

SOUTH DAKOTA SUPREME COURT

McClaflin v. Morrell & Co.

2001 SD 86 · No. #21588 · Decided July 3, 2001

SUMMARY

The South Dakota Supreme Court addresses whether Robert L. McClaflin was entitled to odd-lot permanent total disability benefits under the workers' compensation laws. The court declines to adopt a separate standard based on non-employability in the competitive market, but holds that the claim should remain subject to future adjudication if the claimant's employment ends. The judgment is affirmed in part and reversed and remanded for retention of jurisdiction over the odd-lot claim.

CASE DETAILS

COURT	South Dakota Supreme Court
WRITING FOR THE COURT	Amundson, Justice; Miller, Chief Justice; Sabers, Justice; KonenKamp, Justice; Gilbertson, Justice
JURISDICTION	South Dakota
DECIDED	July 3, 2001
DOCKET	#21588
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Employer appealed the circuit court's decision affirming an award of odd-lot workers' compensation benefits and retaining jurisdiction over the claim.
PRECEDENTIAL VALUE	Published South Dakota Supreme Court opinion; precedential
PARTIES	John Morrell & Co., Employer, Self-Insurer v. Robert L. McClaflin, Claimant

TOPICS

- workers compensation
- appellate procedure
- employment law
- remedies

PRACTICE AREAS

- Workers' compensation
- Employment law

QUESTIONS PRESENTED

1. Whether South Dakota's odd-lot workers' compensation doctrine permits permanent total disability benefits based solely on a claimant's lack of employability in the competitive market.
2. Whether the employer satisfied its burden of showing that suitable work was regularly and continuously available to the claimant.

HOLDINGS

1. South Dakota law does not recognize lack of employability in the competitive market as an independent avenue for establishing a prima facie odd-lot claim.
2. Because McClafin was currently employed in the coatroom position, the court suspended determination of whether he had established a prima facie odd-lot claim, but the claim could be litigated if his employment ended.

KEY QUOTATIONS

“A person is totally disabled if his physical condition, in combination with his age, training, and experience, and the type of work available in his community, causes him to be unable to secure anything more than sporadic employment resulting in insubstantial income.” (§7)

“Even though the burden of production may shift to the employer, however, the ultimate burden of persuasion remains with the claimant.” (§9)

“Thus, this Court has yet to approve this standard and decline to do so today.” (§13)

“Fundamental fairness requires jurisdiction of an action until the litigation is completely and finally determined.” (§16)

FACTUAL BACKGROUND

Robert L. McClafin developed work-related carpal tunnel syndrome after working for John Morrell & Co. in various positions and underwent surgery followed by rehabilitation. He returned to work in 1996 and held several positions, ultimately working in a coatroom performing light duties approved by his treating physician. The Department of Labor awarded odd-lot benefits, but suspended payment because he remained employed; the circuit court affirmed the award based on a competitive-market theory.

PROCEDURAL HISTORY

The South Dakota Department of Labor found McClafin entitled to Cozine and odd-lot benefits but suspended payment of odd-lot benefits because he was employed. The circuit court rejected one basis for obvious unemployability but affirmed the odd-lot award on the ground that McClafin was not employable in the competitive market and affirmed suspension of benefits. The South Dakota Supreme Court affirmed in part, rejected the competitive-market theory, and reversed and remanded with instructions that the circuit court retain jurisdiction over the odd-lot claim.

DISPOSITION

REMAND INSTRUCTIONS

The circuit court was directed to retain jurisdiction over McClafin's odd-lot claim. If McClafin no longer worked for the employer and could show that he was obviously unemployable while the employer could not meet its corresponding burden, the court should instruct the employer to pay odd-lot benefits.

CASES CITED

- *Shepherd v. Moorman Mfg.*, 467 NW2d 916, 918-19 (SD 1991)
- *Tiensvold v. Universal Transport, Inc.*, 464 NW2d 820, 822-23 (SD 1991)
- *Barkdull v. Homestake Mining Co.*, 317 NW2d 417, 418 (SD 1982)
- *Wendel v. Domestic Seed & Supply*, 446 NW2d 265, 270 (SD 1989)
- *Sopko v. C & R Transfer Co., Inc.*, 1998 SD 8, 575 NW2d 225
- *Whitney v. AGSCO Dakota*, 453 NW2d 847 (SD 1990)
- *Mills v. Spink Elec. Co-op.*, 442 NW2d 243, 246 (SD 1989)
- *Wilcox v. City of Winner*, 446 NW2d 772, 775 (SD 1989)
- *Horton v. Garrett Freightlines Inc.*, 684 P2d 297 (Idaho 1984)
- *Lopez v. New York City Hous. Auth.*, 419 NYS2d 244 (1979)
- *Brooks v. Duncan*, 532 P2d 921 (Idaho 1975)
- *Williams v. Safeway Stores*, 525 P2d 1087 (Alaska 1974)
- *Palmeri v. Riggs Sargent, Inc.*, 261 NE2d 887 (IndCtApp 1970)
- *Boden v. City of Hialeah*, 132 So2d 160 (Fla 1961)
- *Pratt v. Central Upholstery Co. Inc.*, 115 SE2d 27 (NC 1960)
- *Kennedy v. Hubbard Milling Co.*, 465 NW2d 792, 797 (SD 1991)
- *Beckman v. John Morrell & Co.*, 462 NW2d 505, 509-10 (SD 1990)
- *Pulver v. Dundee Cement Co.*, 515 NW2d 728, 736 (Mich 1994)