

IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

1999 MTWCC 69

WCC No. 9907-8273

MARK FJELSTAD,

Petitioner,

vs.

FIREMAN'S FUND,

Respondent/Insurer for

NORTH AMERICAN ENERGY SERVICES,

Employer.

ORDER COMPELLING DISCOVERY

Summary: Discovery dispute.

Held: Claimant ordered to produce medical records regarding psychological treatment because they are under his control. If he does not produce them, he is barred from raising any issue of mental capacity to enter into settlement agreement. He shall also produce employment records of any business he operated or certify under oath they do not exist. Employment records of third-party employer are not under claimant's control. He is not ordered to provide a release. Insurer may take records deposition to obtain such records.

Topics:

Discovery: Records of Psychological Treatment. Claimant ordered to produce medical records regarding psychological treatment because they are under his control. If he does not produce them, he is barred from raising any issue of mental capacity to enter into settlement agreement.

Discovery: Employment Records. Claimant ordered to produce employment records of any business he operated or certify under oath they do not exist. Employment records of third-party employer are not under claimant's control. He is not ordered to provide a release. Insurer may take records deposition to obtain such records.

¶1 The matter before the Court is the respondent insurer's motion to compel discovery. The insurer seeks additional medical and employment records.

¶2 The Court declines to engage in any extended discussion of the issues raised by the motion. I note that the parties have already engaged in an extensive pre-trial motion practice . They have devoted nine (9) single spaced pages of argument on these matters, and submitted extensive documentation.

¶3 As to medical records involving psychological treatment, these records are under claimant's control, i.e, he can seek and obtain them. Claimant shall produce them or be barred from raising any issue regarding his mental capacity to enter into the settlement he seeks to abrogate.

¶4 As to employment records of businesses operated by claimant, he shall produce them or certify under oath that they don't exist.

¶5 As to records of a third-party employer, these are not necessarily under the control of claimant and he is not required to provide the insurer with a release. However, respondent is entitled to use other discovery means, i.e., a records deposition.

¶6 SO ORDERED.

DATED in Helena, Montana, this 3rd day of November, 1999.

(SEAL)

\s\ Mike McCarter

JUDGE

c: Mr. Chris J. Ragar

Mr. G. Andrew Adamek

Date Submitted: October 29, 1999