

January 7, 2018

Wayne Frankman  
2201 West 46<sup>th</sup> Street Apt 120  
Sioux Falls, South Dakota 57105

**LETTER DECISION AND ORDER**

Kristi Geisler Holm  
PO Box 1030  
Sioux Falls, SD 57101

RE: HF 36, 2018/19– Wayne Frankman v. Sioux International and Western National Insurance

Dear Mr. Frankman and Ms. Holm:

This letter addresses the following submissions by the parties:

|                   |  |
|-------------------|--|
| October 29, 2018  | Employer/Insurer's Motion to Dismiss                 |
|                   | Employer/Insurer's Brief in Support of Motion        |
| November 6, 2018  | Claimant's e-mail response to Motion and attachments |
| November 29, 2018 | Employer/Insurer's Reply Brief                       |

**QUESTION PRESENTED: IS RESPONDENT ENTITLED TO DISMISSAL AS A MATTER OF LAW?**

**FACTS**

Claimant, Wayne Frankman, sustained a work-related injury on March 9, 1992. The parties entered into a settlement agreement in March 1996, in which Claimant received a lump sum payment . Claimant also subsequently settled with a third-party tortfeasor involved in his work injury and was awarded a substantial sum. On

September 6, 2018, Claimant filed a petition seeking workers compensation benefits. In the petition, Claimant reasserts the facts of his original 1992 injury and has alleged that various people conspired to defraud him of the proceeds of his original settlement.<sup>1</sup> Employer/Insurer then filed a motion to dismiss the petition arguing first that the issue of Claimant's 1992 injury is Res Judicata and second that the issue is not ripe.

## ANALYSIS

### 1. RES JUDICATA

Employer/Insurer first argues that the issue of compensation for Claimant's 1992 injury is res judicata by virtue of the original agreement. "The doctrine of res judicata serves as *claim* preclusion to prevent relitigation of an *issue actually litigated or which could have been properly raised and determined* in a prior action. *Black Hills Jewelry Mfg. Co. v. Felco Jewel Indus., Inc.*, 336 N.W.2d 153, 157 (S.D. 1983)(citations omitted)(emphasis original). "The test for determining if both causes of action are the same is a query into whether the wrong sought to be redressed is the same in both actions." *Bank of Hoven v. Rausch*, 449 N.W.2d 263, 266 (S.D. 1989). The Supreme Court has previously ruled that worker's compensation awards, whether by agreement of the parties or following an adjudication, are res judicata as to all matters considered unless the Department has reserved continuing jurisdiction over one or more questions. *Larsen v. Sioux Falls Sch. Dist. No. 49-5*, 509 N.W.2d 703, 706 (S.D. 1993)(citing *Call v. Ben. & Protec. Order of Elks*, 307 N.W.2d 138 (S.D.1981)).

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<sup>1</sup> Claimant makes similar claims regarding his tort settlement. The Department does not have jurisdiction over civil tort cases that originated in circuit court and will therefore not consider them.

In this case, Claimant's 1992 injury was already litigated, and an agreement was signed, and Claimant received a lump sum award. Claimant cannot now seek any new indemnity benefits for this injury.

## **2. RIPENESS**

Employer/Insurer argue that the current case is not ripe for adjudication because it has not denied Claimant any medical treatment to which he is entitled under the terms of the agreement. "Ripeness involves the timing of judicial review and the principle that judicial machinery should be conserved for problems which are real and present or imminent, not squandered on problems which are abstract or hypothetical or remote." *Meinders v. Weber*, 2000 S.D. 2, ¶ 39, 604 N.W.2d 248, 263 (quoting *Boever v. S.D. Bd. of Accountancy*, 526 N.W.2d 747, 750 (S.D.1995)).

Claimant contends that a number of individuals including, Insurer's employees, Claimant's previous attorney, and the former director of the Division of Labor and Management embezzled the proceeds of his award. Claimant presents no evidence whatsoever to support these allegations. Claimant also submitted a number documents after Employer/Insurer submitted its reply brief which allege that Employer/Insurer has failed to provide various items, including a bed, eye glasses, and a motorized scooter. As Claimant did not present these arguments in his original petition or his response to Employer/Insurer's motion, Employer/Insurer have not been given an opportunity to respond to them and the Department will not consider them.

However, as the original agreement provided for Claimant's continuing medical care, the Department retains jurisdiction over that issue. If Claimant wishes to dispute

anything related to his ongoing medical care, he is directed to refile his petition and specify the deficiencies he feels exist.

### **CONCLUSION AND ORDER**

Employer/Insurer's motion to dismiss is GRANTED. This letter shall constitute the Department's order in this matter.

Sincerely,

/s/ Joe Thronson  
Joe Thronson  
Administrative Law Judge