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Robert Tiefenthaler
Tiefenthaler Law Office PC
518 8th Street Suite D
Sioux City IA 51101

Michael S. McKnight
Darin W. Larson
Boyce Greenfield Pashby & Welk
PO Box 5015
Sioux Falls SD 57117-5015

RE: HF No. 210, 2003/04 – Alberta Hinrickson v. Gateway and St. Paul Companies

Dear Counsel:

I am in receipt of Employer/Insurer's Motion for Summary Judgment, Claimant's response thereto, and Employer/Insurer's Reply.

ARSD 47:03:01:08 governs the Department of Labor's authority to grant summary judgment:

> A claimant or an employer or its insurer may, anytime 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 of 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/Insurer allege that there are no genuine issues of any material fact as to Claimant's failure to file her petition with the South Dakota Department of Labor within the time prescribed by the statute of limitations, and Employer/Insurer are entitled to judgment as a matter of law. Claimant alleges that the statute of limitations was tolled

by her filing a petition for worker's compensation benefits with the Iowa Workers' Compensation Commissioner and by Employer/Insurer's issuance of a second denial letter.

The following facts are undisputed:

Claimant was hired by Employer, Gateway, on March 15, 1993. She worked in various positions during her time at Gateway, from boxing computers, to building computers, to quality control. Claimant's last day of work at Gateway was March 17, 2003, when her position was terminated with Gateway as part of a general layoff at the company. She continued to be paid her regular salary by Gateway for a period after his last working day and received a severance package as part of her layoff.

During Claimant's employment at Gateway, she sustained an injury to her back on February 19, 2001. Claimant was taking part in morning exercises on that day and, as she leaned back, she felt a "pop" in her lower back. Claimant did not miss any work after this incident and continued to receive the same rate of pay. However, she did have certain work restrictions placed on her, including not working more than forty hours per week.

Claimant saw a chiropractor and had manipulation treatments for a couple months after the February 19, 2001, injury. Claimant also saw Dr. Sinnott in Ida Grove, Iowa, for treatment of her rheumatoid arthritis. Dr. Sinnott gave Claimant a belt to wear around her back and prescribed physical therapy for her, which Claimant underwent.

In September of 2001, Claimant was referred to Dr. Donahue, an orthopedic specialist. On October 10, 2001, Dr. Donahue concluded that Claimant's medical condition was a degenerative process rather than a result of a particular injury and that her February 19, 2001, injury was not a major contributing cause of her current symptoms concerning her back.

On October 17, 2001, Taffy Hillenga, from Gallagher Bassett Services, Inc., on behalf of Insurer, sent a letter to Claimant denying further worker's compensation benefits. Claimant received a copy of the letter at or about that time. The letter stated the Claimant's condition at that time did not appear to be related to employment at Gateway, so any further expenses incurred by Claimant would not be covered by workers' compensation. Claimant was further advised that she had two years from the date of the notification to file a petition for hearing with the South Dakota Department of Labor. The Department received a copy of the October 17, 2001, denial letter.

Claimant was once again advised in writing by Ms. Hillenga via letter dated June 3, 2002, that reiterated the position that Claimant's condition was not a result of her employment with Gateway. Claimant was further advised that she had "two (2) years from receipt of the original denial letter to file a petition for hearing. . ." A copy of the original denial letter dated October 17, 2001, was enclosed with the June 3, 2002, letter. The Department received a copy of the June 3, 2002, letter.

On or about June 30, 2002, Claimant filed an Original Notice and Petition for workers' compensation benefits, against Employer/Insurer with the Iowa Workers' Compensation Commissioner. The Iowa matter was dismissed from the jurisdiction of the Iowa Workers' Compensation Commissioner on April 8, 2004, after it was determined that Iowa lacked subject matter jurisdiction and that the corporate veil could not be pierced.

On or about June 3, 2004, Claimant filed a Petition for Hearing with the South Dakota Department of Labor requesting worker's compensation benefits stemming from the February 19, 2001, injury.

Analysis

Employer/Insurer allege that Claimant's request for workers' compensation benefits is barred by the applicable statue of limitations found in SDCL 62-7-35, which provides as follows:

> The right to compensation under this title shall be forever barred unless a written request for hearing pursuant to § 62-7-12 is filed by the claimant with the department within two years after the self-insurer or insurer notifies the claimant and the department, in writing, that it intends to deny coverage in whole or in part under this title. If the denial is in part, the bar shall only apply to such part.

There is no dispute that Claimant did not file her Petition for Hearing within two years of receipt of the first denial letter. Claimant argued that the statute of limitations set forth in SDCL 62-7-35 was tolled by her Iowa filing. There is no equitable tolling of the statute of limitations in workers' compensation cases in South Dakota. The South Dakota Supreme Court has noted that "[i]n the majority of reported decisions, courts have been reluctant to apply equitable principles to relieve a party of the effect of the statute of limitations." Dakota Truck Underwriters v. SD Subsequent Injury Fund, 2004 SD 120, ¶ 21, 689 NW2d 196. In Klien v. Menke, 83 SD 511, 517, 162 NW2d 219, 222 (1968), a workers' compensation case, the South Dakota Supreme Court noted that it is

> [A]ligned with those courts where 'the making or filing of a claim within the required time is jurisdictional . . . being an essential element of the right to compensation.' 100 CJS Workmen's Compensation § 468(2), pp. 363, 364. Where the making or filing of a timely claim is jurisdictional it cannot be waived or avoided on equitable grounds such as by a waiver or an estoppel.

Claimant's arguments regarding tolling are not supported by the cases.

Claimant argued, "[t]he June 3 letter was a subsequent denial letter that was sent to the Department of Labor again triggering a new two year statute of limitations that ran from the Claimant's receipt of the June 3, letter." Claimant can only meet the statute of limitations if the June 3, 2002, denial letter began a new two-year limitation period.

Claimant relied upon Novak v. Grossenberg & Son, 89 SD 308, NW2d 463 (1975) for the proposition that the statute of limitations began anew after the second denial letter was sent on June 3, 2002. Novak is distinguishable from the present case. In Novak, the insurer had assumed liability for the original claim in its entirety. Id. at 468. In the current case, Insurer denied continued coverage for the original claim on October 17, 2001. More importantly, in Novak, the South Dakota Supreme Court was addressing a situation where the claimant was making a claim based upon newly discovered consequences form the original injury. Id. at 467-68. However, in the present matter, the claim for continued coverage of the original injury was denied by the Insurer and there were no newly discovered consequences from the original injury. The denial issued in June 3, 2002, was for the same injury and effects as the denial in October of 2001. The second denial did not begin a new two-year statute of limitations time period.

There are no genuine issues of any material fact as to Claimant's failure to file her petition with the South Dakota Department of Labor within the time prescribed by the statute of limitations. Employer/Insurer are entitled to judgment as a matter of law. Employer/Insurer's Motion for Summary Judgment is granted. Employer/Insurer are directed to submit an Order consistent with this decision.

Sincerely,

Heather E. Covey
Administrative Law Judge