

January 30, 2024

Dianna Jungemann
c/o Zane Jungemann
512 Wilson Street
Jefferson, SD 57038

Letter Decision on Motion for Default Judgment

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RE: HF No 90, 2022/23- Rural Office of Community Services, Inc. and Church Mutual Insurance Co. v. Dianna Jungemann

Greetings:

This letter decision addresses Rural Office of Community Services, Inc. and Church Mutual Insurance Co. (Employer and Insurer) Motion for Default Judgment in the above-referenced matter. Dianna Jungemann (Jungemann) was given until December 29, 2023, to submit her resistance to the Motion. She has not responded.

Employer and Insurer filed a Petition for Hearing on June 16, 2023, requesting a termination of benefits for the August 17 2021, injury based on a change of condition pursuant to SDCL § 62-7-33. Jungemann sustained an injury at work when she tripped and fell in a parking lot. Employer and Insurer accepted the injury as compensable. Jungemann was prescribed physical therapy after which her doctor indicated she would likely be placed at maximum medical improvement (MMI). She was unable to finish the course of physical therapy because she suffered unrelated personal injuries when she tripped, fell, and suffered a stroke. Employer and Insurer additionally requested in their Petition that the Department of Labor & Regulation (Department) suspend compensation otherwise payable

pursuant to SDCL § 62-4-43 until and unless Jungemann resumes and completes treatment for the work injury.

On June 27, 2023, Jungemann's then-attorney wrote to Jungemann advising that he was unable to assist her further with her matter as she had suffered a medical condition unrelated to her workers' compensation matter that prevented her from returning to the work force, that a Petition for Hearing had been filed, and there was a deadline for responding. Jungemann did not file an Answer. As Jungemann has not responded to the Petition, Employer and Insurer have moved for default.

The South Dakota Supreme Court (Court) has held that "proceedings under Work[er's] Compensation Law . . . are purely statutory, and the rights of the parties and the manner of procedure under the law must be determined by its provisions." *Martin v Am. Colloid Co.*, 2011 S.D. 57, ¶ 12, 804 N.W.2d 65, 68. Citing *Caldwell v. John Morrell & Co.*, 489 N.W.2d 353, 364 (S.D.1992). The Department was given the authority to promulgate rules regarding Title 62 pursuant to SDCL 62-2-5. One such rule, ARSD 47:03:01:02.01, provides

The division shall mail notice of the filing of a petition for hearing to all parties. Any adverse party has 30 days after the date of the mailing of the notice to file a response. The response shall be in writing and need follow no specific form. The response shall state clearly and concisely an admission or denial as to each allegation contained in the petition for hearing.

Authority to sanction failure to respond is provided by ARSD 47:03:01:05.02 which states, "If any party fails to comply with the provisions of this chapter, the Division of Labor and Management may impose sanctions upon such party pursuant to SDCL 15-6-37(b). However, attorney fees may be imposed only for a violation of a discovery order."

This rule specifically provides that sanctions may be imposed pursuant to SDCL 15-6-37(b) which does not refer to granting default as a sanction. The Department concludes that default judgment is an extreme remedy, that is inappropriate to apply when not specifically permitted by statute.

Additionally, Jungemann has not offered a response to Employer and Insurer's request to suspend compensation. Her attorney in his Affidavit in Support of Motion to Withdraw as Counsel stated that she has suffered an unrelated medical condition that affects her workers' compensation matter. Therefore, while the Department will not grant default judgment against Jungemann, it is appropriate to suspend compensation otherwise payable pursuant to SDCL § 62-4-43.

For the reasons stated above, Employer and Insurer's Motion for Default Judgment is DENIED in part and GRANTED in part. Jungemann's workers' compensation benefits related to the August 17, 2021, injury are hereby suspended. The parties may consider this letter to be the ORDER of the Department.

Sincerely,

A handwritten signature in blue ink that reads "Michelle Faw". The signature is written in a cursive, flowing style.

Michelle M. Faw
Administrative Law Judge

MMF/das