

IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

2007 MTWCC 34

WCC No. 2005-1251

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GERALD HEFFNER

Petitioner

vs.

MONTANA STATE FUND

Respondent.

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ORDER ON COSTS

**Summary:** Respondent filed an Application for Taxation of Costs pursuant to ARM 24.5.342.

**Held:** ARM 24.5.342 states that costs may be awarded to a prevailing claimant. Respondent is not a claimant. Therefore, Respondent is not entitled to costs.

**Topics:**

**Constitutions, Statutes, Regulations, and Rules: Administrative Rules of Montana: 24.5.342.** The language of ARM 24.5.342 is unambiguous and only allows for a prevailing claimant to recover costs. Moreover, both this court and the Montana Supreme Court have specifically held that an award of costs is not available to insurers. *Montana Contractor Compensation Fund v. Liberty Northwest Ins. Corp.*, 2002 MTWCC 28, ¶ 3, citing *Jaenish v. Super 8 Motel*, 248 Mont. 383, 812 P.2d 1241 (1991). Therefore, although Respondent prevailed, since it is not a claimant, its application for costs is denied.

**Costs: WCC Costs.** The language of ARM 24.5.342 is unambiguous and only allows for a prevailing claimant to recover costs. Moreover, both this court and the Montana Supreme Court have specifically held that an award of costs is not available to insurers. *Montana Contractor Compensation Fund v. Liberty Northwest Ins. Corp.*, 2002 MTWCC 28, ¶ 3, citing *Jaenish v. Super*

8 Motel, 248 Mont. 383, 812 P.2d 1241 (1991). Therefore, although Respondent prevailed, since it is not a claimant, its application for costs is denied.

¶ 1 On July 13, 2007, this Court issued its Findings of Fact, Conclusions of Law and Judgment,<sup>1</sup> finding that Petitioner's L4-L5 disk herniation and extrusion were not the result of his 1980 industrial accident. After the Court's decision, Respondent Montana State Fund (State Fund) filed an application for costs in the amount of \$5,091.63 pursuant to ARM 24.5.342.

¶ 2 ARM 24.5.342 states:

24.5.342 TAXATION OF COSTS (1) Unless otherwise ordered by the court, within 10 days after the entry of a judgment allowing costs, a prevailing claimant shall serve on the parties against whom costs are to be allowed an application for taxation of costs. The application must be filed with the court.

(2) The application for taxation of costs must be signed by the attorney for the claimant, or the claimant personally, if appearing pro sé. The signature on the application is a certification by the person signing the application of the accuracy of the costs claimed and that the costs incurred were reasonable and necessary to the case.

(3) The court will allow reasonable costs. The reasonableness of a given item of cost claimed is judged in light of the facts and circumstances of the case, and the issues upon which the claimant prevailed.

....

(7) An insurer may make specific objection to any item of costs claimed within 10 days of the service of the application.

¶ 3 The language of ARM 24.5.342 is unambiguous and only allows for a prevailing claimant to recover costs. Moreover, both this Court and the Montana Supreme Court have specifically held that an award of costs is not available to insurers. In *Montana Contractor Compensation Fund v. Liberty Northwest Insurance Corporation*, this Court stated, "Prior precedents, as MCCF acknowledges, hold that insurers are not entitled to either costs or attorney fees."<sup>2</sup> Finding no legal basis in either the rule upon which Respondent relies nor in the body of case law from both this Court and the Montana

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<sup>1</sup> 2007 MTWCC 29.

<sup>2</sup> *Montana Contractor Compensation Fund v. Liberty Northwest Ins. Corp.*, 2002 MTWCC 28, ¶ 3, citing *Jaenish v. Super 8 Motel*, 248 Mont. 383, 812 P.2d 1241 (1991). (Insurer is not entitled to attorney fees or costs under the Workers' Compensation Act.)

Supreme Court, therefore, Respondent's application for costs filed with the Court on July 25, 2007, is denied.

ORDER

¶ 4 Respondent's application for costs is **DENIED**.

DATED in Helena, Montana, this 27<sup>th</sup> day of July, 2007.

(SEAL)

/s/ JAMES JEREMIAH SHEA  
JUDGE

c: Gerald Heffner  
Bryce R. Floch  
Submitted: July 25, 2007.