

IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

2005 MTWCC 13

WCC No. 2004-1052

MARK PETERSON

Petitioner

vs.

MONTANA SCHOOLS GROUP INSURANCE AUTHORITY

Respondent/Insurer.

ORDER GRANTING MOTION TO ADD WITNESSES

Summary: After being continued on two prior occasions, on March 9, 2005, the trial in this matter was reset for April 25, 2005. A new scheduling order was issued fixing new pretrial deadlines, however, the respondent's counsel then indicated that he had not agreed to the extension of those deadlines and objected to the petitioner's addition of witnesses not disclosed within the time allowed by the previous scheduling order.

Held: Where a trial is reset and the setting is a month and a half away, the Court should have ascertained whether counsel had agreed to extend pretrial deadlines. Absent their agreement, an opportunity should be provided for objections to any request for an extension to the deadlines and the deadlines should be extended only for good cause. In this case, counsel for the petitioner indicated that the additional witnesses were responsive to deposition testimony taken by agreement after the previously set deadlines. The Court will therefore permit the addition of the witnesses, however, counsel for petitioner shall furnish the respondent's counsel with witness summaries complying with the new scheduling order and also notify respondent's counsel of the portions of deposition testimony to which the additional testimony is responsive.

Topics:

Procedure: Scheduling Order. Where a trial is reset and the setting is only a month and a half distant, the Court should ascertain whether counsel agree to extend pretrial deadlines. Absent their agreement, an opportunity should

be provided for objections to any extension of pretrial deadlines and such deadlines should be extended only for good cause.

¶1 The petition in this matter was filed May 20, 2004. The initial Scheduling Order set the trial for the week of August 9, 2004. At the parties' request, the trial setting was vacated without date.

¶2 In November 2004, the parties agreed to a settlement conference on December 10, 2004. At the same time, however, the petitioner requested a new trial date "as soon as possible after December 10, 2004," in case the parties failed to settle. (Motion to Set Hearing, filed November 10, 2004). A new scheduling order was issued on November 15, 2004, setting the trial for the week of February 14, 2005. The deadline for further identification of witnesses was January 7, 2005. Depositions were to have been completed and filed by February 10, 2005.

¶3 The December 10th settlement conference was vacated due to illness of the respondent's counsel. It was rescheduled for January 24, 2005, and was in fact held on that date. However, a settlement did not ensue.

¶4 In a January 31, 2005 file note, copied to both counsel, this Court's chief hearing examiner, Jay Dufrechou, recorded that on that date he talked by telephone to both counsel and suggested that the February 14, 2005 trial date be vacated to permit completion of discovery. Counsel were directed to provide the Court with a status report no later than March 1, 2005. Neither counsel did so.

¶5 The Court file reflects that on March 8, 2005, the petitioner's counsel faxed a message to Mr. Dufrechou requesting a new trial date. After consulting with opposing counsel about trial dates, an April 25, 2005 date was chosen. That date was confirmed in an Order Resetting Scheduling Order issued March 9, 2005. Although no agreement had been reached between counsel regarding extension of deadlines for identifying additional witnesses or undertaking additional discovery, the new order extended those deadlines, allowing identification of new witnesses up to March 25, 2005.

¶6 The March 8, 2005 FAX from the petitioner's counsel indicated he had three potential new witnesses. On March 10, 2005, one day after the Court issued the latest scheduling order, the respondent's counsel wrote to the Court to advise that he had not agreed to additional witnesses nor to an extension of the deadline for disclosing witnesses. The petitioner then filed a Motion to Add Witnesses. The motion was briefed by both parties and submitted as of March 18, 2005.

¶7 On March 21, 2005, I held a conference call with counsel to discuss the motion. In a situation such as this, where deadlines had already passed and the request was only to

reset the trial date, the Court should have inquired as to whether the parties agreed to extend other pretrial deadlines fixed by prior scheduling orders. Lacking their agreement to do so, the Court should have provided an opportunity to object to any extensions and upon such objection permitted extensions only for good cause.

¶8 Pretrial deadlines, however, can and should be extended for good cause. In the telephone conference with counsel, I inquired as to the reasons for the belated identification of the three witnesses. Counsel for the petitioner indicated that the witnesses will be called to provide testimony which is responsive to deposition testimony given by Dr. Lee Harrison. That deposition was taken recently and is the additional discovery contemplated in Mr. Dufrechou's memo. In light of those representations, as well as the Court's inadvertent extension of the deadlines, I will permit the extended deadlines and witness supplementation to stand.

¶9 Therefore, by March 25, 2005, the petitioner's counsel shall furnish the respondent's counsel with witness summaries complying with the scheduling order. Additionally, he shall identify the portions of Dr. Harrison's testimony to which the additional testimony is responsive. If counsel for the respondent believes that further discovery is necessary in light of the disclosures, then counsel shall confer and agree on new deadlines for the discovery and a new trial date, or apply to the Court for it to set them.

SO ORDERED.

DATED in Helena, Montana, this 22nd day of March, 2005.

(SEAL)

/s/ Mike McCarter
JUDGE

c: Mr. John C. Doubek
Mr. Leo S. Ward
Submitted: March 18, 2005