

Decision on Motion for Summary Judgment

Employer/Insurer moved for summary judgment based on SDCL 62-7-10 because Claimant was injured on September 10, 2004, and failed to report the injury until October 4, 2004.

“Notice to the employer of an injury is a condition precedent to compensation.” Westergren v. Baptist Hosp. of Winner, 1996 SD 69, ¶ 17, 549 N.W.2d 390, 395 (citing Schuck v. John Morrell & Co., 529 N.W.2d 894, 897-98 (S.D. 1995)). The requirements of notice set forth in SDCL 62-7-10 are as follows:

An employee who claims compensation for an injury shall immediately, or as soon thereafter as practical, notify the employer of the occurrence of the injury. Written notice of the injury shall be provided to the employer no later than three **business** days after its occurrence. The notice need not be in any particular form but must advise the employer of when, where, and how the injury occurred. Failure to give notice as required by this section prohibits a claim for compensation under this title unless the employee or the employee’s representative can show:

- (1) The employer or the employer’s representative had actual knowledge of the injury; or
- (2) The employer was given written notice after the date of the injury and the employee had good cause for failing to give written notice within the three business-day period, which determination shall be liberally construed in favor of the employee.

(Emphasis added). The proper test for determining when the notice period should begin has been explained: “The time period for notice or claim does not begin to run until the claimant, as a reasonable person, should recognize the nature, seriousness and probable compensable character of [the] injury or disease.” Miller v. Lake Area Hospital, 1996 SD 89, ¶ 14. “Whether the claimant’s conduct is reasonable is determined ‘in the light of [his] own education and intelligence, not in the light of the standard of some hypothetical reasonable person of the kind familiar to tort law.’” Shykes v. Rapid City Hilton Inn, 2000 SD 123, ¶ 29 (citing Loewen v. Hyman Freightways, Inc., 1997 SD 2, ¶ 15). “The standard is based on an objective reasonable person with the same education and intelligence as the claimant’s.” Id. at ¶ 43.

Upon careful consideration of Employer/Insurer’s Motion for Summary Judgment, Claimant’s deposition, the Affidavit of Heidi Teal, the pleadings, and the authorities cited in Employer/Insurer’s Brief Supporting Motion for Summary Judgment, the Department finds that there are no genuine issues of material fact on the issue of whether Claimant met the requirements of SDCL 62-7-10. Claimant did not meet those requirements.

It is undisputed that Claimant injured his back on September 10, 2004, and did not report the incident until October 6, 2004. Claimant’s deposition testimony revealed that he knew he had hurt himself on September 10, 2005, and that the pain continued through all of September and into October. The September 10 incident caused an

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acute onset of symptoms that Claimant related to a specific incident while he installed a six-by-eight panel. Claimant left work early to go home and rest after the incident. Claimant missed work due to the symptoms. Claimant filed a claim in 2002 when he felt similar symptoms. Claimant as a reasonable person should have recognized the nature, seriousness and probable compensable character of his injury far sooner than October 6, 2004.

It is undisputed that Claimant did not provide written notice to his Employer within three business days of September 10, 2004. It is undisputed that Claimant was working alone when he was injured. Employer/Insurer did not have actual knowledge of the injury. Finally, Claimant failed to demonstrate good cause for his failure to provide written notice within three business days of September 10, 2004.

Claimant's request for payment of medical expenses related to his back injury of September 10, 2004, must be denied. Employer/Insurer is entitled to summary judgment as a matter of law. Claimant's Petition for Hearing must be dismissed with prejudice.

Enclosed please find a copy the signed Order Granting Employer/Insurer's Motion for Summary Judgment and Dismissal.

Sincerely,

Heather E. Covey
Administrative Law Judge

Enclosure