

May 14, 2025

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**LETTER DECISION ON MOTION TO AMEND
SCHEDULING ORDER**

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RE: HF No. 121, 2020/21– Randy Reiter v CCL Industries Corp. and Indemnity Insurance Company

Greetings:

This letter will address the Claimant's Motion to Amend Scheduling Order. All responses have been considered. Claimant has moved to amend the Scheduling Order entered by the Department on January 23, 2025. Claimant was employed full time by Palmer Candy on the date of the expert disclosure deadline, and he, therefore, did not seek expert opinion regarding permanent total disability (PTD). However, after the deadline had passed, on April 16, 2025, his employment was terminated due to attendance problems he alleges flowed from his work injury. As a result of the change in his employment, Claimant requests time to seek and introduce expert vocational opinion and testimony regarding the issue of PTD.

Employer and Insurer resist the Motion and assert that this litigation has gone on for three and a half years, during which time Claimant has made little effort to advance

this case. Claimant served discovery requests on Employer and Insurer on May 11, 2022. Employer and Insurer in turn served discovery requests on Claimant on November 11, 2023, to which Claimant responded on December 27, 2024. There were expert designations by Claimant on May 19, 2022, December 17, 2024, and February 28, 2025. Employer and Insurer asked the Department to enter a scheduling order on December 26, 2024, to move the case along. The Department issued a Proposed Scheduling Order request on December 26, 2024, asking the parties to respond with their proposed deadlines. Employer and Insurer responded on January 17, 2025. Claimant made no response. The Department then entered the Scheduling Order on January 23, 2025. Claimant did not disclose a vocational expert on or before his expert disclosure deadline of February 28, 2025. Employer and Insurer contacted Claimant's counsel on April 14, 2025, asking whether he would assert a PTD claim at trial. Claimant's counsel responded the same day, indicating he would not pursue a PTD claim at trial. As a result of this communication, Employer and Insurer did not retain a vocational expert or otherwise prepare to defend a PTD claim.

The Department rules state in ARSD 47:03:01:12, "A schedule may not be modified except by order of the Division of Labor and Management upon a showing of good cause." The Supreme Court of South Dakota (Court) has provided guidance on the question of whether granting a continuance is appropriate in a given case. In deciding whether to grant a continuance, a trial court should consider the following factors:

- (1) whether the delay resulting from the continuance will be prejudicial to the opposing party;
- (2) whether the continuance motion was motivated by procrastination, bad planning, dilatory tactics or bad faith on the part of the moving party or his counsel;
- (3) the prejudice caused to the moving party

by the trial court's refusal to grant the continuance; and (4) whether there have been any prior continuances or delays.

Meadowland Apartments v. Schumacher, 2012 S.D. 30, ¶ 17, 813 N.W.2d 618, 623

First the Department will consider the two factors of prejudice together. Employer and Insurer assert they will be prejudiced if this Motion is granted. The matter has been ongoing for about four years, and they have invested time and expense conducting discovery and preparing for trial. They also relied on Claimant's assertion that he would not pursue a PTD claim when conducting their discovery and retaining experts. The Court has considered evidence of investment of expenses as evidence of prejudice sufficient to deny a continuance. *Id* at ¶ 18. In response, Claimant asserts that he would be prejudiced if the Department prevented him from bringing a PTD claim and submitting expert opinion in support of said claim because his termination occurred after the expert deadline.

Weighing the potential prejudice, the Department concludes that Claimant would experience the greater prejudice if he was not able to present his claim for PTD. When he informed Employer and Insurer that he did not intend to seek PTD benefits, he was fully employed. However, he was terminated from that employment, allegedly due to his work injury. Employer and Insurer argue that he was let go for unrelated attendance issues. The cause of his termination and its relationship with his work injury is appropriate for the Department to consider through the hearing process. For these reasons, the Department concludes that Claimant would experience greater prejudice if this motion were denied.

The Department will consider the two remaining factors raised by *Meadowland*.

Employer and Insurer assert that Claimant has delayed litigating this case for three and a half years. While there were no formal prior continuances or delays to consider, the failure to progress the case has delayed its resolution. They further assert that this Motion is Claimant's effort to delay this matter further.

Claimant points to the fact that he filed this Motion no more than eight days after he was terminated from Palmer Candy to show he was motivated by the change of his employment status and not by procrastination or desire to delay.

While the Department cannot draw conclusions at this point as to why it took the time it did to start moving the case along, as stated above, Claimant has good cause for bringing a claim for PTD. As he writes in his brief, had he brought the issue of PTD while he was fully employed, it would have been denied as a frivolous claim. Claimants who experience this kind of employment change must be able to present evidence when their claim becomes ripe. Further, Claimant "is entitled as a matter of right to a reasonable opportunity to secure evidence on his behalf." *Tosh v. Schwab*, 2007 S.D. 132, ¶ 25, 743 N.W.2d 422, 430.

Claimant's Motion to Amend Scheduling Order is hereby GRANTED. Attached to this document is the new Amended Scheduling Order.

The parties shall consider this letter to be the Order of the Department.

Sincerely,

A handwritten signature in blue ink that reads "Michelle Faw". The signature is fluid and cursive, with the first name "Michelle" and the last name "Faw" clearly distinguishable.

Michelle M. Faw
Administrative Law Judge

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

RANDY REITER,

HF No. 121, 2020/21

Claimant,

**AMENDED SCHEDULING ORDER
AND NOTICE OF TELEPHONIC
PREHEARING CONFERENCE**

v.

CCL INDUSTRIES CORP.,

Employer,

and

INDEMNITY INSURANCE COMPANY,

Insurer.

Pursuant to ARSD 47:03:01:12, it is hereby ORDERED that the following schedule shall be followed:

1. The deadline for Claimant to disclose and identify its expert(s), together with the expert's report, is August 29, 2025;
2. The deadline for Employer/Insurer to disclose and identify its expert(s), together with the expert's report, is October 31, 2025;
3. The deadline for filing discovery requests is November 28, 2025;
4. The deadline for completion of discovery is December 31, 2025; and
5. The deadline for filing prehearing motions is January 15, 2026.

The Scheduling Order may not be modified except by order of the Department upon a showing of good cause.

The telephonic prehearing conference in this proceeding is scheduled for February 3, 2025, commencing at 9:00 a.m. CT.

IT IS ORDERED that the parties shall be fully prepared at the time of this conference to:

- a. Identify all outstanding issues;
- b. Present arguments and authorities in regard to all motions or amendments to pleadings, which must be filed with the Department prior to conference;
- c. Identify all potential witnesses;
- d. Identify all affidavits and depositions intended to be offered at hearing or objections thereto;
- e. Stipulate to all factual matters not in dispute;
- f. Stipulate to the admission or foundation of exhibits where appropriate;
- g. Present any requests for official notice;
- h. Set a date and time for hearing of this matter.
- i. Present any other matters which will aid in the expeditious conduct of the hearing.

IT IS FURTHER ORDERED that each party participating in the prehearing conference have a thorough knowledge and be prepared to discuss the case. Pursuant to ARSD 47:03:01:15, an order shall be entered subsequent to the conference reciting any action taken, rulings made, and agreements reached by the parties. **Pursuant to ARSD 47:03:01:05.02, failure to comply with this Order may result in sanctions including the dismissal of the matter.** The order will control the subsequent course of the hearing unless modified by further order of the Department.

Dated this 14th day of May, 2025.

SOUTH DAKOTA DEPARTMENT OF LABOR & REGULATION



Michelle M. Faw
Administrative Law Judge