SOUTH DAKOTA
DEPT. OF LABOR
& REGULATION

LABOR & MANAGEMENT DIVISION
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November 10, 2021

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RE: HF No. 104, 2020.21 – Jerry D. Seitz v. City of Madison and SDML Workers' Compensation Fund

Greetings:

The Department of Labor & Regulation (Department) received City of Madison and SDML Workers' Compensation Fund's (Employer/Provider) Motion for Summary Judgment on September 1, 2021. Jerry D. Seitz (Claimant) was given until October 8, 2021 to offer a response, but he did not do so. The Department will now consider the motion without benefit of a response.

Claimant had a history of back related injury and treatment prior to February 4, 2020, when he complained of low back, knee, leg, and pelvic discomfort from an alleged work-related injury. A radiology report dated February 7, 2020, noted moderate compression deformities of his L3 and L5. An MRI taken two weeks later, revealed moderate-to-severe degenerative central spinal stenosis at L2-3 secondary retrolisthesis, disc osteophyte complex and facet arthropathy, broad-based annular protrusion at the L3-4 level lateralizing toward the left narrowing the left lateral recess with potential intraspinal left L4 nerve root impingement, left foraminal to far left lateral

disc herniation with probably extruded fragment and mass effect upon an enlarged exiting L3 nerve, and degenerative spondylosis at L4-5 with asymmetric right paracentral foraminal protrusion and narrowing of the right lateral recess with potential intraspinal right L5 nerve root impingement. No existing L4 nerve root encroachment was noted.

Claimant underwent spinal injection treatments on March 5 and March 18 of 2020. On June 17, 2020, Claimant saw Dr. Geisinger who recommended that he continue walking, continue physical therapy, and potential L2-L4 decompression and fusion surgery if his condition did not improve. Claimant left his position with Employer on April 3, 2020. He attended physical therapy approximately 59 times between April 14, 2020 and September 17, 2020. When he completed physical therapy in September 2020, Claimant rated his pain as being a level 2 at its worst.

On October 28, 2020, Claimant saw Dr. Geisinger reporting that he had begun weightlifting and was having problems with the right side of his back. A new MRI showed degenerative scoliosis, stenosis, and a new right-sided disc herniation at L4-5. Dr. Geisinger noted that Claimant has a history of degenerative scoliosis with significant stenosis at L2-3 and L3-4. The new MRI also showed a disc herniation that is present on the right side at L4-5. This disc herniation was not present on his previous MRI, and it correlated well to his right leg radiculopathy. Employer/Provider asked Dr. Geisinger to opine regarding whether the L4-5-disc herniation was the result of Claimant's February 4, 2020, work injury, and he responded that the L4-5-disc herniation was new. As a result of Dr. Geisinger's opinion, Employer/Provider denied Claimant further workers'

compensation benefits. Claimant filed a Petition for Hearing with the Department on April 6, 2021, which alleged a work-related injury to his spine.

Employer/Provider have moved for summary judgment on the grounds that Claimant lacks the medical evidence necessary to sustain his burden of proof and establish a causal connection between the February 4, 2020, work injury, and his current condition and need for treatment due to an L4-5 herniated disc discovered on October 28, 2020.

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

> 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.

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. *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.

"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, 777 N.W.2d at 367. The testimony must establish causation to "a reasonable degree of medical probability, not just possibility." *Jewett v Real Tuff, Inc.*, 2011 S.D. 33, ¶ 23, 800 N.W. 2d 345, 350. Claimant has not provided a response to Employer/Provider's motion and has, therefore, not shown specific facts indicating a genuine issue of material fact exists. Claimant has further failed to provide medical evidence to show that his alleged work-related injury is a major contributing cause of his current condition. Therefore, Claimant is unable to sustain his burden of proof and summary judgment is proper.

It is hereby ORDERED that Employer and Provider's Motion for Summary Judgment is GRANTED. Hearing file 104, 2020.21 is dismissed with prejudice. This letter shall constitute the order in this matter.

Sincerely,

Michelle Faw

Michelle M. Faw
Administrative Law Judge