

**SOUTH DAKOTA DEPARTMENT OF LABOR
DIVISION OF LABOR AND MANAGEMENT**

**TROY REIT,
Claimant,**

HF No. 84, 2005/06

vs.

**NORTHWEST CONCRETE CUTTING
CORPORATION,
Employer,**

DECISION AND ORDER OF DISMISSAL

and

**THE HERITAGE,
Insurer.**

An administrative hearing having been held on April 18, 2007, the Department hereby makes the following findings:

1. On March 6, 2007, an Order and Notice of Hearing of a worker's compensation proceeding scheduled for April 18, 2007, in Sioux Falls at 9:00 a.m., was sent to the parties pursuant to SDCL 1-26-17.
2. The Order and Notice of Hearing was sent after telephonic prehearing conference held on March 5, 2007, Claimant having participated in the scheduling of the Hearing.
3. All parties were mailed a copy of the Prehearing Order dated March 6, 2007, and the Amended Prehearing Order dated March 22, 2007.
4. The Department sent these notices pursuant to SDCL 62-7-15 and received notice that Claimant accepted these notices via Certified Mail.
5. Claimant did not appear at the time or the place set for hearing on April 18, 2007.
6. Employer/Insurer's counsel appeared, with four witnesses, ready to proceed with hearing.
7. The Department arranged for and will pay for the cost of the appearance of the court reporter at the time and place noticed for hearing.
8. At 9:31 a.m. on April 18, 2007, the undersigned administrative law judge called the Pierre office of the Department of Labor to inquire whether Claimant had contacted anyone there to explain his absence from the

hearing, and was informed by that office that Claimant had not contacted that office.

9. The undersigned administrative law judge waited until 9:38 a.m. to begin the proceeding.
10. Upon commencement of the hearing, Employer/Insurer made an oral Motion to Dismiss based upon the following:
 - a. Claimant's failure to appear at the hearing;
 - b. Claimant's failure to carry his burden of proof on the issues listed in the Prehearing Order and Amended Prehearing Order; and
 - c. the opinions of Dr. Stephen Kazi, whose deposition transcript was received by the Department via the Prehearing Order and at hearing on April 18, 2007.
11. The Department granted Employer/Insurer's Motion to Dismiss.

Based upon the above findings, the Department hereby:

ORDERS that Claimant's Petition for Hearing be dismissed with prejudice pursuant to ARSD 47:03:01:16 and pursuant to Claimant's failure to carry his burden of proof necessary to receive workers' compensation benefits under SDCL Title 62.

Pursuant to SDCL Title 62 and Chapter 1-26, either party may petition for review or appeal this Decision and Order of Dismissal.

Dated this 23rd day of April, 2007, at Pierre, South Dakota.

SOUTH DAKOTA DEPARTMENT OF LABOR

Heather E. Covey
Administrative Law Judge