

IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

2005 MTWCC 46

WCC No. 2001-0412

LAURIE PRESTON

Petitioner

vs.

TRANSPORTATION INSURANCE COMPANY

Respondent/Insurer.

AWARD OF COSTS

Summary: Following a successful appeal of a decision finding the petitioner's claim time-barred, and the respondent's acquiescence to the Court's announced intention to rule in favor of the petitioner with respect to her request for temporary total disability benefits, the petitioner submitted a Memorandum of Costs to which the respondent has objected.

Held: The respondent's objection to inclusion of the cost of appellate mediation is sustained; its other objections are overruled.

Topics:

Costs: WCC Costs. Under Rule 24.5.342(2) of the Workers' Compensation Court rules, the signature of an attorney constitutes his or her certification of the costs. Statutes requiring verification of costs in civil actions are inapplicable.

Costs: WCC Costs. The cost of appellate mediation is not a recoverable cost.

¶1 The matter before the Court is the petitioner's request for costs of \$3,653.44. The respondent objects on numerous grounds.

¶2 Initially, citing sections 25-10-501 and -503, MCA (2003), the respondent urges that costs should be denied because the petitioner's counsel did not verify his Memorandum

of Costs. Section 25-10-501, MCA (2003), provides that a bill of costs must be verified. Section 25-10-503, MCA (2003), provides that if an appellate court awards costs, then the bill of costs to be awarded must be verified in accordance with section 25-10-501, MCA (2003).

¶3 The cited sections are inapplicable. The Supreme Court did not award costs on appeal. Rather, it reversed this Court's decision finding in favor of the respondent. Costs are to be awarded by this Court on account of the petitioner prevailing. Section 25-10-501, MCA (2003), as does the entire Title 25, pertains to civil actions, thus it is not applicable where the rules of the Workers' Compensation Court provide a different procedure. Here, Rule 24.5.342(2), ARM, provides:

(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.

The rule does not require verification. Rather, it provides that an attorney's signature on a memorandum of costs is self-verifying.

¶4 The respondent further objects based on the requirement, also found in section 25-10-503, MCA (2003), that a party must file his or her memorandum of costs within thirty days of remittitur. That requirement applies, however, only where the appellate court awards the fees, which is not the case here. Here, the Workers' Compensation Court is awarding the fees based upon the further proceedings ordered by the Supreme Court. This Court indicated that it was prepared to rule in the petitioner's favor on the merits of her claim for reopening, awarding her temporary total disability benefits retroactive to 1999 and through the date of the hearing, leaving open the issue of whether the benefits ceased at the time of alleged noncooperation by the petitioner. (January 10, 2005 Minute Entry.) The respondent acquiesced to the Court's statement of intent and paid retroactive benefits through December 2, 2003. (March 24, 2005 Minute Entry.)

¶5 Next, the respondent objects to \$1,536.72 paid by the petitioner as her share of the mediator's fee for appellate mediation. The objection is sustained. Rule 54(d)(5), Mont. R. App. P., provides that "[t]he mediator's fee and incidental expenses shall be shared equally by the parties." Rule 24.5.342, ARM, does not override that rule and the cost is not in any event among the sort of items enumerated in the rule as recoverable costs.

¶6 Finally, the respondent objects to photocopying and long distance telephone charges on the ground that the petitioner failed to explain how they were necessary to the prosecution of her appeal. The petitioner has provided a detailed statement of each and

every telephone and copying charge, and the total amount of those items is small. Courts must apply common sense in examining these sorts of costs. Further explanation and justification would require more cost in attorney time than the costs claim. I am satisfied that, given the nature of the case and the amounts of the charges, they are reasonable and necessary. The respondent's objection is therefore overruled.

ORDER

¶7 The cost of appellate mediation is disallowed. The petitioner is therefore entitled to costs in the amount of \$2,116.72, which the respondent shall promptly pay.

DATED in Helena, Montana, this 8th day of August, 2005.

(SEAL)

/s/ Mike McCarter
JUDGE

c: Mr. Richard J. Martin
Mr. Todd A. Hammer
Submitted: June 14, 2005