

IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

2010 MTWCC 25

WCC No. 2009-2342

PATRICIA FLEMING

Petitioner

vs.

MONTANA SCHOOLS GROUP INSURANCE AUTHORITY

Respondent/Insurer.

ORDER REGARDING PETITIONER'S APPLICATION FOR TAXATION OF COSTS

Summary: After prevailing at trial, Petitioner submitted an application for taxation of costs totaling \$3,475.63. Respondent objects to Petitioner's application to recover costs in the amount of \$20 for postage and long-distance telephone charges. Respondent also objects to Petitioner's application to recover costs in the amount of \$735.98 for travel expenses incurred in attending her deposition and trial.

Held: Petitioner is not entitled to recover the \$20 flat fee her attorney charged for postage and long-distance telephone charges. ARM 24.5.342 specifically provides that long-distance telephone expenses and postage expenses are generally found to be reasonable when documented. A predetermined flat fee does not qualify as documentation. Petitioner is not entitled to recover her costs incurred in attending her deposition and trial. This Court has previously disallowed recovery of a claimant's travel costs and Petitioner cites no authority where the Court has allowed recovery of a claimant's travel costs. ARM 24.5.342 neither specifically allows nor prohibits the recovery of costs for a claimant's travel to attend her deposition or trial. It provides that the Court will allow reasonable costs. The reasonableness of a given item of costs claimed is judged in light of the facts and circumstances of the case. Petitioner has not persuaded the Court that the facts and circumstances of her case warrant recovery of her travel costs. Petitioner is awarded the balance of her application for taxation of costs totaling \$2,719.65.

Topics:

Costs: WCC Costs. ARM 24.5.342 neither specifically allows nor prohibits the recovery of costs for a claimant's travel to attend her deposition or for trial; however, it provides in pertinent part that "[t]he reasonableness of a given item of cost claimed is judged in light of the facts and circumstances of the case." The Court has previously disallowed such costs and the facts of this case do not support the claimant's attempt to recover travel costs for attending her deposition and the trial in Montana where claimant had mixed motives for relocating to Arizona; where claimant maintains a home and regularly returns to Montana; and where claimant's husband was residing in Montana at the time of her deposition.

Constitutions, Statutes, Regulations, and Rules: Administrative Rules of Montana: ARM 24.5.342. ARM 24.5.342 neither specifically allows nor prohibits the recovery of costs for a claimant's travel to attend her deposition or for trial; however, it provides in pertinent part that "[t]he reasonableness of a given item of cost claimed is judged in light of the facts and circumstances of the case." The Court has previously disallowed such costs and the facts of this case do not support the claimant's attempt to recover travel costs for attending her deposition and the trial in Montana where claimant had mixed motives for relocating to Arizona; where claimant maintains a home and regularly returns to Montana; and where claimant's husband was residing in Montana at the time of her deposition.

Costs: WCC Costs. ARM 24.5.342 provides that documented long-distance telephone and postage expenses are generally found reasonable. However, where claimant's attorney does not keep track of specific charges – but rather, charges claimants a \$20 flat fee for postage and long-distance telephone charges – the Court held that the predetermined flat fee does not qualify as "documentation" and denied claimant's request to recover these costs.

Constitutions, Statutes, Regulations, and Rules: Administrative Rules of Montana: ARM 24.5.342. ARM 24.5.342 provides that documented long-distance telephone and postage expenses are generally found reasonable. However, where claimant's attorney does not keep track of specific charges – but rather, charges claimants a \$20 flat fee for postage and long-distance telephone charges – the Court held that the

predetermined flat fee does not qualify as “documentation” and denied claimant’s request to recover these costs.

¶1 On June 4, 2010, this Court issued Findings of Fact, Conclusions of Law and Judgment, finding in favor of Petitioner Patricia Fleming (Fleming). On June 11, 2010, Fleming filed her Application for Taxation of Costs, seeking to recover costs totaling \$3,475.63. On June 24, 2010, Respondent Montana Schools Group Insurance Authority (MSGIA) filed Respondent/Insurer’s Objections to Petitioner’s Application for Taxation of Costs, objecting to postage and long-distance telephone charges totaling \$20, and Fleming’s travel expenses totaling \$735.98. On July 2, 2010, Fleming filed Petitioner’s Response to Respondent’s Objection to Application for Taxation of Costs.

¶2 MSGIA objects to Fleming’s request to recover \$20 for costs associated with postage and long-distance telephone charges. MSGIA argues that although ARM 24.5.342 allows for possible reimbursement of such charges, it requires they be documented and verified. Fleming does not dispute that ARM 24.5.342 requires that long-distance and postage expenses be documented. Fleming argues that her attorney’s law firm, Bothe & Lauridsen, P.C., has chosen not to keep track of postage and long-distance telephone charges because it takes a significant amount of staff time to keep track of such charges. Bothe & Lauridsen, P.C. has therefore adopted a policy of charging each workers’ compensation claimant a flat fee of \$20 for postage and long-distance telephone charges.

¶3 Although I do not question Bothe & Lauridsen’s rationale for adopting its flat fee policy, MSGIA is correct that ARM 24.5.342 specifically provides that long-distance telephone expenses and postage expenses are generally found to be reasonable when documented. A predetermined flat fee does not qualify as documentation. Fleming’s request to recover this cost is denied.

¶4 MSGIA also objects to Fleming’s request to recover travel expenses in the amount of \$735.98. Fleming incurred these expenses traveling from Arizona to Montana for her deposition and for trial. MSGIA argues that this Court specifically disallowed a claimant’s travel expenses in *Peterson v. Montana State Fund*,¹ and should do likewise in this case. Fleming responds that Fleming’s travel costs should be recoverable because, “the very reason Ms. Fleming moved to Arizona was because of her industrial injury.”² Fleming points out that this Court noted in its Findings of Fact

¹ *Peterson v. State Comp. Ins. Fund*, 1994 MTWCC 105A-2.

² Petitioner’s Response to Respondent’s Objection to Application for Taxation of Costs at 2.

that, “Dr. Hollis advised Fleming that living in a warm weather climate would be beneficial to Fleming’s conditions.”³

¶5 MSGIA is correct that this Court previously disallowed recovery of a claimant’s travel costs in *Peterson*. Fleming has cited no case in which this Court has allowed recovery of a claimant’s travel costs.

¶6 ARM 24.5.342 governs taxation of costs in the Workers’ Compensation Court. It neither specifically allows nor prohibits the recovery of costs for a claimant’s travel to attend her deposition or for trial. It provides that the Court will allow reasonable costs. It further provides, in pertinent part: “The reasonableness of a given item of cost claimed is judged in light of the facts and circumstances of the case.”⁴ Fleming argues that the facts and circumstances which make recovery of her travel costs reasonable is that she moved to Arizona because of her industrial injury. However, that is not the entire story. Fleming testified in her deposition and at trial that she and her husband moved to Arizona because it was recommended that both of their orthopedic conditions may benefit from a warmer climate.

¶7 Fleming’s motive for relocating to Arizona is, at a minimum, mixed. Although she testified that she moved to Arizona because it was suggested the warm weather would be beneficial to her condition, she also testified that the move was motivated by her husband’s condition as well. At her deposition, Fleming testified that she and her husband still maintain a home in Montana. Her children reside in Montana and she and her husband return to Montana regularly. Fleming’s husband commutes back and forth to Montana as needed to care for their home and, at the time of Fleming’s deposition, her husband was residing in Montana, caring for their home.⁵ Fleming has not persuaded me that the facts and circumstances of this case warrant recovery of her travel costs.

ORDER

¶8 Fleming’s application for taxation of costs regarding postage and long-distance telephone charges in the amount of \$20 is **denied**.

¶9 Fleming’s application for taxation of costs regarding her travel to her deposition and for trial in the amount of \$735.98 is **denied**.

³ *Id.* (citing, *Fleming v. Montana Schools Group Ins. Auth.*, 2010 MTWCC 13, ¶35).

⁴ ARM 24.5.342(3).

⁵ Fleming Dep. 77:20 – 78:23.

¶10 Fleming is awarded the balance of her application for taxation of costs totaling \$2,719.65.

DATED in Helena, Montana, this 7th day of July, 2010.

(SEAL)

/s/ JAMES JEREMIAH SHEA
JUDGE

c: David M. Sandler
Jason B. Jewett
Submitted: July 2, 2010