SOUTH DAKOTA DEPT. OF LABOR & REGULATION

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LETTER DECISION ON MOTION FOR SUMMARY JUDGMENT

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RE: HF No. 104, 2021.22 – Juan Maldonado v. Limoges Construction, Inc. and First Dakota Indemnity Company

Greetings:

This letter addresses Employer and Insurer's Motion for Summary Judgment submitted on November 17, 2023. All responsive briefs have been considered.

This matter arises from alleged work-related injuries that Juan Maldonado (Maldonado) suffered to his left and right knees while working for Limoges Construction, Inc. (Employer) which was at all times pertinent insured for workers' compensation purposes by First Dakota Indemnity Company (Insurer). Maldonado filed a Petition for Hearing with the Department of Labor & Regulation (Department) alleging that on or about December 3, 2017, he suffered work-related injuries to including, but not limited to, his left knee. After surgery and physical therapy, he returned to light-duty work with Employer by March 2018.

In his Petition, Maldonado further alleges that on or about May 19, 2019, while engaged in the course and scope of his employment, he suffered work-related injuries to including, but not limited to, his right knee. At his deposition on January 20, 2023, Maldonado testified that he had injured his right knee in May 2019 while performing exercises at home and not while at work for Employer. After the right knee injury, he did not work for Employer from May 2019 through February 2020.

From February 2020 through October 2020, Maldonado was employed by Rosenbauer in their plumbing department working on fire trucks. He was paid $16.00-$17.50 per hour and worked, on average, more than 40 hours per week. He was able to perform his job duties at Rosenbauer. From October 2020 through November 2020, Maldonado was employed by Smithfield Foods deboning ham. He strained his elbow while working for Smithfield and left that position. Shortly after leaving Smithfield, he began working for his current employer CCL Labels. As of the time of his deposition, he was being paid $21.00 per hour and earning more than his workers' compensation rate. Maldonado is currently not taking any medication or undergoing physical therapy. He is not performing home exercises and does not require assistance to get around. He currently does not have any work restrictions.

On April 12, 2023, the Department issued it Scheduling Order and Notice of Telephonic Prehearing Conference in this matter. The Order provided: "The deadline for Claimant to disclose and identify its expert(s) together with the expert's report is May 31, 2023." As of the date of Employer and Insurer's Motion for Summary Judgment, Maldonado had not disclosed any expert or expert report.

The Department's authority to grant summary judgment is established in ARSD 47:03:01:08 which provides:

> A claimant or an employer or its insurer may, any time 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.

In matters of summary judgment, the moving party 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. *Stromberger Farms, Inc. v. Johnson*, 2020 S.D. 22, ¶ 31, 942 N.W.2d 249, 258-59 (citations omitted). The non-moving party must present specific facts showing that a genuine issue of material facts exists. *Id.* at ¶ 34. "A fact is material when it is one that would impact the outcome of the case 'under the governing substantive law' applicable to a claim or defense at issue in the case." *A-G-E Corp. v. State*, 2006 SD 66, ¶ 14, 719 N.W.2d 780, 785. "[S]ummary judgment is proper when the party opposing provides only conclusory statements and fails to present specific facts showing that a genuine issue exists for trial." *Zhi Gang Zhang v. Rasmus*, 2019 S.D. 46, ¶ 31, 932 N.W.2d 153, 163

Employer and Insurer assert summary judgment should be granted for two reasons:

(1) Maldonado's right-knee injury occurred at home, not in the course of his employment with Employer and is, therefore, not compensable. Furthermore, as Maldonado has failed to disclose any experts to support his claims, he fails to raise a genuine dispute of material fact to establish his right knee injuries

were a major contributing cause of his condition and need for treatment. Thus, he is not entitled to benefits as a matter of law; and

(2) Maldonado is indisputably employable, as he has admitted he is currently employed at CCL Labels working 50-hour work weeks, has no restrictions, and is earning more than his workers compensation rate. Thus, he is not entitled to permanent total disability or rehabilitation benefits.

In response to Employer and Insurer's Motion, Maldonado asserts that he has obtained a report from Dr. Thomas Ripperda in which the doctor opines that his left knee injury is a result of his work-related activities[1]. Dr. Ripperda also opines that the medical care Maldonado received has been reasonable and necessary. To prevail in this matter, Maldonado must be able to prove his alleged work-related injury is a major contributing cause of his condition. Maldonado has not provided an explanation as to why he failed to timely disclose his expert along with the expert report. He did not provide Dr. Ripperda's report to the Department or Employer and Insurer until after this Motion was filed. No good cause has been shown. Dr. Ripperda's report is not timely and thus, will not be accepted by the Department. Therefore, Maldonado has not provided any medical expert opinion to support his claim for benefits.

The Department's Scheduling Order specifically notes that "Pursuant to ARSD 47:03:01:05.02, failure to comply with this Order may result in sanctions including the dismissal of the matter." "No recovery may be had where the claimant has failed to offer credible medical evidence that [their] work-related injury is a major contributing cause of [their] current claimed condition." *Darling v. West River Masonry, Inc.*, 2010 S.D.4, ¶ 13,

[1] Maldonado's left knee injury is not at issue in this Motion.

777 N.W.2d 363 at 367. A claimant must establish "that the injury 'arose out of the course of his employment and that his employment was a major contributing cause of his condition or his disability, impairment, or need for treatment. *Vollmer v. Wal-Mart Store, Inc.*, 2007 S.D. 25, ¶ 14, 729 N.W.2d 377, 383. As he has not provided any timely expert medical opinion, the Department concludes that Maldonado is unable to prove his injury is a major contributing cause of his current condition and no genuine issue of material fact remains. Pursuant to ARSD 47:03:01:08, Employer and Insurer are entitled to judgment as a matter of law.

It is hereby ORDERED that Employer and Insurer's Motion for Summary Judgment is GRANTED. Hearing file #104, 2021/22 is hereby DISMISSED with prejudice. This letter shall constitute the order in this matter.

Sincerely,

Michelle Faw

Michelle M. Faw
Administrative Law Judge