

Opinion No. 69-37

May 1, 1969

BY: OPINION OF JAMES A. MALONEY, Attorney General Ray H Shollenbarger,
Assistant Attorney General

TO: Honorable Garnett R. Burks, District Judge, Seventh Judicial District, P.O. Box
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QUESTIONS

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1. Does Part B of Section 59-10-16.1, N.M.S.A., 1953 Compilation, providing for the supplying of a record on appeal to a workman in a workmen's compensation case without cost, include a free transcript of the testimony?
2. If the transcript of testimony is furnished without cost to the workman can the District Court pay the court reporter for the preparation of such transcript?

CONCLUSION

1. Yes.
2. Yes.

OPINION

{*56} ANALYSIS

Section 59-10-16.1-B, supra provides:

B. When an appeal is taken to the Supreme Court by the workman, or the person appointed by the court to act on behalf of dependents, he is entitled to the record of the hearing and proceedings in the case, and to all papers on file in the office of the clerk of the district court, which shall be prepared, transcribed, certified and forwarded by the clerk to the clerk of the Supreme Court, without cost. No docket fee or other costs shall be charged the workman or representative on appeal, nor is it required that the workman or representative furnish printed briefs or records.

We feel that it is clear in the above quoted section that a workman is entitled to a record of the hearing without cost; however, the real question is whether a record of the hearing includes a transcript of the testimony. Although we find no New Mexico cases on this question, it is our opinion this section entitles the workman to a transcript of the testimony when the parties are unable to agree on a statement of facts. This conclusion

is necessary in order to allow the workman a meaningful appeal to enable the Supreme Court to discharge its responsibility in reviewing an award. See **Plouffe v. Taft-Pierce Mfg.**, 73 R.I. 215, 54 A.2d 417 (1947). However, we do not read this section to require a transcript of the testimony to be furnished without cost in those cases where the issues on appeal can be determined without a transcript of the testimony or with a partial transcript of the testimony.

Section 16-2-22, N.M.S.A., 1953 Compilation, provides in part that the moneys in the court fund are to be "disbursed for the payment of expenses of the district court" upon allowance by the District Judge. This office has said numerous times that the District Court possesses a wide latitude of discretion in authorizing the disbursement of money from the court fund. We feel that the court, in its discretion, could make such {57} a payment to the court reporter. Any payment should be in conformity with Section 21-2-1(22)-2, N.M.S.A., 1953 Compilation.