IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

2002 MTWCC 14

WCC No. 2002-0410

LINDA LINDEMAN

Petitioner

vs.

CONNECTICUT INDEMNITY COMPANY

Respondent/Insurer for

PEAK MEDICAL

Employer.

ORDER ON COSTS

Summary: Claimant submitted application for taxation of costs including costs of obtaining *copies* of the depositions of two doctors and of claimant. The depositions of the doctors were taken by respondent and respondent bore the cost of obtaining the original deposition transcripts that were submitted to the Court. Claimant's deposition was not submitted to the Court.

Held: Under ARM 24.5.342, the Court will allow reasonable costs to a prevailing claimant. Subsection (4) specifies that typically allowed costs include "deposition costs (reporter's fee and transcription costs), if the deposition is filed with the Court." Reasonable costs, however, do not include the expense of obtaining *copies* of depositions for use in trial preparation where the cost of the original depositions submitted to the Court was borne by respondent. Thus, costs of the copies of the doctors' depositions are disallowed. Costs related to claimant's deposition are disallowed under ARM 24.5.342(4) where claimant's deposition was not submitted to the Court.

Topics:

> **Constitutions, Statutes, Regulations and Rules: Workers' Compensation Court Rules: ARM 24.5.342.** Claimant cannot recover the cost of obtaining *copies* of doctors' depositions for use in trial preparation where the cost of the original depositions submitted to the Court was borne by respondent. Costs related to

claimant's deposition are disallowed under ARM 24.5.342(4) where that deposition was not submitted to the Court.

Costs: WCC Cases. Claimant cannot recover the cost of obtaining *copies* of doctors' depositions for use in trial preparation where the cost of the original depositions submitted to the Court was borne by respondent. Costs related to claimant's deposition are disallowed under ARM 24.5.342(4) where that deposition was not submitted to the Court.

¶1 On January 17, 2002, this Court entered judgment in favor of claimant, including an award of costs. On February 5, 2002, claimant submitted Petitioner's Application for Taxation of Costs in the amount of $1,060.86. These costs related to obtaining medical records ($444.96); documented administrative costs, including telephone, photocopies and postage ($308.50); and "costs related to copies of depositions of Dr. Chrzanowski and Dr. Peterson" ($307.40). Claimant acknowledged that "[t]hese depositions were taken at the request of the respondent," thus the costs of the original transcripts of the depositions were borne by respondent.

¶2 Respondent filed timely objections to claimant's costs. While not objecting to costs claimed for medical records and administrative expenses, respondent argues claimant is not entitled to recover deposition costs where it was respondent, not claimant, who took the depositions and incurred deposition costs. The costs claimant is seeking are the costs of obtaining *copies* of the depositions from the court reporter, evidently for counsel's use in trial preparation. Respondent also points out that the claimed $307.40 includes the expense of a copy of claimant's deposition, which was not submitted to the Court by either party.

¶3 ARM 24.5.342 governs taxation of costs. Subsection (3) provides:

> The court will allow reasonable costs. The reasonableness of a given item of cost claimed is judged in light of the facts and circumstances of the case, and the issues upon which the claimant prevailed.

¶4 Subsection (4) provides examples of costs typically allowed, including "deposition costs (reporter's fee and transcription costs), if the deposition is filed with the court."

¶5 Deposition costs for the original transcript are routinely allowed where the deposition was taken by the claimant and submitted to the Court for consideration in deciding the case. However, an entirely different matter is presented where claimant's counsel did not bear the cost of the original which is submitted to the Court but is seeking reimbursement for a *copy* of a deposition used in trial preparation. While a copy of a deposition may be useful in trial preparation, it is not a necessary cost in bringing a case to trial. Counsel was present during the depositions at question, thus knew the materials covered in the deposition and the responses given. The cost of a copy of a deposition is not a recoverable

cost, therefore, the costs for Dr. Chrzanowski's and Dr. Peterson's depositions must be denied.

¶6 As to claimant's deposition, it was not used at trial. Therefore, as suggested by the example set out in subsection (4) of ARM 24.5.342, claimant is not entitled to reimbursement for that deposition.

¶7 ACCORDINGLY, IT IS HEREBY ORDERED that respondent, Connecticut Indemnity Company, pay to petitioner her costs in the amount of $753.46, which is the amount for medical records and administrative costs.

DATED in Helena, Montana, this 8th day of March, 2002.

(SEAL)

\s\ Mike McCarter
JUDGE

c: Mr. Richard J. Martin
Mr. Robert E. Sheridan
Submitted: February 27, 2002