

August 20, 2013

Kristina Marie Tramp  
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Yankton, SD 57078

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Letter Order of Summary Judgment

Robert B. Anderson  
May, Adam, Gerdes & Thompson LLP  
PO Box 160  
Pierre, SD 57501

RE: HF No. 160, 2012/13 Kristina Marie Tramp v. Human Services Center and State  
of SD Workers' Compensation Fund

Dear Ms. Tramp and Mr. Anderson:

I am in receipt of Employer/Insurer's Motion for Summary Judgment. Claimant was given the opportunity to respond to the Motion, but did not do so. The deadline for response to the Motion was July 5, 2013.

Claimant filed her Petition for Hearing on March 25, 2013. Employer/Insurer filed its Answer on May 13, 2013. The Motion for Summary Judgment was filed on June 3, 2013. Claimant did not respond to the Motion for Summary Judgment.

ARSD 47:03:01:08 governs the Department of Labor's authority to grant summary judgment:

A claimant or an employer or its insurer may, anytime 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 record kept by this office shows that Claimant sustained a work-related injury on May 19, 2006, while employed with Employer. At that time, Claimant received a permanent impairment rating of 5% of her upper extremity. The last payment of workers' compensation benefits was made to Claimant on June 16, 2008. In December 2012, Claimant had a medical provider submit medical bills to Employer/Insurer for treatments received in December 2012. These bills were denied by Employer/Insurer in January 2013.

SDCL 62-7-35.1 sets a time limitation on filing for benefits. The statute reads in part, "In any case in which any benefits have been tendered pursuant to this title on account of an injury, any claim for additional compensation shall be barred, unless the claimant files a written petition for hearing pursuant to §62-7-12 with the department within three years from the date of the last payment of benefits." SDCL §62-7-35.1.

Claimant's most recent claims for benefits in December 2012 were filed over three years from the date of the last payment of benefits in June 2008. Employer/Insurer denied coverage based upon the statute of limitations in 62-7-35.1.

The party seeking summary judgment bears the burden of demonstrating the lack of any genuine issue of material fact, and all reasonable inferences from the facts are viewed in the light most favorable to the non-moving party. *Railsback v. Mid-Century Ins. Co.*, 2005 SD 64, ¶6, 680 N.W.2d 652, 654. The burden is on the moving party to clearly show an absence of any genuine issue of material fact and an entitlement to judgment as a matter of law. *Estate of Elliott*, 1999 SD 57, ¶15, 594 NW2d 707, 710 (citing *Wilson*, 83 SD at 212, 157 NW2d at 21). On the other hand, [t]he party opposing a motion for summary judgment must be diligent in resisting the motion, and mere general allegations and denials which do not set forth specific facts will not prevent issuance of a judgment. *Breen v. Dakota Gear & Joint Co., Inc.*, 433 NW2d 221, 223 (SD 1988) (citing *Hughes-Johnson Co., Inc. v. Dakota Midland Hosp.*, 86 SD 361, 364, 195 NW2d 519, 521 (1972)). See also *State Auto Ins. Companies v. B.N.C.*, 2005 SD 89, 6, 702 NW2d 379, 382.

The Motion for Summary Judgment is granted in favor of Employer/Insurer. Claimant failed to file a response to the Motion. Employer/Insurer has demonstrated that they are entitled to judgment as a matter of law. This hearing file is dismissed without prejudice.

The Parties may consider this Letter to be the ORDER of the DEPARTMENT

Sincerely,

Catherine Duenwald  
Administrative Law Judge