SOUTH DAKOTA DEPARTMENT OF LABOR & REGULATION
DIVISION OF LABOR AND MANAGEMENT

CHIELO LOPEZ, **HF No. 104, 2023/24**

Claimant,

v. **DECISION**

QUALITY HOMES LLC,

Employer,

and

ULTIMATE DRYWALL AND SIDING LLC,

Employer,

and

WEST RIVER INSURANCE COMPANY,

Insurer.

This is a workers' compensation case brought before the South Dakota Department of Labor & Regulation, Division of Labor and Management pursuant to SDCL § 62-7-12 and ARSD 47:03:01. The case was heard by Michelle M. Faw, Administrative Law Judge, on March 12, 2026. Claimant, Chielo Lopez, was present and represented by Renee Christensen of Christensen Law Office. Employer, Quality Homes, LLC, and Insurer, West River Insurance Company were represented by Charles A. Larson and Kristin Derenge of Boyce Law Firm. Employer, Ultimate Drywall and Siding, was represented pro se by Nereyda Rocio Larios.

The Department finds the following as facts. Employer, Quality Homes, LLC (Quality Homes) was the general contractor for the Hartford House (Hartford House) construction project in Hartford, South Dakota and was insured by West River Insurance

Company (Insurer) at all times pertinent to this matter. Quality Homes hired Ultimate Drywall and Siding, LLC (Ultimate Drywall) to handle the sheetrock, taping, texturing, and painting. Ultimate Drywall hired Sergio Barboza (Barboza) as a subcontractor to perform the texturing, taping, and painting for the Hartford House. Ultimate Drywall and Barboza did not have workers' compensation insurance.

On September 5, 2023, Chielo Lopez (Lopez) gave Barboza a ride to the Hartford House. Lopez's friend, Amanda Vanderfeen (Vanderfeen), was also in the vehicle. When they arrived at the Hartford House, Barboza went inside the building. A couple minutes later Lopez and Vanderfeen followed and entered the garage. Lopez then went into the darkened house through a doorway. There was no floor on the other side of the doorway, and she fell approximately 9 feet into the unfinished basement. Vanderfeen called down to her, but Lopez did not respond and appeared to be unconscious. After a few minutes, Lopez got up from the floor and was able to walk up some stairs to the main level. They went into the house to find Barboza. Lopez told him what happened and that she needed to leave. He gave her $20. She and Vanderfeen left the Hartford House site.

Issue:

The issue before the Department is whether Lopez was working for Barboza at the time of the injury and therefore, Quality Homes and Insurer are responsible for Lopez's injuries under workers' compensation law.

Analysis:

Lopez claims she was working for Barboza when she fell. Barboza denied that she was working, and he claims she was only there to give him a ride for cash. Lopez seeks workers' compensation benefits from Quality Homes under SDCL § 62-3-10

under the theory that Barboza, as a subcontractor for Ultimate Drywall, employed her at Hartford House. Her Petition for Hearing was received by the Department of Labor & Regulation (Department) on June 3, 2024.

At the hearing on March 12, 2026, Lopez's daughter, Wendolyn Avalos (Avalos), and her husband Marco Lopez (Marco) testified. Barboza and his partner, Santana Rose (Rose), Agustin Nevarez (Nevarez) who was working with Barboza on the day of Lopez's injury, Nereyda Rocio Larios, and Jeff Larson, owner of Quality Homes, also testified. Vanderfeen's deposition was taken on July 21, 2025.

Lopez has brought into question the credibility of Barboza and Nevarez. She argues that Barboza has a lengthy criminal history and during the same month of her injury, he and Nevarez stole a vehicle, threatened the victim at gunpoint with a screwdriver, and forced the victim to drive to a bank to withdraw cash. She further argues that Barboza has incentive to cover up her injury as he did not have workers' compensation insurance or money to pay for her medical bills.

The Department agrees that Barboza and Nevarez are not the most reliable witnesses. However, from the record and observing the hearing testimony, the Department does not find Lopez to be a sufficiently credible witness either. The Department has identified multiple inconsistencies and has attempted to use the testimony of other witnesses, including Barboza and Nevarez, to draw reasonable conclusions regarding facts in this matter.

Lopez claimed that Barboza offered to hire her during a conversation in August 2023. She testified that he asked how much they had paid her, and she said $20 an hour. She said Barboza responded that was fair. She testified that she, Barboza, and Nevarez discussed her work for Nevarez and Agustin Garcia (Garcia). Lopez claimed

that she had worked as a day laborer and helped Garcia and Nevarez on two projects. Nevarez and Garcia did drywall work for those projects. Lopez testified that she helped with the projects for a couple hours by hanging plastic, carrying materials, and cleaning up. She denied helping with drywall or taping on the projects. Nevarez testified that Lopez met him and Garcia at the projects but did not meet them to work. He testified she visited one project to borrow money from Garcia. He said she visited the other because she wanted to get high and was seeking drugs. He gave her methamphetamine. He testified that Lopez did not work on either project and was not paid for any work there.

Barboza finishes dry wall professionally. He testified that drywall is a skill and hard, heavy work. He stated that it takes months to properly train someone to tape for drywall, and for that reason, he only hires people with drywall experience to help him. He testified it would waste time and would not be worth it to hire someone inexperienced. At hearing, Lopez testified she did not do drywall work for Garcia and Nevarez and taught herself to do drywall from doing projects at her home. Barboza, Rose, and Nevarez testified that drywall is a learned skill which takes years to perfect and could not be learned in a matter of hours as Lopez claimed.

On September 4, 2023, Barboza texted Lopez, “I want to talk about business” at 8:46 p.m. Lopez responded that they would talk later in person. Additionally, she agreed to meet Barboza at his home. At hearing, she claimed she took Vanderfeen to the Hartford House the day of her injury, because she was worried about being alone with him. However, here she was willing to meet him at his home.

At hearing Lopez was questioned about drug use. She denied drug use but Barboza, Rose, and Nevarez testified independently that she used drugs. She denied

being in Barboza's truck, but her ID was found there. She claimed he stole her ID. On September 6, 2023, the day after the injury, Barboza left Lopez a voicemail asking if he could drop "something" off at her house. Barboza testified that sometimes they did drugs referring to the "something," but he would not have left money. Rose also testified that the "something" was drugs. Lopez denied that the "something" referred to drugs. She claimed it referred to money for her alleged work at Hartford House the day before.

There are inconsistencies in the accounts of Lopez, Vanderfeen, and Barboza from the day the injury occurred. Lopez claimed she waited with Vanderfeen for a few minutes until she heard Barboza call her to follow him into the house. Barboza denied that he called Lopez to follow him. Upon seeing her injury, Lopez testified that Barboza brought her a piece of frozen meat which she wrapped in a shirt to put on her injured face. Neither Barboza nor Vanderfeen mentioned the meat or where the meat would have come from in an unfinished home.

At hearing Lopez at first denied that Vanderfeen had a history of drug use, but upon cross-examination, she admitted that Vanderfeen had drug convictions and a history of drug use. Initially, she stated that the only reason she gave Barboza a ride to Hartford House was to work. Vanderfeen testified at deposition that the main reason they picked up Barboza was to bring him to the Hartford House because he promised them gas money. Once Lopez was informed of Vanderfeen's testimony, she stated that she picked up Barboza for gas money and to work. At hearing, Lopez testified she was sure that Barboza went into the Hartford House first. However, at her deposition, she testified that she, Vanderfeen, and Barboza entered the house together.

Lopez's husband, Marco, and her daughter, Avalos, offered supporting testimony. On the day of her injury, Marco observed Lopez when he went to her home.

She was visibly bruised on her face and arms. He testified that Lopez told him she fell at work. On September 6, 2023, she texted Avalos that she had fallen at work. Avalos also testified that she knew Lopez would give rides for money. The Department finds both of them to be credible witnesses. However, neither of them was with Lopez prior to or during the injury and all they know about what happened stems from what she has told them. The possibility that Lopez's business relationship with Barboza actually revolves around drugs has been raised. Avalos was asked at hearing if she would be disappointed in her mother if she found out she was selling drugs. She responded that she would be disappointed. She was certain Lopez would not do that sort of thing, but if she did, neither Avalos nor her children would be around her. Therefore, Lopez had reason to misrepresent what happened at the Hartford House to her family. For that reason, their testimony does not help prove that she was working as she claims.

Even if the testimony in this matter was evenly weighted, the burden is still on Lopez to prove her entitlement to benefits. "In the event that the evidence is evenly balanced so that you are unable to say that the evidence on either side of an issue has the greater convincing force, then your finding upon the issue must be against the party who has the burden of proving it." *Stavig v. Stavig*, 2009 S.D. 89, 774 N.W.2d 454, 459. All of these inconsistencies in Lopez's testimony and the lack of supporting evidence lead the Department to conclude that she cannot prove by a preponderance of evidence that she was working for Barboza on the day she was injured. For that reason, she does not meet the requirements of an employee under SDCL § 62-1-2. Ultimate Drywall and Siding, Quality Homes, LLC, and West River Insurance Company are not responsible for Lopez's injuries under Title 62.

Quality Homes, and West River Insurance Company shall submit Findings of Fact and Conclusions of Law and an Order consistent with this Decision within twenty (20) days from the date of receipt of this Decision. Lopez shall have an additional twenty (20) days from the date of receipt of Proposed Findings and Conclusions to submit objections thereto and/or to submit their own proposed Findings of Fact and Conclusions of Law. The parties may stipulate to a waiver of Findings of Fact and Conclusions of Law and if they do so, Employer shall submit such Stipulation along with an Order consistent with this Decision.

Dated this day 20 of July 2026.

SOUTH DAKOTA DEPARTMENT OF LABOR & REGULATION



Michelle M. Faw
Administrative Law Judge