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LETTER DECISION & ORDER

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RE: HF No. 69, 2009/10 – John J. Anderson v. Global Polymer Industries, Inc. and The Cincinnati Insurance Company

I am in receipt of Employer and Insurer's Motion for Summary Judgment, along with supporting argument and the affidavit of Patrick Schmidt. I am also in receipt of Claimant's Objection to Employer and Insurer's Motion for Summary Judgment, Claimants' Brief Opposing Employer and Insurer's Motion for Summary Judgment and the affidavits of John J. Anderson, Wanda Amundson, Claimant's letter in further response dated December 13, 2012, and Employer and Insurer's Reply Brief in Support of Their Motion for Summary Judgment. I have carefully considered each of these submissions.

ARSD 47:03:01:08 governs the Department of Labor's authority to grant summary judgment:

> A claimant or an employer or its insurer may, anytime 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 of 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.

Employer/Insurer moves the Department for Summary Judgment arguing that Claimant's Petition for Hearing was untimely.

SDCL §62-7-35 provides,

> The right to compensation under this title shall be forever barred unless a written petition for hearing pursuant to §62-7-12 is filed by the claimant with the department within two years after the self-insurer or insurer notified the claimant and the department, in writing, that it intends to deny coverage in whole or in part under this title. If the denial is in part, the bar shall only apply to such part.

John Anderson (Claimant or Anderson) was employed by Global Polymer Industries, Inc. (Employer). On September 3, 2007, he suffered an injury in the course of his employment and notice was given to Employer. Employer/Insurer initially accepted the claim and paid some workers' compensation benefits to Claimant. On October 17, 2007, Insurer denied further coverage and notified Claimant by letter. The Department received a copy of that denial letter on November 21, 2007. Claimant filed a petition for hearing with the Department dated October 16, 2009. The Petition was received by the Department on October 19, 2009.

Employer/Insurer argues that Claimant was notified of the denial on October 17, 2007. Pursuant to SDCL §62-7-35, the petition must be filed with the Department within two years, or October 16, 2009. Employer/Insurer argues that Claimant's petition was untimely because it was not filed with the Department until October 19, 2009, when it was received and date stamped by the Department.

Claimant argues that he did not receive the Insurer's denial until October 19, 2007 or October 20, 2007. Claimant further asserts that since the Department did not have written notice of the denial until November 21, 2009, the petition was timely filed. Claimant cites, *Sauder v. Parkview Care Center*, 2007 SD 103, 740 NW2d 878, in which the Supreme Court held,

> SDCL §62-7-35, as set out above, constitutes the statute of limitations for worker's compensation claims. Clearly, the statute provides that the limitations period does not begin to run until *the claimant and the Department* have been notified in writing of the denial. The statute is unambiguous regarding who needs to receive notice to begin the running of the limitations period.

Id. at ¶ 23 (emphasis in the original).

SDCL §62-7-35 applies after the Claimant and the Department have been notified on the denial. In this case, the Department did not receive notice of the denial until November 21, 2007. Therefore, Claimant's petition was timely. *Id*. See Also *Thurman v. Zandstra Construction*, 2010 SD 46, 785 NW2d 268.

Even if the Department were to accept that notice was given to the Department on October 17, 2007, when the Insurer purports to have mailed the denial letter to the Department, "it is long-standing public policy that worker's compensation statutes be liberally construed in favor of injured employees. Worker's compensation statutes are

remedial and should be liberally construed to effectuate its purpose." *Wilcox v. City of Winner* , 446 NW2d 772 (SD 1989)

The South Dakota Supreme Court has previously addressed the reason for statute of limitations in workers' compensation cases. The Court held, "the purpose of requiring a claim for compensation to be filed by an injured employee, like notice, is to protect employers against stale claims which cannot be promptly investigated." *Moody v. L.W. Tyler, Custom Combiners,* 297 NW2d 179,180 (SD 1980).

In the case at hand, Anderson's claim was reported and an investigation must have been conducted because Employer and its Insurer assumed liability and paid benefits up until the October 17, 2007 denial. Anderson signed and mailed a petition for hearing on October 16, 2009. Although it may not have been received by the Department until October 19, 2009, Employer/Insurer was in no way prejudiced by the filing on that date.

Employer/Insurer's Motion for Summary Judgment is hereby denied. This letter shall serve as the Department's Order.

Sincerely,

/s/ *Taya M. Runyan*

Taya M. Runyan
Administrative Law Judge