

IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

2007 MTWCC 19

WCC No. 2006-1558

ROBERT MACK

Petitioner

vs.

TRANSPORTATION INSURANCE COMPANY

Respondent/Insurer.

ORDER ON COSTS

Summary: Petitioner submitted a claim for costs pursuant to this Court's holding in its Findings of Fact, Conclusions of Law and Judgment. Respondent objected to paying the full amount of the costs associated with taking Petitioner's deposition in Elko, Nevada. The basis for Respondent's objection is that Petitioner's deposition was taken both for his claim in this Court and a civil action Petitioner was pursuing against the State of Montana in the First Judicial District Court. Respondent, therefore, argues that Petitioner should only be entitled to recover 50% of the costs associated with this deposition.

Held: Pursuant to ARM 24.5.342(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." In the present case, it is neither reasonable, nor equitable, for Respondent to pay the full costs associated with a deposition that was taken for the benefit of two separate claims. The costs in dispute are reduced by 50%.

Topics:

Constitutions, Statutes, Regulations, and Rules: Administrative Rules of Montana: 24.5.342. Where Petitioner's deposition was taken both for his claim in the Workers' Compensation Court as well as his claim in District Court, Petitioner is only entitled to 50% of the costs associated with taking his deposition.

Costs: WCC Costs. Where Petitioner's deposition was taken both for his claim in the Workers' Compensation Court as well as his claim in District Court, Petitioner is only entitled to 50% of the costs associated with taking his deposition.

¶ 1 On May 22, 2007, I issued Findings of Fact, Conclusions of Law and Judgment in this matter in which I held, *inter alia*, that Petitioner was entitled to reasonable costs.¹ Petitioner filed his motion for costs, with supporting affidavit, on May 30, 2007, requesting an Order awarding costs totaling \$11,217.23. On June 6, 2007, Respondent filed its objection. Of the costs enumerated by Petitioner, Respondent objected only to paying the full amount of the costs incurred in taking Petitioner's videotaped deposition in Elko, Nevada.

¶ 2 The basis for Respondent's objection is that the Elko trip to take Petitioner's video deposition was for two purposes: (1) Petitioner's action in this Court; and (2) a civil claim filed against the State of Montana in the First Judicial District Court. Respondent contends that the bulk of Petitioner's deposition was spent relative to Petitioner's claim against the State and only a small portion of the deposition was actually even introduced in Petitioner's claim before this Court.² Respondent does not argue that the costs are not recoverable in their entirety. Nor does Respondent argue that the costs should be apportioned pro rata to the time spent on each respective claim during Petitioner's deposition. Respondent suggests only that a fair, proper, and equitable apportionment would be to reduce the recoverable costs associated with this deposition by half in light of the dual purpose it served. I agree.

¶ 3 ARM 24.5.342(3), states:

(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.

¶ 4 In judging the reasonableness of the disputed costs in this case, the facts and circumstances are these: Petitioner's deposition was taken both for his claim in this Court as well as his claim in the First Judicial District Court. By taking a single deposition for both claims, Petitioner was able to advance two litigations while incurring a single set of associated costs. Having prevailed in this action, Petitioner is now asking this Court to turn his twofer into a ferfree. This is neither reasonable, nor equitable, in light of the facts and circumstances of this case.

ORDER

¶ 5 Petitioner is entitled to those costs which are not in dispute: \$6,501.37.

¶ 6 Petitioner is entitled to 50% of the costs associated with taking his deposition in Elko, Nevada: \$2,357.93.

¶ 7 Petitioner's request for costs is **GRANTED** in the total amount of \$8,859.30.

¹ 2007 MTWCC 16, ¶ 61.

² In fact, the entire transcript of Petitioner's deposition was submitted to the Court. Respondent is correct, however, that only select portions of the video were admitted by stipulation of the parties.

DATED this 11th day of June, 2007.

(SEAL)

JAMES JEREMIAH SHEA
JUDGE

c: Laurie Wallace
Jon L. Heberling
Todd A. Hammer
Submitted: June 6, 2007