November 1, 2021

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AMENDED LETTER DECISION ON MOTION FOR SUMMARY JUDGMENT

Charles A. Larson
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RE: HF No. 28, 2020/21 – Abdirahman Hussein v. Showplace Wood Products, Inc, and Dakota Truck Underwriters

Dear Mr. Haugaard and Mr. Larson:

This letter addresses Showplace Wood Products, Inc. and Dakota Truck Underwriters (Employer and Insurer) Motion for Summary Judgment submitted August 11, 2021; Abdirahman Hussein's (Hussein) Response to Employer and Insurer's Motion for Summary Judgment submitted September 16, 2021; and Employer and Insurer's Reply Brief in Support of Motion in support of Summary Judgment submitted September 23, 2021.

On September 24, 2018, Hussein suffered a work-related injury when a pressurized chemical solvent came into contact with his eyes. Employer and Insurer deemed the claim compensable and paid benefits. On June 18, 2020, Dr. Bruce Elkins opined that the work-related injury was not related to Hussein's impairment rating, and that Hussein required no further medical treatment related to the September 2018

injury. As a result of Dr. Elkins' opinion, Insurer issued a denial letter to Hussein. Hussein submitted a Petition for Hearing to the Department of Labor & Regulation (Department) on September 25, 2020.

Employer and Insurer have moved the Department for summary judgment on the grounds that Hussein has not disclosed any experts and has no medical support for his claim. The Department entered a scheduling order that set a July 21, 2021 deadline for Hussein to disclose any experts along with their reports. Claimant has not disclosed an expert. Employer and Insurer assert that as there is no just cause for Hussein's delay, no expert disclosure of witnesses rendering an opinion on causation, and no genuine disputes of material fact, they are, therefore, entitled to judgment as a matter of law.

The Department's authority to grant summary judgment is established in ARSD 47:03:01:08:

> 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.

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. *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.

Employer and Insurer assert that without a medical expert, Hussein cannot meet his burden of proving that his work injury is a major contributing cause of his condition. They argue that Hussein has not provided expert testimony or medical evidence to establish that his September 2018 injury is a major contributing cause of his current claimed condition.

Hussein asserts that the fact that he did not hire an expert witness does not meet the standard for summary judgment provided by ARSD 47:03:01:08 and that genuine issues of material facts still exist in this matter. Hussein has provided the records of numerous medical providers by affidavit. The providers certified that their records are authentic and are evidence of the injury sustained by Hussein. Hussein further asserts that Hussein was injured by Employer’s failure to follow OSHA Guidelines, product safety recommendations, and state laws. He argues that Employer’s failure to follow safety protocols directly resulted in his injury.

To prevail in this matter, Hussein must be able to prove that his work-related injury on September 24, 2018 is and remains a major contributing cause of his current condition. Medical records alone are not enough to meet this burden. “The 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.” *Day v. John Morrell & Co.*, 490 N.W.2d 720, 724 (S.D. 1992). “No recovery may be had where the claimant has failed to offer credible medical evidence that [their] work-related injury is a major contributing cause of [their] current claimed condition.” *Darling v. West River Masonry,*

Inc., 2010 S.D.4, ¶ 13, 777 N.W.2d at 367. The testimony must establish causation to "a reasonable degree of medical probability, not just possibility." *Jewett v Real Tuff, Inc.*, 2011 S.D. 33, ¶ 23, 800 N.W. 2d 345, 350.

Hussein has provided medical records and affidavits, but without a medical expert to testify regarding the relationship between the medical evidence and his physical state, Hussein cannot prove that the work-injury is a major contributing cause of his current condition. "The fact that an employee may have suffered a work-related injury does not automatically establish entitlement to benefits for his current claimed condition." *Darling*, *supra* at ¶ 11. As Hussein is unable to prove that his September 24, 2018 injury is a major contributing cause of his current condition, no genuine issue of material fact remains. Further, Hussein's claims regarding Employer's alleged failure to follow safety protocols are not relevant to the medical causation issue and are not genuine issues of material fact for purposes of this motion for summary judgment.

It is hereby ORDERED that Employer and Insurer's Motion for Summary Judgment is GRANTED. This letter shall constitute the order in this matter.

Sincerely,

Michelle M. Faw
Administrative Law Judge