SOUTH DAKOTA
DEPT. OF LABOR
& REGULATION

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August 28, 2024

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RE: HF No. 58, 2021/22 – Paul Skinner v. Trapp Plumbing Company and Federated Mutual Insurance Company

Letter Decision on Motion for Partial Summary Judgment

Greetings:

The Department of Labor and Regulation (Department) has received Claimant's Motion for Partial Summary Judgment, and Employer, Insurer's Response to the Motion, as well as Claimant's Reply to the Response. All pleadings and submissions to the Department, by the Parties, have been taken into consideration when deciding this Motion.

Background:

Paul Skinner (Skinner) alleges that on June 25, 2021, he sustained a back injury while completing his job duties for Trapp Plumbing Company (Employer), which was at all times pertinent insured for workers' compensation purposes by Federated Mutual Insurance Company (Insurer). Skinner felt a "pop" in his back while attempting to remove a sewer machine from a customer's basement. Skinner was unable to lift the sewer machine out of the customer's basement due to the pain in his back. After leaving the jobsite, Skinner returned to the office and told Employer's office manager, Nancy Van Hout (Van Hout) and Brandon Trapp (Trapp), owner of Trapp Plumbing Company, that

he “popped” his back and someone else would need to remove the sewer machine from the customer’s basement. Van Hout is responsible for filing first report of injury forms as well as keeping record of where employees worked each day. Based on the records she kept, Van Hout was able to locate the sewer machine Skinner left behind. Trapp traveled to the jobsite where Skinner had been working and retrieved the sewer machine.

On June 28, 2021, Skinner attempted to work but was unable to due to severe back pain. Skinner sent a text message to Trapp on June 29th detailing his back injury, the doctor’s prescription, and stated the doctor’s instruction to stay off his feet for a few days. On June 30, 2021, Skinner went to the emergency room due to his back pain. Over the course of the next few weeks Skinner worked on and off for Employer but ultimately was unable to continue working due to his back pain. The last day Skinner physically worked for Employer was July 13, 2021. Employer completed a first report of injury form on June 30, 2021, and noted the date of injury as June 25, 2021. The first report of injury form was filed with Insurer in August 2021.

Analysis:

Skinner moved for Partial Summary Judgment alleging Employer had actual notice of his injury. 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 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.

The party seeking summary judgment 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. *Railsback v. Mid-Century Ins. Co*., 2004 SD 64, ¶ 6, 680 N.W.2d 652, 654. “A trial court may grant summary judgment only when there are no genuine issues of material fact.” *Estate of Williams v. Vandeberg*, 2000 SD

155, ¶ 7, 620 N.W.2d 187, 189, (citing, SDCL § 15-6-56(c); *Bego v. Gordon*, 407 N.W.2d 801 (S.D. 1987)). "In resisting the motion, the non-moving party must present specific facts that show a genuine issue of fact does exist." *Estate of Williams*, 2000 SD 155 at ¶ 7, (citing, *Ruane v. Murray*, 380 N.W.2d 362 (S.D.1986))

The issue at hand is whether Skinner has met the notice requirement under SDCL § 62-7-10, which states:

> An employee who claims compensation for an injury shall immediately, or as soon thereafter as practical, notify the employer of the occurrence of the injury. Written notice of the injury shall be provided to the employer no later than three business days after its occurrence. The notice need not be in any particular form but must advise the employer of when, where, and how the injury occurred. Failure to give notice as required by this section prohibits a claim for compensation under this title unless the employee or the employee's representative can show:
>
> (1) The employer or the employer's representative had actual knowledge of the injury; or
>
> (2) The employer was given written notice after the date of the injury and the employee had good cause for failing to give written notice within the three business-day period, which determination shall be liberally construed in favor of the employee.

Skinner did not provide written notice to Employer. Therefore, his claim can only proceed if his Employer "had actual notice knowledge of both his injury and its potential work-relatedness." *Orth v. Stoebner & Permann Const., Inc.*, 2006 S.D. 99, ¶ 54, 724 N.W.2d 586, 598.

Employer and Insurer argue Skinner did not provide notice of the injury within the three-day period required by § 62-7-10. Employer does not dispute Skinner stated he "popped" his back and could not lift the sewer machine out of the customer's basement on June 25, 2021. However, Employer and Insurer argue Skinner did not relate the popping to something that occurred at work. Skinner asserts Trapp and Van Hout understood the work-related nature of the alleged injury and were provided actual notice during the June 25th conversation. Neither party disputes the contents of the June 25, 2021, conversation. The only question is whether Employer had actual knowledge Skinner's injury may have been related to his employment.

The South Dakota Supreme Court has concluded, "It is not enough for a claimant to prove notice of an injury, the claimant must also "prove [Employer] was on notice of the work-related nature of the injury." *Miller v. Lake Area Hosp*., 1996 S.D. 89, ¶ 11, 551 N.W.2d 817, 819. The Court has stated, "[i]n determining actual knowledge, the employee must prove that the employer had 'sufficient knowledge to indicate the possibility of a compensable injury.' The employee must also prove that the employer had sufficient knowledge that the injury was sustained *as a result of her employment* versus a pre-existing injury from a prior employment." *Shykes v. Rapid City Hilton Inn*, 2000 S.D. 123, ¶ 36, 616 N.W.2d 493, 501 (citing *Streyle v. Steiner Corp.,* 345 N.W.2d 865, 867 (S.D. 1984)

The Court has held that employers are not expected to investigate every single injury their employees sustain, "[t]here must ... be some knowledge of accompanying facts connecting the injury or illness with the employment, and indicating to a reasonably conscientious manager that the case *might* involve a *potential* compensation claim." *Orth* at ¶ 59, (citing *Vaughn v. John Morrell & Co.*, 2000 S.D. 31, ¶ 33, 606 N.W.2d 919 at 925 (emphasis added) (quoting Larson's Workers' Compensation Laws § 78.31(a)(2)). In *Orth*, the Court states when an employee informs an employer of back pain, a "reasonably conscientious manager" would ask "from *what*?" *Id.* at ¶ 61.

Employer argues the deposition testimony regarding the June 25, 2021, injury only establishes that Skinner told Employer his back popped, not that it was related to something that occurred at work. However, Employer fails to acknowledge the accompanying facts connecting the injury to employment. The fact that Skinner was at a customer's house carrying out his job duties for Employer when his back "popped" and was unable to complete those job duties due to the pain caused by the "pop" are crucial "accompanying facts connecting the injury to employment" required by law. When Skinner told VanHout and Trapp he was unable to lift a sewer machine out of a customer's basement, due to a "pop" in his back, Employer had sufficient knowledge to indicate the possibility Skinner was injured at work on June 25, 2021.

Van Hout and Trapp knew Skinner was working at the time of the injury and its potential relatedness to his work. Employer knew Skinner was unable to complete his job duties due to the pain in his back. This should have indicated to a "reasonably

conscientious manager" that the injury "might involve a potential compensation claim." When notified that an employee left a sewer machine in a basement, a reasonably contentious manager would ask: "why?" It is reasonable for Skinner to believe that informing Van Hout and Trapp of injury to his back while at work caused him to leave a job unfinished, provided Employer with actual notice that he sustained a work-related injury. Any knowledge of prior health conditions or injuries does not excuse Employer's failure to recognize the possibility of a compensable injury.

Therefore, the Department concludes Skinner properly provided notice under SDCL §62-7-10.

ORDER:

In accordance with the conclusions above, the Department finds that Paul Skinner's Motion for Partial Summary Judgment is GRANTED.

The Department finds that Skinner provided notice in accordance with SDCL §62-7-10.

This letter shall constitute the order in this matter.

Sincerely,

Kiira M. Weber

Kiira M. Weber
Administrative Law Judge