

IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

1996 MTWCC 33

WCC No. 9408-7104

BRUCE MARCOTT

Petitioner

vs.

LOUISIANA PACIFIC CORPORATION

Respondent/Insurer/Employer.

ORDER FOR PAYMENT OF COSTS

Summary: Petitioner, who prevailed on the substantive issues at trial, seeks costs, including that for the copy of one deposition filed with the Court. Respondent, who prevailed on claimant's appeal of this Court's denial of attorneys fees and penalty, seeks costs associated with both trial and appeal.

Held: Costs which claimant may recover include the cost of the copy of a deposition where the original was filed the Court. Respondent is entitled to its costs on appeal, but not to costs it incurred in the lower court.

Topics:

Costs: WCC Costs. Where a deposition was filed with the Court, claimant is entitled to recover the cost of a copy of the deposition. A copy is essential to the use of the original in that it is necessary for cross-examination and, often, for preparing proposed findings and argument.

Costs: Supreme Court Costs. Where insurer successfully defended claimant's appeal of lower court's refusal to award attorneys fees and penalty, insurer is entitled to offset its costs on appeal against claimant's costs at trial, but cannot recover its own costs at trial where it lost the substantive trial issues.

Both parties have requested costs in this matter. Petitioner (claimant) requests costs with respect to the trial of this matter since he prevailed on the substantive issues and was found entitled to costs in this Court's decision. Respondent (insurer) requests costs because it prevailed on claimant's appeal of the denial of attorney fees and a penalty.

The claimant's costs of \$4,491.67, as set forth in his Third Amended Affidavit of Costs, are all recoverable. ARM 24.5.242. Included among those costs are costs for both the original and one copy of depositions filed with the Court. Insurer objects to paying for the copy. However, where the original is submitted to the Court, a copy is necessary for cross-examination and, often, for preparing proposed findings and argument. Copies are therefore essential to the use of the original. The other items are also recoverable as ordinary costs enumerated in the rule.

The insurer seeks, in addition to the filing fee on appeal and the costs of the transcript and its brief, to recover its expenses of taking five depositions. Those costs are not recoverable since they were incurred in connection with the trial and not in connection with the appeal. The total of costs allowable for the appeal is \$733.80, which amount shall be set off against the sum due claimant.

The net amount due claimant is therefore \$3,757.87, which the insurer shall pay to claimant.

SO ORDERED.

Dated in Helena, Montana, this 26th day of April, 1996.

(SEAL)

\s\Mike McCarter

JUDGE

c: Mr. Chris J. Ragar

Mr. Kelly M. Wills