

January 29, 2018

Tyler Coverdale
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PO Box 5027
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LETTER DECISION AND ORDER

Lee C. "KIT" McCahren
Olinger, Lovald, McCahren & Reimers
P.O. Box 66
Pierre, SD 57501

RE: HF No. 139, 2015/16 – James Johnson v. 3M Company and Old Republic
Insurance Co. Motion to Reconsider

Dear Mr. Coverdale and Mr. McCahren:

This letter addresses the following submissions by the parties:

December 28, 2017 Employer and Insurer's Motion to Reconsider
Affidavit of Counsel

January 12, 2018 Claimant's Resistance to Motion to Reconsider

January 23, 2018 Employer and Insurer's Reply to Claimant's Resistance to Motion to
Reconsider

MOTION TO RECONSIDER

Employer/Insurer previously filed a motion to dismiss Claimant's petition after Claimant died of causes not related to his workplace injury. The Department determined that Claimant's estate may be entitled to medical and temporary benefits accrued between the time of Claimant's work injury and his death and denied the motion. Employer/Insurer then filed a motion to reconsider the previous denial of its motion for summary judgment.

Employer/Insurer bases its request on *Knapp v. Hamm & Phillips Service Company, Inc., and Liberty Mutual Insurance Co.*, Memorandum Decision CIV. 11-25, (Fourth Judicial Circuit, Dec. 19, 2011).

Knapp involved a North Dakota oil rig worker that filed a petition for benefits in South Dakota. Before his claim was adjudicated, claimant died of causes unrelated to his injury. Mr. Knapp's wife then filed a motion to substitute herself in place of her deceased husband. Employer/insurer in that case filed a motion for summary judgment arguing that Claimant's death ended any claim that his estate may have had to any workers compensation benefits. The Department disagreed, stating:

While Mrs. Knapp is not able to recover future workers' compensation benefits that Claimant may have ultimately shown he was entitled to because they were not installment payments as described in SDCL § 62-4-11, Mrs. Knapp may be able to recover past benefits owed and medical expenses that Claimant incurred prior to Claimant's death that he was reasonably entitled to. The claim for benefits for properly submitted medical benefits and disability payments that had accrued during Claimant's lifetime do not abate at the time of Claimant's death. To hold otherwise would allow the Employer/Insurer the advantage [of] the Claimant's death and receive an underserved windfall.

Re: Erwin "Don" Knapp v. Hamm & Phillips Serv. Co., Inc. & Liberty Mut. Ins. Co., HF No. 105, 2009/10, 2011 WL 9843631, at *2 (S.D. Dept. Lab. May 4, 2011).

Though the Department allowed Claimant to substitute his wife in his place, it ultimately ruled it did not have jurisdiction over the case. Claimant's widow appealed to the Fourth Judicial Circuit which upheld the Department's dismissal on jurisdictional grounds. Even though the circuit court ruled the Department had no jurisdiction to hearing the original case, it nonetheless ruled on the substitution issue. The court conceded that, "[a]lthough rendered moot by the court's decision on jurisdiction, the

issue of substitution is addressed in the event of appellate review.” *Knapp*,
Memorandum Decision, *supra*.

“[W]hen a court dismisses a case for lack of subject matter jurisdiction, any further discussion of the merits of that case is dicta.” *State v. Singleton*, 274 Conn. 426, 440, 876 A.2d 1, 9 (2005) (Quoting *Office of Consumer Counsel v. Dept. of Public Utility Control*, 234 Conn. 624, 649 n. 23, 662 A.2d 1251 (1995)). By rendering the substitution issue moot, the circuit court’s proclamation on that issue became dictum. “It is a fundamental principle of our jurisprudence that courts do not adjudicate issues that are not actually before them in the form of cases and controversies. *Moeller v. Weber*, 2004 S.D. 110, ¶ 45, 689 N.W.2d 1, 16. Because the circuit court’s decision regarding substitution in *Knapp* is dictum, it has no binding effect on the Department.

ORDER

Employer/Insurer’s Motion for Reconsideration is DENIED. This letter shall constitute the Department’s Order in this matter.

Sincerely,

/s/ Joe Thronson
Joe Thronson
Administrative Law Judge