

October 13, 2009

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Letter Decision and Order

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RE: HF No. 68, 2007/08 – Raymond L. Matthews v. National American University and Travelers Insurance

Dear Ms. MEYERS and Mr. Larson:

Submissions:

This letter addresses the following submissions by the parties:

September 16, 2009	Employer and Insurer's Motion Answers to Discovery Requests (Second Set); Employer and Insurer's Certificate of Good Faith Attempt to Confer; Employer and Insurer's Brief in Support of Motion to Compel (Second Set); Affidavit of Charles A. Larson in Support of Motion to Compel;
September 25, 2009	Claimants Resistance to Employer and Insurer's Motion to Compel Answers to Interrogatories and Requests for Production of Documents (Second Set);
September 30, 2009	Employer and Insurer's Brief in Reply to Claimant's Response to Employer/Insurer's Motion to Compel Answers to Discovery Request (Second Set); and Supplemental Affidavit of Charles A. Larson in Support of Motion to Compel Answers to Discovery (Second Set).

Background:

The facts of this case as reflected by the above submissions and documentation are as follows:

1. Employer and Insurer (National American University and Travelers Insurance) served discovery requests on Claimant (Raymond L. Matthews) on February 14, 2008.
2. The Department of Labor ordered Claimant to answer Employer and Insurer's requests for discovery on June 26, 2008. Claimant complied with the Department's order on July 23, 2008.
3. On January 20, 2009, Employer and Insurer deposed Claimant.
4. On July 2, 2009, Employer and Insurer served a second set of discovery request on Claimant asking him to supplement his previous discovery answers. Claimant did not respond to this request. Employer and Insurer also requested a newly signed authorization for the release of Claimant's medical records.
5. Employer and Insurer attempted on several occasions to confer with Claimant about Claimant's failure to comply with the July 2, 2009 discovery request.

Motion to Compel:

Supplemental Discovery Answers

Employer and Insurer have asked that Claimant supplement his prior discovery answers. While discussing discovery, the South Dakota Supreme Court has stated:

Discovery rules are designed "to compel the production of evidence and to promote, rather than stifle, the truth finding process." Magbuhat v. Kovarik, 382 N.W.2d 43, 45 (S.D.1986) (citing Chittenden & Eastman Co. v. Smith, 286 N.W.2d 314, 316 (S.D.1979)). The purpose of workers' compensation is to provide for employees who have lost their ability to earn because of an employment-related accident, casualty, or disease. Rawls v. Coleman-Frizzell, Inc., 2002 SD 130, ¶ 19, 653 N.W.2d 247, 252 (citing Sopko v. C & R Transfer.

Dudley v. Huizenga, 2003 SD 84, ¶ 11, 667 NW2d 644. 648. In workers' compensation cases, motions to compel are governed by SDCL 1-16-9.2. That statute states:

SDCL 1-16-19.2. Each agency and the officers thereof charged with the duty to administer the laws and rules of the agency shall have power to cause the deposition of witnesses residing within or without the state or absent therefrom to

be taken or other discovery procedure to be conducted upon notice to the interested person, if any, in like manner that depositions or witnesses are taken or other discovery procedure is to be conducted in civil actions pending in circuit court in any matter concerning contested cases.

Claimant's duty to supplement his discovery answers is found in SDCL 15-6-26. That statute states:

SDCL 15-6-26(e). A party who has responded to a request for discovery with a response that was complete when made is under a duty to supplement or correct the response to include information thereafter acquired if ordered by the court or in the following circumstances:

- (1) A party is under a duty to supplement at appropriate intervals the party's response to a discovery request authorized under subdivision (a) if the party learns that in some material respect the response is incomplete or incorrect and if the additional or corrective information has not otherwise been made known to the other parties during the discovery process or in writing. With respect to testimony of an expert, the duty extends to information contained in any expert report, discovery response concerning expert's opinions and any deposition of the expert.
- (2) A party is under a duty seasonably to amend a prior response to an interrogatory, request for production, or request for admission if the party learns that the response is in some material respect incomplete or incorrect and if the additional or corrective information has not otherwise been made known to the other parties during the discovery process or in writing.
- (3) A duty to supplement responses may be imposed by order of the court, agreement of the parties, or at any time prior to trial through new requests for supplementation of prior responses.

This statutory provision makes it clear that Claimant has a duty to supplement his discovery answers. The frequency of Employer and Insurer's request for supplemental information has not been unreasonable. Therefore, Claimant is directed to answer Employer and Insurer' Interrogatories and Requests for Production of Documents (Second Set)s

Medical Release.

Employer and Insurer have also requested a new authorization for the release of Claimant's medical records. SDCL 62-4-1.3 dictates that Claimant must authorize the release of his medical records. That provision states:

SDCL 62-4-1.3. Upon the request of an employer, an employee subject to this title shall supply a signed medical release to allow copying of any medical record and report relevant to the employee's claim for workers' compensation. If the employee objects to the relevance of any medical record or report, an administrative law judge within the department shall, upon a showing of good cause for the release of such record or report, approve the release of the medical record or report relevant to the employee's claim, to the employer. The employer shall, upon request, provide a copy of all medical records and reports received, to the employee, without cost to the employee.

Neither party disputes that Claimant is obligated to provide Employer and Insurer with a signed medical release form. Rather, Claimant states that he has already provided them with a release, whereby Employer and Insurer's attorneys could add their names behind Claimant's attorneys. Employer and Insurer argue that the practice of the medical providers is to only honor the first names on the release. It does not appear to be a hardship for the Claimant to provide Employer and Insurer with a newly signed authorization for the release of Claimant's medical records. Therefore, Claimant is directed to sign a new medical release form.

Order

In accordance with the above analysis, Employer and Insurer's Motion to Compel is granted. Claimant shall provide the answers requested and a newly signed medical release form within 20 days of this order. This letter shall constitute the Department's Order in this matter.

Sincerely,

Donald W. Hageman
Administrative Law Judge