

July 10, 2012

Michael M. Hickey
Bangs, McCullen, Butler, Foye & Simmons LLP
PO Box 2670
Rapid City, SD 57709-2670

Letter Decision and Order

John Stanton Dorsey
Whiting, Hagg, Hagg, Dorsey & Hagg LLP
PO Box 8008
Rapid City, SD 57709-8008

RE: HF No. 157, 2011/12 – Rapid City Professional Hockey, LLC d/b/a Rapid City Rush v. Joseph Grimaldi

Dear Mr. Hickey and Mr. Dorsey:

Submissions

This letter addresses the following submissions by the parties:

- | | |
|---------------|---|
| May 4, 2012 | Joseph Grimaldi's Motion to Dismiss;

[Employee's] Brief in Support of Motion to Dismiss; |
| June 7, 2012 | [Employer and Insurer's] Brief in Resistance to Motion to Dismiss; and |
| June 20, 2012 | Employee's Reply to Employer/Self-insurer's Brief in Resistance to Motion to Dismiss. |

Facts

The facts of this case as reflected by the above submissions are as follows:

1. On or about September 14, 2011, Joseph Grimaldi, (Grimaldi) a professional hockey player, entered into a contract to play for Rapid City Professional Hockey, LLC d/b/a Rapid City Rush (the Rush). Upon entering into that contract, Grimaldi became an employee of the Rush.

2. Prior to his employment with the Rush, Grimaldi had played hockey for the Elmira Jackals in 2010. During that time, he sustained an injury to his left hip as a result of being hit during a hockey game.
3. On or about March 25, 2010, Grimaldi had an MRI which revealed the existence of a traumatic injury to Grimaldi's left hip. Additionally, the MRI showed the existence of a right-sided hip CAM lesion, which is synonymous with femoacetabular impingement syndrome.
4. In March of 2010, Grimaldi's treating physician, Dr. Kelly, recommended hip surgery.
5. When Grimaldi came to the Rush, a pre-season MRI confirmed the existence of injury and damage in the right hip area, a right acetabular labral tearing and spurring with mild right chondromalacia and right femoral head asphericity.
6. On or about October 25, 2011, Grimaldi reported to the Rush team trainer that he sustained a pulled right abdominal muscle.
7. On November 1, 2011, the Rush prepared a First Report of Injury and filed it with the Department of Labor and Regulation.
8. On January 19, 2012, the Department acknowledged receipt of the First Report of Injury and assigned State Claim No. 1391009 to the injury.
9. Following the injury, Grimaldi was seen on a number of occasions by Dr. Christopher Dietrich, the Rush team physician. Dr. Dietrich opined that Grimaldi suffered from "bilateral femoroacetabular impingement, some labral pathology and chondromalacia ... [which] appear to be chronic longstanding problems."
10. Dr. Dietrich noted that Grimaldi continued to have "tenderness in the right hip" and that he appeared "to have flared his preexisting hip degenerative pathology/impingement."
11. Dr. Dietrich stated that "the injury from 10/22 [was] not the cause of all of his hip pathology" but was instead a "preexisting femoroacetabular impingement, hip labral degeneration."
12. Based upon Dr. Dietrich's opinions, the Rush, through its third party administrator, sent Grimaldi a letter dated January 27, 2012, stating that the team had provided Grimaldi with all the benefits to which he was entitled. The letter suggested by implication that no future benefits would be provided for the October 25, 2012 injury.

13. Grimaldi has not sought or demanded any benefits from the Rush pursuant to the workers compensation laws of this state for his October 25, 2012 injury since the Rush's January 27, 2012 letter.
14. The Rush filed a Petition for Hearing dated April 25, 2012.
15. Grimaldi filed a Motion to Dismiss dated May 4, 2012.
16. Additional facts may be discussed below.

Motion to Dismiss:

The Department's role in workers' compensation case is triggered by SDCL 62-7-12 which states:

If the employer and injured employee or the employee's representative or dependents fail to reach an agreement in regard to compensation under this title, either party may notify the Department of Labor and Regulation and request a hearing according to rules promulgated pursuant to chapter 1-26 by the secretary of labor and regulation. The department shall fix a time and place for the hearing and shall notify the parties.

SDCL62-7-12. (emphasis added). Consequently, the Department's review of the matter is only authorized if the parties fail to reach an agreement as to the compensability of an alleged injury. At this point in time, there is no evidence that the parties disagree. The Rush has sent a letter to Grimaldi stating that they have provided all the benefits to which Grimaldi is entitled and to date he has not indicated that he disagrees with that determination.

It would be pure speculation at this point for the Department to assume that Grimaldi will seek or demand workers' compensation benefits in the future. While Grimaldi may be seeking benefits under a separate provision of his employment contract, the Department's participation is not triggered unless he contends entitlement to benefits under SDCL Title 62.

Simply stated, this case is not "ripe" for litigation. The South Dakota Supreme court has discussed the doctrine of "ripeness" in Steinmetz v. South Dakota, 2008 S.D. 87, 756 N.W.2d 392

Ripeness involves the timing of judicial review and the principle that "[j]udicial machinery should be conserved for problems which are real and present or imminent, not squandered on problems which are abstract or hypothetical or remote." Meinders v. Weber, 2000 S.D. 2, ¶39, 604 N.W.2d 248, 263 (Boever v. South Dakota Bd. of Accountancy, 526 N.W.2d 747, 750 (S.D. 1995) (quoting Gottschalk v. Hegg, 89 S.D. 89, 228 N.W.2d 640, 643-44 (1975))) (alterations in

original). “Courts should decide only mature controversies, eschewing advisory opinions and conjectural questions.” Id. (citing Kneip v. Herseth, 87 S.D. 642, 214 N.W.2d 93, 96 (1974)). “

Id. at ¶ 17. “A matter is sufficiently ripe if the facts indicate imminent conflict.” Id.

The doctrine of ripeness is also applicable in agency cases, see Davis, Administrative Law Treatise, § 21.01. Indeed the South Dakota Administrative Procedures Act codified at SDCL chapter 1-26 confines the role of agencies to “contested cases. To date, Grimaldi has not “contested” the Rush’s decision to deny him future benefits.

Order

This case is not ripe and is dismissed without prejudices. This letter shall constitute the order in this matter.

Sincerely,

?s? doanald W. Hageman
Donald W. Hageman
Administrative Law Judge