

IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

2008 MTWCC 1

WCC No. 2007-1972

PETER SCHOENEN

Petitioner

vs.

UNINSURED EMPLOYERS' FUND

Respondent

and

SERVICE MASTER ALL-PURPOSE CLEANING, INC.

Uninsured Employer.

ORDER DENYING RESPONDENT'S MOTION FOR
INDEPENDENT MEDICAL EXAMINATION

Summary: Respondent Uninsured Employers' Fund has moved the Court to order Petitioner to attend an independent medical examination.

Held: Respondent did not request Petitioner to attend an independent medical examination until after the deadline for designating witnesses and filing expert witness' summaries had expired. Therefore, Respondent's motion is denied as untimely.

¶ 1 Respondent Uninsured Employers' Fund has moved for an Order compelling Petitioner to attend an independent medical examination (IME). The employer, Service Master All-Purpose Cleaning, Inc., concurs in this motion. Petitioner resists the motion on the grounds that the request for an IME was untimely.

¶ 2 The Petition for Trial in this matter was filed on October 15, 2007. A Scheduling Order was issued that same date and served upon Respondent and the employer. The Scheduling Order provided that all expert witnesses, along with a summary of the subject matter and the nature of the facts and opinions to which the expert is expected to testify,

shall be exchanged on or before November 23, 2007. The Scheduling Order also provided that all proposed exhibits, including medical records, were to be exchanged by November 23, 2007.

¶ 3 Counsel for Respondent e-mailed Petitioner's counsel on November 26, 2007, and requested that Petitioner submit to an IME.¹ Petitioner's counsel responded by letter the following day and advised that Petitioner would not agree to submit to an IME because the request was untimely.² On December 14, 2007, Respondent filed its motion to compel Petitioner to submit to an IME.

¶ 4 In its brief in support of its motion to compel an IME, Respondent argues, "It is essential that the UEF obtain the independent medical opinions so as to properly evaluate this file."³ This begs the question as to how Respondent evaluated its file in the several months preceding its eleventh-hour request for an IME. More to the point, however, Respondent has completely failed to address the timeliness issue which is the primary basis upon which Petitioner objected to Respondent's request for an IME.

¶ 5 This Court has previously held that when a request for an IME is made after the time for designating witnesses and filing expert witness' summaries has expired, the request must be denied as untimely.⁴ Although it is conceivable that circumstances may justify an untimely request in some situations, that is not the situation at hand. In fact, Respondent has simply ignored the timeliness issue in requesting its IME. Therefore, Respondent's request for an IME is denied.

ORDER

¶ 6 Respondent's motion for an independent medical examination is **DENIED**.

¶ 7 Any party to this dispute may have twenty days in which to request reconsideration from this Order.

///

¹ Ex. A to UEF's Motion for Independent Medical Examination.

² Ex. B to UEF's Motion for Independent Medical Examination.

³ UEF's Motion for Independent Medical Examination at 2.

⁴ *Mack v. Montana State Fund*, 2005 MTWCC 28, ¶ 8.

DATED in Helena, Montana, this 4th day of January, 2008.

(SEAL)

/s/ JAMES JEREMIAH SHEA
JUDGE

c: J. Kim Schulke
Arthur M. Gorov
William O. Bronson
Submitted: December 27, 2007