

IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

2006 MTWCC 18

WCC No. 2006-1590

TRAVELERS INSURANCE COMPANY

Petitioner

vs.

SANDY L. ULRICH-GOODWIN

Respondent.

ORDER DENYING REQUEST FOR EMERGENCY TRIAL

Case Summary: Petitioner requests an emergency hearing and declaratory ruling pursuant to ARM 24.5.311 and 24.5.351.

Held: The request for an emergency setting is denied. ARM 24.5.311 requires that good cause be shown to justify the setting of an emergency trial. To determine whether good cause exists, the rule requires that “[f]acts constituting the emergency must be set forth in the petition in sufficient detail for the court to determine whether an actual emergency exists.” In the present case, Petitioner has petitioned for declaratory relief seeking, apparently, a ruling that Respondent be required to travel from her home in Kalispell to an independent medical examination (IME) in Bozeman. Section 39-71-605(1)(b), MCA (2005), mandates that an IME must be conducted at a “place that is as close to the employee's residence as is practical.” Although Petitioner states that it is willing to pay all expenses and endeavor to make Respondent’s travel from Kalispell to Bozeman for the IME as convenient as possible, it has offered no details in its petition as to how the Court might find that an examination in Bozeman is as close to Respondent’s residence as practical. Accordingly, the Court cannot find good cause exists to justify an emergency setting.

Topics:

Constitutions, Statutes, Regulations, and Rules: Administrative Rules of Montana: 24.5.311. Good cause for an emergency setting has not been demonstrated where Petitioner seeks a declaratory ruling ordering Respondent to travel from Kalispell to Bozeman for an IME without alleging

sufficient detail in its petition from which the Court might find that an examination in Bozeman is as close to Respondent's residence as practical, as required by § 39-71-605(1)(b), MCA.

Procedure: Emergency Petition. Good cause for an emergency setting has not been demonstrated where Petitioner seeks a declaratory ruling ordering Respondent to travel from Kalispell to Bozeman for an IME without alleging sufficient detail in its petition from which the Court might find that an examination in Bozeman is as close to Respondent's residence as practical, as required by § 39-71-605(1)(b), MCA.

¶1 Petitioner seeks a declaratory ruling from this Court that Respondent is required to travel from Kalispell to Bozeman for an independent medical examination (IME).¹ Petitioner has requested this Court to set the matter for an emergency trial pursuant to ARM 24.5.311. For the reasons set forth below, Petitioner's motion is denied.

¶2 ARM 24.5.311 allows for the setting of trials upon less than 75 days' notice when good cause is shown. Good cause has not been shown here. The dispute in the present case centers around Respondent's refusal to travel from her home in Kalispell to an IME in Bozeman. Petitioner makes this request pursuant to § 39-71-605(2), MCA (2005).² Section 39-71-605(1)(b), MCA (2005), however, mandates that an IME must be conducted at a "place that is as close to the employee's residence as is practical." Although Petitioner states that it is willing to pay all expenses and endeavor to make Respondent's travel from Kalispell to Bozeman for the IME as convenient as possible, it has offered no details in its petition from which the Court might find that an examination in Bozeman is as close to Respondent's residence as practical. Accordingly, the Court cannot find that good cause exists to justify an emergency setting.

¶3 By this Order, the Court does not suggest that a good cause showing pursuant to ARM 24.5.311 requires the Petitioner to demonstrate a likelihood of success in the ultimate disposition of the claim. However, the rule does require that the petition contain sufficient details from which the Court can conclude that good cause exists. In the present case, the details that are provided do not make such a showing. Respondent sustained a shoulder injury while employed by Petitioner's insured.³ Petitioner accepted the claim.⁴ Petitioner

¹ Petitioner does not include a specific prayer for relief in its petition. However, in the introductory paragraph of its petition, Petitioner states that it is seeking a declaratory ruling. Also, it is clear from the contentions enumerated in the petition that this dispute arises from Respondent's refusal to attend an IME in Bozeman. Therefore, the Court can infer that this is the relief being sought.

² Petition for Emergency Hearing/Declaratory Ruling, ¶ 6.

³ *Id.*, ¶¶ 1, 3.

⁴ *Id.*, ¶ 4.

has requested Respondent to attend an IME with Dr. John Vallin at Bridger Orthopedics in Bozeman and Respondent has refused despite Petitioner's offer to fly her from Kalispell to Bozeman, pay for all expenses, and accomplish the IME in one day.⁵ Petitioner provides no details in its petition, however, as to why an IME cannot be conducted by an orthopedist in Kalispell or, failing that, in one of several other communities which are closer than Bozeman to Petitioner's residence. Accordingly, in light of the clear mandates of § 39-71-605(1)(b), MCA (2005), that an IME be conducted at a "place that is as close to the employee's residence as is practical," the Court cannot find that good cause exists to set an emergency trial.

¶4 As it has previously, the Court will consider an amended petition setting forth facts, presented in sufficient detail, for the Court to determine whether good cause exists to justify an emergency setting.⁶ Alternatively, since the nature of this dispute appears to lend itself to summary ruling, the Court will entertain a request from the parties that the matter be resolved by way of a motion for summary judgment which may satisfy Petitioner's desire for an expedited ruling on this issue.

ORDER

¶5 Petitioner's request for an emergency trial setting is **DENIED**.

¶6 Petitioner is granted leave to amend his petition to set forth facts in sufficient detail for the Court to determine whether an actual emergency exists. If no amended petition is received by the Court within twenty days from the date of this Order, this matter will be placed on the Court's regular trial schedule.

DATED in Helena, Montana, this 27th day of April, 2006.

(SEAL)

/s/ James Jeremiah Shea
JUDGE

c: Thomas A. Marra
Laurie Wallace

⁵ *Id.*, ¶¶ 6-8.

⁶ See *Rogers v. Montana State Fund*, 2005 MTWCC 58; *Lyons v. Montana State Fund*, 2006 MTWCC 17.