

IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

1994 MTWCC 73

WCC No. 9406-7066

EDWIN TAYLOR

Petitioner

vs.

STATE COMPENSATION INSURANCE FUND

Respondent/Insurer for

MONTANA DEPARTMENT OF HIGHWAYS

Employer.

**ORDER GRANTING MOTION TO COMPEL ANSWERS
TO DEPOSITION QUESTIONS**

The matter under consideration is the State Compensation Insurance Fund's (State Fund) motion to compel the petitioner, Edwin Taylor, to answer deposition questions concerning workers' compensation claims he filed with respect to injuries on February 26, 1990 and November 15, 1990. Those claims are not at issue in this particular proceeding, but they are the subject of two separate petitions recently filed by the claimant. The Court notes that the State Fund has filed a motion to consolidate all three cases, but that motion will be addressed at a later time.

The present case involves a March 4, 1991 industrial accident. According to the petition, a claim for the 1991 accident was accepted by the State Fund, which paid temporary total and medical benefits until April 6, 1994. The State Fund now alleges that the claim was fraudulent, and it appears from the multitude of documents already filed in this case that claimant is being criminally prosecuted on account of this claim, as well as the other two claims.

The Court has not received a copy of the claimant's deposition. However, according to claimant, he refused to answer questions about the 1990 accidents "[b]ecause those claims were still in mediation and because they are not related to the accident, injuries or disability EDWIN A. TAYLOR suffered to his low back on March 4, 1991" (Edwin Taylor's Brief in Opposition to State Fund's Motion to Compel Answers to Deposition Questions.) The State Fund, however, argues that its inquiries are relevant to establish "that Taylor has

engaged in a pattern of fraudulent activity in order to receive workers' compensation benefits."

The standard for discovery is not whether the information sought is itself admissible but whether the information might lead to discoverable evidence. Rule 26(b)(1), Mont.R.Civ.P., provides in relevant part:

It is not ground for objection that the information sought will be inadmissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.

While this Court has not specifically adopted the Montana Rules of Civil Procedure, it frequently looks to them for guidance on matters which its own rules do not specifically address. I find that the standard set forth in Rule 26(b)(1) is an appropriate standard for measuring the scope of discovery.

The issue in this case is fraud and the State Fund asserts that the claimant was engaged in a "pattern of fraudulent activity" which involved not only the 1991 claim but the two 1990 claims as well. Rule 404(b), Mont.R.Evid., permits "[e]vidence of the crimes, wrongs, or acts" to prove "motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident." The Court cannot ascertain at this stage of the case whether information concerning the other two claims will be admissible evidence, but the mere possibility that it might be is sufficient to compel answers to the State Fund's questions.

THEREFORE, IT IS HEREBY ORDERED as follows:

1. Respondent may reconvene the claimant's deposition.
2. Claimant is ordered to answer questions put to him by respondent's counsel. (This directive does not preclude claimant from invoking his fifth amendment right against self-incrimination but that right was apparently not the basis of his refusal to answer.)
3. Claimant is ordered to pay the costs of an original transcript of the reconvened deposition.
4. The respondent's request for attorney fees is denied.

DATED in Helena, Montana, this 17th day of August, 1994.

(SEAL)

/s/ Mike McCarter

JUDGE

c: Mr. Bernard J. Everett
Mr. Oliver H. Goe