

IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

2026 MTWCC 7

WCC No. PI-2026-0000102-WCI

MADISON JORDAN

Petitioner

vs.

XL SPECIALTY INS. CO.

Respondent/Insurer.

**ORDER GRANTING RESPONDENT'S MOTION TO COMPEL ATTENDANCE AT
INDEPENDENT MEDICAL EXAMINATION**

INTRODUCTION

¶ 1 Petitioner Madison Jordan sustained an accepted cervical strain in a workplace fall on August 27, 2023. Ms. Jordan's claim was closed within days of the accident, then reopened roughly ten weeks later when she reported a jaw and temporomandibular joint (TMJ) condition she attributes to the same fall. Respondent XL Specialty Ins. Co. (XL Specialty) disputes that the TMJ condition is work-related. XL Specialty obtained one independent medical examination (IME) in April 2024, performed by Albert D. Olszewski MD, an orthopedic surgeon, who found no causal link between the fall and Ms. Jordan's jaw complaints. XL Specialty now seeks to compel Ms. Jordan's attendance at a second IME, arguing that developments in her treatment over the past two years justifies further examination by a specialist qualified to address the jaw condition now at issue. Ms. Jordan opposes the request, arguing that a second IME is duplicative, reactive to litigation, and unsupported under what she contends is the applicable "good cause" standard. There are no indemnity or wage-loss issues in dispute; the parties dispute only Ms. Jordan's entitlement to medical benefits for the jaw condition.

ISSUE

¶ 2 The issue presented is whether XL Specialty is entitled to an order compelling Petitioner to attend an independent medical examination pursuant to § 39-71-605, MCA.

FACTUAL BACKGROUND

¶ 3 This matter comes before the Court on a motion to compel, not a motion for summary judgment. The parties do not represent that the following chronology is undisputed. It is set out below solely to provide context for the arguments addressed in this Order. Further proceedings in this matter may add to, subtract from, or otherwise alter this chronology.

¶ 4 On August 27, 2023, Ms. Jordan was injured in a fall at work, in which she allegedly struck her head and her arm or shoulder.

¶ 5 On August 28, 2023, Ms. Jordan was seen at Curry Health Center (CHC) and diagnosed with cervical strain, or cervicgia.

¶ 6 On August 30, 2023, Ms. Jordan returned to CHC for a follow-up visit, reporting some continuing limitations but overall improvement.

¶ 7 On August 31, 2023, Ms. Jordan spoke by telephone with the adjuster handling her claim. She reported that she had missed no work and was doing better, therefore the claim was closed.

¶ 8 On October 5, 2023, Ms. Jordan returned to CHC reporting jaw and TMJ pain and locking and was referred for a dental evaluation.

¶ 9 On November 6, 2023, Ms. Jordan emailed the claims adjuster, alleging jaw locking and headache. She was referred to Missoula Oral Surgery, where she was diagnosed with TMJ, and a course of six weeks of physical therapy was recommended, along with the possibility of an MRI.

¶ 10 On November 17, 2023, the claim was reopened.

¶ 11 On November 21, 2023, Ms. Jordan again spoke with the adjuster and reported that she had experienced no prior issues with her jaw before the accident.

¶ 12 On April 23, 2024, Dr. Olszewski performed an IME. He concluded that Ms. Jordan's cervical strain was work-related, but that her jaw pain was not, noting that jaw pain had not been reported at her first two visits following the accident. He concluded

that Ms. Jordan had reached maximum medical improvement (MMI) with a 0% impairment rating.

¶ 13 Between 2024 and 2025, Ms. Jordan received treatment from Joseph Yousefian, DMD. These records were apparently not provided to XL Specialty at that time.

¶ 14 In March 2026, Ms. Jordan's counsel initiated correspondence with Dr. Yousefian and with Craig Jolley, DMD, Ms. Jordan's family dentist, regarding the causal relationship between her TMJ condition and the industrial accident.

¶ 15 On June 18, 2026, Ms. Jordan filed her Petition for Trial.

¶ 16 A second IME, with Joe Meng, DDS, MS, FACP, whom XL Specialty represents to be a specialist in the treatment of TMJ, was scheduled for August 24, 2026. Ms. Jordan objected and refused to attend. The examination was canceled pending resolution of the motion addressed in this Order.

APPLICABLE LAW

A. The Statute:

39-71-605. Examination of employee by physician -- effect of refusal to submit to examination -- report and testimony of physician -- cost. (1) (a) Whenever in case of injury the right to compensation under this chapter would exist in favor of any employee, the employee shall, upon the written request of the insurer, submit from time to time to examination by a physician, psychologist, or panel that must be provided and paid for by the insurer and shall likewise submit to examination from time to time by any physician, psychologist, or panel selected by the department or as ordered by the workers' compensation judge.

(b) The request or order for an examination must fix a time and place for the examination, with regard for the employee's convenience, physical condition, and ability to attend at the time and place that is as close to the employee's residence as is practical. An examination that is conducted by a physician, psychologist, or panel licensed in another state is not precluded under this section. The employee is entitled to have a physician present at any examination. If the employee, after written request, fails or refuses to submit to the examination or in any way obstructs the examination, the employee's right to compensation must be suspended and is subject to the provisions of 39-71-607. Any physician, psychologist, or panel employed

by the insurer or the department who makes or is present at any examination may be required to testify as to the results of the examination.

(2) In the event of a dispute concerning the physical condition of a claimant or the cause or causes of the injury or disability, if any, the department or the workers' compensation judge, at the request of the claimant or insurer, as the case may be, shall require the claimant to submit to an examination as it considers desirable by a physician, psychologist, or panel within the state or elsewhere that has had adequate and substantial experience in the particular field of medicine concerned with the matters presented by the dispute. The physician, psychologist, or panel making the examination shall file a written report of findings with the claimant and insurer for their use in the determination of the controversy involved. The requesting party shall pay the physician, psychologist, or panel for the examination.

(3) As used in this section, a panel includes a practitioner having substantial experience in the field of medicine concerned with the matters presented by the dispute and whose licensure would qualify the practitioner to act as a treating physician, as defined in 39-71-116, and may include a psychologist.

(4) A claimant is required, upon a written request of an insurer, to submit to a functional capacities evaluation conducted by a licensed physical or occupational therapist.¹

B. Controlling Case Law:

¶ 26 In *Robinson*² the claimant suffered a heat stroke in 1996 while working on a ranch. Six years later, the respondent sent her for an IME, and later for a panel IME with a psychiatrist, neurologist, and psychologist.³ The claimant sued, alleging that § 39-71-605, MCA, was unconstitutional because it allowed an insurer to compel attendance at serial IMEs without a showing of good cause, in violation of her rights to privacy, due process, and freedom from unreasonable searches and seizures.⁴

¶ 27 Central to the claimant's argument was whether § 39-71-605, MCA, was unconstitutional because it did not incorporate the good-cause standard from Rule 35, M.R.Civ.P.⁵ The Montana Supreme Court held that workers' compensation proceedings operate differently from ordinary civil litigation, observing that the workers' compensation

¹ § 39-71-605 (2021), MCA.

² *Robinson v. State Comp. Mut. Ins. Fund*, 2018 MT 259, 393 Mont. 178, 430 P.3d 69.

³ *Id.*, ¶ 2.

⁴ *Id.*, ¶ 10.

⁵ *Id.*, ¶ 15.

system is a humanitarian program created by the Montana Legislature, and that the purpose of the Workers' Compensation Act is for the Act to be “primarily self-administering,” without reliance on lawyers and the courts.⁶

¶ 28 The *Robinson* court held that the good-cause standard does not control.⁷ Rather, examinations must be scheduled with regard for the employee's convenience, physical condition, and ability to attend, at a time and place as close to the employee's residence as practical.⁸ The court further noted that a claimant has the right to have his or her own physician present at the examination.⁹

¶ 29 *Neisinger*¹⁰ is the dispositive decision of the Montana Supreme Court on the question of multiple IMEs in the workers' compensation context.

¶ 30 In *Neisinger*, the claimant injured his leg at work in May 2015. In June 2016, he underwent an IME with an orthopedic surgeon. In October 2017, the claimant reported increased knee pain, and his treating physician referred him to a pain-management specialist, who noted complaints of anxiety and sleep disturbance and recommended a psychiatric evaluation. The respondent did not authorize the recommended psychiatric treatment, but instead scheduled a second examination under § 39-71-605, MCA — with two physicians, a psychiatrist and a new orthopedic examiner. The claimant refused to attend either examination.¹¹

¶ 31 The Workers' Compensation Court held that the respondent had to first pay for the recommended psychiatric treatment before it could compel a psychiatric IME, but held that the orthopedic examination could proceed, because the claimant's leg condition had arguably changed, the prior examination was two years old, and the claimant's own providers could comment on the new orthopedic opinion, thereby balancing the parties' interests.¹²

¶ 32 On appeal, the Supreme Court held that the claimant did not have to attend the psychiatric examination, because causation had not yet been established, and that the respondent likewise did not have to pay for the psychiatric treatment on that same basis.¹³ The Supreme Court held, however, that the claimant did have to attend the orthopedic examination, agreeing with the Workers' Compensation Court that his knee condition had changed.¹⁴

⁶ *Id.*, ¶ 23.

⁷ *Id.*, ¶ 28.

⁸ *Id.*, ¶ 24.

⁹ *Id.*

¹⁰ *Neisinger v. New Hampshire Ins. Co.*, 2019 MT 275, 398 Mont. 1, 452 P.3d 909.

¹¹ *Id.*, ¶¶ 4-9.

¹² *Id.*, ¶ 11.

¹³ *Id.*, ¶ 22.

¹⁴ *Id.*, ¶ 11, n2.

¶ 33 In so holding, the Supreme Court articulated the standard now governing requests for examinations under § 39-71-605, MCA:

The WCC incorrectly imputed the “good cause” requirement of M.R.Civ. P. 35 to the standard applicable under § 39-71-605, MCA. See *Robinson*, ¶ 23. However, a § 605 exam must nevertheless be “for purposes relevant to [the] claim” and “appropriate to the handling of the claim.” *Robinson*, ¶ 30. Because nothing at this juncture suggests that Neisinger's complaints of anxiety and insomnia are causally related to his accepted claim, we affirm the WCC's denial of New Hampshire's request for a § 605 exam.¹⁵

ANALYSIS

¶ 34 In the case at bar, Ms. Jordan argues that the “good cause” standard still applies to a request for an IME under § 39-71-605, MCA. The Supreme Court has twice rejected this argument. In *Robinson*, the court held that examinations under § 605 are governed by a different standard than examinations under Rule 35, M.R.Civ.P., and quoted the statutory language providing that § 605 allows an insurer to obtain an examination “without having to petition the court, make a showing of good cause, and obtain an order.”¹⁶

¶ 35 *Neisinger* is the leading case in Montana on this issue and solidly supports XL Specialty's position. *Neisinger* specifically rejects the good-cause standard applied in cases such as *MacGillivray*, and clearly states that, going forward, a respondent requesting an IME under § 605 must satisfy two elements: the proposed examination must be for purposes relevant to the claim, and it must be appropriate to the handling of the claim.¹⁷

¶ 36 In the instant case, Ms. Jordan alleges an injury to, and ongoing, progressive problems relating to, her jaw. XL Specialty represents, and Ms. Jordan does not dispute, that the proposed IME is to be conducted by Dr. Meng — a specialist in the treatment of jaw conditions, including TMJ — qualifications that Dr. Olszewski does not possess.

¶ 37 The cause of Ms. Jordan's TMJ condition is at the center of this claim. XL Specialty disputes causation; Ms. Jordan asserts a causal connection and arguably has treating-physician opinions supporting her position. The requested IME will address this issue, which is not only relevant, but central, to the claim. This satisfies the first element of the *Neisinger* standard.

¹⁵ *Id.*, ¶ 23 (alteration in original).

¹⁶ *Robinson*, ¶ 23.

¹⁷ *Neisinger*, ¶ 23.

¶ 38 The second element of the standard requires that the examination be appropriate to the handling of the claim. Dr. Olszewski's IME was primarily focused on Ms. Jordan's cervical strain, a condition well within his expertise as an orthopedic surgeon. Ms. Jordan's TMJ condition has since become the central issue in this case, and Dr. Olszewski's examination did not address it with the benefit of a specialist's qualifications.

¶ 39 During the two years since Dr. Olszewski's examination, Petitioner has undergone additional treatment and evaluation, including with a TMJ specialist and her treating dentist, generating diagnoses and findings — among them chronic degenerative joint disease, a deviated septum, and obstructive sleep apnea — that were neither known to nor addressed by Dr. Olszewski. A condition may reasonably be expected to change, and to generate new and relevant diagnostic information, over two years of ongoing treatment, and the record here reflects that it has. This is consistent with *Neisinger*, where the Supreme Court and the Workers' Compensation Court both concluded that a claimant must attend a further orthopedic examination where the condition at issue had arguably changed and the prior examination was two years old.

CONCLUSION

¶ 40 For the foregoing reasons, XL Specialty's Motion to Compel Attendance at IME is GRANTED.

ORDER

¶ 41 IT IS HEREBY ORDERED that Ms. Jordan shall attend the rescheduled independent medical examination with Dr. Meng, at a time and place to be noticed consistent with § 39-71-605(1)(b), MCA.

DATED this 8th day of September, 2026.

(SEAL)

/s/ Lee Bruner
Judge Lee Bruner

c: Ross T. Johnson
Charlie K. Smith

Submitted: August 8, 2026