January 3, 2023

Karali Russell
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Letter Decision on Motion for Default Judgment

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RE: HF No 20, 2022/23- Centennial Management, Inc and Employers Mutual Casualty Company v. Karali Russell

Greetings:

This letter decision addresses Centennial Management, Inc. and Employers Mutual Casualty Company's (Employer and Insurer) Motion for Default Judgment in the above-referenced matter. Karali Russell (Russell) was given until December 5, 2022, to submit her resistance to the Motion. She has not responded.

The present matter arises from a work-related injury sustained by Russell on September 30, 2020, while she was working for Employer. Russell was pushing a cart of boxes when she bumped a door with the cart and the boxes slipped. She reached over and around the cart trying to keep them from falling. Russell claimed she injured her left knee and right lower back. The claim was accepted as compensable.

She sought medical treatment following the injury. Russell was diagnosed with a strained lower back with some sciatica, and the left knee pain was either secondary to changes in her ambulation or the sciatica. She was given a brace. Russell did not miss seven consecutive days of work, and by October 15, 2020, a physician at Black Hills Urgent

Care noted that she had reached maximum medical improvement.

Russell continued to seek treatment for her knee and back pain. An x-ray of her hip revealed degenerative changes without any acute findings and an x-ray of her lumbar spine revealed spondylolisthesis at L5-S1 with disk space narrowing at L4-L5 and minimal anterolisthesis of L3 on L4. On March 15, 2021, Russell was seen at Monument Health. She stated she had been feeling well and was seeking clearance for work. She was released to return to work without restrictions.

In November 2021, Russell sought treatment with Black Hills Orthopedic & Spine Center for left hip pain. She thought she had aggravated it when she jumped out of a roughly 4-foot-high window at work. She hurt her back, hip, and knee. X-rays revealed bilateral hip osteoarthritis. The doctor indicated that Russell has a disability due to the pain, and she has largely exhausted her non-operative measures. It was considered that Russell might be a good candidate for hip replacement. Russell received two intra-articular hip injections.

Employer and insurer assert that neither the injections nor the treatment at Black Hills Orthopedic & Spine is related to the work injury. They submitted a petition to the Department of Labor & Regulation (Department) on August 29, 2022, seeking termination of benefits for Russell's low back work injury based on a change of condition pursuant to SDCL 62-7-33, because they assert that the September 30, 2020, injury is not a major contributing cause of her current condition, disability, impairment, or need for treatment. As Russell has not responded to the Petition, Employer and Insurer have moved for default judgment pursuant to ARSD 47:03:01:02.01 and SDCL 15-6-55.

The South Dakota Supreme Court (Court) has held that "proceeding's under Work[er's] Compensation Law . . . are purely statutory, and the rights of the parties and the manner of procedure under the law must be determined by its provisions." *Martin v Am. Colloid Co.,* 2011 S.D. 57, ¶ 12, 804 N.W.2d 65, 68. Citing *Caldwell v. John Morrell & Co.,* 489 N.W.2d 353, 364 (S.D.1992). The Department was given the authority to promulgate rules regarding Title 62 pursuant to SDCL 62-2-5. One such rule, ARSD 47:03:01:02.01, provides

> The division shall mail notice of the filing of a petition for hearing to all parties. Any adverse party has 30 days after the date of the mailing of the notice to file a response. The response shall be in writing and need follow no specific form. The response shall state clearly and concisely an admission or denial as to each allegation contained in the petition for hearing.

Authority to sanction failure to respond is provided by ARSD 47:03:01:05.02 which states, "If any party fails to comply with the provisions of this chapter, the Division of Labor and Management may impose sanctions upon such party pursuant to SDCL 15-6-37(b). However, attorney fees may be imposed only for a violation of a discovery order." This rule specifically provides that sanctions may be imposed pursuant to SDCL 15-6-37(b) which does not refer to granting default as a sanction. Employer and Insurer have asserted that default is appropriate under SDCL 15-6-55. However, the Department has not been provided statutory authority to apply SDCL 15-6-55. The Department is permitted to look to the Rules of Civil Procedure under Title 15 for guidance, however, as default judgment is an extreme remedy the Department concludes it is not appropriate to apply it as a sanction that was not specifically permitted by statute.

For the reasons stated above, Employer and Insurer's Motion for Default Judgment is DENIED.

Sincerely,

Michelle Faw

Michelle M. Faw
Administrative Law Judge

MMF/das