IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

1995 MTWCC 77

WCC No. 9406-7066

EDWIN TAYLOR

Petitioner

vs.

STATE COMPENSATION INSURANCE FUND

Respondent/Insurer for

MONTANA DEPARTMENT OF HIGHWAYS

Employer.

AFFIRMED *Taylor v. State Fund, 275 Mont. 432* (1996) (No. 95-484)

ORDER SUPPLEMENTING FINDINGS OF FACT AND
OTHERWISE DENYING CLAIMANT'S POST-TRIAL MOTIONS

Summary: After Worker's Compensation Court entered Findings of Fact, Conclusions of Law and Judgment finding that two of claimant's three workers' compensation claims were fraudulent, claimant filed motion asking Court to set aside findings or grant a new hearing. In addition, former counsel for claimant wrote Court indicating that he read the Court's findings as suggesting that he had intimidated a witness.

Held: After re-review of evidence, Court clarifies that it found the witness felt intimated by counsel, but not that counsel had intended to intimidate the witness or had acted improperly. Supplemental findings of fact are provided in narrative by the Court, but the claimant's motion to set aside findings or grant a new hearing is denied.

Topics:

Witnesses: Credibility. Though Court did not find all of the testimony of witness credible, her testimony that claimant told her he was scamming the system was

credible when placed in context of the actions and behavior of the witness, as well as her demeanor when testifying.

Witnesses: Intimidation. Though Court found witness felt intimated by claimant's counsel, and believed this contributed to her signing prior affidavit that contradicted her in-court testimony, the Court did not find that counsel had intended to intimidate the witness or had acted improperly.

On August 21, 1995, this Court entered its Findings of Fact, Conclusions of Law and Judgment finding that two of three workers' compensation claims filed by claimant were fraudulent.

On August 28, 1995, the Court received claimant's motion asking that the Court set aside or amend its findings or grant a new hearing. At approximately the same time, I also received a letter from Mr. Bernard J. Everett, one of claimant's counsel, indicating that he read my decision as finding that he had intimidated one of the witnesses (Elizabeth Larain) in this case. (August 26, 1995 letter of Everett to Judge McCarter.) In discussions with counsel, some of which have been transcribed, I have notified counsel that Everett misread my findings. On the other hand, after reviewing the finding which refers to Everett, I also acknowledged that I left the matter of Everett's conduct more ambiguous than I should have. The claimant's present motions, therefore, provide me an opportunity to clarify my finding regarding Everett and Larain, as well as address the claimant's other contentions regarding the evidence in this case.

At trial Larain testified that Edwin Taylor told her in the spring of 1991 that he had "faked" his March 4, 1991 injury and was "scamming" the system. Her testimony contradicted an earlier affidavit she had signed in which she stated that she basically did not have a recollection of conversations in 1991 because of "memory erasure" drugs she took later on. The affidavit was prepared for her by Everett, who was representing Taylor, and who had talked to Larain at length on June 29, 1994. The affidavit was the principal basis for Taylor's attack on Larain's credibility.

During a deposition of Larain on August 3, 1994, Larain repudiated critical portions of the affidavit and testified that she signed it only after Everett told her she was going to be "dragged through the court", that her personal medical history would be brought up, and that if she signed the affidavit the case against Taylor would be thrown out of court and she would not have to testify. (Larain Dep. at 51-53.) Everett, whose cross-examination elicited these accusations, was plainly upset and interjected, "Hey, you're going to go to Court, Liz, because you're lying through your teeth, and you're going to go to Court." (*Id.* at 53.) The deposition was then stopped and I was contacted by telephone. After listening at length to what the attorneys and Larain had to say (Larain Dep. at 54-98), it became clear that the accusations of Larain against Everett created a hostile atmosphere not

conducive to continuing the deposition. It also became clear to me that Everett was likely to be a witness in the case and that I could not judge Larain's credibility merely by reading her deposition.

Thereafter, I issued an order disqualifying Everett from acting as trial counsel. (Order Disqualifying Petitioner's Counsel , November 30, 1994.) At the request of Mr. Oliver H. Goe, who represented the State Fund, I subsequently issued orders and subpoenas directing Larain to personally appear at trial.

Both Larain and Everett testified at trial. Ultimately, I found Larain's testimony concerning her conversations with claimant to be credible. I also found that her "explanation that she signed the affidavit because she **felt** intimidated by claimant's counsel and did not want to have to testify . . . credible." (Finding 62, emphasis added.) I did not find that Everett had in fact intentionally intimidated her or that he had done anything improper. Nonetheless, I understand that in light of my prior disqualification of Everett, my failure to say anything more about the matter could be construed as insinuating such a finding. It is therefore incumbent upon me to specifically address Everett's conduct and to amplify my findings regarding Larain's credibility.

I must also address Taylor's arguments in support of his motion. He has directed my attention to testimony and exhibits he believes I overlooked or ignored. He also renews his attack on Larain's credibility.

I have reread Larain's testimony, not only the specific portions identified by claimant in his supporting brief, but her entire testimony. I have also reread Everett's written account of the conversation he had with Larain on June 29, 1994 (Ex. 26) and the affidavit Everett prepared for Larain following the conversation. (Ex. 25(B).) In addition, I have reread the testimony of Lance Zanto, Robert Beebe, Carol McKeon, and Edward Taylor and the exhibits which Taylor identifies in his supporting brief. After doing all of this, and considering the arguments made by counsel, I reach the same conclusions I reached in my original Findings of Fact, Conclusions of Law and Judgment but make additional supplemental findings regarding Everett and the arguments presented by the post-trial motion. These findings, as follow, are in narrative form but shall constitute supplementary findings of fact.

Larain testified at trial that claimant had admitted faking his March 4, 1991 injury and "scamming the system." (Larain Trial Testimony at 17-18.) That testimony was inconsistent with the affidavit which Everett prepared and she signed. According to the affidavit, she was suspicious of the claim but Taylor did not tell her he did not fall. The affidavit further stated that by October 1993, her memory as to what Taylor told her was very limited because she had "taken two prescription drugs that erased my memory." It went on to say, "As a result, I have a very limited ability to remember what MR. TAYLOR

or anyone else told me in 1991." The affidavit further stated that her best recollection of her conversations with Taylor would be what she told investigator Bryan Costigan on September 21, 1992. Because the affidavit is the cornerstone of claimant's attack on Larain's testimony, I set it out in full here:

AFFIDAVIT OF ELIZABETH WHITE

STATE OF MONTANA, }
ss:
County of Deer Lodge. }

I, ELIZABETH WHITE, also known as ELIZABETH LARAIN, being first duly sworn upon my oath, depose and say as follows:

I

I was an acquaintance of EDWIN A. TAYLOR during the year 1991.

II

In early March 1991 I visited EDWIN A. TAYLOR while he was hospitalized at Bozeman Deaconess Hospital. He told me that he had been injured while working for the Highway Department picking up road cones and stepped in a pot hole.

III

After he was released from the hospital, sometime later, I cannot recall exactly when, he attempted suicide by taking an overdose of flexeril. He was not in my opinion really mentally stable. Shortly after, he was released from the hospital for attempting suicide, I went over to his house to visit with him. I cannot specifically recall what he said but he talked about how much money he was going to settle his workers' compensation case for. I got the impression that he never injured his back. I really cannot recall what he said except that I remember he told me something to the effect that Dr. Shaneyfelt would no longer treat him and they had kicked him out of the hospital because nothing was wrong with his back.

IV

I do not know if EDWIN A. TAYLOR injured his low back on March 4, 1991 while working for the Highway Department. He never told me he did not fall on March 4, 1991.

V

On September 21, 1992 I recall meeting with a Mr. Bryan Costigan, an investigator, at the Law Enforcement Academy in Bozeman. I believe the interview was recorded. I never was provided with a copy of that interview. What I told Mr. Costigan during that interview would be my best recollection that I have regarding any conversations that I had with EDWIN A. TAYLOR about his industrial injury in March of 1991.

VI

I remember being interviewed by Mr. Costigan on another occasion in October 1993. However, by that time my recollection of what EDWIN A. TAYLOR told me about how his injury occurred or whether or not he was hurt as the result of that injury is very limited because I had taken two prescription drugs that erased my memory. As a result, I have a very limited ability to remember what MR. TAYLOR or anyone else told me in 1991.

VII

The two prescription drugs I took were Versed and Sentanyl. I started taking those drugs for pain I had as the result of a back surgery in April or May 1991 and continued to take them until March 1992. I finally was able to quit taking the drugs in March 1992 after being treated at the Rimrock Foundation. Both of these drugs are memory erasers. I have not been able to clearly recall many things ever since. I do not recall exactly what EDWIN A. TAYLOR told me.

FURTHER AFFIANT SAYETH NOT.

DATED THIS 25th DAY OF *July*, 1994.

/S/ Elizabeth white
ELIZABETH WHITE

SUBSCRIBED AND SWORN TO before me this 25th day of July, 1994 by ELIZABETH WHITE.

/S/ Cheryl A. Hansen
Notary Public for the State of
Montana, residing in Wolf Point
My commission expires 8-10-96

(Ex. 25.)

The question I faced was whether Larain was telling the truth at trial when she testified as to a specific recollection of her conversations with Taylor, or whether, as stated in her affidavit, she had no recollection of her conversations

In reviewing Larain's testimony, I initially note that claimant recalled her conversation with Everett as lasting two to three hours. (Larain Trial Testimony at 45-46.) Everett's records show that it was only an hour. (Ex. 27.) An hour conversation is a long time and, unless one has a telephone record or is clocking the conversation, it may seem a lot longer. I did and do not find the discrepancy significant.

I also note that during her direct examination, Larain characterized Everett as pleasant over the phone. (Larain Trial Testimony at 44-45.) Claimant emphasizes this point but overlooks her additional testimony at trial concerning her conversations with Everett. That testimony will be set out later on in this Order.

The assertion made in that affidavit that Larain could not recall the 1991 conversations with Taylor contradicted at least one prior report concerning Taylor. On August 5, 1991, Larain told Lance Zanto, a claims examiner with the State Fund, that Taylor had admitted to her that his workers' compensation claim was a fake. (Ex. 54 (admitted without objection); Zanto Testimony at 14.) Moreover, shortly following her conversation with Everett, Larain called Elizabeth A. Horsman (Larain Trial Testimony at 65-66), who is a prosecutor for the State in workers' compensation fraud matters. Horsman referred her to Costigan, the state investigator assigned to Taylor's case. (*Id*. at 67.) On the day after her conversation with Everett, Larain talked to Costigan. In that conversation she read the affidavit and pointed out statements in it which she believed to be untrue. She told Costigan that she felt intimidated and that Everett had been trying to intimidate her. (*Id.* at 69-73.) She also told Costigan that Taylor had in fact told her that he was defrauding workers' compensation . (*Id.* at 74-75.) At the time, she was angry about the conversation she had had with Everett. (*Id.* at 68.)

Larain's state of mind and actions immediately following her telephone conversation with Everett lend credence to her testimony that she felt intimidated, that the affidavit was

in significant parts untrue, and that she was testifying truthfully at trial concerning Taylor's admission of fraud.

Indeed, she did not initially return the affidavit to Everett but sent it to Costigan. It was only after Larain and her husband fought that she decided to go ahead and sign the affidavit. She testified:

> A. He [my husband] was extremely angry. He said for me to just make it go away. He didn't understand why I was involved in any of this. We got into a big battle about it, and ultimately I ended up signing the affidavit so I wouldn't have to go to trial and make it go away. That's why I did it, and because of what Mr. Everett had said to me about my name going to be plastered all over and all my medical records and everything about my past and everything was to be brought up in open court and was going to cost me a lot of time and money, etcetera, etcetera. At that point I said this would be the easiest thing to do is just lie and sign it. Which is what I did. By signing it I was lying.

(*Id.* at 83-84.) After personally observing Larain, and considering her prior report of fraud, her immediate reaction to the phone conversation, and her initial disavowal of the affidavit, I found her explanation as to why she executed a false affidavit credible.

Her explanation was further bolstered by the fact that following her conversation with Everett she was clearly aware that Taylor intended to fight the charges against him and that she would therefore have to testify at trial. Based on her conversation with Everett she was also aware that her memory would be challenged and that her medical history, including drug treatment for addiction to a prescription medication, could be brought out in any trial. Everett's own recollection of his conversation with Larain shows that she provided details of her medical history, including back surgery, her medications, and drug treatment to get off prescription medications. (Ex. 26.) Her reluctance to be involved is also apparent from Everett's notes. Everett recorded that he introduced himself, told her she was named as a witness, and had read her the statement she had given to Costigan. The following then took place:

> She responded that she did not remember anything and did not want to be a witness in the cases. **She did not want to be involved**. I told her she was a witness and in order to represent my client it was very important that she tell me exactly what EDWIN A. TAYLOR may have told her. [Emphasis added.]

(Ex. 26 at 2.) It is reasonable to read her immediate response as a put-off — in essence, a statement that she did not want to talk to Everett. But, as Everett's telephone records and statement indicate, the conversation continued for an hour.

I am persuaded that Larain felt pressured to continue talking to Everett and responded to his questions by claiming a lack of memory. At trial Everett testified that he told her that she was a very important witness and that he had a right to talk to her. He also acknowledged that several times during his conversation with her she said she did not remember anything and did not want to be involved.

At trial Larain testified that Everett told her that "Taylor had terrible medical problems from this injury and that when they brought him to the ER he was covered with bruises and contusions . . . ." (Larain Trial Testimony at 66.) She further testified that Everett told her, "[I]f I signed the affidavit saying that I had forgotten everything, that this trial and everything would go away and that would be the end of it . . . ." (*Id.* at 66-67.)

Everett's memorandum of the conversation lends some support to Larain's recollection. He wrote:

> I told her ED had recently seen Dr. Lovitt and he'd recommended surgery . . . .
>
> She told me that that surprised her because Bryan Costigan told her ED never had anything wrong with his back. I told her that wasn't true and if she wanted I'd let her look at his medical records.

(Ex. 26 at 6.) While his memorandum does not mention telling her about bruises and contusions, I note that the memorandum was prepared six months after the conversation and that a conversation about contusions would be consistent with the position taken by Everett in the Court, to wit: that Taylor suffered contusions and that those contusions are proof that he suffered an industrial injury. I find it likely that Everett did tell Larain about contusions but do not believe that he intentionally omitted mention of that part of the conversation in his memo.

> In his memorandum, Everett also recalls:
> I told her that I was going to prepare an affidavit for her. She asked me what it was for. I told her that I was going to use it in both cases and that **maybe there would not have to be a trial. She said good - I do not want to be involved**. [Emphasis added.]

(Ex. 26 at 5.) It is not surprising that Larain interpreted his statement as meaning that if she signed the affidavit she would not have to testify.

In characterizing the conversation, Larain said, "I thought he [Everett] was manipulating me, trying to help me gain sympathy for Ed Taylor. I think he intimidated me." (Larain Trial Testimony at 68.) Even though Everett was not acting improperly in imparting information he thought important to the case, Larain's perception that he was trying to gain sympathy for Taylor and manipulating her was neither unbelievable nor irrational.

There is one more significant conversation that took place which reflects on Larain's state of mind when she executed the affidavit. After preparing the affidavit, Everett called Larain back on the afternoon of June 29 and read her the affidavit. When he got to paragraph three and the part about Taylor telling her that Dr. Shaneyfelt would no longer treat him and had kicked him out of the hospital (Ex. 26), she interrupted and told Everett to take that information out and just put in that she did not know anything. (Everett Trial Testimony [not transcribed].) Everett, who had heard her tell him about the conversation, did not alter the affidavit. The conversation, however, is further indication that Larain was having second thoughts about her involvement in the case and wanted to cut herself free from it. Indeed, in a frustrated response during colloquy among counsel, the Court and Larain during Larain's deposition on August 3, 1994, she at one point said she had had enough and was going to answer every further question by responding, "I don't remember anything." (Larain Dep. at 88.)

I also note that the gist of the affidavit was that she did not remember, not that Taylor did not tell her his claim was a fake. I also note that there was no testimony to support the proposition that the drugs Larain was taking in 1992 could cause "memory erasure" of long term memory.

In the end, after sifting through all of this, and listening personally to Larain's testimony, I was simply persuaded that the affidavit was not true and that Larain indeed did recall, and testified truthfully about, the critical conversations with Taylor.

More, however, needs to be said about Larain's accusations against Everett as the foregoing discussion does not fully reflect those accusations. At trial Larain gave the following additional testimony:

> When I discussed with Mr. Everett Ed's case, during the course of our conversation Mr. Everett told me that this was going to be a huge trial, that my name was going to be dragged all over the place, that my medical history would be brought out, anything that I'd ever done would be dragged out. I call that intimidation. I then said — We both discussed — We had discussed previously about the medication that I took after my back surgeries, and I said, "Well should I just say that I just don't remember," and he said, "If you can write down that you don't remember and sign that affidavit, then you won't have to go to trial and it will be ended." He told me it was going to be

> the trial of the century and I'd be smeared all over the place and I don't think anybody wants to do that or go through that.

(Larain Trial Testimony at 73-74.) She made a similar accusation during her deposition (Larain Dep. at 51-53.) I find her testimony in this regard to be exaggerated if not false in part. While I am persuaded that Everett in essence either told Larain or implied to her that there was going to be a trial and that a vigorous defense would be mounted, I do not believe that he told her that her name was going to be smeared. I do not believe that he threatened to bring out her medical history at trial, although I do believe that she realized her history could well become an issue. And, I do not believe, as she suggests, that she and Everett negotiated what the affidavit should say.

Rather I am persuaded that Everett's recollection of the conversation with Larain is basically accurate, although it undoubtedly is lacking in some details. Most importantly, I am persuaded and find that Everett did not threaten or intentionally intimidate Larain. It was Larain who raised the lack of memory to deflect Everett's unwanted inquiry and to avoid further involvement in the case. While she may have perceived Everett as trying to manipulate her and gain her sympathy, he did nothing wrong in telling her that Taylor had a real back problem, in relating Taylor's assertion that he had suffered bruises and contusions, and in telling her that there would be a trial and she would be a witness. Everett did nothing wrong in asking her to sign an affidavit setting forth his genuine understanding of what she told him. Indeed, in his letter to her, he specifically told her the he wanted the truth and that "[i]f the Affidavit is accurate, would you please sign it in the presence of a Notary Public and return it to me in the envelope that I have enclosed for your convenience." (Ex. 25A.) I find that Everett did not act improperly in interviewing Larain.

Ultimately, I was not persuaded that all of Larain's testimony was true. And while that is enough to view all of her testimony with suspicion, I am still persuaded that she testified truthfully regarding her conversations with Taylor. I should also add that my decision was not based solely on that testimony. Her testimony was only one piece of evidence on which I relied. As set out in my original findings, there is other substantial evidence supporting my decision in this case.

I have fully considered the arguments advanced by Taylor in his motion. The evidence identified in his brief and at oral argument was considered by me before I entered my original findings, and I saw, and still see, no requirement that I respond to every item of evidence cited by a party in support of his arguments. Nonetheless, along with re-reviewing Larain's testimony, I have once again reviewed the evidence identified in the motion and argument to determine if I misapprehended the overall effect of the evidence or erred in finding that Taylor defrauded the State Fund with respect to two of his workers'

compensation claims. After that review, I now remain as firm in my conviction that Taylor committed fraud as I was at the time I issued my original findings.

Before discussing Taylor's specific contentions, I want to reiterate two points from my original decision. First, the State Fund bore the burden of proof in this case. In attorney Wade J. Dahood's words, he was "presumed innocent," and I honored that presumption. Had the evidence in this case been evenly balanced, I would not have hesitated to find for Taylor, and in fact did so with respect to one of his claims.

Second, the fact that Taylor has a back condition does not in and of itself prove that his condition resulted from an industrial injury. There is nothing in the medical evidence to indicate an acute injury as opposed to long term degeneration, or, other than Taylor's own report, to prove that his back problems stemmed from an industrial accident. Beebe, whom I felt was a credible witness, testified persuasively that prior to March 4, 1991, Taylor had complained of back pain and attributed his back problem to a car accident and a shortened leg. (Beebe Trial Testimony at 108.) There was also significant evidence that Taylor has exaggerated his symptoms.

Dr. Johnson's records do not prove an injury. Dr. Johnson merely recited the history provided to him by Taylor. Moreover, although an MRI and myelogram indicated a possible disk bulge at the L5-S1, and possible motion at the L4-5 level, Dr. Johnson's notes reflect that "[i]t was difficult for him [Taylor] to point to any specific dermatome" with respect to his reputed leg pain. (Ex. 16A at 3.) He referred Taylor to Dr. Snyder for evaluation and Dr. Snyder did "not feel that an operation is indicated because of the **generality** of the complaints." (Ex. 16B; emphasis added.)

Similarly, Dr. Traynham's records do not prove an injury. Dr. Traynham is a psychologist and performed a psychological evaluation of claimant. While he records what claimant told him about various injuries, he does not directly address, nor could he, whether an industrial accident occurred. (Ex. 23.) In his notes, Dr. Traynham says claimant's depression is "a function both of underlying personality pattern and the work place stresses and injuries the claimant experienced." (*Id.* at 6.) Since Dr. Traynham was relying on what claimant related to him, his conclusion does not prove that the injuries at issue in this case occurred, and his conclusion in any event does not reference specific injuries.

Moreover, there is information in Dr. Traynham's notes which is entirely consistent with and supports my findings of fact in this case. Dr. Traynham records that prior to March 4, 1991, Taylor was having serious difficulties with his job, a report that contradicts Taylor's claim that he had a dream job and was not having difficulty at work. (*Id.* at 2.) On the Minnesota Multiphasic Personality Inventory claimant scored "an extremely elevated profile" on the F scale. (*Id.* at 4.) The F scale is a validity scale, and Dr. Traynham had this to say about the score:

> Personality evaluation with the MMPI was met with some difficulties do to the claimant's extremely negative response set. The first administration on 09 December manifested an F-K of 35. This produced an extremely elevated profile of an individual who had answered an improbably number of F scale items in the scored direction and the profile is **invalid**. This can occur when a person has difficulty understanding the questions, **or is answering the questions randomly, very deviantly, or in a "fake bad" direction.**
>
> The claimant was presented with the results of this administration and asked to attempt to answer the instrument with a little less negative feeling. He stated that he truly felt he was answering the questions honestly but would attempt to be more realistic on the second administration. This administration on 17 December resulted in an F-K Index of 32 and a Weiner-Harmon Differential of 328. It appears this is a result of a response set from an extremely emotionally unstable individual who is narcissistic and self-indulging and who **habitually exaggerates and dramatizes complaints and has a tendency to feel very unfortunate and sorry for himself.** These patients may expect immediate attention, help and pity. This type of patient may be genuinely miserable, upset or at a loss, but the clinical picture is strongly coloured by the style and intensity of expression of these symptoms. [Emphasis added.]

(*Id.* at 4-5; emphasis added.) In scoring the T scales, Dr. Traynham observed, "The resulting clinical profile indicates **almost maximum elevations in exaggerated physical symptoms,** depression, paranoia, obsessiveness, and confusion." (*Id.* at 5, emphasis added.) Interestingly, Dr. Traynham also recorded Taylor's statement that at the time of his injuries he was "an accident waiting to happen." (*Id.* at 3; quotes in original.) Overall, Dr. Traynham's notes reflect an individual possessed by numerous personal demons. Suffice it to say, the notes do not flatter Taylor or support his claims in this case.

As requested, I have reviewed once more the testimony of Dan Noyes. Noyes took Taylor to the hospital on March 4, 1991, and testified that Taylor looked like he was in pain. (Noyes Dep. at 7-8.) However, he did not witness any accident. He also did not observe any bruises, abrasions or other physical signs of injury on Taylor. That testimony is inconsistent with Taylor's claim at trial regarding physical evidence of his injuries. See Finding 61. Moreover, Noyes' observations about pain merely reflects the behavior Taylor was exhibiting at the time, and there is an abundance of evidence that Taylor has exaggerated and fabricated pain symptoms. Finally, Noyes' testimony casts doubt on Taylor's claim that he fell on account of a build-up of asphalt on his shoes. (Noyes Dep. at 15-17.)

The Court has already evaluated the medical information concerning claimant's initial hospitalization. The fact that the emergency room record states that claimant was in pain in and of itself does no more than reflect how Taylor was acting out and what he was telling the ER personnel.

Taylor challenges the Court's finding that Beebe was a credible witness, arguing that he was biased because he believed that Taylor had stolen $25 dollars from him. But I listened to Beebe and found him very credible. Indeed, some of his testimony was corroborated by Taylor himself, who confirmed that he had shown Beebe something on his neck and that he had in fact been working under a car in April 1991.

In my conclusions of law, I noted that Taylor had made as great a negative impression on me as any witness I have heard during the last two years. I abide by that statement. Taylor's confident, forceful testimony at trial stood in stark contrast to the complaining, depressed, non-functional individual who appears in the many medical and psychological records presented in this case. His explanations about what he showed Beebe on his neck and his working under his car were implausible. He testified that he liked his job a lot, but that testimony was contradicted by what he told his psychologist in the winter of 1990-91. He had a smooth answer for everything presented against him.

I reread Zanto's testimony and nothing in it changes my mind. Zanto testified concerning his continuation of benefits despite Larain's report and his receipt of investigative information at various times. However, even though he may have evaluated the case at those times, he did not have the array of evidence presented at trial to me. And, in the end, it is my evaluation of the evidence which is required.

I also read the Norman panel report which Dahood referred to in oral argument. As with other medical records, it reports what claimant said about an industrial accident but offers no objective evidence which supports his claim. (Ex. 21.)

Finally, I want to make it clear that my finding against Taylor in no way reflects any deficiency in the legal representation provided to him by Everett and Dahood. They have been vigorous and aggressive advocates in this case and done everything within their power to persuade me that Taylor's claims were legitimate. It is clear to me that they genuinely believe Taylor. They have invested enormous time and energy in this case, and gone above and beyond the duty of any ordinary advocate. They have acted ethically. But in the process, Everett was wounded by an errant, unfounded allegation of intimidation; his wound was undoubtedly magnified by this Court's own failure to initially make a specific finding concerning the allegation. Hopefully, these supplemental findings and discussion will put to rest any cloud that has hung over either him or Dahood in this case, and also serve to acknowledge that they have done the best job possible in representing their client.

Mr. Taylor's motion to amend, reconsider or for a new trial is **denied.** The Court's findings of fact are deemed amended by this Order. The original judgment and this entire matter are certified as final for purposes of appeal.

Dated in Helena, Montana, this 6th day of October, 1995.

(SEAL)

/s/ Mike McCarter
JUDGE

c: Mr. Wade J. Dahood
Mr. Oliver H. Goe
Mr. Bernard J. Everett
Submitted Date: September 29, 1995