

IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

1998 MTWCC 9

WCC No. 9612-7668

JETTA ARDESSON

Petitioner

vs.

LEGION INSURANCE

Respondent/Insurer for

MOUNTAIN VIEW CARE CENTER

Employer.

ORDER AWARDING COSTS

Summary: Respondent disputed costs claimed by petitioner after trial, including \$51.50 in travel expenses for petitioner's counsel's secretary, preparation of the transcript from the first phase of trial, and cost surrounding a subpoena duces tecum issued to the claims adjuster requiring the original claims file at trial.

Held: Travel expenses for counsel's secretary is allowed where she was prepared to testify regarding various exhibits to which respondent had objected. Her testimony was not necessary given trial rulings, but that could not have been known to counsel prior to trial. Cost of the transcript is not allowed consistent with a prior WCC ruling that trial transcript costs would not be routinely allowed unless necessary for appeal or where specifically requested by the WCC. Here, the transcript was prepared for counsel's use at the second phase of trial and while that was a convenience to counsel, it is not an allowed cost. The subpoena charge is allowed. Although counsel might have avoided the cost with a phone call to opposing counsel, he was entitled to guarantee that the file be brought through the subpoena process.

Topics:

Costs: WCC Costs. Respondent disputed costs claimed by petitioner after trial. \$51.50 in travel expenses for petitioner's counsel's secretary allowed where she was prepared to testify regarding various exhibits to which respondent had objected. Her testimony was not necessary given trial rulings, but that could not have been known

to counsel prior to trial. The cost of preparation of the transcript from the first phase of trial is not allowed consistent with a prior WCC ruling that trial transcript costs would not be routinely allowed unless necessary for appeal or where specifically requested by the WCC. Here, the transcript was prepared for counsel's use at the second phase of trial and while that was a convenience to counsel, it is not an allowed cost. The cost surrounding a subpoena duces tecum issued to the claims adjuster requiring the original claims file at trial is allowed. Although counsel might have avoided the cost with a phone call to opposing counsel, he was entitled to guarantee that the file be brought through the subpoena process.

1 On, January 28, 1998, counsel for the petitioner, Mr. Chris J. Ragar, filed his claim for costs with affidavit in the above-entitled matter. respondent's response to affidavit of costs was received and filed on February 6, 1998 and petitioner's brief in support of motion for costs with attached documentation was received and filed on February 12, 1998.

2 Respondent does not object to various costs in the amount of \$273.88. However, the following objections were made:

- 1) Service of Subpoena/Teri Bohnsack \$ 25.00
- 2) Claims file from Legion Insurance (twice) 168.85
- 3) Mileage Expense/Stacey Rasnick 51.50
- 4) Legal Research/State Law Library 7.50
- 5) Next day delivery postage 19.40
- 6) Faxes - August and October 69.00
- 7) Transcript of August 28, 1997 trial 236.59
- 8) Telephone conference call 41.04

Total \$ 618.88

3 The Workers' Compensation Court rule regarding costs provides in relevant part:

24.5.342 TAXATION OF COSTS

...

(3) The court will allow reasonable costs. The reasonableness of a given item of cost claimed is judged in light of the facts and circumstances of the case, and the issues upon which the claimant prevailed.

(4) The following are examples of costs that are generally found to be reasonable:

- (a) deposition costs (reporter's fee and transcription cost), if the deposition is filed with the court;
- (b) witness fees and mileage, as allowed by statute, for non-party fact witnesses;
- (c) expert witness fees, including reasonable preparation time, for testimony either at deposition or at trial, but not at both;
- (d) travel and lodging expenses of counsel for attending depositions;
- (e) fees and expenses necessary for perpetuation or presentation of evidence offered at trial, such as recording, videotaping or photographing exhibits;
- (f) documented photocopy expenses;
- (g) documented long-distance telephone expenses; and
- (h) documented postage expenses.

(5) The following are examples of costs that are generally found not to be reasonable:

- (a) trial transcripts ordered by the parties prior to any appeal;
- (b) secretarial time; and
- (c) items of ordinary office overhead not typically billed to clients.

(6) Items of cost not specifically listed in this rule may be awarded by the court, in accordance with the principles in (3).

...

4 Petitioner in her reply brief provided documentation for photocopies from the State Law Library in the amount of \$7.50; postage for express mail to the respondent in the amount of \$19.40; cost of file from GAB in the amount of \$95.90; long distance conference call in the amount of \$41.40; and fax charges in the amount of \$18.00 for a total of \$182.20.

5 The request for travel expenses in the amount of \$51.50 for Ms. Stacey Rasnick, secretary to Mr. Ragar will be allowed. Ms. Rasnick was present at trial and prepared to testify regarding various exhibits to which the respondent had objected. Due to my ruling on the admissibility of the exhibits her testimony was not taken, but until that ruling counsel had to be able to present her testimony regarding the exhibits.

6 The circumstances regarding the use of the transcript of the previous hearing in this matter is unique to this case. Nevertheless, as in previous cases this cost will not be

allowed. As stated in *Byun v. Montana Schools Group Insurance Authority*, WCC No. 9407-7085, order awarding costs, December 4, 1995:

Therefore, the Court will no longer routinely award the cost of a trial transcript except in cases where a transcript is necessary for appeal or where the Court specifically requests a transcript to aid it in reaching its decision.

While it is not disputed that the petitioner made use of the transcript during the second phase of the trial, that must be characterized as a convenience to the counsel, not for the purposes of appeal or at the direction of this Court. Also, it is noted that the transcript is not a part of the Court's file.

7 The final cost being disputed is the charge for service of the subpoena duces tecum on Ms. Bohnsack, respondent's adjuster. Petitioner avers that in spite of the verbal agreement from opposing counsel to have Ms. Bohnsack at the trial it was still necessary to issue the subpoena in order to guarantee that the "original claims file" be brought. At the time of the conference between the parties and the Court concerning Ms. Bohnsack's appearance, the assurance that the file would accompany Ms. Bohnsack was not discussed. The Court would anticipate that a telephone call to opposing counsel about the matter would have brought an assurance that the file would be brought without a subpoena. On the other hand, claimant was certainly entitled to subpoena the file to make sure it was available in Court and to avoid any possible misunderstanding about the matter. The cost of the subpoena in the amount of \$25.00 is allowed.

8 In summary, those costs set forth and justified by documentation in the amount of \$182.20, travel costs in the amount of \$51.50 and the cost of service on the subpoena in the amount of \$25.00, for a total of \$258.70 are allowed. The cost of the transcript in the amount of \$236.59 is disallowed.

9 IT IS HEREBY ORDERED that the respondent, Legion Insurance, pay to petitioner's attorney, Mr. Chris J. Ragar, his costs in the amount of \$532.58.

DATED in Helena, Montana, this 19th day of February, 1998.

(SEAL)

\s\ Mike McCarter

JUDGE

c: Mr. Chris J. Ragar

Mr. Steven S. Carey

Submitted: February 12, 1998