

IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

1995 MTWCC 82

WCC No. 9411-7166

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ROCKEY G. ROONEY

Petitioner

vs.

CREDIT GENERAL INSURANCE

Respondent.

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ORDER AWARDING COSTS

**Summary:** Respondent disputed costs claimed by successful petitioner.

**Held:** Under *Kloepfer v. Bechtel Construction Co.*, 272 Mont. 78, 52 St. Rptr. 663 (1995), costs payable in the WCC under the reasonable costs standard are not necessarily comparable to those recoverable in a district court case. It is settled that the WCC has developed a practice of allowing costs associated with medical testimony and depositions. After a September 20, 1995, meeting of the Workers' Compensation Court Rules Committee, the members agreed the Court should adopt a rule authorizing costs for photocopying, long distance telephone charges, and other charges that are typically billed to clients and not considered part of overhead. Here, costs are allowed for medical records, photocopies, telephone charges, and postage. Claimant's request for compensation for a motel room he took on the day of his independent medical examination is denied, however, where he flew by airplane to and from Billings on the same day of the exam and there is no medical opinion that he required a motel room in which to lie down prior to his flight home.

**Topics:**

**Costs: WCC Costs.** Under *Kloepfer v. Bechtel Construction Co.*, 272 Mont. 78, 52 St. Rptr. 663 (1995), costs payable in the WCC under the reasonable costs standard are not necessarily comparable to those recoverable in a district court case. It is settled that the WCC has developed a practice of allowing costs associated with medical testimony and depositions. After a September 20, 1995, meeting of the Workers' Compensation Court Rules Committee, the members agreed the Court should adopt a rule authorizing costs for photocopying, long

distance telephone charges, and other charges that are typically billed to clients and not considered part of overhead. Here, costs are allowed for medical records, photocopies, telephone charges, and postage. See, ARM 24.5.342.

**Costs: WCC Costs.** Claimant's request for compensation as litigation cost for a motel room he took on the day of his independent medical examination is denied where he flew by airplane to and from Billings on the same day of the exam and there is no medical opinion that he required a motel room in which to lie down prior to his flight home.

(SEE FOLLOWING ORDER)

1995 MTWCC 87

IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

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ROCKY G. ROONEY,

Petitioner,

WCC No. 9411-7166

vs.

CREDIT GENERAL INSURANCE,

Respondent/Insurer for

TTC INC.,

Employer.

**FILED**

OCT 23 1995

OFFICE OF  
WORKERS' COMPENSATION JUDGE  
HELENA, MONTANA

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ORDER AWARDING COSTS

In its FINDINGS OF FACT, CONCLUSIONS OF LAW AND JUDGMENT issued June 29, 1995, this Court awarded the claimant "costs in an amount to be determined by the Court."

On July 25, 1995, the Montana Supreme Court issued its decision in *Kloepfer v. Bechtel Construction Co.*, 52 St.Rptr. 663 (1995). The Supreme Court found that "the costs payable in Workers' Compensation Court under the reasonable costs standard are not necessarily comparable to the standard applied in normal district court cases." Specifically, the court held "[t]here is no issue of fact regarding the past practice of the Workers' Compensation Court to award a successful claimant the cost of medical testimony and depositions." Counsel have been given the opportunity to discuss the effect of the Supreme Court decision on the claimant's requested costs.

The respondent specifically objects to an award of costs for: 1) medical records; 2) Dr. Lahey's fee for deposition; 3) photocopies; 4) telephone; 5) postage; and 6) motel room for the claimant during the day of his independent medical examination, for a total of \$717.09.

On September 20, 1995, the Rules Committee for the Workers' Compensation Court met and discussed the adoption of a rule governing costs. The members agreed that the Court should adopt a rule authorizing costs for documented photocopying, long distance telephone charges, and other charges. While recognizing that the past practice of the Court has been to disallow these costs, the committee expressly agreed that these are costs which are ordinarily billed to their clients and that they do not fall into the category of overhead. Therefore, medical records in the amount of \$30.00, photocopies in the amount of \$12.00, and telephone charges in the amount of \$70.97 will be allowed. Postage was not specifically discussed by the Rules Committee, but the Court finds that

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postage costs should be allowed under the same reasoning as photocopying and telephone charges. Therefore, postage in the amount of \$22.92 is allowed. Finally, pursuant to *Kloepfer*, the cost of Dr. Lahey's deposition fee in the amount of \$550.00 is allowed.

The motel bill is **denied**. Claimant incurred the bill when he attended an independent medical exam in Billings. He left his home in Lolo, Montana at 6:00 a.m. to reach Billings in time for his exam. The exam lasted two hours, and claimant had to wait another six hours before his flight back west. During that time he rented a motel room. I am not satisfied that the rental was essential even though he claims he had to lie down. Certainly he has not provided any medical documentation demonstrating it was essential.

IT IS HEREBY ORDERED the claimant shall recover the disputed costs of \$685.89 pursuant to this order for a total of \$1128.29 in costs from the respondent.

This Order is certified as final for purposes of appeal pursuant to ARM 24.5.348.

DATED in Helena, Montana this 23<sup>rd</sup> day, of October, 1995.

(SEAL)

  
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JUDGE

c: Mr. Mark E. Westveer  
Mr. Michael P. Heringer