

October 5, 2007

LETTER ORDER

Edgar Carpenter
19921 Gore Road
Sainte Genevieve, MO 63670-8383

Sent Certified:

Jennifer L. Wollman
Woods, Fuller, Shultz, & Smith, P.C.
PO Box 5027
Sioux Falls, SD 57117-5027

RE: HF No. 169, 2005/06– Edgar Carpenter v. Hardee’s and Zurich North America

Dear Mr. Carpenter and Ms. Wollman:

I am in receipt of Employer/Insurer’s Motion to Dismiss for Failure to Prosecute. Notice was sent to Mr. Carpenter on August 29, 2007. No response was received from Mr. Carpenter.

Claimant filed his Petition for Hearing on March 6, 2006. Employer/Insurer filed its Joint Answer on June 1, 2006. Claimant did not respond to the Department Proposed Scheduling Order dated December 26, 2006. The last record activity occurred on March 6, 2006.

ARSD 47:03:01:09 allows the Department discretion in dismissing a workers’ compensation claim if there “has been no activity for at least one year, unless good cause is shown to the contrary.”

ARSD 47:03:01:16 allows the Department discretion in sanctioning parties:

If a party or the party’s attorney fails to obey a scheduling or prehearing order, if no appearance is made on behalf of the party at a scheduling or prehearing conference, or if a party or the party’s attorney fails to participate in good faith, the Division of Labor and Management, upon motion or its own initiative, may make such orders with regard thereto that it considers just.

In Dudley v. Huizenga, 2003 SD 84, the Supreme Court stated, “our workers’ compensation laws and administrative rules are remedial in nature and should be liberally construed to achieve their purposes.” Dismissal is an extreme remedy. Claimant apparently contacted the Department of Labor on June 7, 2006 and January 4, 2007, seeking information about how to proceed with his case. Claimant’s concerns were addressed by Department staff and he was advised to seek legal counsel. Unfortunately, this contact does not amount to record activity. Claimant’s failure to pursue his case amounts to inaction warranting a dismissal. Claimant has failed to provide the Department with good cause for his inactivity. Employer/Insurer’s Motion to Dismiss is granted at this time. Claimant’s Petition for Hearing is dismissed with prejudice.

This letter shall constitute the Department’s Order.

Sincerely,

Heather E. Covey
Administrative Law Judge