

IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

1995 MTWCC 40

WCC No. 9407-7089

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**EBI/ORION GROUP  
(CONNECTICUT INDEMNITY)**

**Petitioner**

**vs.**

**MICHAEL S. BLYTHE**

**Respondent/Claimant.**

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ORDER COMPELLING PRODUCTION OF MILITARY RECORDS

**Summary:** Insurer sought production of military records of claimant who seeks benefits on basis of mental disability allegedly arising from work accident. Claimant objects to production on the ground there are no psychological tests and no history of psychological condition in the records relevant to his present condition.

**Held:** Where records contain psychiatric note made after psychiatric examination, and medical histories containing claimant's responses to various questions that could be relevant to his present condition, and where Ph.D. psychologist submitted affidavit that histories in the military records would be relevant to determining changes in claimant's status and accuracy of information he presently provides, the records should be produced.

**Topics:**

**Discovery: Military Records.** Where military records contain psychiatric note made after psychiatric examination, along with medical histories containing claimant's responses to various questions, and where affidavit of Ph.D. psychologist indicates that histories in the military records would be relevant to determining changes in claimant's status and accuracy of information he presently provides, the records should be produced in case where claimant alleges mental disability flowing from work accident.

**Discovery: Records of Psychological Treatment.** Where military records contain psychiatric note made after psychiatric examination, along with medical histories containing claimant's responses to various questions, and where affidavit of Ph.D. psychologist indicates that histories in the military records would be relevant to determining changes in claimant's status and accuracy of information he presently provides, the records should be produced in case where claimant alleges mental disability flowing from work accident.

Petitioner/insurer, EBI/Orion Group (EBI), has requested production of respondent/claimant's (claimant) military records. Claimant requested that the records be sent directly to the Court for in camera inspection. The Court received the records on May 12, 1995, and forwarded a complete copy to claimant's attorney, along with a request that he identify records he did not wish disclosed and the grounds for his objection.

Claimant has reviewed the records and filed a response to production of medical records. He objects to the furnishing of any of the records on the grounds that there are no psychological tests contained in the records and no history of any psychological condition relevant to his present condition.

Among the records is a psychiatric note entered following a psychiatric examination. Also contained in the medical records are notes concerning claimant's request to see a psychiatrist, a medical history which contains responses of claimant that may be relevant to his personality or mental condition, a report of medical examination which notes a normal psychiatric evaluation, and a record reflecting his discharge from military service.

An affidavit of a Dr. David Faust, Ph.D., a psychologist retained by EBI, states in part:

4. I have also asked for past psychological tests and the military records concerning Mr. Blythe. One would expect to find histories presented in those materials that date back, perhaps to youth. It is important to have those histories to compare with information one obtains contemporaneously to help determine what, if any, changes in psychological status and functioning have occurred; in order to evaluate and design treatment; and in order to formulate a prognosis. For example, prior recovery from a similar condition may alter prognosis. Past records can also provide information that is crucial in determining the etiology or cause of Mr. Blythe's present psychological problems.

5. Histories also provide important information as to whether someone has presented accurate historical information about themselves to their present physicians. Additionally, Dr. Stratford's records indicated that there had been a prior MMPI and other psychological testing done on Mr. Blythe. Clearly, the comparison of these results to Dr. Stratford's testing might help in determining changes in status over time. For example, it is uncertain whether some of Mr. Blythe's problems started many years ago.

(Affidavit of David Faust, Ph.D. at 2.)

Claimant is asserting that his industrial accident has resulted in a psychological rather than physical disability. Dr. Faust's affidavit is sufficient to persuade me that the military records may contain information relevant to this case. The material is therefore discoverable. See Rule 26(b)(1), Mont.R.Civ.P.

THEREFORE, IT IS ORDERED that claimant produce copies of pages 1, 5, 9, 10, 11, and 17. Claimant is free to furnish any additional pages he believes are necessary for completeness.

Dated in Helena, Montana, this 1st day of June, 1995.

(SEAL)

/s/ Mike McCarter  
JUDGE

c: Mr. Charles E. McNeil  
Mr. Richard R. Buley