SOUTH DAKOTA DEPT. OF LABOR & REGULATION

LABOR & MANAGEMENT DIVISION
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Letter Decision on Motion for Summary Judgment

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RE: HF No 62, 2018/19 – Andrew Cox v. Prinsco, Inc. and American Contractors Insurance Group (ACIG)

Greetings:

This letter decision addresses Claimant's Motion for Summary Judgment and all responsive briefs have been considered. The Department of Labor & Regulation's (Department) authority to grant summary judgment is established in 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. *Stromberger Farms, Inc. v. Johnson*, 2020 S.D. 22, ¶ 31, 942 N.W.2d 249, 258-59 (citations omitted). The non-

moving party must present specific facts showing that a genuine issue of material facts exists. *Id.* at ¶ 34. "A fact is material when it is one that would impact the outcome of the case 'under the governing substantive law' applicable to a claim or defense at issue in the case." *A-G-E Corp. v. State*, 2006 SD 66, ¶ 14, 719 N.W.2d 780, 785. "Summary judgment is proper when the [opposing party] provides only conclusory statements and fails to present specific facts showing that a genuine issue exists for trial." *Zhi Gang Zhang v. Rasmus*, 2019 SD 46, ¶ 31, 932 N.W.2d 153, 163.

Claimant asserts that he is entitled to Summary Judgment because compensability of his claimed injury has been established pursuant to SDCL 62-1-1(7). He further asserts that Employer and Insurer have not met their burden as to their asserted defense based upon medical causation. The deadline for completion of discovery was April 8, 2022. Claimant has identified medical expert Dr. Reynolds and Employer and Insurer have identified medical expert Dr. Melin. Both doctors have opined that Claimant's work activities were, and continue to be, a major contributing cause of his asserted injuries, need for treatment, periods of disability, and resulting permanent impairment. Further, Employer and Insurer have not disputed Claimant's assertion that he has proven a compensable injury. For this reason, and the agreement of the medical experts, the Department is persuaded that Claimant has proven that his injury is a major contributing cause of his condition, and it is therefore compensable.

Additionally, Claimant has asserted that Employer and Insurer are responsible for payments for past and future medical bills related to his claimed injury. Claimant also claims entitlement to past Temporary Total Disability (TTD) benefits as well as a Permanent Partial Disability (PPD) rating and payment of the assigned percentage of permanent impairment. Upon review of the submissions, the Department concludes that Claimant is entitled to the PPD rating and the percentage of permanent impairment. The Department further concludes that Claimant is entitled to benefits but genuine issues of material fact remain regarding what benefits are specifically owed.

Therefore, the Department grants partial Summary Judgment on the issue of Causation but denies partial Summary Judgment regarding the specific calculation of medical bills and other benefits. The Department would like to have a telephonic conference call regarding the issue of benefits to discuss the best course of action to resolve these remaining issues. The Department will contact the parties to establish a date and time for the telephonic conference.

Sincerely,

Michelle M. Faw
Administrative Law Judge

MMF/das