

IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

1994 MTWCC 16A-1

WCC No. 9305-6796

VICTORIA KLOEPFER

Petitioner

vs.

LUMBERMENS MUTUAL CASUALTY COMPANY

Respondent/Insurer for

BECHTEL CONSTRUCTION COMPANY

Employer.

ORDER AWARDING COSTS

This Court's Judgment of January 18, 1994, awarded reasonable costs under section 39-71-611, MCA. Claimant's Affidavit of Costs, Respondent's Memorandum in Opposition, and Reply Briefs by both parties have been filed and the matter of costs is now ready for decision.

The respondent objects to costs for depositions of those parties who testified at trial, the witness fee for Dr. Peter V. Teal, the charge for the service of deposition subpoenas, and copying charges for medical records.

The Court determines that the claimant is entitled to recover the following costs from the respondent:

Deposition transcripts	\$1,130.00
Witness fees	30.00
Mileage (no objection)	0.00
Service of subpoenas	34.80
Photocopies	6.45
Transcript expense (no objection).	358.60
Medical records	<u>268.90</u>
TOTAL	\$1,848.75

DISCUSSION

Costs are governed by section 25-10-201, MCA. **Stevens v. State Compensation Insurance Fund**, WCC No. 9304-6778, Order Awarding Costs (march 11, 1994) citing **Baeta v. State Compensation Mutual Insurance Fund**, 254 Mont. 487, 839 P.2d 566 (1992). Petitioner and respondent agreed and stipulated before trial that the Court could consider all depositions. Fees are recoverable for the service of subpoenas under **King v. Allen**, 29 Mont 5, 73 Pac. 1107 (1903). These costs, including the service of subpoenas will be allowed. The cost of the medical records, which were used as exhibits and are required by the Court, is allowed. This case turned on the medical evidence with the Court relying on Dr. Teal's testimony and records. It is within the discretion of the Court to award these costs. **Thayer v. Hicks**, 243 Mont. 188, 160, 793 P.2d 784 (1990). The petitioner will not be penalized by the fee charged by the hospital or the doctor. Fees paid to expert or non-expert witnesses for pretrial work are not recoverable. **Witty v. Pluid**, 220 Mont. 272, 274, 714 P.2d 169 (1985).

In summary, the expert witness fee for Dr. Teal in the amount of \$750.00 is disallowed.

IT IS HEREBY ORDERED that petitioner shall recover from the respondent the sum of \$1,848.75 in costs.

DATED in Helena, Montana, this 5th day of April, 1994.

(SEAL)

/s/ Mike McCarter

JUDGE

c: Mr. James G. Edmiston, III

Mr. Steven S. Carey