IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

1999 MTWCC 12

WCC No. 9806-8000

S. L. H.

Petitioner

vs.

STATE COMPENSATION INSURANCE FUND

Respondent/Insurer for

THIRSTY'S BAR

Employer.

ORDER GRANTING COSTS

Summary: Claimant who prevailed on some but not all issues at trial filed application for taxation of costs. Respondent objected to cost of testimony of a vocational consultant and physician.

Held: Cost of testimony of vocational consultant not allowed where there was no specification of cost of testimony and bill for services appeared to have been sent directly to insurer in any event as part of insurer's contract with consultant. Cost of physician's testimony granted where at least some of that testimony was relevant to an issue on which claimant prevailed.

Topics:

> **Costs: WCC Costs.** Cost of testimony of vocational consultant not allowed where there was no specification of cost of testimony and bill for services appeared to have been sent directly to insurer in any event as part of insurer's contract with consultant. Cost of physician's testimony granted where at least some of that testimony was relevant to an issue on which claimant prevailed.

¶1 The Court received Claimant's Application for Taxation of Costs along with a Motion for Award of Attorneys' Fees and Costs prior to the January 14, 1999 judgment entered in the above-entitled matter. Judge McCarter previously found that claimant was entitled to costs but was not entitled to attorney fees. Therefore, the only matter considered is claimant's request for costs.

¶2 In its supplemental response to claimant's request for costs, the respondent withdrew all objections but for its objections to $300 for the testimony of Dr. Mary Ann Evans at the September 15, 1998 trial and to the cost of the testimony of Micki Marion, vocational consultant. With regard to Marion's fee, respondent objects based on the fact that no amount is described and this bill was sent directly to the State Fund as part of Marion's vendor contract. The objection is sustained. Respondent's objection to the testimony of Dr. Evans is based on the contention that her testimony was used *primarily* to establish an impairment rating, an issue on which the claimant did not prevail. However, Dr. Evans did testify concerning her restriction of claimant to part-time work and claimant's limited abilities in the workplace. That testimony was relevant to the wage-loss issue. The Court therefore overrules respondent's objection to Dr. Evans' fee.

¶3 IT IS HEREBY ORDERED that the State Fund pay the claimant's costs in the amount of $1,029.90.

¶4 This Order is signed by the Hearing Examiner at the direction of the Judge of the Workers' Compensation Court.

DATED in Helena, Montana, this 4th day of February, 1999.

(SEAL)

\s\ Clarice V. Beck
CLARICE V. BECK
Hearing Examiner

c: Ms. Sara R. Sexe
Mr. William O. Bronson
Submitted: January 14, 1999