

October 23, 2009

Lee C. "KIT" McCahren
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PO Box 66
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LETTER DECISION & ORDER

Richard L. Travis
May & Johnson PC
PO Box 88738
Sioux Falls, SD 57109-8738

RE: HF No. 112, 2008/09 – Brice Cody v. Prairie Ethanol and Nationwide Agribusiness

Dear Mr. McCahren and Mr. Travis:

I have received Claimant's Petition for Approval of Lump Sum Payment RE: Form 111, Employer/Insurer's Response to Petition for Approval of Lump Sum Payment and Claimant's Amended Petition for Approval of Attorney's Fees.¹

Claimant suffered an injury arising out of and in the course of his employment with Employer on June 11, 2007. On July 28, 2009, Dr. Thomas Ripperda opined that Claimant had suffered a 15% whole person impairment for cervical radiculopathy. On October 7, 2009, the Department approved a Form 111. Claimant requested that a lump sum payment be issued pursuant to his Form 111. Claimant was terminated by Employer on January 10, 2009, and has been off work since that time.

SDCL § 62-7-6 allows for lump sum benefits to be paid in certain circumstances. SDCL § 62-7-6 provides in part:

An employer or employee who desires to have any unpaid compensation paid in a lump sum may petition the Department of Labor asking that the compensation be paid in that manner. If, upon proper notice to interested parties and proper showing before the department, it appears in the best interests of the employee

¹ Claimant's Amended Petition for Approval of Attorney's Fees dated October 21, 2009, requests approval of a lump sum payment and gives argument in support of that request. The approval of attorney's fees in this matter was sent under separate cover. The Department considered this correspondence in regard to the Petition for Approval of Lump Sum Payment.

that the compensation be paid in lump sum, the secretary of labor may order the commutation of the compensation to an equivalent lump-sum amount.

Typically, the South Dakota workers' compensation statutes do not favor lump sum awards. "The allowance of a lump-sum award is the exception and not the general rule." *Stenimetz v. State of South Dakota, DOC Star Academy*, 2008 SD 87, ¶17 (citations omitted). The rationale behind this policy is:

Since compensation is a segment of a total income insurance system, it ordinarily does its share of the job only if it can be depended on to supply periodic income benefits replacing a portion of lost earnings. If a . . . totally disabled worker gives up these reliable periodic payments in exchange for a large sum of cash immediately in hand, experience has shown that in many cases the lump sum is soon dissipated and the work[er] is right back where he would have been if [workers'] compensation had never existed.

Id. SDCL § 62-7-6 clearly sets forth the circumstances under which a lump sum award can be made. "[P]rior [South Dakota Supreme Court] decisions confirm that the primary emphasis must be placed on providing an injured worker with a reliable stream of income to replace lost wages and benefits." *Id.* ¶10 (citations omitted).

SDCL §62-7-6 restricts lump sum awards to situations where it is in the best interest of the claimant. The South Dakota Supreme Court has identified four factors to consider when determining if a lump sum is in a claimant's best interests:

1. Age, education, mental and physical condition, and actual life expectancy.
2. Family circumstances, living arrangements, and responsibilities to dependents.
3. Financial condition, including all sources of income, debts and living expenses.
4. Reasonableness of plan for investing the lump sum proceeds and ability to manage invested funds or arrangement for management by others."

Enger v. FMC, 2000 SD 48 ¶13, 609 NW2d 132,135(quoting Thomas, 511 NW2d at 580).

Claimant did not submit any evidence to support his assertion that it is in his best interest to receive his permanent partial disability benefits in a lump sum other than to state that Claimant is financially shrewd and fully capable to manage his financial affairs. While this may be true, that is not enough to meet the standard of "best interest" as defined by the South Dakota Supreme Court. Claimant also argues that he needs additional funds at his disposal to pay for prescription expenses, but Claimant did not submit any supporting documentation that his expenses related to prescriptions could not be paid from monthly payments of his permanent partial disability.

Claimant's Petition for Approval of Lump Sum Payment RE: From 11 is hereby denied. Employer/Insurer has agreed to pay to Claimant a lump sum of the permanent partial disability benefits for the period from July 28, 2009, through the date of this decision. The balance of the permanent partial disability benefits shall be paid in installments of two payments per month.

This letter shall serve as the Department's Order.

Sincerely,

Taya M. Dockter
Administrative Law Judge