

IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

1996 MTWCC 74

WCC No. 9606-7567

ROSEMARIE BLANCHER

Petitioner

vs.

LIBERTY MUTUAL FIRE INSURANCE COMPANY

Respondent/Insurer for

SHOPKO

Employer.

ORDER DENYING MOTION FOR PROTECTIVE ORDER AND ATTORNEY FEES AND ORDER
GRANTING IME

Summary: Claimant moved for protective order prohibiting and independent psychiatric examination. Respondent moved to compel the examination.

Held: The insurer's motion to compel is granted; the motion for protective order is denied. While claimant's treating physicians have undertaken some psychological evaluation of claimant and opined she needs no further evaluation and may be harmed by further evaluation, the respondent has the right to present evidence on the matter. The insurer has produced counter-opinions indicating the need for further evaluation. A well-known and respected psychiatrist has opined that further evaluation is warranted, outlined a non-demanding examination schedule in a neutral environment, and stated the exam will not be harmful. An orthopedic surgeon has opined that claimant's industrial injury was a muscle strain which has completely healed, suggesting her continued complaints may be due to psychological factors unrelated to the injury.

Topics:

Discovery: Compelling Discovery. Insurer's motion to compel independent psychiatric examination is granted over claimant's objection based on opinions of her treating physicians that such evaluation is not necessary and could be harmful to claimant. The insurer produced counter-opinions indicating the need for further evaluation. A well-known and respected psychiatrist opined that further evaluation

is warranted and outlined a non-demanding examination schedule in a neutral environment. An orthopedic surgeon opined that claimant's industrial injury was a muscle strain which has completely healed, suggesting her continued complaints may be due to psychological factors unrelated to the injury.

Discovery: Independent Medical Examinations. Insurer's motion to compel independent psychiatric examination is granted over claimant's objection based on opinions of her treating physicians that such evaluation is not necessary and could be harmful to claimant. The insurer produced counter-opinions indicating the need for further evaluation. A well-known and respected psychiatrist opined that further evaluation is warranted and outlined a non-demanding examination schedule in a neutral environment. An orthopedic surgeon opined that claimant's industrial injury was a muscle strain which has completely healed, suggesting her continued complaints may be due to psychological factors unrelated to the injury.

Discovery: Protective Orders. Insurer's motion to compel independent psychiatric examination is granted over claimant's objection based on opinions of her treating physicians that such evaluation is not necessary and could be harmful to claimant. The insurer produced counter-opinions indicating the need for further evaluation. A well-known and respected psychiatrist opined that further evaluation is warranted and outlined a non-demanding examination schedule in a neutral environment. An orthopedic surgeon opined that claimant's industrial injury was a muscle strain which has completely healed, suggesting her continued complaints may be due to psychological factors unrelated to the injury.

Independent Medical Examination (IME). Insurer's motion to compel independent psychiatric examination is granted over claimant's objection based on opinions of her treating physicians that such evaluation is not necessary and could be harmful to claimant. The insurer produced counter-opinions indicating the need for further evaluation. A well-known and respected psychiatrist opined that further evaluation is warranted and outlined a non-demanding examination schedule in a neutral environment. An orthopedic surgeon opined that claimant's industrial injury was a muscle strain which has completely healed, suggesting her continued complaints may be due to psychological factors unrelated to the injury.

Petitioner/claimant (claimant) moves for a protective order prohibiting an independent psychiatric examination and for attorney fees associated with obtaining such order. Respondent moves for an order compelling the IME. After reviewing the briefs and submissions of the parties, the motion for a protective order is **denied**, the request for attorney fees is **denied**, and the motion to compel the IME is **granted**.

Due to the late date on which these motions have been submitted (December 23, 1996), the impendency of the trial (January 6, 1997), and the holiday season (Christmas and New

Year's day), I am unable to provide the parties with a detailed legal analysis of the motions and will offer only a couple of general comments at this time. However, a detailed legal discussion will be forthcoming at a later date.

Initially it appears that some psychological evaluation of claimant has been done by her treating physicians, who express their opinions that claimant needs no further evaluation and may in fact be harmed by further evaluation. Those opinions, however, cannot deprive the respondent/insurer (insurer) of its right to present evidence on the matter nor should it frustrate an IME evaluation to assist the insurer in developing that evidence. Where the insurer produces counter-opinions indicating the need for further evaluation and further indicating that it can be done in a fashion that will not harm the claimant, it is entitled to the IME. Dr. William Stratford, a well known and respected psychiatrist (*EBI/Orion Group V. Michael S. Blythe*, WCC No. 9407-7089 (2/08/96)), has indicated the need for further evaluation, outlined a non-demanding schedule for the evaluation, provided for an evaluation in a neutral environment, and expressed his opinion that the examination will not be harmful. Dr. Robert E. Chambers, an orthopedic surgeon, previously performed an IME of claimant and opined that claimant's industrial injury was a muscle strain which has fully healed. Dr. Chambers suggested that claimant's continuing complaints may be due to psychological factors unrelated to the industrial accident. Dr. Stratford's and Dr. Chamber's opinions on these matters are more than ample justification for the proposed IME.

As to the law, I am generally persuaded by respondent's authority. As noted above, a more detailed discussion of the law will be provided at a later time.

Therefore, the claimant shall submit to the evaluation outlined by Dr. Stratford in his October 10, 1996 letter. The evaluation shall be conducted under the conditions and limitations set forth in that letter.

SO ORDERED.

DATED in Helena, Montana, this 24th day of December, 1996.

(SEAL)

/s/ Mike McCarter
JUDGE

c: Mr. Randall O. Skorheim

Mr. Larry W. Jones

Submitted: December 23, 1996