IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

2001 MTWCC 39

WCC No. 2001-0323

ROBIN MARQUARDT

Petitioner

vs.

LIBERTY NORTHWEST INSURANCE CORPORATION

Respondent/Insurer for

EASTER SEAL SOCIETY/GOODWILL INDUSTRIES

Employer.

ORDER REGARDING PENDING MOTIONS

Summary: Petitioner moved for a more definite statement regarding witness testimony and also moved to exclude job analyses prepared subsequent to mediation. The respondent supplemented its witness information and petitioner did not challenge the supplement.

Held: (1) The motion for a more definite statement is moot in light of the supplementation.

(2) The motion in limine is denied since the statutes governing mediation expressly authorize presentation of evidence in addition to that presented at mediation.

Topics:

> **Evidence: Generally.** Parties are not precluded from presenting evidence in workers' compensation court which was not presented at mediation.
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> **Evidence: Vocational.** Parties are not precluded from presenting evidence of additional job analyses prepared subsequent to mediation.
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> **Mediation.** While parties are required to present all issues during mediation, they are not required to present every item of evidence that they may ultimately use at trial and are not precluded from developing additional evidence subsequent to mediation. § 39-71-2406 (1999-2001).
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> **Constitutions, Statutes, Regulations and Rules: Montana Code Annotated: § 39-71-2406 (1999-2001).** While parties are required to present all issues during mediation, they are not required to present every item of evidence that they may

ultimately use at trial and are not precluded from developing additional evidence subsequent to mediation. § 39-71-2406 (1999-2001).

¶1 Two motions, both filed by petitioner, are submitted for decision. The first is a motion in limine to exclude any job analysis prepared after mediation took place. The second is for a more definite statement.

For More Definite Statement

¶2 The motion for a more definite statement challenges the sufficiency of the description of testimony set forth in the response with respect to witnesses the respondent has identified. Subsequent to the motion, the respondent filed a Supplement to Response to Petition, setting forth in greater detail the proposed testimony of witnesses. In large part, the witnesses are experts and their testimony is described as that appearing from the witnesses written records and reports which have presumably been furnished to the petitioner. The supplementation was filed June 25, 2001, and the Court has received nothing from petitioner indicating that the supplementation is deficient. Moreover, on its face it appears sufficient. The motion for more definite statement is deemed moot.

To Exclude Further Job Analysis

¶3 Based on language in the mediation statutes requiring parties to "fully present their cases at the mediation level," § 39-71-2406, MCA (1999-2001), petitioner moves to exclude job analyses prepared subsequent to mediation. The motion is **denied**. There is nothing in the language which requires that every piece of potential evidence be presented at mediation. Other language in the same section indicates that the language requires only that all **issues** be presented during mediation and the section expressly provides, "[I]f a cause proceeds to the workers' compensation court, the parties are not precluded from presenting additional evidence before the court." Court rules provide ample opportunity for petitioner to propound discovery concerning any additional job analysis and to prepare counter-evidence.

ORDER

¶4 The motion for more definite statement is deemed **moot**. The motion in limine is **denied**.

DATED in Helena, Montana, this 12th day of July, 2001.

(SEAL)

\s\ Mike McCarter
JUDGE

c: Mr. Robert C. Kelleher
Mr. Larry W. Jones
Date Submitted: June 26, 2001