

January 22, 2019

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LETTER DECISION AND ORDER

Steven H. Fredericks
300 Valley Drive #10
Valley Springs, SD 57068

RE: HF No. 117, 2017/18 – Steven Fredericks v. City of Brandon and SDML Worker's Compensation Fund

Dear Ms. Hensley and Mr. Fredericks:

This letter is in response to Employer/Insurer's motion for summary judgment which was filed November 21, 2018. Claimant was given 20 days to file a response but failed to do so.

ISSUE PRESENTED: IS EMPLOYER/INSURER ENTITLED TO SUMMARY JUDGMENT?

FACTS

On September 12, 2015, Claimant allegedly suffered a lower back injury while working for Employer. Claimant filed a petition for a hearing on May 14, 2018. The Department entered a scheduling order on August 21, 2018. According to that order, the deadline for Claimant to designate an expert was November 5, 2018. Claimant failed to designate an expert and Employer/Insurer filed a motion for summary judgment.

ANALYSIS

The Department's authority to grant summary judgment is found in ARSD

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A claimant or an employer or its insurer may, any time after expiration of 30 days from the filing of a petition, move with supporting affidavits for a summary judgment. The division shall grant the summary judgment immediately if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.

"[The]Court reviews a grant of summary judgment to determine whether the moving party has demonstrated the absence of any genuine issue of material fact and entitlement to judgment on the merits as a matter of law." *Stern Oil Co. v. Brown*, 2012 S.D. 56, ¶ 8, 817 N.W.2d 395, 398. (Quoting *Tolle v. Lev*, 2011 S.D. 65, ¶ 11, 804 N.W.2d 440, 444).

Employer/Insurer bases its motion for summary judgment on the fact that Claimant has not provided any medical evidence to support his claims of injury. In a workers compensation case, a claimant bears the burden of proving all essential elements of his case. Claimant must support his claim that he is entitled to workers compensation benefits with medical evidence. SDCL 62-1-1(7)(2018). In addition, "The testimony of professionals is crucial in establishing this causal relationship because the field is one in which laymen ordinarily are unqualified to express an opinion." *Day v. John Morrell & Co.*, 490 N.W.2d 720, 724 (S.D. 1992). Finally, "[c]ausation must be established to a reasonable medical probability." *Orth*, at ¶ 34 (citation omitted).

Claimant has failed to provide any medical evidence or expert which would support his claim that he is entitled to workers compensation benefits. Neither has claimant responded to Employer/Insurer's motion.

ORDER

Employer/Insurer's motion for summary judgment is GRANTED.

SOUTH DAKOTA DEPARTMENT OF LABOR
& REGULATION

Joe Thronson
Administrative Law Judge