IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

2000 MTWCC 62

WCC No. 9801-7900

KRISTOPHER MILLER

Petitioner

vs.

STATE COMPENSATION INSURANCE FUND

Respondent/Insurer for

SELF-EMPLOYED DOCTOR OF CHIROPRACTIC

Employer.

ORDER DENYING MOTION TO COMPEL

Summary of Case: Discovery dispute. State Fund seeks production of documents in control of claimant but not in his possession. Claimant responded by providing releases for some of the requested documents.

Held: Releases for records not in a party's possession

Topics:

Discovery: Compelling Discovery. Insurer moved to compel production of documents in control of claimant but not in his possession (medical, disability and other claims records). Claimant provided releases authorizing insurer to obtain some documents, as allowed by ARM 24.5.324(7). Court denied motion where insurer did not demonstrate why those releases were not adequate, but ordered claimant to provide releases for documents not yet provided.

Discovery: Requests for Production: *Authorization for records*. Insurer moved to compel production of documents in control of claimant but not in his possession (medical, disability and other claims records). Claimant provided releases authorizing insurer to obtain some documents, as allowed by ARM 24.5.324(7). Court denied motion where insurer did not demonstrate why those releases were not adequate, but ordered claimant to provide releases for documents not yet provided.

¶1 State Compensation Insurance Fund moves for an order compelling claimant to provide documents sought in discovery requests propounded in February 1998.

¶2 First, the State Fund seeks medical, disability, and other insurance claims filed by claimant. Claimant only recently responded by providing releases which authorize the State Fund to secure the claims, but did not provide the claims themselves. In opposing the motion, claimant responds that he has none of the information requested and that providing the releases is "the best Petitioner can do." (Response to Motion to Compel at 2.)

¶3 Second, it seeks income tax returns filed by claimant in 1991 and 1992. His response to the request states those are the only years in which he filed returns. Although he did not provide a release for the returns, he offers to do so now.

¶4 Rule 24.5.324 permits releases in lieu of actual production. Subsection (7) of the rule provides:

> (7) If the request is intended to obtain production of documents which are not in the adverse party's possession but are within the adverse party's custody or control, unless otherwise ordered by the court, the adverse party may in lieu of providing the documents, provide an authorization or a release as necessary to obtain such documents from all persons or entities physically possessing the documents.

State Fund has not shown why the releases provided by claimant are inadequate. Lacking information indicating that the releases will not enable the State Fund to gather the information it seeks, I presently find no reason to require claimant to make similar attempts. With respect to the income tax returns, claimant shall forthwith provide the State Fund with adequate releases or obtain the returns himself.

¶5 SO ORDERED.

DATED in Helena, Montana, this 20th day of September, 2000.

(SEAL)

/s/ Mike Miller
JUDGE

c: Mr. Robert G. Olson
Mr. Charles G. Adams
Date Submitted: September 11, 2000