

IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

1996 MTWCC 57

WCC No. 9601-7486

RUSSELL L. STONE

Petitioner

vs.

STATE COMPENSATION INSURANCE FUND,

Respondent/Insurer for

BECK LAND & CATTLE COMPANY

Employer.

ORDER VACATING TRIAL WITHOUT DATE;
ORDER COMPELLING DISCOVERY

Summary: Insurer moved to vacate trial and compel deposition of pro se claimant who told insurer, "I, will give no deposition, under oath, or otherwise."

Held: ARM 24.5.326 allows sanctions for failure to make discover. Motion to vacate trial date and compel discovery is granted. Claimant is cautioned that failure to submit to deposition may result in dismissal of petition with prejudice.

Topics:

Constitutions, Statutes, Regulations and Rules: Worker's Compensation Rules:

ARM 24.5.326. Insurer moved to vacate trial and compel deposition of pro se claimant who told insurer, "I, will give no deposition, under oath, or otherwise." ARM 24.5.326 allows sanctions for failure to make discover. Motion to vacate trial date and compel discovery is granted. Claimant is cautioned that failure to submit to deposition may result in dismissal of petition with prejudice.

Discovery: Compelling Discovery. Insurer moved to vacate trial and compel deposition of pro se claimant who told insurer, "I, will give no deposition, under oath, or otherwise." ARM 24.5.326 allows sanctions for failure to make discover. Motion to vacate trial date and compel discovery is granted. Claimant is cautioned that failure to submit to deposition may result in dismissal of petition with prejudice.

Discovery: Depositions: Generally. Insurer moved to vacate trial and compel deposition of pro se claimant who told insurer, "I, will give no deposition, under oath, or otherwise." ARM 24.5.326 allows sanctions for failure to make discovery. Motion to vacate trial date and compel discovery is granted. Claimant is cautioned that failure to submit to deposition may result in dismissal of petition with prejudice.

Discovery: Sanctions. Insurer moved to vacate trial and compel deposition of pro se claimant who told insurer, "I, will give no deposition, under oath, or otherwise." ARM 24.5.326 allows sanctions for failure to make discovery. Motion to vacate trial date and compel discovery is granted. Claimant is cautioned that failure to submit to deposition may result in dismissal of petition with prejudice.

State Fund's Motion to Vacate Hearing and to Compel Discovery, with supporting memorandum, was filed on August 22, 1996. In light of the limited time remaining until the scheduled trial date, the Court's previous difficulties in contacting claimant, and the obvious resolution of the motion, the Court will address the motion without awaiting a response by claimant.

The record shows that timely notice of the intent to take claimant's deposition on August 21, 1996, was served by the respondent on August 2, 1996. Thereafter, claimant advised Mr. Adams, attorney for the State Fund in an August 5, 1996 letter, "I, will give no deposition, under oath, or otherwise." A copy of claimant's letter was filed by him with the Court on August 9. Thereafter, he failed to show up at the time and place designated for his deposition.

Workers' Compensation Court rule ARM 24.5.322, provides, "Any party may take the testimony of any person, **including a party, by deposition** upon oral examination after the petition has been served." Court rules also provide the remedy for a situation wherein a party fails to comply with discovery requests.

24.5.326 FAILURE TO MAKE DISCOVERY--SANCTIONS (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 must abide by the Court rules whether represented by counsel or not. He cannot refuse or fail to attend a properly noticed deposition. State Fund's motion to vacate the trial is therefore **granted**. The claimant is ordered to submit to the taking of his deposition at a

time and place to be designated by the State Fund. A minimum of ten days notice of the deposition must be given to the claimant. Failure of the claimant to submit to the deposition may result in the petition being dismissed with prejudice.

IT IS HEREBY ORDERED that the trial scheduled for the week of September 2, 1996, is **vacated without date.**

IT IS FURTHER ORDERED that claimant shall submit to the taking of his deposition after timely notice by the State Fund. Failure to allow the taking of his deposition may result in the dismissal of the petition with prejudice.

DATED in Helena, Montana, this day of August, 1996.

(SEAL)

\s\ Mike McCarter

JUDGE

c: Mr. Russell L. Stone - Certified Mail

Mr. Charles G. Adams

Submitted: August 23, 1996