

IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

1997 MTWCC 56

WCC No. 9707-7779

MICHAEL RAGATZ

Petitioner

vs.

UNINSURED EMPLOYERS' FUND

Respondent/Insurer for

BEVERLY LUNCEFORD

Claimant.

ORDER IMPOSING SANCTIONS AND COMPELLING DISCOVERY

Summary: Counsel for claimant, who is respondent in this case, failed to respond to interrogatories or to seek additional time based on claimant's alleged illness. Petitioner moved to compel and sought sanctions.

Held: Sanctions in the amount of \$300 are ordered against claimant's counsel personally, with direction that the cost not be passed on to claimant.

Topics:

Discovery: Sanctions. Counsel for claimant, who is respondent in this case, failed to respond to interrogatories or to seek additional time based on claimant's alleged illness. Sanctions in the amount of \$300 are ordered against claimant's counsel personally, with direction that the cost not be passed on to claimant.

On September 30, 1997, the petitioner moved to compel answers to interrogatories and requests for production propounded upon the claimant, who is a respondent in this matter. The motion also sought sanctions.

The Court ordered claimant to reply to the motion by October 3, 1997, and on that date it received Claimant's Brief in Opposition to Petitioner's Motion to Compel Discovery Responses and for Sanctions. At a pretrial conference held on October 6, 1997, this Court's hearing examiner directed claimant to answer the interrogatories by October 20, 1997. On October 9, 1997, the Court issued an Order to Show Cause as to why sanctions should not

be imposed upon claimant and scheduled a hearing on the matter at 10:00 a.m., October 14, 1997, in Missoula.

A hearing was held as scheduled. Mr. Jeffrey B. Hays appeared for petitioner, Mr. Kevin Braun for respondent Uninsured Employers' Fund, and Mr. Paul Tranel for claimant. Mr. Tranel appeared in place of Mr. Milton Datsopoulos, who is claimant's attorney of record in this case, because Mr. Datsopoulos had a conflicting commitment. At the conclusion of the hearing, the Court imposed sanctions against claimant's attorney in the amount of \$300 and ordered that claimant's attorney pay that amount and not pass the amount on to claimant. It reaffirmed its hearing examiner's oral Order that claimant answer discovery by October 20, 1997.

Facts

On August 29, 1997, the petitioner served interrogatories and requests for production upon claimant. Under Rules 24.5.303, 24.5.323, and 24.5.324, claimant's responses to the discovery requests were due September 22, 1997. On September 23, 1997, counsel for petitioner wrote to counsel for claimant advising that he had not received the responses and requesting the responses be served no later than September 26, 1997. The letter noted that the case was set for trial during the week of October 13, 1997, and that time was of the essence. The letter also warned that if responses were not received by September 26, 1997, petitioner would move to compel the responses and would seek sanctions.

No response or other communication was forthcoming from claimant's counsel and on October 1, 1997, the petitioner filed his motion to compel and request for sanctions. In his October 3, 1997 response to the motion, claimant's attorney indicated that claimant was too ill to provide responses.

At the pretrial conference held on October 6th, claimant requested a continuance of the trial. Opposing counsel did not object, subject to agreement by UEF not to pursue enforcement of a lien against petitioner from district court. The request was granted. Had this Court denied the motion, this case would have gone to trial on October 14, 1997.

Discussion

Rule 24.5.326 governs sanctions for failure to respond to discovery, providing:

(1) If a party fails to respond to discovery pursuant to these rules, or makes evasive or incomplete responses to discovery, or objects to discovery, the party seeking discovery may move for an order compelling responses. With respect to a motion to compel discovery, the court may impose such sanctions as it deems appropriate, including, but not limited to, awarding the prevailing party attorney fees and reasonable expenses incurred in obtaining the order or in opposing the motion. If the party shall fail to make discovery

following issuance of an order compelling responses, the court may order such sanctions as it deems required and just under the circumstances.

Claimant's illness provides good cause for an extension of time in which to respond to the discovery. However, it does not excuse claimant's counsel from his failure to seek an extension of time or contact petitioner's counsel. Time is of the essence in workers' compensation cases since trials are typically held 75 days after the filing of the petition. A simple telephone call could have averted the motion and the additional work done by petitioner's counsel and this Court. Counsel may ignore the deadlines imposed by the Scheduling Order and the rules for extending those deadlines, but they do so at their peril.

At the hearing on the motion, petitioner's counsel stated that he spent four hours on the motion and in attending the hearing. He also incurred \$22 in travel expense. His hourly rate is \$100 an hour. Thus, he requested attorney fees and costs of \$422. Since the motion was a simple one, I have limited the sanctions to \$300.

The culpability for failing to file responses or seeking an extension of time lies with claimant's attorney, not with claimant. Therefore, the sanctions must be paid by Mr. Datsopoulos personally and may not be charged to the claimant.

ORDER

Finding good cause,

IT IS HEREBY ORDERED THAT within two weeks of this Order counsel for claimant shall pay to petitioner's counsel the sum of \$300.

IT IS FURTHER ORDERED THAT claimant shall have until October 20, 1997, in which to answer the petitioner's interrogatories and requests for production. If she is too ill to respond by that date, then her counsel may apply to the Court for a further extension but such application must be made prior to October 20, 1997, and be supported by an affidavit and medical reports.

DATED in Helena, Montana, this 17th day of October, 1997.

(SEAL)

/s/ Mike McCarter

JUDGE

c: Mr. Jeffrey B. Hays - U.S. Mail & Faxed
Mr. Kevin Braun - U.S. Mail & Faxed
Mr. Milton Datsopoulos - U.S. Mail & Faxed