

October 4, 2007

LETTER ORDER

Monroe Kraft
PO Box 219
Timber Lake, SD 57656

Sent Certified:

Timothy M. Engel
May Adam Gerdes & Thompson
PO Box 160
Pierre, SD 57501-0160

RE: HF No. 183, 2004/05 – Monroe E. Kraft v. Faye D. Kraft and Berkley Risk Administrators Company, LLC

Dear Mr. Kraft and Mr. Engel:

I am in receipt of Employer/Insurer's Motion to Dismiss for Failure to Prosecute. Claimant received notice of this Motion and his deadline to respond to this Motion. To date Claimant has not responded.

Claimant filed his Petition for Hearing on April 8, 2005. Employer/Insurer filed its Answer on April 26, 2005. The last record activity in this file was Claimant's letter of June 21, 2006, wherein he indicated he would "like to keep this case active."

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 did not respond to Employer/Insurer’s Motion. Claimant has not provided the Department with good cause for the inactivity. Claimant’s failure to pursue his case now amounts to inaction warranting a dismissal. Employer/Insurer’s Motion to Dismiss is granted. Claimant’s Petition for Hearing is hereby dismissed with prejudice.

This letter shall constitute the Department’s Order.

Sincerely,

Heather E. Covey
Administrative Law Judge