

May 9, 2013

Christina L. Klinger
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LETTER DECISION & ORDER

J. G. Shultz
Woods, Fuller, Shultz & Smith PC
P.O. Box 5027
Sioux Falls, SD 57117-5027

RE: HF No. 84, 2011/12 – Daniel L. Kassner v. Christensen Farms & Feedlots, Inc. and Liberty Mutual Insurance Company

Dear Ms. Klinger and Mr. Shultz:

I have received Employer/Insurer's Motion for Partial Summary Judgment and Affidavit of Counsel in the above referenced matter. I have also received Claimant's Response to Employer/ Insurer's Motion for Partial Summary Judgment and Claimant's Motion for Summary Judgment and Employer/Insurer's Reply Brief in Support of Their Motion for Partial Summary Judgment and in Opposition to Claimant's Motion for Partial Summary Judgment. I have carefully considered each of these submissions in addressing the pending motions.

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.

There are no disputed facts at issue, and therefore summary judgment is appropriate in this matter.

Employer/Insurer move the Department for partial summary judgment as to the amount of Claimant's medical bills for his September 30, 2010, back surgery that he is entitled to claim. Claimant initially received coverage from his health insurer for the back surgery after Employer/Insurer denied coverage. Employer/Insurer argues that it is only required to reimburse the health insurer for their

payments, rather than pay the full value of all the medical bills. Claimant has made a cross Motion for Partial Summary Judgment requesting the Department issue an order for Employer/Insurer to directly pay Claimant the medical expenses as billed.

The controlling law in this situation is SDCL §62-1-1.3, which provides in relevant part,

If an employer denies coverage of a claim on the basis that the injury is not compensable under this title due to the provisions of subsections 62-1-1(7)(a), (b), or (c), such injury is presumed to be nonwork related for other insurance purposes, and any other insurer covering bodily injury or disease of the injured employee shall pay according to the policy provisions.

... If it is later determined that the injury is compensable under this title, the employer shall immediately reimburse the parties not liable for *all payments made*, including interest [.] *Emphasis added.*

This statute makes no reference to the medical fee schedule or billed amounts; rather the amount of reimbursement is based upon the payments that were actually made by Claimant and/or another insurer. See *Wise v. Brooks Const. Ser.*, 2006 S.D. 80 ¶ 37-38 , 721 N.W.2d 461. In this matter, Insurer denied coverage on the basis that the injury was not compensable under Title 62 for lack of notice. If it is later determined that the injury is compensable, Employer/Insurer must reimburse the party not liable, in this case Blue Cross/Blue Shield, only for payments actually made and Claimant for his out of pocket expenses, not the face value of the disputed medical bills. Employer/Insurer is entitled to Partial Summary Judgment as a matter of law. This letter shall serve as the Department's Order.

Sincerely,

/s/ *Taya M. Runyan*

Taya M. Runyan
Administrative Law Judge