IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

WCC No. 9501-7222

PATRICK E. TOMMY

Petitioner

vs.

STATE COMPENSATION INSURANCE FUND

Respondent/Insurer for

NORTHWEST SIGNS AND SERVICES

Employer.

ORDER DENYING MOTION TO COMPEL

Summary: In motion to compel, claimant seeks more detailed information about other employees of employer, including W-2 and W-4 forms, and checks and other documents showing payments to claimant. He also seeks an order permitting his attorney to inspect the employer's premises.

Held: Where petitioner's wages are not in dispute, he is not entitled to additional information concerning payments made to him. Employer has already provided all the information it has concerning other employees. While expert may be permitted to inspect employer's premises to weight items for lifting requirements, claimant's attorney would become a witness in the case if he inspected the premises, so that request is denied.

Topics:

> **Discovery: Employment Records.** Where petitioner's wages are not in dispute, he is not entitled to additional information regarding wages other than what the employer has produced. Employer need not produce additional information regarding other employees.
>
> **Discovery: Employer's Premises.** While claimant may be entitled to order permitting vocational expert to visit employer's premises to weigh items relevant to lifting restrictions, Court would not order employer to allow visit by claimant's attorney, who would then become a witness to any observations he made relevant to the case.

Employers: Generally. While claimant may be entitled to order permitting vocational expert to visit employer's premises to weigh items relevant to lifting restrictions, Court would not order employer to allow visit by claimant's attorney, who would then become a witness to any observations he made relevant to the case.

Attorneys: As Witness. While claimant may be entitled to order permitting vocational expert to visit employer's premises to weigh items relevant to lifting restrictions, Court would not order employer to allow visit by claimant's attorney, who would then become a witness to any observations he made relevant to the case.

Petitioner has filed a motion to compel discovery. In that motion he seeks more detailed information concerning other employees of the respondent, W-2 and W-4 forms, and checks and other documents showing wages paid to petitioner. He also seeks an order permitting inspection of the employer's premises.

The motion is **denied**. Respondent has provided all information it has concerning other employees and it does not appear that petitioner's wages are in dispute. As to the request for an inspection of the employer's premises, the employer has relocated since the date of the accident. While petitioner may have legitimate interests in weighing objects at the employer's place of business to establish lifting requirements, the respondent indicates that petitioner's attorney wishes to personally conduct the inspection and states that the employer vehemently objects to such inspection. Respondent notes that the inspection contemplated by petitioner's attorney is ordinarily done by a vocational expert and that an inspection by Mr. Thomas J. Murphy would put him in the position of becoming a witness in the case. The Court agrees. Therefore, until and unless the petitioner identifies an appropriate person to conduct such inspection, petitioner's request is **denied.**

Dated in Helena, Montana, this 21st day of March, 1995.

(SEAL)

/s/ Mike McCarter
JUDGE

c: Mr. Thomas J. Murphy
Ms. Ann E. Clark