IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

2001 MTWCC 54

WCC No. 2001-0360

DANIELLE WHITLOCK

Petitioner

vs.

FREMONT INDUSTRIAL INDEMNITY COMPANY

Respondent/Insurer for

TOWN PUMP, INCORPORATED

Employer.

ORDER ON MOTION TO COMPEL

Summary: Claimant alleges three sequential injuries during the fall of 2000 and, in the alternative, an occupational disease. The insurer denies liability for the first two injuries based on a failure to give timely notice and for the third injury based on claimant not reaching maximum medical improvement (MMI) after the second injury. It defends the OD claim by alleging there were three distinct injuries. The matter before the Court is a motion to compel claimant to provide financial information from 1997 to present and to compel a more detailed statement concerning six witnesses' prospective testimony.

Held: The claimant is ordered to provide further details concerning knowledge of two witnesses, if that information is available to her, otherwise the motion is **denied**.

Topics:

Discovery: Compelling. The Court will not compel discovery with respect to information which has no bearing on the issues of the case, nor will it compel disclosure of information concerning the prospective testimony of witnesses under the control of the party propounding the discovery.

Discovery: General. Discovery which has no bearing on the issues of the case will not be permitted.

Discovery: General. A party is not required to provide detailed information concerning the prospective testimony of witnesses who are under the control of the party propounding the discovery.

¶1 The petition in this case alleges three industrial injuries occurring sequentially on September 1, 2000, October 31, 2000, and November 25, 2000. "One or a combination of these three events" is alleged to have caused disability relating to claimant's back, requiring surgery. (Petition, ¶ 1.) In the alternative, petitioner claims an occupational disease arising out of employment. (Petition, ¶ 2.)

¶2 The insurer's response alleges that it is not liable for the first two injuries because claimant failed to give timely notice as required by section 39-71-603, MCA, and that it is not liable for the third because she had not reached MMI from the second. It denies that claimant is suffering from an occupational disease, contending that claimant "suffered three specific injuries identifiable by time and place of occurrence and occurring on a single day or work shift." (*Id.* at II, D.)

¶3 The present matter involves respondent's motion to compel responses to interrogatories and production of documents. Two subjects are involved. The first is respondent's request for information about claimant's bank accounts and charge cards from January 1997 to the present and records regarding bank accounts and charge cards from January 2000 to date. Respondent argues that information about claimant's spending and income "may shed considerable light on Petitioner's lifestyle and current physical condition." (Motion to Compel and Supporting Brief, at 5.) It argues that banking and credit card records can yield information "about a person's activities that is absolutely relevant to the issue of whether a person is totally disabled," noting that "an active person will often use their credit cards and checking account to pay for their entertainment such as travel, sporting goods . . . ." (*Id.*) Respondent also argues that bank records can show whether an injured worker is receiving income from a source not disclosed to the insurer, which it contends is relevant to any claim involving lost wages. Finally, respondent argues financial records may contain information about possible non-work related injuries because people often pay medical providers or auto repair businesses with checks or credit cards.

¶4 The requests for financial records and information are **denied**. Claimant's credit card and banking information has no bearing on the issues raised in this case. Nor can the Court imagine what relevant evidence to which they might lead to. This sort of discovery is beyond the pale.

¶5 The second issue raised by the motion to compel concerns the adequacy of claimant's answer to an interrogatory regarding expected witnesses. Respondent asked for the subject matter of non-expert witness testimony and a "summary of the facts to which the witness is expected to testify." Claimant identified six witnesses, but gave only cursory explanation of anticipated testimony. She noted three witnesses "will testify regarding notice issues," two

others "will testify regarding the facts of the . . . . incident," and the last, respondent's adjuster, would "testify regarding adjusting these claims."

¶6 In her response to the motion to compel, claimant states that one witness has been deposed since the motion was filed, noting that the deposition supplements the interrogatory answer. Respondent has filed a reply brief, agreeing that disclosure regarding that witness is no longer at issue. Claimant noted in her response that another witness, Dana Miller, "will testify that she was aware the Petitioner left notes for her employer giving notice of her work-related condition in mid-November." In its reply, respondent informed the Court that claimant no longer intends to call Dana Miller. In any event, information disclosed regarding these two witnesses is now adequate.

¶7 This leaves four witnesses: a supervisor, Martha Arnold, on notice issues; a co-worker, April Keen, regarding the October 31 incident; a customer, Troy Merriman regarding the November incident; and the adjuster, Alyssa Nicol. Information about the testimony of the employer's supervisor and the adjuster is more readily available to respondent than it is to claimant. Indeed, these are adverse witnesses freely available to the insurer. The motion to compel further information with regard to these witnesses is frivolous and **denied**. With respect to the co-worker and customer, claimant is ordered to supplement her interrogatory answers with detail similar to or exceeding that supplied with regard to Dana Miller. If claimant does not have access to these witnesses and is unable to determine the specific testimony they might give, then she can so state and provide as much information as she has. She shall do so by September 27, 2001.

SO ORDERED.

DATED in Helena, Montana, this 20th day of September, 2001.

(SEAL)

Mike McCarter
JUDGE

c: Ms. Charla K. Tadlock
Mr. Kelly M. Wills
Submitted: September 19, 2001