

**SOUTH DAKOTA DEPARTMENT OF LABOR & REGULATION
DIVISION OF LABOR AND MANAGEMENT**

LISA GALYEN,

HF No. 54, 2002/03

Claimant,

v.

**DECISION ON AMENDED MOTION
FOR SUMMARY JUDGMENT**

**STATE OF SOUTH DAKOTA,
DEPARTMENT OF CORRECTIONS –
CYCC and STATE OF SOUTH DAKOTA ,**

Employer/Insurer,

This Decision addresses Employer/Insurer's Amended Motion for Summary Judgment filed on April 27, 2018. Claimant was given the opportunity to respond to the Motion but did not do so. The deadline for response to the Motion was May 31, 2018.

Background:

Lisa Galyen (Claimant) suffered certain injuries arising out of and in the course of her employment with the State of South Dakota, Department of Corrections (Employer/Insurer) on or about September 24, 2000. Claimant and Employer/Insurer reached a compromise settlement agreement whereby the parties agreed to settle all pending disputes and resolve Claimant's claim for benefits. Generally, the Parties agreed that Employer/Insurer would pay consideration for Claimant's release of claims subject to reopening the matter for review. Employer/Insurer and Claimant agreed that Employer/Insurer is entitled to reopen the matter pursuant to their settlement agreement to terminate worker's compensation benefits due to changes in circumstance and condition. The settlement agreement included an annuity payment of \$743.89 per month to Claimant, for the remainder of Claimant's life, subject to any reopening or review to which Employer/Insurer may be entitled pursuant to South Dakota law and the agreement itself.

Claimant is currently working full-time for the Coconino County Sheriff's Office in Arizona as a GIS specialist in information systems and communications and has been since April 27, 2017. At this position, Claimant is earning \$30.00 an hour with insurance and retirement benefits.

Analysis:

The Department of Labor and Regulation'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.

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. "A trial court may grant summary judgment only when there are no genuine issues of material fact." Estate of Williams v. Vandenberg, 2000 SD 155, ¶ 7, 620 N.W.2d 187, 189, (citing, SDCL 15-6-56(c); Bego v. Gordon, 407 N.W.2d 801 (S.D. 1987)). "In resisting the motion, the non-moving party must present specific facts that show a genuine issue of fact does exist." Estate of Williams, 2000 SD 155 at ¶ 7, (citing, Ruane v. Murray, 380 NW2d 362 (S.D.1986)).

Review of payments and change of condition is governed by SDCL § 62-7-33 which states, "Any payment, including medical payments under § 62-4-1, and disability payments under § 62-4-3 if the earnings have substantially changed since the date of injury, made or to be made under this title may be reviewed by the Department of Labor and Regulation pursuant to § 62-7-12 at the written request of the employer or of the employee and on such review payments may be ended, diminished, increased, or awarded subject to the maximum or minimum amounts provided for in this title, if the department finds that a change in the condition of the employee warrants such action. Any case in which there has been a determination of permanent total disability may be reviewed by the department not less than every five years."

The South Dakota Supreme Court has stated that a "change in condition of the employee," is ordinarily a change, for better or worse in claimant's physical condition," Welch v. Auto. Co., 528 N.W.2d 406, 409-10 (SD 1995) (citing 3 Larson, The Law of Workmen's Compensation, § 81. 31(a) (1988)), and not an economic change. Whitney v. Agsco Dakota, 453 N.W.2d 847, 851 (S.D. 1990).

At the time of the settlement agreement, it was contemplated by the Parties that Claimant's "physical condition, in combination with [Claimant's] age, training, and experience and the type over work available in the employee's community, cause[d] the employee to be unable to secure anything more than sporadic employment resulting in an insubstantial income." SDCL § 62-4-53. Since April 27, 2017, Claimant has been working full-time at her current position earning \$30.00 an hour. Her current

employment is not sporadic and does not result in an insubstantial income. Claimant's condition has changed and she is no longer unable to work due to permanent total disability.

Conclusion:

The Department grants Employer/Insurer's Amended Motion for Summary Judgment for the above stated reasons. Claimant is no longer entitled to permanent total disability benefits due to change in condition. This letter shall constitute the order in this matter.

Counsel for Employer/Insurer shall submit Findings of Fact and Conclusions of Law and an Order consistent with this Decision within twenty (20) days from the date of receipt of this Decision. Claimant shall have an additional twenty (20) days from the date of receipt of Employer/Insurer's Proposed Findings and Conclusions to submit objections thereto and/or to submit their own proposed Findings of Fact and Conclusions of Law. The parties may stipulate to a waiver of Findings of Fact and Conclusions of Law and if they do so, Employer/Insurer shall submit such Stipulation along with an Order consistent with this Decision.

Dated this 6 day of August, 2018.

SOUTH DAKOTA DEPARTMENT OF LABOR & REGULATION

Michelle M. Faw
Administrative Law Judge