

December 6, 2010

Donna M. Chute
1550 Seger Dr., Lot # 116
Rapid City, SD 57701

Letter Decision and Order

Catherine M. Sabers
Lynn, Jackson, Shultz & Lebrun PC
P.O. Box 8250
Rapid City, SD 57709-8250

RE: HF No. 16, 2009/10 – Donna M. Chute v. Parkway Nifty Fifties & First Comp

Dear Ms. Chute and Ms. Sabers:

Submissions:

This letter addresses the following submissions by the parties:

November 12, 2010	Claimant's Motion to Amend Petition for Hearing;
November 30, 2010	Employer and Insurer's Response to Claimant's Motion to Amend;
December 2, 2010	Claimant's Response to Employer and Insurer's Response to Claimant's Motion to Amend.

Background:

Claimant, Donna M. Chute, filed a Petition for Hearing dated July 8, 3009. Employer, Parkway Nifty Fifties, and Insurer, First Comp, filed Employer and Insurer's Answer to Petition for Hearing dated December 8, 2009. Claimant filed a Motion to Amend Petition for Hearing dated November 12, 2010. Claimant's Motion to Amend Petition for Hearing does not contain the language of the proposed amendment. The language of the proposed amendment has not been provided to the Department of Labor or Employer and Insurer

Motion to Amend Petition for Hearing:

Motions to amend pleadings are governed by SDCL 15-6-15(a). That provision states,

A party may amend his pleading once as a matter of course at any time before a responsive pleading is served or, if the pleading is one to which no responsive pleading is permitted and the action has neither been placed upon the trial calendar, nor an order made setting a date for trial, he may so amend it at any time within twenty days after it is served. Otherwise a party may amend his pleading only by leave of court or by written consent of the adverse party; and leave shall be freely given when justice so requires. A party shall plead in response to an amended pleading within the time remaining for response to the original pleading or within ten days after service of the amended pleading, whichever period may be the longer, unless the court otherwise orders.

SDCL 15-6-15 (a).

In this case an answer has been filed and more than twenty days lapsed between the submission of the petition and the motion to amend. Consequently leave must be granted by the Employer and Insurer or the Department before the Petition for Hearing can be amended.

The South Dakota Supreme Court discussed a court's role when considering amended pleadings in *Burhenn v. Dennis Supply Company*, 2004 SD 91, ¶ 20, 685 NW2d 778, 783. citing *Dakota Cheese, Inc. v. Ford*, 1999 SD 147, ¶24, 603 NW2d 73, 78. In that case the Court stated, "the most important consideration in determining whether a party should be allowed to amend a pleading is whether the nonmoving party will be prejudiced by the amendment." Id.

Claimant has not submitted the proposed language of the Amended Petition for Hearing. Without that language, it is impossible for the Department to determine whether the proposed amendment will prejudice the Employer and Insurer. It is also impossible for Employer and Insurer to defend against potential prejudices. Under these circumstances, the Department cannot grant Claimant's Motion to Amend Petition for Hearing.

Order:

For the reason stated above, it is hereby, Ordered, the Claimant's motion is denied. This letter shall constitute the order in this matter.

Sincerely,

Donald W. Hageman
Administrative Law Judge