July 13th, 2017

Rebecca L. Mann
Gunderson, Palmer, Nelson & Ashmore, LLP
PO Box 8045
Rapid City, SD 57709

LETTER DECISION AND ORDER

Lorrie Lynn Black Bear
70 Melano St.
Rapid City, SD 57701

RE: HF No. 98, 2016/17 – Lorrie Lynn Black Bear v. Glenn C. Barber & Associates, Inc. and Acuity

Dear Ms. Mann and Ms. Black Bear:

This letter addresses the following submissions by the parties:

June 26th, 2017	Employer/Insurer's Motion for Summary Judgement
	Employer/Insurer's Statement of Material Facts
	Employer/Insurer's Memorandum in Support of Motion
	Affidavit of Rebecca Mann
July 5th, 2017	Letter to Department from Claimant
	Various medical records of Claimant, Lorrie Black Bear

Facts

Claimant, Lorrie Black Bear was employer by Employer as a laborer when she is alleged to have sustained a work-related injury January 14th, 2016. Employer/Insurer

initially accepted the injury as compensable. Claimant was soon thereafter released to return to work with a no climbing restriction, but did not do so with Employer.

On three separate occasions, Claimant visited Black Hills Urgent Care. Claimant was then referred to Dr. Christopher Dietrick for physical therapy. In addition, on April 22nd, 2016, Dr. Thomas Jetzer performed an independent medical examination (IME) on Claimant. Dr. Jetzer opined that claimant had reached maximum medical improvement (MMI) and there was no evidence to suggest Claimant had any residual problems from her work-related injury. Claimant was again seen by Dr. Dietrich on May 2nd, 2016. Dr. Dietrich noted that "no significant objective findings" supported Claimant's claims. Claimant also underwent MRIs of her spine and sternum, and an abdominal CT scan. Dr. Dietrich's opinion was that none of these were abnormal and did not support Claimant's complaints.

Employer/Insurer filed a motion for summary judgement alleging that Claimant had failed to provide the necessary medical evidence to prove that her work-related injury was a major contributing cause of her condition. Claimant responded by sending a letter to the Department July 5th, 2017 and a number of medical reports. There is no certificate indicating that these documents were sent to Employer/Insurer.

Issue presented

Is Employer/Insurer entitled to summary judgement as a matter of law?

Analysis

Pursuant to SDCL 15-6-56(c):

> The motion and supporting brief, statement of undisputed material facts, and any affidavits, and any response or reply thereto shall be served within the dates set forth in § 15-6-6(d).
>
> (1) A party moving for summary judgment shall attach to the motion a separate, short, and concise statement of the material facts as to which the moving party contends there is no genuine issue to be tried. Each material fact in this required statement must be presented in a separate numbered statement and with appropriate citation to the record in the case.
>
> (2) A party opposing a motion for summary judgment shall include a separate, short, and concise statement of the material facts as to which the opposing party contends a genuine issue exists to be tried. The opposing party must respond to each numbered paragraph in the moving party's statement with a separately numbered response and appropriate citations to the record.
>
> (3) All material facts set forth in the statement that the moving party is required to serve shall be admitted unless controverted by the statement required to be served by the opposing party.
>
> The judgment sought shall be rendered forthwith 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. A summary judgment, interlocutory in character, may be rendered on the issue of liability alone although there is a genuine issue as to the amount of damages.

Claimant has failed to conform to the requirements set out in SDCL 15-6-56(c)(2). "[W]hen 'shall' is the operative verb in a statute, it is given 'obligatory or mandatory' meaning." *Discover Bank v. Stanley*, 2008 S.D. 111, ¶ 21, 757 N.W.2d 756, 762. Because Claimant provides no statement of material facts to counter those of Employer/Insurer, the Department must accept those of Employer/Insurer.

Order

Employer/Insurer's Motion of Summery Judgment is GRANTED. This letter shall constitute the Department's Order in this matter.

Sincerely,

/s/ Joe Thronson
Joe Thronson
Administrative Law Judge
Department of Labor and Regulation