

IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

1994 MTWCC 108

WCC No. 9407-7085

LINDA BYUN

Petitioner

vs.

ALEXIS RISK MANAGEMENT

Respondent.

ORDER REGARDING MOTION TO COMPEL

Summary: Respondent filed motion to compel further answers to interrogatories and production of income tax records. Interrogatories requested list of all injuries claimant had suffered, employers for the past ten years, and information about medical treatment received. Claimant's response was: "Please see the testimony the Petitioner gave in her deposition dated July 30, 1992."

Held: If the matters identified in interrogatories were fully explored and adequately answered in a deposition, it would be oppressive to require the answering party to restate the information in answer to interrogatories. It is also unnecessary for the deponent's counsel to go through a previously taken deposition and identify the page number where information appears. Petitioner is required only to state whether her deposition provided all the information sought by the interrogatory. If the deposition did not so provide, claimant must supplement her deposition testimony in response to the interrogatories. Court declined to compel production of claimant's income tax records where such records were not calculated to lead to admissible evidence on rehabilitation benefit or medical issues raised in petition.

Topics:

Discovery: Interrogatories. The purpose of written discovery is to provide meaningful information relevant to the issues of the case. The rule allowing discovery was not intended as a weapon to be used merely to increase the work and litigation costs of the party opponent.

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Discovery: Requests for Production: Income Tax Records. Court declined to compel production of claimant's income tax records where such records were not calculated to lead to admissible evidence on rehabilitation benefit or medical issues raised in petition.

Respondent has filed a motion to compel further answers to three interrogatories and to compel production of income tax returns. This is a matter which could and should have been worked out between counsel.

Petitioner was injured January 19, 1991. The respondent's brief informs the Court that the Montana Department of Labor has issued an initial order determining that option (c) is the first appropriate rehabilitation option for petitioner. Petitioner appealed that initial determination to a hearing examiner of the Department but further proceedings before the Department have been stayed because an issue has arisen as to whether petitioner's thoracic outlet syndrome is related to her 1991 injury. The petition seeks a determination that the syndrome was caused by the 1991 industrial accident, and asks the Court to order the insurer to pay related medical bills and reinstate temporary total disability benefits. In an alternative prayer, the petitioner seeks payment of total rehabilitation benefits under section 39-71-1023, MCA (1989).

The interrogatories at issue herein are numbers 2, 3 and 5 of Montana School Group insurance Authority's First Discovery Requests. Those interrogatories request petitioner to list all injuries she has ever suffered, identify all employers for the last ten years, and provide information concerning medical treatment she has received. It appears that a deposition of claimant was taken some two years ago on July 30, 1992, apparently in another matter since the present petition was not filed until July 5, 1994. Based on that

deposition, the petitioner provided the following similar response to each of the interrogatories:

Answer: Please see the testimony the Petitioner gave in her deposition dated July 30, 1992.

In response to the interrogatory concerning prior injuries, petitioner added, "No insurance claims were made or litigation initiated." The full text of the interrogatories and answers is set out in the margin.¹

Respondent argues that it is entitled to complete answers to these interrogatories.

The purpose of written discovery is to provide meaningful information relevant to the issues of the case. The rule allowing interrogatories was not intended as a weapon to be used merely to increase the work and litigation costs of the party opponent. If the matters identified in the interrogatories were fully explored and adequately answered in a deposition, it would be oppressive to require the answering party to restate the information in answer to interrogatories. On the other hand, the answering party has an obligation to at least verify that all of the information sought by the interrogatory was in fact provided

¹**INTERROGATORY NO. 2:** Please list all injuries you have received of any kind and identify the nature and date of the injury, whether it resulted in litigation, the names of any insurance companies involved, and the final disposition of the injury.

ANSWER: Please see the testimony the Petitioner gave in her deposition dated July 30, 1992. No insurance claims were made or litigation initiated.

INTERROGATORY NO. 3: Please identify all employers for the last ten years prior to the date of responding to these discovery requests, and identify the employer, the type of employment, and inclusive dates of employment, your immediate supervisor, and your reason for leaving that employment.

ANSWER: Please see the Petitioner's testimony in her deposition dated July 30, 1992.

INTERROGATORY NO. 5: Please identify all medical providers and identify the condition treated, the dates of treatment and the outcome of the treatment.

ANSWER: Please see the Petitioner's testimony in her deposition dated July 30, 1992.

during the deposition. If all of the information was not provided, or new information has arisen since the time of the deposition, then the answering party has an obligation to provide the additional information in the answer.

The Court will also not require the answering party to go through a previously taken deposition and identify the page number where information appears. Attorneys are perfectly capable of reading depositions and identifying relevant information.

Petitioner's request for income tax returns is denied. The returns are not relevant to any of the issues in this case. Specifically, they are not relevant to the request for total rehabilitation benefits. Those benefits commence upon a claimant's reaching maximum healing if she is unable to return to her time-of-injury job. Benefits terminate upon (1) the expiration of 26 weeks after the date the Department of Labor and Industry is notified that a rehabilitation provider has been provided; (2) the date the worker actually returns to work; (3) the Department issues an order finding that the worker is qualified to return to work; or (4) the Department of Social and Rehabilitation Services submits an Individualized Written Rehabilitation Plan, whichever occurs first. Section 39-71-1023, MCA (1989).² Petitioner's past income tax returns are relevant to none of those things.

²**39-71-1023. Total rehabilitation benefits during period of rehabilitation services -- limitations -- termination.** (1) A worker who no longer is temporarily totally disabled but meets the definition of a disabled worker may be eligible for total rehabilitation benefits.

(2) Eligibility for total rehabilitation benefits begins on the date of maximum healing and continues for a period not to exceed 26 weeks after the date notice is given to the department by the insurer that a rehabilitation provider has been designated.

(3) Benefits must be paid at the disabled worker's temporary total disability rate. The department may extend the benefit period for good cause. The insurer may extend the benefit period without department approval but must notify the department of the extension.

(4) Total rehabilitation benefits under this section terminate when:

(a) a worker returns to work;

(b) a worker is qualified to return to work under the priorities in 39-71-1012 pursuant to a department order; or

(c) an I.W.R.P. is submitted to the department by the department of social and rehabilitation services.

(5) The insurer shall provide written notice to the worker and department that benefits have been terminated.

Finally, the Court notes that other matters, especially the *production* of medical records, are discussed by respondent. There is no motion to compel production of medical records or for any relief. Therefore, the Court will not address those other matters.

Based on the foregoing discussion, IT IS HEREBY ORDERED AS FOLLOWS:

1. Petitioner is ORDERED to further answer interrogatories 2, 3 and 5 by stating whether the petitioner's deposition provided respondent with all of the information sought by the interrogatory. If all of the information was not provided, then petitioner is ORDERED to further respond to the interrogatory by providing whatever information which will make the information complete.

2. Respondent's motion to compel production of income tax returns is **denied**.

3. The cross-requests for attorney fees and costs are **denied**.

Dated in Helena, Montana, this 5th day of December, 1994.

(SEAL)

/s/ Mike McCarter
JUDGE

c: Ms. Laurie Wallace
Mr. Leo S. Ward