

January 22, 2009

Richard L. Travis
May & Johnson PC
PO Box 88738
Sioux Falls, SD 57109-8738

LETTER ORDER

Mark Mosterd
912 Vermont Ave.
Platte, SD 57369

Re: HF No. 101, 2007/08 - Mark Mosterd v. Framers Elevator Co. and
Farmland Mutual Insurance Company

Dear Mr. Travis and Mr. Mosterd:

Employer/Insurer filed a Motion to Dismiss Petition for Hearing on June 30, 2008. The Department of Labor provided Claimant with notice of that motion and directed Claimant to respond to the motion by July 18, 2008. To date, Claimant has failed to respond to Employer/Insurer's motion.

SDCL 62-7-10 states:

An employee who claims compensation for an injury shall immediately, or as soon thereafter as practical, notify the employer of the occurrence of the injury. Written notice of the injury shall be provided to the employer no later than three business days after its occurrence. The notice need not be in any particular form but must advise the employer of when, where, and how the injury occurred. Failure to give notice as required by this section prohibits a claim for compensation under this title unless the employee or the employee's representative can show:

- (1) The employer or the employer's representative had actual knowledge of the injury; or
- (2) The employer was given written notice after the date of the injury and the employee had good cause for failing to give written notice within the three business-day period, which determination shall be liberally construed in favor of the employee.

In this case, there is no dispute that Claimant failed to notify his employer of his injury within the time period provided by SDCL 62-7-10. Therefore, Employer/Insurer's Motion to Dismiss Petition for Hearing is granted. Claimant's Petition for Hearing is dismissed with prejudice.

This letter shall constitute the Department of Labors Order.

Sincerely,

Donald W. Hageman
Administrative Law Judge