

January 31, 2023

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RE: HF No 12, 2015/16- Teresa Norton v. Masco Corporation (f/k/a/ Merillat Industries, Inc.)

Greetings:

This letter decision addresses Masco Corporation's (Masco) Motion for Reconsideration submitted August 24, 2022. All responses have been considered.

Masco moves the Department of Labor & Regulation (Department) to reconsider its decision to grant summary judgment to Teresa Norton (Norton). Following an appeal by Masco, the Circuit Court opined in a footnote in its May 12, 2022, Memorandum Opinion that the Department may reconsider its decision if it believes reconsideration would be appropriate.

Masco argues that the Department should reconsider its decision based upon late authorities because the Department's decision in *Michael Nygaard v. Skywest Airlines & Indem. Ins. Co. of N. Am.*, HF No. 26, 2020/21, 2021 WL 5413370, at *4 (S.D. Dept. Lab. Aug. 4, 2021) has bearing on the decision in this matter. In *Nygaard*, the claimant alleged the employer and insurer "failed to timely approve, deny, and/or pay for his medical

expenses” under an approved settlement agreement. *Id* at 1. The Department granted the employer and insurer’s motion for partial summary judgment pursuant to SDCL 62-4-1.1 and 62-4-1.2. The Department concluded that SDCL 62-4-1.2 was the sole available remedy.

In this matter, Norton has alleged that Masco has delayed or denied payments requested or otherwise hindered her medical treatment under an approved settlement agreement. In its August 19, 2021, Letter Decision, the Department granted Norton’s Motion and directed the parties to submit affidavits listing known claims and an accounting of what has been paid or denied. Masco asserts that requiring an accounting contradicts the Department’s decision in *Nygaard* where it decided that levying fines under SDCL 62-4-1.2 was the only available remedy.

Norton asserts that reconsideration is inappropriate and is a delaying tactic by Masco. She further asserts that Masco has not brought any new evidence but instead relies on the same arguments presented in the original summary judgment. Masco argues that its motion is not an attempt to delay but a result of the suggestion by the Circuit Court which it asserts encouraged reconsideration. Masco also argues that the original Motion for Summary Judgment was merely an attempt at activity to avoid a motion to dismiss for failure to prosecute. It further asserts that Norton failed to supplement her discovery responses regarding experts in 2015, and she should not be rewarded with summary judgment. Additionally, Masco argues that the Circuit Court recommended reconsideration based on its observations regarding its affidavit in response to the Motion for Summary Judgment.

The Circuit Court’s opinion noted that the Department may reconsider the Motion for Summary Judgment if it finds that it is appropriate to do so. After reviewing the

Circuit Court's opinion, the parties' submissions, and the available record, the Department concludes that reconsideration is not appropriate in this matter. The parties will proceed as Ordered in the Department's August 19, 2021, Letter Decision on Motion for Summary Judgment.

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

MMF/das