

September 8, 2021

Thomas A. Gannon


Sent certified 7020 1810 0000 9854 8346

**LETTER DECISION ON MOTION TO
DISMISS FOR FAILURE TO
PROSECUTE**

Thomas J. Von Wald
Boyce Law Firm, LLP
PO Box 5015
Sioux Falls, SD 57117-5015

RE: HF No. 95, 2019/20 – Thomas Gannon v Ace Ready Mix, Inc. and Acuity Mutual Insurance Company

Greetings:

The Department of Labor & Regulation (Department) received this Motion to Dismiss for Failure to Prosecute submitted by Ace Ready Mix, Inc. and Acuity Mutual Insurance Company (Employer and Insurer) on July 7, 2021. Thomas Gannon (Gannon) was given the opportunity to respond to the Motion but did not do so. The deadline for response to the Motion was August 24, 2021.

ARSD 47:03:01:09 allows the Department of Labor and Regulation discretion in dismissing a workers' compensation claim if there "has been no activity for at least one year, unless good cause is shown to the contrary."

As the record does not show any activity by Gannon since he filed his Petition for Hearing on March 5, 2020, the Department hereby Orders that Employer and Insurer's Motion to Dismiss for Failure to Prosecute is granted. This Worker's Compensation Hearing File No. 95, 2019/20 is dismissed without prejudice.


The Parties may consider this Letter to be the Order of the Department.

This is the final decision in this matter unless it is appealed in one of two ways:

- (1) The decision is appealed directly to circuit court within 30 days after the date of this decision, OR
- (2) A request for a Department of Labor and Regulation review is filed by mailing a letter of appeal to the Secretary, S.D. Department of Labor and Regulation, 123 W. Missouri Ave., Pierre, SD 57501 within 10 days after the date of this decision. The Secretary's Decision may be appealed to circuit court within 30 days after the date of the Secretary's decision.

If you have any questions regarding this Letter Order of Dismissal, please contact this office.

Sincerely,


Michelle M. Faw
Administrative Law Judge