SOUTH DAKOTA
DEPT. OF LABOR
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August 19, 2025

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LETTER DECISION ON MOTION FOR SUMMARY JUDGMENT

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RE: HF No. 19, 2022/23– Landon Gab v Kramp Enterprises, Inc. and Addison-United Fire and Casualty Company

Greetings:

This letter will address Employer and Insurer's Motion for Summary Judgment. All responsive briefs have been considered.

This matter arises from a work injury sustained by Claimant on or about February 20, 2020, while working for Employer. Claimant filed a Petition for Hearing with the Department of Labor and Regulation on August 15, 2022, seeking workers' compensation benefits. On August 13, 2021, Claimant's treating doctor, Dr. Thomas Ripperda, opined that Claimant had reached maximum medical improvement for the work injury and assigned a 12% whole person impairment. On May 14, 2024, Dr. Ripperda submitted an addendum to his initial impairment rating and assigned a 17% whole person impairment to Claimant. Claimant was paid permanent partial disability

benefits for both the initial 12% impairment rating and the additional 5% impairment rating.

Claimant testified at his deposition that he was working as an electrician apprentice starting approximately January of 2022. He stated that he has no issues physically completing the job and only avoids lifting objects over 50 lbs. He works forty hours per week and makes $20.50 per hour. Claimant testified that he never misses any time due to his back injury, nor has he ever had to leave work early due to the pain.

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.

Employer and Insurer have moved for an order granting summary judgment, because they assert Claimant has failed to identify or disclose sufficient medical evidence to establish his alleged workplace injury is and remains a major contributing cause of his current condition and need for treatment. They further assert that there is no genuine issue of material fact, and they are thus entitled to 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 argue that Claimant has not provided any medical opinions establishing that the work-related injury is and remains a major contributing cause of his current condition and need for treatment. To prevail in this matter, Claimant must prove all elements necessary to qualify for compensation by a preponderance of the evidence. *Titus v. Sioux Valley Hosp.*, 2003 SD 22, ¶ 11, 658 N.W.2d 388, 390. He must also establish that the work-related injury is a major contributing cause of his current claimed condition and need for treatment. *Vollmer v. Wal-Mart Store, Inc.*, 2007 SD 25, ¶ 12, 729 N.W.2d 377, 382.

Claimant asserts that he has submitted facts, medical evidence, and expert opinion sufficient to meet his burden at hearing. In the alternative, he requests that the Department grant a continuance to allow Dr. Ripperda or one of his treating providers to offer either written or deposition testimony to support his claim that the work-related injury remains a major contributing cause of his current condition and need for treatment.

The Department concludes that summary judgment is proper as Claimant has failed to sustain his burden of proof establishing the work injury is and remains a major contributing cause of his current condition and need for treatment. The Scheduling

Order issued by the Department on June 5, 2024, set the deadline for Claimant to disclose his experts along with their reports as October 24, 2024. In his disclosure, Claimant has failed to provide medical opinion establishing the work injury is and remains a major contributing cause of his current condition and need for treatment. "[T]he testimony of professionals is crucial in establishing this causal relationship because the field is one in which laymen ordinarily are unqualified to express an opinion." *Orth v. Stoebner & Permann Const., Inc.*, 2006 S.D. 99, ¶ 34, 724 N.W.2d 586, 593.

In his brief, Claimant asserts that reasonable minds could conclude that the work injury continues to be a major contributing cause of his current condition. However, this is not enough to challenge the Motion for Summary Judgment. "A sufficient showing requires that '[t]he party challenging summary judgment ... substantiate his allegations with sufficient probative evidence that would permit a finding in his favor on more than mere speculation, conjecture, or fantasy.'" *Nationwide Mut. Ins. Co. v. Barton Solvents Inc.,* 2014 S.D. 70, ¶ 10, 855 N.W.2d 145, 149. Causation must be established to a reasonable degree of medical probability, not just possibility. *Darling v. W. River Masonry, Inc.,* 2010 S.D. 4, ¶ 12, 777 N.W.2d 363, 367.

Claimant has also requested he be allowed to seek out the supplemental opinion he lacks. He did not provide any explanation as to why he failed to establish the evidence within the time provided by the Scheduling Order. He has made this request pursuant to SDCL § 15-6-56(f) which provides,

> Should it appear from the affidavits of a party opposing the motion that he cannot for reasons stated present by affidavit facts essential to justify his opposition, the court may refuse the application for judgment or may order

> a continuance to permit affidavits to be obtained or depositions to be taken or discovery to be had or may make such other order as is just.

Claimant has not provided an affidavit in accordance with SDCL § 15-6-56(f). "Under [Rule 56(f)], the facts sought through discovery must be "essential" to opposing the summary judgment[.] "*Dakota Indus., Inc. v. Cabela's.Com, Inc.*, 2009 S.D. 39, ¶ 6, 766 N.W.2d 510, 512. "This requires a showing how further discovery will defeat the motion for summary judgment." *Id*. Claimant has failed to meet the requirements of the rule and to provide specific facts to overcome the Motion for Summary Judgment. Therefore, his request for further discovery is denied.

Employer and Insurer's Motion for Summary Judgment is GRANTED. Hearing file #19, 2022/23 is hereby DISMISSED. The hearing scheduled for October 1, 2025, is canceled.

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

Sincerely,

Michelle M. Faw
Administrative Law Judge