

IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

1994 MTWCC 16A-2

WCC No. 9305-6796

VICTORIA KLOEPFER

Petitioner

vs.

LUMBERMENS MUTUAL CASUALTY COMPANY

Respondent/Insurer for

BECHTEL CONSTRUCTION COMPANY

Employer.

ORDER DENYING PETITIONER'S REQUEST FOR
REDETERMINATION OF COSTS

Petitioner has filed a request for reconsideration of the Court's prior order regarding costs. Specifically, she requests that the Court reverse itself regarding Dr. Teal's bill for \$750. In its Order Awarding Costs the Court determined that the doctor's bill was not an awardable cost.

In requesting reconsideration, petitioner initially raises a number of policy arguments. Whether good policy or bad policy, the Court is bound by the law in determining the amount of costs it may award the petitioner.

She also argues that the full amount of expert witnesses fees and costs have in the past been awarded by the Court. Irrespective of past practice, this Court is bound to follow the law.

Petitioner further argues that **Witty v. Pluid**, 220 Mont. 272, 273, 714 P.2d 169 (1986), in which the Supreme Court held that expert witness fees are limited to \$10 per day per witness, concerned costs in a district court proceeding and is therefore inapplicable to the Workers' Compensation Court. However, in **Baeta v. State Compensation Mutual Insurance Fund**, 254 Mont. 487, 839 P.2d 566 (1992), the Supreme Court held that the same cost statute governing district court proceedings (§ 25-10-201, MCA) is applicable to proceedings in the Workers' Compensation Court. In **Witty** the Court specifically considered the fees which may be awarded to experts under section 25-10-201. It

determined that the section does not permit a fee greater than \$10 because section 26-2-505, MCA, provides that "[a]n expert is a witness and receives the same compensation as a witness" and section 26-2-501, MCA, provides that a witness is entitled to \$10 for each day of attendance at trial.

Finally, petitioner argues that the Supreme Court could not have intended **Witty** to apply in Workers' Compensation Court proceedings because in **Baeta** it affirmed the Workers' Compensation Court's award of \$4,033.23 in costs for Norm Johnson, claimant's vocational expert. The costs awarded with respect to Mr. Johnson, however, were not at issue on appeal. Those costs were not discussed in the Supreme Court's opinion and a review of the appellate briefs show that they were never challenged. Thus, **Baeta** can hardly be read as authority for exempting Workers' Compensation Court proceedings from the rule of **Witty**.

The motion for a redetermination of costs is **denied**.

DATED in Helena, Montana, this 22nd day of June, 1994.

(SEAL)

/s/ Mike McCarter

JUDGE

c: Mr. James G. Edmiston

Mr. Steven S. Carey