August 4, 2021

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LETTER DECISION ON MOTION FOR PARTIAL SUMMARY JUDGMENT

J. G. Shultz
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RE: HF No. 26, 2020/21 – Michael Nygaard v. SkyWest Airlines and Indemnity Insurance Company of North America

Dear Mr. Lee and Mr. Shultz:

This letter addresses SkyWest Airlines and Indemnity Insurance Company of North America's (Employer and Self-Insurer) Motion for Partial Summary Judgment submitted June 3, 2021; Michael Nygaard's (Claimant) Memorandum in Opposition for Partial for Summary Judgment submitted July 7, 2021; and Employer and Self-Insurer's Reply Brief in Support of Employer and Insurer's Motion for Partial Summary Judgment submitted July 16, 2021.

Claimant was injured on September 4, 2010. He submitted a Petition for Hearing to the Department of Labor & Regulation (Department) on March 19, 2014. The parties entered into a Compromise Settlement Agreement and Release (Agreement) which was approved by the Department on February 9, 2015. Per the agreement, all claims were resolved except future medical expenses.

Claimant filed a Petition for Hearing Regarding Enforcement of Settlement Agreement Regarding Claimant's Worker's Compensation Benefits (Second Petition) on September 15, 2020. In the Second Petition, Claimant alleges that Employer and Insurer have consistently failed to timely approve, deny, and/or pay for his medical expenses and prescriptions. These allegations include delays for a water exercise membership prescription, a back-brace prescription, prescriptions medication refills, and medical treatment. Claimant additionally seeks a hearing before the Department and an Order enforcing the Agreement. Employer and Insurer have moved the Department for partial summary judgment alleging that Claimant is unable to seek his requested relief under South Dakota Law.

The Department's authority to grant summary judgment is established in administrative rule ARSD 47:03:01:08:

> A claimant or an employer or its insurer may, any time 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.

Employer and Insurer request the department dismiss each claim in the Second Petition that is based upon allegedly delayed coverage of prescriptions or medical care. Employer and Insurer assert that the relevant statute regarding failure to timely respond to medical expense payments is SDCL 62-4-1.1 which states:

> Within thirty days after receiving a properly submitted bill for medical payments, the employer shall:
>
> (1) Pay the charge or any portion of the bill that is not denied;

> (2) Deny all or a portion of the bill on the basis that the injury is not compensable, or the service or charge is excessive or not medically necessary; or
>
> (3) Request additional information to determine whether the charge or service is excessive or not medically necessary or whether the injury is compensable.

Employer and Insurer further assert that violation of SDCL 62-4-1.1 does not permit a financial remedy for a claimant, but instead allows the Department to fine noncompliant employers pursuant to SDCL 62-4-1.2:

> An employer that fails, refuses, or neglects to comply with the provisions of § 62-4-1.1 is subject to a [sic] administrative fine of five hundred dollars payable to the Department of Labor and Regulation for each act of noncompliance, unless the employer had good cause for noncompliance. The department may promulgate rules pursuant to chapter 1-26 to establish standards for medical bill submissions pursuant to § 62-4-1.1.

In support of their position, Employer and Insure have provided the case *Sauder v. Parkview Care Center*, 2007 S.D. 103, 740 N.W.2d 878. In *Sauder,* the Department dismissed Sauder's petition as untimely per the two-year statute of limitations establish by SDCL 62-7-35. On appeal, claimant raised the issue of whether an insurer's failure to comply with denial procedures outlined in SDCL 62-6-3 tolled the statute of limitations. Sauder argues that the insurer's denial was filed outside the maximum number of days under SDCL 62-6-3, and therefore, the two-year statute of limitations was tolled. The insurer argued that SDCL 62-6-3 provided the sole remedy for a violation, and it did not affect the statute of limitations.

> The insurer shall file a copy of the report required by § 62-6-2 with the Department of Labor and Regulation within ten days after receipt thereof.
>
> The insurer or, if the employer is self-insured, the employer, shall make an investigation of the claim and shall notify the injured employee and the department, in writing, within twenty days from its receipt of the report, if it denies coverage in whole or in part. This period may be extended not to

> exceed a total of thirty additional days by the department upon a proper showing that there is insufficient time to investigate the conditions surrounding the happening of the accident or the circumstances of coverage. If the insurer or self-insurer denies coverage in whole or in part, it shall state the reasons therefor and notify the claimant of the right to a hearing under § 62-7-12. The director of the Division of Insurance, or the secretary of labor and regulation if the employer is self-insured, may suspend, revoke, or refuse to renew the certificate of authority, or may suspend or revoke all certificates of authority granted under Title 58 to any company or employer which fails, refuses, or neglects to comply with the provisions of this section. *A company or employer which fails, refuses, or neglects to comply with the provisions of this section is also subject to an administrative fine of one hundred dollars payable to the Department of Labor and Regulation for each act of noncompliance, unless the company or employer had good cause for noncompliance.*

SDCL 62-6-3 (emphasis added)

The South Dakota Supreme Court (Court) agreed with insurer, ruling that:

> From a plain reading of the statute, it is clear that the only penalties provided for an untimely denial are revocation of certificates of authority and/or a one hundred dollar fine. There is nothing in the statute indicating that tolling the statute of limitations is one of the penalties for filing outside of the allowable time frame. If [insurer] failed to comply with the statute, then it is up to the director of the Division of Insurance to penalize them in a manner provide for by legislature.

Id. at ¶ 17

Employer and Insurer argue that Claimant's matter is similar to *Sauder*. SDCL 62-4-1.2 established that when an Insurer is in violation of SDCL 62-4-1.1, then the exclusive remedy is a $500 fine payable to the Department under SDCL 62-4-1.2.

Claimant argues that the Department is permitted to enforce agreements pursuant to SDCL 62-7-5, which states:

> If the employer and employee reach an agreement in regard to the compensation under this title, a memorandum of the agreement shall be filed with the department by the employer or employee. Unless the department within twenty days notifies the employer and employee of its disapproval of the agreement by letter sent to their addresses as given in the memorandum filed, the agreement shall stand as approved and is enforceable for all purposes under the provisions of this title.

Claimant further argues that SDCL 62-2-5 provides the Department with jurisdiction to enforce agreements. SDCL 62-2-5 provides:

> The Department of Labor and Regulation shall carry out and enforce the provisions of this title. The department may promulgate rules pursuant to chapter 1-26 governing procedures in worker's compensation hearings, petitions, interested parties, summary judgments, dismissals, applications in self-insurance, and related procedural matters.

Claimant argues that the statutes related to enforceability of approved agreements are unambiguous, and therefore, as the Agreement has been approved, it is thus enforceable under SDCL 62-7-5. Claimant asserts that the Court has held that statutes must be "read… as a whole along with enactments relating to the same subject." *Goin v. Houdashelt*, 2020 SD 32, ¶ 13, 945 N.W.2d 349, 353 (citations omitted). "[W]hen the language of a statute is clear, certain and unambiguous, there is no occasion for construction, and the court's only function is to declare the meaning of the statute as clearly expressed in the statute." *Id.*

Claimant asserts that interpreting SDCL 62-4-1.2 as the exclusive remedy for failure to comply with § 62-4-1.1 would render SDCL 62-7-5 "mere surplusage." "[T]he Legislature intended that no part of its statutory scheme be rendered mere surplusage." *Faircloth v. Raven Industries, Inc.*, 2000 SD 158. ¶ 6, 620 N.W.2d 198, 201. Claimant further argues that the holding in *Sauder,* interpreted in conjunction with the rules of statutory construction, supports the conclusion that if a statute does not specifically indicate another statute is affected, it was not intended to be a part of the statute. In *Sauder*, the Court was persuaded by the fact that the relevant statute did not specifically reference tolling of the statute of limitations. Claimant asserts SDCL 62-4-1.2 similarly

does not provide that it limits enforceability of a settlement agreement under SDCL 62-7-5.

The Department agrees with Employer and Insurer. The Court has held that "[s]tatutes of specific application take precedence over statutes of general application." *Abata v. Penning Cty. Bd. Of Commissioners*, 2019 S.D. 39, ¶ 19, 931 N.W.2d 714, 721; *Schafer v. Deuel Cty. Bd of Comm'rs*, 2006 S.D. 106, ¶ 10, 725 N.W.2d 241, 245; *Cooperative Agronomy Services v. South Dakota Department of Revenue*, 2003 SD 104, ¶ 19, 668 N.W.2d 718, 723. SDCL 62-7-5 deems agreements generally enforceable. However, the Legislature has provided the specific penalty for failing to comply with SDCL 62-4-1.1 through SDCL 62-4-1.2.

> In a case where two statutes touch upon the same subject matter, there is a presumption that the Legislature intended the two to coexist and that it 'did not intend an absurd or unreasonable result.' *Id.* Therefore, the statute with the more specific language 'relating to a particular subject will prevail over the general terms of another statute.' *Id.*

In re Guardianship & Conservatorship for T.H.M., 2002 S.D. 13, ¶ 7, 640 N.W.2d 68, 71 (quoting *Martinmaas v. Engelmann*, 2000 S.D. 85, ¶ 49, 612 N.W.2d 600, 611).

Therefore, SDCL 62-7-5 has not been rendered "mere surplusage," because settlement agreements are still enforceable. However, the legislature has dictated that if an employer fails to comply with SDCL 62-4-1.1, it is subject to an administrative "fine of five hundred dollars payable to the Department of Labor and Regulation for each act of noncompliance, unless the employer had good cause for noncompliance." SDCL 62-4-1.2. The $500 fine is the specific enforcement method provided to the Department by chapter 62. Therefore, Employer and Insurer's assertion that violation of SDCL 62-4-1.1 does not permit a financial remedy for a claimant is correct.

It is hereby ORDERED that Employer and Insurer's Motion for Partial Summary Judgment is GRANTED.

Each claim in the Second Petition that is based upon allegedly delayed coverage of prescriptions or medical care is hereby DISMISSED.

Sincerely,

Michelle M. Faw
Administrative Law Judge