

IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

1996 MTWCC 18

WCC No. 9512-7452

STEVEN K. YAGER

Petitioner

vs.

MONTANA SCHOOL GROUP INSURANCE AUTHORITY

Respondent/Insurer for

LIVINGSTON SCHOOL DISTRICT #4 AND #1

Employer.

ORDER DENYING MOTION TO IMPOSE SANCTIONS

Summary: Following settlement conference that did not lead to settlement, claimant moved to sanction respondent for not bringing a representative of the insurer to the settlement conference.

Held: Motion denied where counsel for the insurer had represented during conference that he had ultimate settlement authority. In the future, however, counsel will be required to inform the Court in advance of a settlement conference if claimant or the insurer's representative with settlement authority will not be present. In the case of the insurer, the Court expects that, at a minimum, the local adjuster who has been working the case will be in attendance.

Topics:

Settlement Conferences. While motion to sanction insurer for not bringing adjuster to settlement conference was denied where counsel had represented at conference that he had ultimate settlement authority, the Court will require, in the future, that the Court and other party be notified in advance if the claimant or the representative of the insurer with authority will not be present.

On February 6, 1996, a settlement conference was held in this matter. Court Hearing Examiner, Ms. Clarice V. Beck, Mr. Steven K. Yager, claimant, Mr. J. David Slovak, counsel for the claimant, and Mr. Leo S. Ward, counsel for Montana School Group Insurance Authority, participated. The conference did not result in a settlement.

Counsel for the claimant has filed a Motion to Impose Sanctions on respondent for the reason that a representative of MSGIA was not present during the negotiations. This motion is denied.

At the time of the settlement conference Mr. Ward was asked if, as requested in the Court's letter of January 25, 1996, he had ultimate settlement authority. Mr. Ward responded that he did and the conference progressed. The Court has no reason to doubt this representation and will not sanction the respondent.

Settlement conferences conducted by the Hearing Examiner have been successful when counsel have agreed between themselves as to the procedure to be followed with regard to the presence of their clients. Counsel should continue to discuss the options and attempt to reach agreement. However, the circumstances of this settlement conference and the comments presented by Mr. Slovak have resulted in the Court revising its procedures for settlement conferences in which there is not an agreement to proceed without the client being present. In the future, a party will be required to advise the Court and the opposing party if a representative of the insurer, or the claimant, will not be present. In the case of the insurer, counsel will be required to explain what arrangements can be made to have a representative present, with the expectation that, at a minimum, the local adjuster who has been working the case will attend.

DATED in Helena, Montana, this 12th day of February, 1996.

(SEAL)

CLARICE V. BECK

Hearing Examiner

c: Mr. J. David Slovak

Mr. Leo S. Ward