April 1, 2020

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J. G. Shultz
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P.O. Box 5027
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RE: HF No. 52, 2019/20 – State Auto Insurance Companies v. Eric Meyer

Dear Culhane and Mr. Shultz:

This letter addresses the following submissions by the parties:

August 3, 2018	Claimant's Motion to Compel Discovery and Production of Documents
August 23, 2018	Employer/Insurer's Opposition to Motion
	Affidavit of Jennifer Van Anne
September 10, 2018	Claimant's Reply in Support of Motion

ISSUE PRESENTED: IS CLAIMANT ENTITLED TO A DISMISSAL AS A MATTER OF LAW?

FACTS

On February 21, 2019, Claimant, Eric Meyer, was injured when the vehicle he was riding was struck from behind by a semi-truck. Employer/Insurer initially treated these injuries as compensable and paid medical and temporary benefits to Claimant. However, it later asserted that Claimant was not in the course and scope of his

employment at the time of the accident and therefore not entitled to benefits. On November 8, 2019, Insurer filed a petition for a determination that Claimant was not entitled to workers compensation benefits and that Insurer was entitled to recoup any workers compensation benefits paid to Claimant. Claimant filed a response and motion to dismiss on February 6, 2019 arguing that no case in controversy exists in this case and thereof the Department is without jurisdiction to consider Insurer's petition.

Analysis

Claimant asserts since Insurer has paid all benefits, no controversy exists, and the Department is without jurisdiction to hear this petition. Employer/Insurer counters that it is not precluded from challenging benefits it has already paid. In support of its argument, Employer/Insurer cite to *Tiensvold v. Universal Transp., Inc.,* 464 N.W.2d 820, 825 (S.D. 1991). *Tiensvold* involved the appeal of the Department's award of benefits to the claimant after he was injured in a trucking accident. In addition, the employer and insurer requested reimbursement of $529.29 in temporary total benefits that were paid to claimant in error. The Court agreed that the claimant was required to reimburse insurer for the overpayment of benefits. It noted: "We base our holding upon the general premise that an employer is entitled, upon the award of compensation being made at it, to credit or reimbursement for any payments which may have already been made to the worker in advance by way of compensation for the injury in question." *Tiensvold v. Universal Transp., Inc.,* 464 N.W.2d 820, 825 (S.D. 1991)(citing 82 Am.Jur.2d, Workmen's Compensation § 365).

Claimant attempts to distinguish the facts of *Tiensvold* with those of this case. He argues that unlike in *Tiensvold*, there was no error in the payment of benefits. He

points to SDCL 62-4-1.1[1] and argues that Employer/Insurer paid benefits to Claimant instead of seeking more information beforehand. However, the Court also addressed this argument in Tiensvold:

> It is argued that it is unfair to allow the employer to recoup for his own error at the inconvenience to the claimant. *We think not. We think the public interest will be better served by encouraging employers to freely pay injured employees without adversary strictness.* It is not so unfair to compel the claimant to face at an earlier date the termination he would face later in any event so as not to penalize the employer. *Id.* at 758. (Emphasis added).

The Court further opined:

> Any statutory interpretation which would penalize an employer who voluntarily makes weekly payments to an injured employee in excess of his ultimate liability would certainly discourage voluntary payment by employers and would therefore constitute a disservice to injured workers generally. *Id.* at 504.

Id. at 825 (quoting *Western Casualty and Surety Company v. Adkins,* 619 S.W.2d 502, 504 (Ky.App.1981).

Thus, *Tiensvold* clearly allows Employer/insurer to recoup a payment of benefits in error when these benefits were paid in good faith. Claimant next cites to *Skjonsberg v. Menard, Inc. and Praetorian Ins. Co*., 2019 SD 6 to argue that the Department was without jurisdiction to adjudicate this case because no controversy exists. *Skjonsberg*, involved a dispute over the payment of claimant's medical bills. The Department

[1] 62-4-1.1. Employer's duties upon receipt of medical bill. 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

granted *Skjonsberg's* first motion for summary judgment. Later, the claimant filed a second motion for summary judgment after insurer failed to pay medical benefits. Insurer argued that the motion was moot because it had paid all of claimant's medical bills. Insurer appealed the Department's granting of the second summary judgment to the circuit court, which upheld the Department's decision. Insurer then appealed to the South Dakota Supreme Court. That court reversed, noting:

> Here, no controversy exists or existed before the Department that the Employer and Insurer are responsible for Skjonsberg's medical expenses from her two injuries. The Department's 2014 order—which was not appealed—had already determined that Skjonsberg's injuries were work-related and that Employer and Insurer were liable to compensate her for her medical expenses. Further, before the Department entered the 2016 summary judgment order, Employer and Insurer presented undisputed facts in resistance to Skjonsberg's motion for summary judgment that the medical expenses at issue had been fully resolved with the medical providers.

Id. at ¶ 13.

Skjonsberg and Tiensvold, are factually distinguishable from one another. Unlike in Tiensovold, there was no dispute in Skjonsberg that the claimant was entitled to benefits. The Department granted the claimant's first motion for summary judgment, and insurer did not appeal the ruling. By failing to appeal the Department's first determination, the insurer foreclosed any possibility that it could go back and dispute the validity of the claims. Here, the Department has not yet made this determination. In accordance with the Court's ruling in *Tiensvold*, Employer/Insurer is entitled to challenge the payment of benefits it feels were in error.

CONCLUSION

Claimant's Motion to Dismiss Employer/Insurer's Petition is DENIED. This letter shall constitute the Departments decision on this matter.

/s/ Joe Thronson
Joe Thronson
Administrative Law Judge