

TRUDITH L. WOLDMOE, Employee/Appellant, v. KNIGHT RIDDER and TRAVELERS INS. GRP., Employer-Insurer.

WORKERS' COMPENSATION COURT OF APPEALS  
SEPTEMBER 16, 1999

No. [REDACTED SSN]

HEADNOTES

**COSTS & DISBURSEMENT - EXTRAORDINARY COSTS.** Where the employee's physicians all resided in California, the compensation judge, by order, allowed the depositions of all four physicians finding their testimony crucial to the determination of the nature and extent of the employee's disability and causation for the injury, and the judge relied on the doctors' deposition testimony in making his decision, we conclude the claimed costs and disbursements of the employee's attorney are "extraordinary," and the employer and insurer are ordered to reimburse the employee's attorney for the \$1,186.04 in travel expenses claimed.

Reversed.

Determined by: Johnson, J., Rykken, J., and Wheeler, C.J.  
Compensation Judge: Danny P. Kelly

OPINION

THOMAS L. JOHNSON, Judge

The employee appeals the compensation judge's order denying certain claimed disbursements. We reverse.

BACKGROUND

On December 29, 1988, Trudith Waldmoe, the employee, sustained an injury while working for Knight Ridder, the employer, insured by Travelers Insurance Group. The employer and insurer admitted the employee sustained a personal injury. The employee was off work for several days as a result of her injury and then returned to work at her regular job with the employer.

In November 1991, the employee quit her job with the employer and moved with her husband from Duluth, Minnesota, to California. In California, the employee treated with a number of doctors in the San Francisco area, including Dr. Fillmore S. Rodich, her primary treating physician, Dr. Robert Byers, an orthopedic surgeon, and Dr. Marvin B. Zwerin, an osteopathic practitioner. In May 1997, the employee was examined by Dr. Thomas Moore at the request of the Social Security Administration.

In March 1996, the employee filed a claim petition seeking temporary total disability benefits from and after November 17, 1991. In their answer, the employer and insurer admitted the employee's personal injury, but denied the employee sustained an injury to her jaw and denied the employee's need for a cervical fusion was causally related to the work injury. In preparation for the hearing, the employee's attorney filed motions seeking orders allowing the deposition testimony of Dr. Rodich, Dr. Byers, Dr. Zwerin and Dr. Moore. See Minn. Stat. § 176.155, subd. 5; Minn. R. 1415.2900, subp. 3. On January 29, 1998, the compensation judge filed orders allowing the oral testimony. Each order stated the oral testimony of the doctor "is crucial to the accurate determination of the nature and extent of the employee's alleged disability and causation of said disability." (Judgment Roll.) Over a three-day period in February 1998, the employee's attorney deposed Dr. Zwerin, Dr. Moore, Dr. Rodich and Dr. Byers at their California offices. The employee's attorney personally attended the depositions and made arrangements for the employer and insurer's counsel to participate by telephone.

The case was heard by a compensation judge at the Office of Administrative Hearings in March 1998. At issue was the nature and extent of the employee's admitted personal injury and her claim for temporary total disability benefits from November 17, 1991 through the date of the hearing. In a Findings and Order filed May 14, 1998, the compensation judge found the December 29, 1988 personal injury was a substantial contributing cause or factor in the following: a temporomandibular joint and headache condition, arthritis of the hands, wrists and ankles, degenerative disc disease of the cervical spine, a closed head injury and headache condition and bilateral upper extremity reflex sympathetic dystrophy. (Findings 31-35.) In his memorandum, the compensation judge stated he accepted the opinions of Dr. Byers, Dr. Zwerin and Dr. Rodich with respect to diagnosis and causation. (Memo at 7.) The compensation judge awarded temporary total disability benefits from January 15 to March 11, 1996 and denied the balance of the employee's claim. There was no appeal from the compensation judge's Findings and Order.

On October 2, 1998, the employee's attorney filed a Petition for Taxation of Costs seeking reimbursement of the expenses incurred by counsel in his trip to California to depose the doctors, as follows:

|    |                     |                 |
|----|---------------------|-----------------|
| 1) | Meal expense        | \$81.00         |
| 2) | Tolls               | \$6.00          |
| 3) | Fuel for rental car | \$14.00         |
| 4) | Hotel               | \$381.62        |
| 5) | Rental car          | \$427.42        |
| 6) | Airfare             | <u>\$276.00</u> |
|    |                     | \$1,186.04      |

The employer and insurer filed an objection to the employee's petition. The case was heard by a compensation judge at the Office of Administrative Hearings on December 12, 1998. No testimony was taken and no exhibits were offered at the hearing. The transcript

consists of the arguments of counsel. In a Findings and Order, served and filed February 17, 1999, the compensation judge found the claimed expenditures were actual and necessary costs and disbursements that related to issues upon which the employee prevailed. However, the compensation judge denied payment of the claimed expenses, finding they were ordinary expenses of running a law office and were not disbursements under Minn. Stat. § 176.511. The employee appeals.

## STANDARD OF REVIEW

"[A] decision which rests upon the application of a statute or rule to essentially undisputed facts generally involves a question of law which [the Workers' Compensation Court of Appeals] may consider de novo." Krovchuk v. Koch Oil Refinery, 48 W.C.D. 607, 608 (W.C.C.A.) 1993).

## DECISION

Minn. Stat. § 176.511, subd. 2, entitled Disbursements, taxation, states:

The commissioner or compensation judge, or on appeal the workers' compensation court of appeals, may award the prevailing party reimbursement for actual and necessary disbursements. These disbursements shall be taxed upon five days written notice to adverse parties.

The compensation judge has discretion to award reimbursement of actual and necessary disbursements to the prevailing party. Rymer v. Jiffy Lube, 54 W.C.D. 383 (W.C.C.A. 1996); Brochu v. U.S. Steel Corp., 27 W.C.D. 417, 425 (W.C.C.A. 1974).

The employee acknowledges the ordinary expenses of running an office are not disbursements within the meaning of Minn. Stat. § 176.511, subd. 2. See Iverson v. Coop Country Farmers Elevator, 46 W.C.D. 503 (W.C.C.A. 1992). However, citing Sorenson v. Pan-O-Gold Baking Co., 35 W.C.D. 944, 946 (W.C.C.A. 1982), the employee asserts that expenses which "become extraordinary in amount" may be reimbursed under the statute "as seem[s] reasonable under the circumstances of the particular case." The employee argues the travel expenses to California, in this case, are extraordinary. The employee further contends that requiring the employee to bear these costs, in effect, deprives the employee of the ability to prove the case. The employer and insurer respond that when Mr. Peterson agreed to represent a California resident, he understood the expenses of representation would be greater, but nevertheless decided to represent the employee. The respondents state they reimbursed the employee's attorney for the doctor's charges for the depositions and the deposition transcripts. The travel expenses, they assert, were incurred voluntarily and are ordinary costs of doing business. Accordingly, the respondents argue the compensation judge's denial of the requested disbursements was legally correct and consistent with case law.

In Sorenson v. Pan-O-Gold Baking Co., the employee's attorney sought reimbursement of certain claimed disbursements directly from the employee's compensation. The court held an attorney's usual expenses of running an office, and investigating and handling a claim are not generally collectable as disbursements from the employee. The court noted that overhead expenses such as rent, lights, equipment costs, secretarial help, paper, copying costs, telephone expense, postage and other such items are paid out of the contingency fee and it is inappropriate to charge such expenses to the client unless they become extraordinary in amount. In Iverson v. Coop Country Farmers Elevator, *id.*, the employee and employer arrived at a settlement which required the employee to reimburse his attorney for photocopies, postage and long distance telephone charges. The compensation judge refused to approve the settlement and the employee appealed. This court reaffirmed the Sorenson doctrine and held that long distance phone calls, photocopying and postage are not extraordinary costs incurred by a law office. The court further noted the costs at issue were not directly related to the presentation of evidence at trial but were the ordinary costs of running a law firm. In Kisler v. Michigan Peat, slip op. (W.C.C.A. July 3, 1991), the employee sought to tax under Minn. Stat. § 176.511 the cost of the employee's attorney's travel expenses for attending a hearing in Duluth, Minnesota. The compensation judge found the travel costs were an office expense and denied the requested taxation. This court affirmed, and held the costs were not an extraordinary circumstance or expense. See also Dufault v. Ruan Transp. Corp., 26 W.C.D. 288 (W.C.C.A. 1972). Compare Benson v. Northwest Airlines, Inc., 561 N.W.2d 530 (Minn. App. 1997), in which the court of appeals affirmed the district court's award, pursuant to Minn. Stat. § 549.04, reimbursing the prevailing party's attorney's travel costs to attend a deposition.

The compensation judge found the employee's claimed disbursements for travel to California were actual and necessary disbursements that related to issues upon which the employee prevailed. (Finding 10.) However, the compensation judge concluded that, as a matter of law, these expenses are ordinary expenses of running a law office and are not disbursements. In Sorenson, Iverson and Kisler, this court recognized that extraordinary expenses may be reimbursed under the statute in certain situations. The compensation judge failed to consider whether the expenses at issue were extraordinary under the facts of this case. We therefore reverse the compensation judge's denial of the Petition for Taxation of Costs filed October 5, 1998. Rather than remand the case to the compensation judge, this court will resolve the issue under the authority given this court under Minn. Stat. § 176.511 to award reimbursement for actual and necessary disbursements to a prevailing party.

The nature and extent of the employee's personal injury was a significant issue in this case. The compensation judge allowed a deposition of each of the employee's doctors and stated in the orders that the doctor's testimony was crucial to the accurate determination of the nature and extent of the employee's alleged disability and causation of the disability. The judge made five detailed findings (finding nos. 31 - 35) regarding the nature of the employee's personal injury, and relied on the testimony of the employee's doctors in making his determinations regarding diagnosis and causation of the employee's condition. All of the expenses in question were directly related to the presentation of necessary evidence at trial. The travel expenses were unusually large because the doctors all resided in California. Mr. Peterson stated at the hearing

that one of the doctors said he would not do a deposition by phone but wanted to meet with Mr. Peterson in person to review the employee's medical records and prepare for the deposition. (T. 10.) For these reasons, we conclude the expenses in question were extraordinary based on the unique facts of this case. Knight Ridder and Travelers Insurance Group are, accordingly, ordered to reimburse the employee's attorney the sum of \$1,186.04.