IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

WCC No. 9407-7085

LINDA BYUN

Petitioner

vs.

MONTANA SCHOOLS GROUP INSURANCE AUTHORITY

Respondent/Insurer for

TROY PUBLIC SCHOOL

Employer.

ORDER AWARDING COSTS

The petitioner/claimant prevailed in this case and seeks an award of costs in the amount of $1,738.87. Respondent objects to $1,275.37 of that amount. The following costs are in dispute:

1. Travel expenses related to Dr. Russo's deposition. $ 8.62

2. Travel expenses related to Dr. Demakas' deposition 375.00

3. Expert witness fee (Dr. Demakas) 680.00

4. Transcript of trial 211.75

$1,275.37

The parties briefed the matter prior to the Supreme Court's decision in *Kloepfer v. Bechtel Construction Co.,* 52 St. Rep. 663 (1995). In that case the Court overruled its prior holding in *Baeta v. State Compensation Mutual Ins. Fund,* 254 Mont. 487, 839 P.2d 566 (1992), that costs awardable in the Workers' Compensation Court are governed by section 25-10-201, MCA. In *Kloepfer* the Court held that section 25-10-201, MCA, does not apply in workers' compensation cases, rather the general standard of "reasonable costs" set forth in sections 39-71-611 and -612, MCA, applies.

In light of *Kloepfer,* the Court requested the parties to file supplemental briefs. Having received the briefs, the matter is now ready for determination.

Initially, I do not read the *Kloepfer* decision as requiring strict adherence to pre-*Baeta* practice of the Court. In reviewing pre-*Baeta* cost decisions, I note that costs were

sometimes awarded or denied without explanation and that the practice of the Court was not always consistent. Moreover, circumstances change. As determined by the Court's Rules Committee, when it met in September 1995, certain costs previously denied by the pre-*Baeta* Court should be deemed reasonable and awarded. On the other hand, some costs previously awarded may not be justified.

Dr. Demakas' deposition fee is clearly awardable. *Kloepfer* specifically held that expert witness costs should be awarded since they have traditionally been awarded. Whether or not I retain the discretion to change that specific practice, I find no good reason to do so.

As noted in a prior case, *Carrie Brown v. Liberty Mutual Fire Insurance Company,* WCC No. 9505-7315 (November 1, 1995 Order Awarding Costs), this Court's prior practice regarding travel expenses has not always been consistent. The matter was, however, recently addressed by the Court's Rules Committee, which agreed that travel and lodging expenses related to the taking of depositions should be awarded. The Committee, which consists of both claimants' and insurers' attorneys, agreed that this item should be included in a proposed rule which is presently circulating for comment. Pending adoption of the rule, I find that travel expenses for taking medical depositions are akin to expert witness fees and necessary to establish the claimant's medical case. *See Kloepfer* at 663. I find the travel costs in this case to be reasonable and they are therefore awarded.

Finally, I must address the matter of the trial transcript. While it was the routine pre-*Baeta* practice of this Court to award the costs of preparing a trial transcript irrespective of any appeal, I find that circumstances have changed and that such cost should no longer be routinely awarded. In the past, proposed findings were submitted after trial and often after a transcript had been prepared. The Court relied on trial transcripts. The practice of the present Court is far different. Proposed findings are now required to be submitted prior to trial and the vast majority of cases are deemed submitted for decision at the close of trial. Trial transcripts are no longer routinely prepared and submitted to the Court prior to its decision. This practice allows the Court to reach an earlier decision than it would reach under the old practice. Moreover, the Court takes copious notes. Even where transcripts are available it has found that they add little to what is reflected in its notes.

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.

The final question I must address is whether to apply this policy to the case at hand. I have decided not to do so because at the time of trial of the case the Court was not requiring pretrial filing of proposed findings and had not made it quite as clear, as it has in recent months, that a trial transcript is unnecessary. Therefore, the cost of the transcript in this case will be allowed. However, in cases tried in the future, as well as previously tried cases

deemed submitted at the close of trial, such cost will only be awarded under the circumstances previously mentioned.

THEREFORE, IT IS HEREBY ORDERED AND ADJUDGED that Montana School Group Insurance Authority pay claimant costs in the amount of $1,738.87.

This ORDER is certified as final for purposes of appeal.

Dated in Helena, Montana, this 4th day of December, 1995.

(SEAL)

/s/ Mike McCarter
JUDGE

c: Ms. Laurie Wallace
Mr. Leo S. Ward
Submitted: November 7, 1995