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RE: HF No. 69, 2011/12 – Linda Rhyne v. Coach America Express Shuttle and New Hampshire Insurance

Dear Mr. Leach and Ms. Bogard:

I am in receipt of Claimant's Motion for Partial Summary Judgment, along with supporting argument and documentation. Employer/Insurer has provided a brief in resistance to Claimant's Motion, along with the affidavit of Heather L. Bogard. I have also received Claimant's Reply Brief. 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.

Claimant moves for partial summary judgment on Employer/Insurer's SDCL 62-4-37 defense of intentional misconduct. Claimant argues that there is no genuine issue of material fact and that Claimant is entitled to judgment as a matter of law based on res judicata and collateral estoppel.

Claimant's motion is based on the transcript of the Circuit Court hearing for a protective order filed by Claimant against a co-worker. The transcript indicated that the Circuit Court

Judge issued the protective order¹. Claimant argues Employer/Insurer's defense that Claimant instigated an altercation with a co-worker which ultimately resulted in her injuries is moot in light of the Circuit Court's ruling that,

By a preponderance of the evidence that the testimony of Ms. Rhyne is more credible than that of Mr. Weishaupl. The Court finds that the evidence establishes by a preponderance of the evidence that on August 9 of 2011, that he engaged in a confrontation at the milepost that has been testified to in evidence near Dewey and that Mr. Weishaupl did, in essence, push her down to the ground causing injury to her back and her neck. The Court notes that this is not the same standard applicable in a criminal case.

I am issuing the protection order for a period of six months of time, and there is no showing here that there is a history of stalking or texting back and forth between the two or any conduct of harassment other than this incident.

"Summary judgment is a drastic remedy, and should not be granted unless the moving party has established the right to a judgment with such clarity as to leave no room for controversy." *Richards v. Lenz*, 95 SDO 597, ¶14, 539 NW2d 80 (SD 1995) (citations omitted). Summary Judgment is not appropriate in this matter. Claimant contends that the doctrines of res judicata and collateral estoppel bar employer/Insurer from relitigating the issue of who was the aggressor in the confrontation between Ms. Rhyne and Mr. Weishaupl. Claimant's argument that the two proceedings turn on the issues of whether Mr. Weishaupl was the aggressor and whether Ms. Rhyne was the victim of assault is rejected. The issue in the protective order proceeding was whether a showing was made of a history of stalking or harassment or physical injury pursuant to SDCL 22-19A-8. This is different than whether Employer/Insurer can show that Mr. Rhyne is barred from compensation due to willful misconduct.

There are genuine issues of material fact as to whether Claimant is barred from receiving compensation due to willful misconduct pursuant to SDCL 62-4-37. Claimant has failed to meet her burden to show that she is entitled to judgment as a matter of law. Claimant'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

¹ The parties did not provide the petition for protective order, however based on the transcript it is assumed that it was brought under the stalking or harassment statute. No actual Order of protection issued by the Circuit Court was provided to the Department.