

IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

2013 MTWCC 5

WCC No. 2012-3052

ROD OVERHOLT

Petitioner

vs.

LIBERTY NORTHWEST INSURANCE

Respondent/Insurer.

ORDER DENYING PETITIONER'S MOTION TO EXCLUDE EVIDENCE AND LIMIT
DISCOVERY AND ORDERING RESPONDENT TO PRODUCE AUDIO RECORDING
OF STATEMENT

Summary: Petitioner moved to prohibit Respondent from pursuing discovery concerning any previous injuries, medical records, and employment information, arguing that since Respondent had denied liability because Petitioner's industrial injury occurred in North Dakota, the discovery information Respondent sought would be irrelevant to its grounds for denial. Petitioner further sought to prohibit Respondent from using a recorded statement Petitioner gave since Respondent had failed to provide Petitioner with a copy of the audio recording. Respondent objected to Petitioner's motion, arguing that it is entitled to this discovery under the broad rules applicable to this matter.

Held: Under the broad rules of discovery applicable to this matter, Respondent is entitled to pursue the discovery of the information it may seek regarding Petitioner's previous injuries, medical records, and employment information insofar as such discovery is reasonably calculated to lead to the discovery of admissible evidence. Therefore, Petitioner's motion is denied. Respondent is ordered to produce to Petitioner a copy of the audio recording of Petitioner's statement.

Topics:

Discovery: Privileges: Medical Information. Discovery is very broad. Medical records relating to Petitioner's industrial injury and any previous

relevant medical records are discoverable, even though Respondent denied liability on non-medical grounds.

Discovery: Relevancy and Materiality. Discovery is very broad. Medical records relating to Petitioner's industrial injury, any previous relevant medical records, and records relating to a claim Petitioner filed in another state are discoverable, even though Respondent denied liability on other grounds.

Evidence: Exclusions: Failure to Provide Discovery. Where Respondent failed to provide Petitioner with a copy of an audio recording of its claims adjuster's interview with Petitioner, but produced a transcript, the Court denied Petitioner's motion to prohibit Respondent's use of the audio recording. However, the Court ordered Respondent to produce to Petitioner a copy of the audio recording.

¶ 1 Petitioner Rod Overholt moves this Court for an order prohibiting Respondent Liberty Northwest Insurance (Liberty) from "requesting and presenting issues, evidence or arguments not relevant to § 39-71-402[,] MCA, which [Liberty] asserted as denial of my claim" ¹ Liberty objects to Overholt's motion, arguing that the motion is better characterized as a motion to limit discovery pursuant to ARM 24.5.325, and that Liberty is entitled to the discovery it seeks since relevance is broadly construed in the context of discovery. ²

¶ 2 On February 19, 2013, I initiated a conference call with the parties to hear further argument and to make oral ruling on Overholt's motion. ³ This Order incorporates my oral ruling and expounds upon my reasoning.

¶ 3 In his motion, Overholt contends that Liberty denied his claim for benefits solely on the ground that Liberty is not liable under § 39-71-402, MCA, because Overholt's industrial accident occurred in North Dakota. Overholt argues that since Liberty's denial "was exclusive of medical reasons past or present," this Court should preclude Liberty from seeking discovery pertaining to Overholt's medical history on the ground of

¹ Petitioner's Motion in Limine & Brief to Exclude Irrelevant Evidence and Limit Discovery, Exhibits, or Arguments to Respondent's Argument for Denial and Mediation w[h]ich was § 39-71-402[,] MCA (Opening Brief), Docket Item No. 6.

² Liberty Northwest Insurance's Response Brief in Opposition to Petitioner's Motion in Limine/Limit Discovery (Response Brief), Docket Item No. 11.

³ See Minute Book Hearing No. 4451, Docket Item No. 22.

irrelevancy.⁴ Overholt argues that Liberty's discovery requests are time-consuming and misdirect the Court from the issue of liability under § 39-71-402, MCA.⁵

¶ 4 Liberty responds that under ARM 24.5.325, this Court may limit discovery to protect a party from annoyance, embarrassment, oppression, or undue burden or expense, and that none of these bases are applicable in the present case. Liberty argues that in previous cases, this Court has held that discovery itself need not be relevant, but need only be reasonably calculated to lead to the discovery of admissible evidence.⁶ In his oral argument, Overholt replies that Liberty's requests to discover the contents of his North Dakota claim file will lead to undue burden and expense as Overholt will be forced to subpoena witnesses to defend against arguments Liberty may make if it is allowed to introduce these records.

¶ 5 As I noted during the conference call, discovery is very broad. Certainly the medical records relating to Overholt's industrial injury and any previous relevant medical records are discoverable, as are the records from the workers' compensation claim Overholt filed in North Dakota. While Overholt argues that these records are irrelevant as Liberty had denied liability under § 39-71-402, MCA, this argument goes to the reasonableness of Liberty's denial and not to the discoverability of information which may lead to the discovery of admissible evidence.

¶ 6 However, as I further noted during the conference call, there is a difference between discoverability and admissibility. While Overholt argues that he will be forced to subpoena witnesses regarding his North Dakota claim file if Liberty is allowed to obtain a copy of that file, what Overholt fails to appreciate is that the mere fact that this evidence is discoverable does not necessarily mean it is admissible. My ruling denying Overholt's motion to limit discovery does not preclude Overholt from later moving to exclude this information from admission – assuming Liberty ultimately attempts to submit this discovery into evidence.

¶ 7 Overholt has further moved for an order prohibiting Liberty from using a recorded statement it made of Overholt regarding his claim on the ground that Liberty has failed to provide Overholt with a copy of the audio recording it made of the statement.⁷ During the conference call, Overholt acknowledges that Liberty provided him with a transcript it

⁴ Opening Brief at 2.

⁵ Opening Brief at 4.

⁶ *Liberty Northwest Ins. Corp. v. State Compen. Ins. Fund*, 2001 MTWCC 32, ¶ 10 (citing M.R.Civ.P. 26(b)(1)).

⁷ Opening Brief at 4.

made of the recording. However, he argues that he is entitled to a copy of the recording itself and asks the Court to rule that Liberty may not use the recorded statement as evidence since it failed to provide him with a copy of the recording. While I am not prepared to order this remedy, I do agree with Overholt's position that he is entitled to a copy of the audio recording and I am ordering Liberty to produce it to Overholt.

Order

¶ 8 Petitioner's motion in limine is **DENIED**.

¶ 9 Respondent shall provide Petitioner with a copy of the audio recording of his statement to Respondent within 10 days of the issuance of this Order.

DATED in Helena, Montana, this 26th day of February, 2013.

(SEAL)

/s/ JAMES JEREMIAH SHEA
JUDGE

c: Rod Overholt
Leo S. Ward
Submitted: February 19, 2013