

March 21, 2014

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Letter Decision on Motion
for Summary Judgment

Eric R. Kerkvliet
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P.O. Box 2700
Sioux Falls, SD 57101-2700

RE: HF No. 200, 2012/13 Randell L. Jacobson v. Rupp Masonry Construction – Rupp Incorporated (see also HF No. 256, 1990/91)

Dear Mr. Christenson and Mr. Kerkvliet:

The Department is in receipt of Employer and Insurer's Motion for Summary Judgment on the issue of Statute of Limitations, filed with the Department on January 24, 2014. Claimant responded on February 26, 2014. Employer and Insurer submitted a final Reply to the Response on March 13, 2013. The Department, having considered all submissions, including briefs, affidavits, and case citations, and being fully advised in the premises, issues this Letter Order on the Motion for Summary Judgment.

Is it the Order of the Department that questions of material fact are still at issue and Employer and Insurer are not entitled to Judgment as a Matter of Law. The Motion for Summary Judgment is Denied.

FACTS

1. While working for Employer, Claimant allegedly suffered a work-related injury on November 3, 1987. This injury was in primary denial by Employer and Insurer, due to previous and subsequent injuries by Claimant.
2. The Parties settled the dispute which was memorialized in the Agreement to Settle Worker's Compensation Claim and Stipulation for Dismissal of Claim upon Department Approval, signed and approved by the Department on June 4, 1992.

3. Specific in this Agreement was the Employer and Insurer's agreement to pay for "future medical treatments ...directly and causally related to [C]laimant's alleged November 3, 1987, incident ..."
4. On January 8, 1998, Claimant sustained a slip and fall that was not work related. He submitted medical bills from January 9, 1998, March 7, 10, and 24, 1998, April 14 and 24, 1998, to Employer and Insurer.
5. Employer and Insurer requested that Dr. Richard Farnham examine Claimant and give an opinion on whether the medical complaints from 1998 were related to the alleged injury in 1987. Dr. Farnham gave the opinion that Claimant's complaints and medical bills for those dates were not related.
6. Employer and Insurer issued a denial which states, "Therefore, due to Dr. Farnham's professional opinion, the medical charges submitted to us for 1-8-98, 3-7-98, 3-10-98, 3-24-98, 4-14-98, and 4-24-98 are not compensable under your workers compensation claim of 11-3-87."
7. The denial goes on to state, "If you contest our reasons for denial of payment regarding the above mentioned dates of service, please be advised that you have two years from receipt of this letter to file a Petition..."
8. On September 4, 2012, Claimant returned to the Orthopedic Institute and Dr. Mitchell Johnson has advised Claimant to undergo surgery. Dr. Johnson has signed an affidavit stating that the recommended surgery and symptoms are causally related to the injury suffered on November 3, 1987.
9. Claimant filed a Petition for Hearing on Medical Benefits on June 14, 2013
10. An Answer was made by Employer and Insurer on August 5, 2013.
11. Employer and Insurer filed this Motion for Summary Judgment on January 24, 2014.

ANALYSIS & DECISION

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.

ARSD 47:03:01:08.

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.

Claimant's treating physician has given the opinion that Claimant's current condition is caused by the injury allegedly sustained at work in 1987. Any inference taken from this fact must be seen in a light most favorable to the non-moving party, the Claimant. The inference is that Claimant's current condition is caused by the alleged injury from 1987. This material fact is in dispute and a genuine issue exists.

The resulting settlement agreement from the 1987 incident left open all medical claims caused by that injury. Employer and Insurer denied specific dates of medical treatment in 1998, but that denial did not change the settlement agreement. The 1998 denial also did not serve as a denial for anything other than the specific dates of medical treatment spelled out in the Denial letter. The Denial Letter is very clear that if Claimant disagrees with the denial of payment for specific dates of medical treatment, he may file a Petition for Hearing. The Denial Letter did not deny all future medical treatment associated with the 1987 injury. Employer and Insurer, since 1998, have not issued a denial of benefits to Claimant, relying solely on this 1998 Denial which only denies specific dates of medical treatment.

Employer and Insurer are relying on SDCL 62-7-35.1 for the proposition that Claimant had three years from the last date of Insurer covered medical treatment in which to file a Petition for Hearing. The statute, 62-7-35.1 was not law until 1995, after the date of initial injury and after the settlement agreement was approved. The South Dakota Supreme Court "has consistently ruled that in workers' compensation cases the law in effect when the injury occurred governs the rights of the parties." *S.D. S.I.F.*, 2002 S.D. 34, at ¶3, 641 N.W.2d at 657. Employer and Insurer are limited from using 62-7-35.1 in this case. Furthermore, there is no indication in the parties' submissions when Claimant's last covered medical treatment occurred.

In the alternative, Employer and Insurer argue that 62-7-35 (two-year statute of limitation) applies to the 1998 denial; in that Claimant had two years to file a Petition for Hearing after the 1998 denial letter. The statute specifically reads, "If the denial is in part, the bar shall only apply to such part." The denial was in part and therefore, Claimant is barred from petitioning for payment of medical treatments given on those dates contained in the 1998 Denial letter. Claimant has not petitioned for payment of medical bills for those dates.

Claimant presents the argument that Employer and Insurer have waived any statute of limitation to future medical benefits when becoming a party to the Settlement Agreement approved in 1992. This argument is persuasive and adopted.

Claimant relies upon the SD Case of *Schmidt v. Eagle Materials Co.*, 337 N.W.2d 816, 818 (1983). In that case the facts are very similar to the facts in this situation. The *Schmidt* settlement agreement addendum read:

WHEREAS, both parties have been advised by Dr. R.R. GIEBINK that the said KEITH SCHMIDT may have further medical and hospital expense,

IT IS AGREED by and between the undersigned that settlement of the permanent partial disability claim of KEITH SCHMIDT with the HARTFORD INSURANCE GROUP does not relieve the insurance company of any future claim by the said KEITH SCHMIDT for medical and hospital which may hereafter arise as a direct and proximate result of the injury sustained by the said KEITH SCHMIDT on October 18, 1972, while employed by Eagle Materials.

IT IS FURTHER AGREED that the permanent partial disability and temporary total issue is being settled in any event, whether said disability increases or decreases. (emphasis added).

Schmidt v. Eagle Materials Co., 337 N.W.2d 816, 817 (1983). The Court then explained:

Employer and insurer paid all medical expenses incurred prior to October 18, 1978. Employer and insurer contend, however, that SDCL 62-4-9, as it existed on the date of the injury, bars claimant's claim for payment of medical expenses incurred subsequent to October 18, 1978.

Id. At that time, there was a six-year limitation on workers' compensation benefits; only medical treatment occurring within six years of the injury was compensable. This law, SDCL 62-4-9, was repealed in 1974, after the date of Schmidt's injury.

The Supreme Court overruled the Department when the Department used that six-year statute of limitations law to dismiss a claimant's petition for benefits. The settlement had taken place before six years had passed from the date of the injury. The Court stated:

SDCL 62-7-5 provides that an agreement as to compensation which is approved by the Department of Labor is enforceable for all purposes. See also *Chittenden v. Jarvis*, 68 S.D. 5, 297 N.W. 787 (1941). We construe the addendum to the final release and receipt as constituting a waiver by insurer of any time limitation that might otherwise have existed. Accordingly, insurer will not now be heard to claim that SDCL 62-4-9 bars claimant's right to payment of medical expenses incurred after October 18, 1978.

Id. at 818.

In the case at hand, the 1992 Settlement Agreement had no mention of time limitations for future medical expenses. Instead, the Settlement Agreement specifically leaves open all future medical care, with the caveat that Employer and Insurer “retain the sole and exclusive right to direct the medical treatment of claimant.” Employer and Insurer waived their right to any time limitations that might otherwise have existed. The 1998 denial did not mention the settlement agreement and did not affect the terms of the 1992 settlement.

In South Dakota, “[t]he rights and obligations of parties to a contract are determined solely by the contract language, which must be construed according to the plain meaning of its terms.” *Yarcheski v. Reiner*, 669 N.W.2d 487, 495 (S.D.2003). It is not ambiguous that the parties agreed that all future medical treatments directly and causally related to the 1987 injury are covered by Employer and Insurer.

Genuine issues of material fact exist in this case. The moving party is not entitled to judgment as a matter of law. The Motion for Summary Judgment is Denied. The Department has jurisdiction of this case. The Parties may consider this Letter Decision to be the Order of the Department.

Sincerely,

Catherine Duenwald
Administrative Law Judge
Division of Labor & Management
Department of Labor & Regulation