March 20, 2009

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LETTER DECISION

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RE: HF No. 87, 2007/08
Russell Eagleman v. Chamberlain Academy and Youth Services International, Inc. and American International Group, Inc.

Dear Counsel:

The Department is in receipt of and has considered the following submissions:

> January 28, 2009 - Employers and Insurer's Motion for Summary Judgment along with Brief in Support of Motion for Summary Judgment and statement of material facts not in dispute, the Affidavit in Support of Motion of Summary Judgment and attached exhibits.
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> March 2, 2009 - Claimant's Response to Employers and Insurer's Statement of Material Facts Not in Dispute, Claimant's Statement of Material Facts, Affidavit of Attorney Kenneth R. Dewell of Appropriate Citations to the Record Supporting Claimant's Statement of Material Facts, and Claimant's Brief in Resistance to Employer and 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.

The party seeking summary judgment bears the burden of demonstrating the lack of any genuine issue of material fact, and all reasonable inferences from the facts are viewed in the light most favorable to the non-moving party. *Railsback v. Mid-Century Ins. Co.*, 2005 SD 64, ¶6, 680 N.W.2d 652, 654.

> The burden is on the moving party to clearly show an absence of any genuine issue of material fact and an entitlement to judgment as a matter of law. *Estate of Elliott*, 1999 SD 57, ¶15, 594 NW2d 707, 710 (citing *Wilson*, 83 SD at 212, 157 NW2d at 21).

McDowell v. Citicorp USA, 2007 SD 53, ¶22, 734 N.W.2d 14, 21.

> The guiding principles in determining whether a grant or denial of summary judgment is appropriate are:
>
> > (1) The evidence must be viewed most favorable to the nonmoving party; (2) The burden of proof is upon the movant to show clearly that there is no genuine issue of material fact and that he is entitled to judgment as a matter of law; (3) Though the purpose of the rule is to secure a just, speedy and inexpensive determination of the action, it was never intended to be used as a substitute for a court trial or for a trial by jury where any genuine issue of material fact exists; (4) A surmise that a party will not prevail upon trial is not sufficient basis to grant the motion on issues which are not shown to be sham, frivolous or so unsubstantial that it is obvious it would be futile to try them; (5) Summary judgment is an extreme remedy and should be awarded only when the truth is clear and reasonable doubts touching the existence of a genuine issue as to material fact should be resolved against the movant; and (6) Where, however, no genuine issue of fact exists it is looked upon with favor and is particularly adaptable to expose sham claims and defenses.

Owens v. F.E.M. Electric Association, Inc., 694 N.W.2d 274, 277 (SD 2005).

The Petition filed by Claimant makes claim for medical expenses and disability benefits incurred as a result of incidents that occurred September 2, 2006 and November 4, 2006, on Employer's premises while Claimant was working.

Employers/Insurer's Motion for Summary Judgment makes the arguments that Claimant failed to give proper notice to Employer under SDCL §62-7-10 or in the alternative that Claimant has presented no proof that employment with Employer was a major contributing cause of Claimant's medical condition.

The first argument for Summary Judgment is premised on the fact that Claimant did not tell Employer within three days of September 2, 2006, that he believed the injury was caused or related to his employment; that Claimant did not complete a First Report of

Injury Form within three days of September 2, 2006. The South Dakota Supreme Court has ruled that:

> In determining actual knowledge, the employee must prove that the employer had sufficient knowledge to indicate the possibility of a compensable injury.… In other words, to satisfy the actual knowledge notice requirement, the employer: 1) must have sufficient knowledge of the possibility of a compensable injury, and 2) must have sufficient knowledge that the possible injury was related to employment with the employer.

Orth v. Stoebner & Permann Construction, Inc., 2006 SD 99, ¶53, 724 N.W.2d 586, 598 (internal citations omitted). Claimant had a heart attack at work on September 2, 2006. Claimant had just assisted a student who had purposefully injured herself. Claimant had physically exerted himself, by running about 30 feet, to reach and assist the injured student.

The evidence presented shows that Employer drove Claimant to the hospital and had actual knowledge that Claimant was having a heart-related "incident" or possible heart attack. Employer did not expect to have Claimant file paperwork with Employer while he was in the hospital. The day he returned to work light duty, Claimant spoke to Employer about workers' compensation coverage for the hospitalization. Claimant informed Employer that he told the hospital the incident would or should be covered under work comp. Employer did not fill out the First Report of Injury form after hearing this request by Claimant and did not prompt Claimant to fill out a First Report of Injury form.

The evidence, as seen in a light more favorable to the non-moving party, shows that Employer had actual knowledge of Claimant's injury as required under SDCL §62-7-10 and that it was related to Claimant's employment.

The second argument for summary judgment is that there is no proof that Claimant's employment is a major contributing cause of Claimant's medical condition. SDCL §62-1-1(7) defines a workers compensation "injury" as:

> only injury arising out of and in the course of the employment, and does not include a disease in any form except as it results from the injury. An injury is compensable only if it is established by medical evidence, subject to the following conditions:
> (a) No injury is compensable unless the employment or employment related activities are a major contributing cause of the condition complained of; or
> (b) If the injury combines with a preexisting disease or condition to cause or prolong disability, impairment, or need for treatment, the condition complained of is compensable if the employment or employment related injury is and remains a major contributing cause of the disability, impairment, or need for treatment.

(c) If the injury combines with a preexisting work related compensable injury, disability, or impairment, the subsequent injury is compensable if the subsequent employment or subsequent employment related activities contributed independently to the disability, impairment, or need for treatment.

SDCL § 62-1-1(7). The employment need only be a major contributing cause of the claimed injury or condition. Claimant is not required to show that his employment is "the" major contributing cause of the injury or condition. "This causation requirement does not mean that the employee must prove that [his] employment was the proximate, direct, or sole cause of [his] injury; rather the employee must show that [his] employment was a '*contributing factor*' to his injury." *Orth* at ¶32 (internal citations omitted).

The facts do indicate that Claimant suffered from high blood pressure and had other potential risk factors associated with heart attacks. However, Employer knew of these issues and risk factors. The Supreme Court has stated before, and it is a general principal of workers' compensation law, that "[i]n so far as the pre-existing condition is concerned we must take the employee as we find him." *St. Luke's Midland Regional Medical Center v. Kennedy*, 2002 SD 137, ¶13, 653 NW2d 880 (quoting *Elmstrand v. G. & G. Rug & Furniture Company*, 77 SD 152, 155, 87 NW2d 606, 608 (1958). The evidence presented contains medical testimony from Dr. Jones indicating that an incident at Claimant's employment may have been a major contributing cause of Claimant's condition.

In viewing the evidence in a light most favorable to the nonmoving party, there is a factual question regarding whether Claimant's employment was a major contributing cause of Claimant's condition.

The Department, in viewing the evidence and submissions in a light most favorable to the non-moving party, determines that there are genuine issues of material fact. Employers/Insurer has not shown that there is no genuine issue of material fact and that Employers/Insurer is entitled to judgment as a matter of law. Employers/Insurer's Motion for Summary Judgment is denied. An Order denying the Motion is attached to this Letter Decision.

Sincerely,

Catherine Duenwald
Administrative Law Judge