

IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

1997 MTWCC 70A-1

WCC No. 9708-7814

KATHY M. FITCH,

Petitioner,

vs.

LIBERTY MUTUAL FIRE INSURANCE COMPANY,

Respondent/Insurer for

J.C. PENNEY, INCORPORATED,

Employer.

ORDER REQUIRING EXPLANATION

A hearing was held on October 30, 1997, in Bozeman, Montana, on petitioner Kathy Fitch's (claimant) motion for a protective order prohibiting respondent Liberty Mutual Fire Insurance Company (Liberty) from contacting prospective witnesses and from conducting further video surveillance. During the hearing, claimant alleged discrepancies in the surveillance videotape offered to the Court as Hearing Exhibits 6-8. Liberty responded that the alleged discrepancies complained of by claimant were due to splicing the original surveillance tapes into the videotapes offered at the hearing, but that no changing or editing had been done to the surveillance tapes.

At the conclusion of the hearing, the Court ordered Liberty to produce copies of all the original surveillance tapes, in VHS format, so that the Court could view them and determine if claimant's allegations of tampering had merit. Liberty subsequently filed five videotapes with the Court per my request at the hearing.

After viewing all five videotapes, the Court finds only one discrepancy, and this discrepancy requires explanation. Specifically, in Tape 1 during surveillance of claimant at the car wash on September 23, 1997, the videotape jumps from 7:29 p.m., on September 23, 1997 to 1:50 p.m., on September 25, 1997 and back to 7:30 p.m on September 23, 1997 in rapid succession. Since I had previously ordered exact copies of the original, unedited surveillance tapes, this jump in sequence requires an explanation.

THEREFORE, IT IS ORDERED that Liberty submit to the Court:

1. An explanation of how the VHS videotape submitted to the Court was made, including whether the videotape was made directly from the camera tapes or was copied from the camera tapes to video and then recopied for the Court; and

2. An explanation of the discrepancy in the videotape and an explanation of how the surveillance sequence in Tape 1 came to be out of order on the videotapes submitted to the Court in compliance with the Court's order at the conclusion of the October 30, 1997 hearing.

DATED in Helena, Montana, this 8th day of December, 1997.

(SEAL)

\s\ Mike McCarter

JUDGE

c: Mr. H. Charles Stahmer - Faxed & Mailed

Mr. Larry W. Jones - Faxed & Mailed