

November 4, 2021

Miguel Angel Puentes Rosabal
4608 Douglas Lane
Lehigh Acres, FL 33973

**LETTER DECISION ON
MOTION TO STRIKE AND
MOTION TO DISMISS**

Kimberly A. Dorsett
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1 Court Street
PO Box 1030
Aberdeen, SD 57402-1030

RE: HF No. 129, 2020/21- Miguel Angel Puentes Rosabal v. Terex and Broadspire

Greetings:

The Department of Labor & Regulation (Department) received this Motion to Strike and Motion to Dismiss submitted by Terex and Broadspire (Employer and Insurer) on July 16, 2021. Miguel Angel Puentes Rosabal (Claimant) was given until August 25, 2021 to respond, but he did not do so.

The record shows that Claimant filed this Petition for Hearing (Second Petition) with the Department on June 8, 2021. He had filed a previous Petition, hearing file number 46, 2016/17 currently pending before the Department, also alleging he suffered a work-related injury to his teeth and to his left arm during his employment with Terex. The first Petition was submitted in July 2016. After Claimant's attorney was allowed to withdraw on September 7, 2018, Employer and Insurer's counsel has had no contact with Claimant.

Employer and Insurer have moved to strike Claimant's Second Petition under SDCL 15-6-12(f) which provides,

Upon motion made by a party before responding to a pleading or, if no responsive pleading is permitted by these rules, upon motion made by a party within twenty days after the service of the pleading upon him or upon the court's own initiative at any time, the court may order stricken from any pleading any insufficient defense or any redundant, immaterial, impertinent, or scandalous matter.

The Department finds that the Second Petition is redundant as it asserts facts and circumstances which appear to be the subject of a prior Petition. Therefore, the Second Petition submitted June 8, 2021 is properly dismissed and struck. If Claimant wishes to go ahead with this claim, he must proceed under the original Petition, hearing file number 46, 2016/17.

It is hereby ORDERED that Employer and Insurer's Motion to Strike and Motion to Dismiss is GRANTED. Hearing file 129, 2020/21 is STRUCK and DISMISSED.

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

Sincerely,

A handwritten signature in blue ink that reads "Michelle Faw". The signature is written in a cursive, flowing style.

Michelle M. Faw
Administrative Law Judge