10, 192 P.3d 1145 (ruling that insurer was liable for claimant’s right-knee condition, which was caused by overloading due to his left-knee occupational disease).

reasoned. However, when ruling on a request for interim benefits, neither the Compliance Specialist nor this Court weighs the evidence and makes a final decision. This Court has explained that to make a *prima facie* case, “a claimant need not prove that he is entitled to TTD benefits, but need only tender substantial evidence which, if believed, would entitle him to TTD benefits.”⁶ Godat is correct that Dr. Sigmond’s causation opinion serves as sufficient evidence that he is entitled to interim TTD benefits under his leg claim.

¶ 19 Because the Compliance Specialist correctly decided that Godat is entitled to interim TTD benefits under his leg claim under § 39-71-610, MCA, this Court now enters the following:

ORDER

¶ 20 The DLI’s Order Reinstating Benefits Pending a Hearing (Per 39-71-610, MCA) is **affirmed**.

¶ 21 Pursuant to ARM 24.5.348(2), this Order is certified as a final judgment for purposes of appeal.

DATED this 16th day of August, 2022.

(SEAL)

/s/ DAVID M. SANDLER
JUDGE

c: Joe C. Maynard
Leslae J.E. Dalpiaz and Miranda J. Dalpiaz

Submitted: August 10, 2022

⁶ *Larson*, ¶ 20 (citations omitted).