

STATE OF MONTANA
DEPARTMENT OF LABOR AND INDUSTRY
HEARINGS BUREAU

William Polk,)	Case No. 29-1995
)	
Claimant,)	
)	FINAL AGENCY DECISION
vs.)	ON REMAND
)	
Planet Insurance Company,)	
)	
Insurer,)	
)	
)	

Introduction

This case is before the department on remand from the Workers' Compensation Court, which issued an amended decision on appeal from the department's second final agency decision (issued November 15, 2000). Subsequent to the Compensation Court's amended decision on appeal, the Montana Supreme Court dismissed the pending appeal from the Compensation Court's decision. The lengthy prior procedural history appears in the November 15, 2000, final agency decision.

The hearing examiner now adopts by reference and reissues the entirety of the November 15, 2000, findings of fact and opinion, with the following changes.

Findings of Fact

The facts previously found remain unchanged.

Opinion

In Causation of Polk's Disabling Condition, beginning on page 11, delete the entire paragraph beginning, "Aggravation is compensable to the extent of the harm resulting from the occupational disease," beginning near the bottom of page 15.

Delete the final sentence of the next paragraph (the first full paragraph on page 16),"However, smoking did aggravate this respiratory problem." Replace the deleted sentence with the

following sentence: "Although smoking did aggravate this respiratory problem, that aggravation does not result in any allocation that reduces Polk's entitlement."

Delete the paragraphs on pages 16-17, from the paragraph beginning, "There is substantial credible evidence that Polk suffered from emphysema before the grain dust exposures at Koch," through the paragraph beginning "However, since smoking increased the risk of pulmonary problems due to grain dust exposure, at least part of the current disability resulted from the on-going aggravation of Polk's developing bronchiectasis by smoking."

The remainder of the opinion remains unchanged.

Conclusions of Law

1. The department has jurisdiction. Mont. Code Ann. § 39-72-611 and § 39-72- 612.
2. Claimant suffers from an occupational disease (bronchiectasis) proximately caused by his employment, arising out of grain dust exposures at his employment with the employer and resulting in disablement (total disability) commencing the day he left employment with the employer in November 1993. Mont. Code Ann. § 39-72-102(4) and § 39-72-408. The claimant is entitled to disability and medical benefits in accord with the provisions of the Act.
3. Claimant also suffers from a preexisting condition (emphysema) that his employment with the employer permanently aggravated by grain dust exposures, but which did not cause his total disability at the time he left his employment. Mont. Code Ann. § 39-72-706.
4. The claimant is entitled to reasonable costs. Within ten days after issuance of this final decision on remand, the claimant shall submit an affidavit of costs. The insurer may file an objection requesting an evidentiary hearing within two weeks after service of the affidavit. Mont. Code Ann. § 39-72-613.

Judgment and Final Order

The insurer must pay the claimant Occupational Disease Act benefits for the disability from the date he left employment in November 1993 until otherwise ordered. The insurer is entitled to credit for any benefits already paid. A cost order will issue after the hearing examiner determines costs.

DATED: January 30, 2003

/s/ TERRY SPEAR

Terry Spear, Hearing Examiner

Montana Department of Labor and Industry