

IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

2009 MTWCC 13

WCC No. 2008-2152

BROCK HOPKINS

Petitioner

vs.

UNINSURED EMPLOYERS' FUND

Respondent

RUSSELL A. KILPATRICK

Intervenor.

ORDER DENYING UNINSURED EMPLOYERS' FUND'S MOTION TO COMPEL

Summary: Respondent Uninsured Employers' Fund (UEF) moved the Court for an Order compelling Intervenor to produce his state and federal tax returns, with all schedules, for the years 2004 through 2007. Intervenor responds that, because the central issue in this case is whether Petitioner was Intervenor's employee on the date of his injury, November 2, 2007, the tax returns for any years besides 2007 are irrelevant and not reasonably calculated to lead to the discovery of admissible evidence. With respect to Intervenor's 2007 tax return, Intervenor states that he has not produced that return because he has not yet filed a tax return for 2007.

Held: The UEF's motion is denied. The UEF argues that the tax returns for the years 2004 through 2007 are relevant, or at least reasonably calculated to lead to the discovery of admissible evidence, "in light of Petitioner, Brock Hopkins, [sic] assertion that he worked for and was paid by [Intervenor] for the years 2004 through 2007." The UEF's argument basically boils down to Intervenor's tax returns being discoverable because the UEF "believes" they are discoverable. Beyond the UEF's conclusory assertion, however, the UEF offers no explanation or argument as to **how** Intervenor's tax returns from the years preceding Petitioner's date of injury are relevant or reasonably calculated to lead to the discovery of admissible evidence.

Topics:

Discovery: Compelling Discovery. Where the UEF offers no explanation or argument as to how the alleged uninsured employer's tax returns from the years preceding the claimant's injury may be relevant or reasonably calculated to lead to the discovery of admissible evidence, this Court will not guess as to the reasons behind the UEF's request and will not compel the production of the documents.

¶ 1 Respondent Uninsured Employers' Fund (UEF) moved the Court for an Order compelling Intervenor to produce his state and federal tax returns, with all schedules, for the years 2004 through 2007. Intervenor responds that, because the central issue in this case is whether Petitioner was Intervenor's employee on the date of his injury, November 2, 2007, the tax returns for any years besides 2007 are irrelevant and not reasonably calculated to lead to the discovery of admissible evidence. With respect to Intervenor's 2007 tax return, Intervenor states that he has not produced that return because he has not yet filed a tax return for 2007.

¶ 2 Excluding only the caption, date, and signature line, the UEF's motion to compel and brief in support¹ reads, in its entirety, as follows:

COMES NOW Montana Department of Labor & Industry, Uninsured Employers' Fund (UEF), through counsel, and moves the Court to order production of Respondent Russell A. Kilpatrick's federal and state tax returns, with all schedules for the years 2004, 2005, 2006, and 2007, as requested in UEF's First Discovery Requests.

Kilpatrick summarily states the only relevant tax returns are the 2007 records, but did not include any tax returns at all with his discovery response. The UEF believes the previous tax returns are relevant in light of Petitioner, Brock Hopkins, [sic] assertion that he worked for and was paid by Kilpatrick for the years 2004 through 2007. At the very least the information sought is reasonably calculated to lead to the discovery of admissible evidence.²

¶ 3 I am as much a fan of brevity and conservation of our natural resources as the next guy, and on both of those points I commend the UEF's accomplishment in limiting its entire motion and brief to four sentences, as well as its decision to forego filing a reply brief in

¹ Although the UEF filed only a single-page document titled "Motion to Compel Discovery" with no other supporting documentation, for purposes of this Order, I consider it a combined motion and brief.

² Motion to Compel Discovery at 1, Docket Item No. 18.

support of its motion. That being noted, the UEF's argument basically boils down to Intervenor's tax returns being discoverable because the UEF "believes" they are discoverable. Beyond this conclusory assertion, however, the UEF offers no explanation or argument as to **how** Intervenor's tax returns from the years preceding Petitioner's date of injury may be relevant or reasonably calculated to lead to the discovery of admissible evidence. Although it is certainly conceivable that the tax returns may, in fact, be discoverable, I decline to guess as to how that may be.

¶ 4 Regarding Intervenor's 2007 tax returns, Intervenor concedes that Schedule C of his 2007 tax returns would be discoverable since that was the year in which Petitioner was injured. Intervenor asserts he has not produced this document, however, because he has not yet filed a return for his 2007 taxes. In the event Intervenor files his 2007 tax returns during the pendency of this case, he is ordered to supplement his responses to the UEF's discovery requests accordingly.

ORDER

¶ 5 The UEF's motion to compel is **DENIED**.

¶ 6 In the event Intervenor files his 2007 tax returns during the pendency of this case, he is ordered to supplement his responses to the UEF's discovery requests accordingly.

DATED in Helena, Montana, this 20th day of March, 2009.

(SEAL)

/s/ JAMES JEREMIAH SHEA
JUDGE

c: Jeffrey Ellingson
Joseph Nevin
Mark Cadwallader
Bryce R. Floch
Submitted: March 16, 2009