

June 10, 2011

Donna M. Chute
1550 Seger Dr., Lot # 116
Rapid City, SD 57701

Sent Certified: 70082810000162236334

Letter Decision and Order

Catherine M. Sabers
Lynn, Jackson, Shultz & Lebrun PC
P.O. Box 8250
Rapid City, SD 57709-8250

RE: HF No. 16, 2009/10 – Donna M. Chute v. Nifty Fifties, Inc. and FirstComp

Dear Ms. Chute and Ms. Sabers:

Submissions:

This letter addresses the following submissions by the parties:

February 18, 2011	[Employer and Insurer's] Motion for Protective Order and Memorandum in Support Thereof; Affidavit of Catherine M. Sabers in Support of Motion for Protective Order;
March 22, 2011	Claimant's Opposition to Employer and Insurer's Motion for Protective Order and Memorandum in Support Thereof; Claimant's Motion for Joinder; Claimant's Motion for Appointment of Trustee; Affidavit of Donna Chute in Support of Claimant's Opposition to Employer and Insurer's Motion for Protective Order;
April 5, 2011	Employer and Insurer's Reply in Support of Motion for Protective Order;
May 2, 2011	Defendants' Response to Motion for Joinder and for Appointment of Trustee;

May 7, 2011	Claimant's Response to Defendants' Response to Motion for Joinder and for Appointment of Trustee; and
May 11, 2011	Letter from Catherine M. Sabers to the Administrative Law Judge.

Background:

1. On September 10, 2008, Donna M. Chute (Claimant) reported a work-related injury while employed by Nifty Fifties, Inc. (Employer).
2. Claimant reported that she had slipped and fallen on a wet kitchen floor onto her buttock injuring her back.
3. At the time of Claimant's injury, Employer was insured by FirstComp (Insurer) for workers' compensation purposes.
4. Insurer assumed responsibility for the injury and has paid \$26,630.37 in medical expenses on behalf of Claimant.
5. Claimant now seeks medical expenses associated with her treatment of depression which she alleges is the result of her September 10, 2008 fall. Insurer has denied coverage of these medical expenses.
6. Claimant filed an Amended Petition for Hearing dated January 6, 2011. Employer and Insurer filed their Answer to Amended Petition for Hearing dated March 7, 2011.

Preliminary Statement:

Claimant argues that Employer and Insurer did not serve Defendants' Response to Motion for Joinder and for Appointment of Trustee in a timely manner. The Department disagrees. The Administrative Law Judge sent a letter dated April 1, 2011, which granted Employer and Insurer 30 days to respond to the motion. April 1st plus 30 days equals May 1st. May 1, 2011 was a Sunday. Consequently, Employer and Insurer timely served their response on May 2, 2011.

Motion for Joinder:

Claimant has filed a Motion for Joinder asking to name as Defendants a number of business names under which Employer has operated. She also asks that several individuals who are shareholders, i.e., owners of the business be identified as Defendants.

The evidence on the record makes clear that the Employer in this case is Nifty Fifties, Inc. and, as such, is the appropriate Defendant along with the Insurer. Nifty Fifties, Inc. and Insurer have already accepted responsibility for the September 10, 2008 injury and paid some medical expenses. There is no need to add the additional names under which the business has operated.

This business operates as a corporation. As a corporation, it has a separate and distinct legal identity from its shareholders, officers and directors. Brevet International, Inc. v. Great Plains Luggage Co., 2000 SD 5, ¶ 25, 604 NW2d 268. Indeed, one of the reasons for incorporating a business is to protect the assets of the shareholders from the corporation's creditors. Claimant was the employee of the corporation, not the shareholders. Consequently, it is not appropriate to name the shareholders as parties in this case.

Motion to Appoint Trustee:

Claimant filed a Motion to Appoint a Trustee. Claimant asks the Department to appoint a trustee to hold the Employer and its shareholders' property to assure that there are sufficient funds available to pay the sums Claimant seeks in this action.

Administrative agencies do not have many of the implied and common law powers of judicial branch courts. Maas v. Dept. of Commerce and Regulation, 2003 SD 48, ¶ 65 661 N.W.2d 726. Administrative agencies are creatures of the Legislature. As such, any judicial authority that they exercise must be bestowed by the Legislature through statute of rule. Consequently, their adjudicatory jurisdiction and powers are limited.

The Legislature has not conferred the authority to the Department to appoint trustees in these cases. Therefore, the Department cannot grant Claimant's motion.

Motion for Protective Order:

Employer and Insurer have filed a Motion for Protective Order. They have objected to many of the questions that Claimant asked in interrogatories which they believe are not reasonably calculated to lead to admissible evidence.

In this case, Claimant has attempted to expand the list of legal issues well beyond those related to the workers' compensation arena. Claimant has a "laundry list" of complaints about the Employer and its owners including wage and hour complaints and breach of contracts. Most of Employer and Insurer's objections are directed toward questions related to these peripheral issues.

In Claimant's Amended Petition for Hearing, she correctly stated that the petition was filed under the authority of SDCL 62-7-12. That provision only authorizes the commencement of workers' compensation cases. As referenced above, the judicial jurisdiction of the Department is limited. It has no jurisdiction to adjudicate most of Claimant's peripheral complaints. For example, breach of contract cases must be filed in circuit court.

Even in areas where the Department may have regulatory power, like wage and hour complaints, the claims must be filed in accordance with the appropriate procedures. See, ARSD 47:04. Those proceedings are separate and distinct from these and the cases are not consolidated. This proceeding has a very narrow focus and is not a platform for addressing work-place complaints. Other forums may offer a venue for such complaints. This one does not.

In its simplest form, most inquiries in workers' compensation cases are limited to the following: 1) whether claimant suffered an injury which arose out of and in the course of employment. In this case, the answer to this inquiry is yes; 2) whether claimant's work-related injury is a major contributing cause of her current complaint; and 3) whether the treatment sought or provided was reasonable and necessary.

In this case, the majority of Claimant's interrogatories to which Employer and Insurer objected are not reasonably calculated to lead to admissible evidence related to these narrow issues. Therefore, Employer and Insurer's objections are reasonable and the answers to Claimant's interrogatories are complete, with one exception.

State law provides that the insurance policy between the Employer and Insurer for purposes of workers' compensation which was in effect at the time of Claimant's injury is discoverable even if it is not admissible at the hearing. SDCL 15-6-26(b)(2). Consequently, Employer and Insurer shall make that policy available if they have not already done so.

Order:

For the reason stated above, it is hereby, Ordered, that the caption of this case shall be changed to indicate Nifty Fifties, Inc. as Employer. Claimant's Motion for Joinder is denied. Claimant's Motion to Appoint Trustee is denied. Employer and Insurer's Motion for Protective Order is granted except that the insurance policy referenced above shall be provided to Claimant. This letter shall constitute the order in this matter.

Sincerely,

Donald W. Hageman
Administrative Law Judge