

May 3, 2005

LETTER DECISION

Pamela Blankenship
802 South Topaz Place
Sioux Falls SD 57106

Rick W. Orr
Davenport Evans Hurwitz & Smith
PO Box 1030
Sioux Falls SD 57101-1030

RE: HF No. 136, 2004/05 – Pamela Blankenship v. Medical X-Ray Center and Risk Administration Services, Inc.

Dear Ms. Blankenship and Mr. Orr:

I am in receipt of Employer/Insurer's Motion for Summary Judgment, Claimant's letter response thereto, and Employer/Insurer's letter in reply. Having carefully considered the submissions of the parties, along with the Department's file, the Department grants Employer/Insurer's Motion for Summary Judgment.

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 on 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 filed a Petition for Hearing, alleging that on January 23, 2003, she suffered Post-Traumatic Stress Disorder, as a result of finding a deceased person lying on the ground in Employer's parking lot. Employer/Insurer timely answered and filed its Motion for Summary Judgment on the ground that Claimant suffered no compensable injury.

The following facts are undisputed:

Claimant, while on a break at work, found a man in Employer's parking lot in need of emergency medical attention. Claimant summoned help for the man and his wife, but did not take any other action to revive the man. Claimant suffered no physical injury during the event. No part of her body was injured.

On March 17, 2004, Claimant completed a First Report of Injury. On that First Report of Injury Claimant described her injury as "post traumatic stress disorder after the discovery of an expired person in the parking lot." Claimant admitted that finding the deceased man was not the only stressor that caused her to seek psychiatric treatment.

In 1999, South Dakota's definition of "injury" for purposes of workers' compensation claims was amended to address specifically the compensability of mental injuries. The following language was added to the definition of "injury" found in SDCL 62-1-1(7):

The term does not include a mental injury arising from emotional, mental, or nonphysical stress or stimuli. A mental injury is compensable only if a compensable physical injury is and remains a major contributing cause of the mental injury, as shown by clear and convincing evidence. A mental injury is any psychological, psychiatric, or emotional condition for which compensation is sought[.]

By the plain language of this statute, mental injuries are compensable only if they are the result of a compensable physical injury. Worker's compensation is a creature of statute. "[P]roceedings under the Workers' Compensation Law . . . are purely statutory, and the rights of the parties and the manner of procedure under the law must be determined by the provisions." Sopko v. C & R Transfer Co., Inc., 2003 SD 69, ¶ 10, 665 N.W.2d 94, 97 (quoting Caldwell v. John Morrell & Co., 498 N.W.2d 353, 364 (SD 1992)).

The South Dakota legislature has demanded that an employee sustain a compensable physical injury in order for a mental injury to be compensable, and even then, only if the physical injury remains a major contributing cause of the mental injury. Therefore, the inquiry is twofold: (1) did the employee sustain a physical injury and, if so, (2) did and does that physical injury remain a major contributing cause of the alleged mental disability.

In this case, Claimant cannot sustain her burden of establishing the first prong of the statute. It is undisputed that Claimant did not sustain a compensable physical injury on

January 23, 2003. Therefore, any claim for a mental injury fails as a matter of law. Employer/Insurer are entitled to summary judgment as a matter of law. Claimant's Petition for Hearing must be dismissed.

Employer/Insurer shall submit a proposed order consistent with this decision.

Sincerely,

Heather E. Covey
Administrative Law Judge