

IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

2008 MTWCC 9

WCC No. 2007-1992

CARLON FIRST STRIKE

Petitioner

vs.

MONTANA CONTRACTOR COMPENSATION FUND

Respondent/Insurer.

ORDER GRANTING RESPONDENT'S MOTION TO COMPEL AN IME

Summary: Respondent moved to compel Petitioner to attend an independent medical examination. Petitioner argues that since Respondent already denied liability for his claim, Respondent is not entitled to further investigation.

Held: Under § 39-71-605(2), MCA, Respondent is entitled to obtain an IME because a dispute exists concerning the claimant's physical condition and/or the cause or causes of any injury or disability the claimant may have.

¶ 1 Respondent Montana Contractor Compensation Fund moves the Court for an order compelling Petitioner Carlon First Strike's attendance at an independent medical examination (IME) pursuant to § 39-71-605, MCA. Petitioner responds that Respondent is not entitled to an IME because it denied liability for his claim and therefore it is not entitled to further investigation.

¶ 2 The Court conducted a conference call on January 15, 2008, to discuss Respondent's motion. Based upon the parties' briefs and the arguments presented, I granted Respondent's motion under § 39-71-605(2), MCA, for the reasons set forth below.

¶ 3 I found that Petitioner's reasoning did not take into account the language of § 39-71-605(2), MCA, which states:

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

¶ 4 under the statute, Respondent is entitled to obtain an IME because a dispute exists concerning Petitioner's physical condition and/or the cause or causes of any injury or disability Petitioner may have. Therefore, Respondent's motion is granted.

JUDGMENT

¶ 5 Respondent's motion for an independent medical exam is **GRANTED**.

DATED in Helena, Montana, this 1st day of February, 2008.

(SEAL)

/s/ JAMES JEREMIAH. SHEA
JUDGE

c: Laurie Wallace
Kelly M. Wills
Submitted: January 15, 2008