SOUTH DAKOTA DEPT. OF LABOR & REGULATION

LABOR & MANAGEMENT DIVISION
Tel: 605.773.3681 | Fax: 605.773.4211 | sdjobs.org

September 23, 2021

Kirk D. Rallis
King Law Firm, PC
101 N Phillips Ave., Ste. 602
Sioux Falls, SD 57104

LETTER DECISION ON MOTION TO STRIKE DEFENDANT MOTION FOR SUMMARY JUDGMENT

Laura K. Hensley
Boyce Law Firm, PC
PO Box 5015
Sioux Falls, SD 57117-5015
BY EMAIL ONLY

RE: HF No. 119, 2019/20 – Scott Elmer Sexton v. Union County and SDML Worker's Compensation Fund

Greetings:

The Department of Labor & Regulation (Department) received this Motion to Strike Defendant Motion for Summary Judgment submitted by Scott Elmer Sexton (Sexton) on September 20, 2021. All responses now have been considered.

Sexton moves the Department to strike Union County and SDML Worker's Compensation Fund's (Employer/Insurer) Motion for Summary Judgement pursuant to SDCL 15-615(c)(1) which provides,

> A party moving for summary judgment shall attach to the motion a separate, short, and concise statement of the material facts as to which the moving party contends there is no genuine issue to be tried. Each material fact in this required statement must be presented in a separate numbered statement and with appropriate citation to the record in the case.

Sexton asserts that Employer/Insurer did not provide him with "material facts as to which the moving party contends there is no genuine issue to be tried" or a "separate

numbered statement with appropriate citation to the record in the case." Therefore, he asserts the Motion for Summary Judgment should be struck.

Employer/Insurer assert that ARSD 47:03:01:08 sets the standard for summary judgment in workers' compensation hearings. Employer/Insurer argue that ARSD 47:03:01:08 does not require a separate statement of facts, but merely that 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."

Employer/Insurer are correct. ARSD 47:03:01:08 is the rule that governs summary judgment in workers' compensation, and a list of facts, while appreciated, is not required. Sexton's Motion to Strike Defendant Motion for Summary Judgment is hereby DENIED.

Further, argument provided in response to this motion that is more appropriately considered as a response to Employer/Insurer's Motion for Summary Judgment has been disregarded for this decision. If Sexton wishes to make arguments in response to Employer/Insurer's Motion for Summary Judgment, he should do so in his brief in response to that motion.

Additionally, Sexton has stated that there exists "good cause" for an extension of the current Scheduling Order. If he would like to request an extension of the Scheduling Order, he may do so by submitting a motion to that effect with a brief in support of his motion.

The Parties will consider this letter to be the Order of the Department.

Sincerely,

Michelle M. Faw
Administrative Law Judge