IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

2001 MTWCC 64

WCC No. 2001-0449

NORMAN EUGENE STACY

Petitioner

vs.

PLUM CREEK NW LUMBER, INCORPORATED

Respondent/Insurer/Employer.

ORDER DENYING INDEPENDENT MEDICAL EXAMINATION

Summary: Insurer seeks an order for a second IME based upon the possible impeachment of its first IME physician. The potential impeachment is the result of communications between the physician and the insurer's claims examiner after the physician's examination of the claimant and the flip-flop of the physician from a pro-claimant to a pro-insurer opinion.

Held: While the Court has the authority to order a second IME, the purpose of the second IME is not legitimate. The request is **denied**.

Topics:

> **Independent Medical Examination.** The Workers' Compensation Court has the authority to order a claimant to submit to an independent medical examination.
>
> **Independent Medical Examination.** Where a claimant has already submitted to an independent medical examination requested by an insurer, he will not be required to submit to a second examination merely because the first IME physician's opinions might be impeached based upon communications between the physician and the insurer's claim's adjuster.

¶1 Respondent has requested the Court to compel petitioner to attend an independent medical examination (IME) it has scheduled with Dr. Dana Headapohl. Both parties filed briefs and on December 6, 2001, the Court held a telephone conference with counsel to hear their oral arguments. After considering the briefs and the oral arguments, the motion is **denied**.

¶2 The salient facts are straightforward. At respondent's request, an IME was conducted by Dr. Bruce Belleville, who weighed in on behalf of petitioner. Following the IME there were communications between the respondent's claims examiner and Dr. Belleville, after which Dr. Belleville apparently weighed in for respondent. Petitioner gave notice of his intent to impeach Dr. Belleville. In an attempt to avoid the controversy surrounding Dr. Belleville's testimony, respondent then sought a second IME by Dr. Headapohl.

¶3 While the Workers' Compensation Court certainly has authority to compel the petitioner to submit to an IME, § 39-71-605, MCA,[(1)] there is not good cause to do so in this case. The apparent purpose of the second IME is to avoid impeachment of the opinions of the first IME doctor based upon communications between the doctor and the respondent's claims examiner. In short, respondent seeks to avoid impeachment which flows from its own actions. That purpose is insufficient. Respondent cannot seek serial IMEs simply because it dislikes the opinions of its prior IME physician or is concerned that the physician's opinions may not be persuasive. To order a further IME in this case would be an invitation to unending IMEs.

ORDER

¶4 The motion to compel a further IME is **denied**.

DATED in Helena, Montana, this 14th day of December, 2001.

(SEAL)

\s\ Mike McCarter
JUDGE

c: Mr. Edward K. Duckworth
Mr. Todd A. Hammer
Submitted: December 5, 2001

1. Section 39-71-605(1)(a), MCA, provides:

> **39-71-605. Examination of employee by physician -- effect of refusal to submit to examination -- report and testimony of physician -- cost.** (1) (a) Whenever in case of injury the right to compensation under this chapter would exist in favor of any employee, the employee shall, upon the written request of the insurer, submit from time to time to examination by a physician, psychologist, or panel that must be provided and paid for by the insurer and shall likewise submit to examination from time to time by any physician, psychologist, or panel selected by the department **or as ordered by the workers' compensation judge**. [Emphasis added.]