

SUPREME COURT OF MONTANA

Heth v. Montana State Fund

350 Mont. 376 (Mont. 2009) · No. DA 08-0285 · Decided May 5, 2009

SUMMARY

The Montana Supreme Court affirmed the Workers’ Compensation Court’s determination that Montana State Fund was liable for benefits arising from Martin Heth Jr.’s intoxication-related workplace accident. The court held that Montana Code § 39-71-407(4) did not require the employer to have contemporaneous knowledge of the employee’s alcohol use; ongoing knowledge and failure to attempt to stop the use could trigger the statutory exception. The court also held that substantial credible evidence supported the factual findings concerning the employer’s knowledge and credibility.

CASE DETAILS

|                       |                                                                                                                                                    |
|-----------------------|----------------------------------------------------------------------------------------------------------------------------------------------------|
| COURT                 | Supreme Court of Montana                                                                                                                           |
| WRITING FOR THE COURT | Patricia O. Cotter; Mike McGrath; W. William Leaphart; Brian Morris; John Warner                                                                   |
| JURISDICTION          | Montana                                                                                                                                            |
| DECIDED               | May 5, 2009                                                                                                                                        |
| DOCKET                | DA 08-0285                                                                                                                                         |
| DISPOSITION           | affirmed                                                                                                                                           |
| PROCEDURAL POSTURE    | Montana State Fund appealed the Workers' Compensation Court's judgment holding it liable for Martin Heth, Jr.'s workers' compensation claim.       |
| STANDARD OF REVIEW    | The court reviews the Workers' Compensation Court's findings of fact for substantial credible evidence and its conclusions of law for correctness. |
| PRECEDENTIAL VALUE    | published precedential opinion                                                                                                                     |
| PARTIES               | Montana State Fund v. Martin Heth, Jr.                                                                                                             |

TOPICS

- workers compensation
- statutory interpretation
- standard of review
- appellate procedure

PRACTICE AREAS

## QUESTIONS PRESENTED

1. Whether section 39-71-407(4), MCA (2005), requires an employer to have contemporaneous or specific knowledge of an employee's alcohol use immediately before an accident for the employer-knowledge exception to apply.
2. Whether substantial credible evidence supported the Workers' Compensation Court's findings that Heth knew his son consumed alcohol while performing employment duties and that the drinking was regular or recurrent.
3. Whether the Workers' Compensation Court's credibility findings concerning Heth were inconsistent and erroneous.

## HOLDINGS

1. Section 39-71-407(4), MCA, does not require an employer to have knowledge of an employee's alcohol or drug use immediately before the accident. Ongoing knowledge that the employee regularly used alcohol while working, combined with a failure to attempt to stop that use, can trigger the exception.
2. Substantial credible evidence supported the Workers' Compensation Court's findings that Heth knew JR drank alcohol while working and that the drinking was regular or recurrent.
3. The Workers' Compensation Court's credibility findings were not inconsistent, and its decision to credit Heth's testimony about his knowledge while discounting his account of the amount JR drank did not constitute error.

## KEY QUOTATIONS

*“The plain language of § 39-71-407(4), MCA, does not require that an employer have knowledge of alcohol and/or drug use immediately prior to his or her employee's accident.” (¶ 27)*

*“Not only did Heth have knowledge that JR drank on the job, he did not attempt to stop him, as required by the plain language of the statute; rather, he acquiesced, merely counseling moderation and control.” (¶ 29)*

*“It is the function of the WCC as finder of fact to discount or grant greater weight to testimony based on the credibility of the witness.” (¶ 37)*

## FACTUAL BACKGROUND

Martin Heth, Jr. was injured in a one-vehicle accident while driving a company septic-tank truck during work, and his stepmother was killed. Medical testing showed alcohol in his blood after the accident, and the Workers' Compensation Court found that alcohol was the major contributing cause of the accident. Heth's employer and father knew that he drank beer while working and driving company trucks, but instructed him only to moderate and control his drinking rather than attempting to stop it.

## PROCEDURAL HISTORY

After Montana State Fund denied Heth's claim based on his intoxication, Heth petitioned the Workers' Compensation Court for a hearing. Following a February 2008 hearing, the Workers' Compensation Court held the State Fund liable under the employer-knowledge exception in section 39-71-407(4), MCA. The Montana Supreme Court affirmed.

#### DISPOSITION

affirmed

#### CASES CITED

- Harrison v. Liberty Northwest Ins. Corp., 2008 MT 102, ¶¶ 11-12, 342 Mont. 326, 181 P.3d 590
- Citizens Right to Recall v. McGrath, 2006 MT 192, ¶ 18, 333 Mont. 153, 142 P.3d 764
- Van Vleet v. Ass'n of Counties Work. Comp., 2004 MT 367, 324 Mont. 517, 103 P.3d 544
- Thoreson v. Uninsured Employers' Fund, 2002 MT 6N, 309 Mont. 529, 43 P.3d 983
- Buckman v. Montana Deaconess Hosp., 224 Mont. 318, 321, 730 P.2d 380, 382 (1986)

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