

December 17, 2010

Marcene J Smith
Wilkinson & Wilkinson
PO Box 29
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LETTER DECISION & ORDER

J. G. Shultz
Woods, Fuller, Shultz & Smith PC
PO Box 5027
Sioux Falls, SD 57117-5027

RE: HF No. 44, 2002/03 – Craig Anderson v. Larson Manufacturing Company, Inc. and
Zurich North America

Dear Mr. Smith and Mr. Shultz:

This matter was returned to the Department of Labor following appeal to the Sixth Circuit Court. Employer/Insurer renewed its Motion for Summary Judgment filed on April 19, 2010, prior to appeal.

At a prior hearing on the merits of his workers compensation claim, Claimant was represented by Gary Schumacher or Wilkinson & Wilkinson, Attorneys at Law. Due to Mr. Schumacher's recent deployment, the Department allowed additional time for Marcene Smith, another attorney at Wilkinson & Wilkinson, Attorneys at Law, who has appeared as Claimant's counsel, to become familiar with this file. The Department requested that a response to the Employer/Insurer's Motion for Summary Judgment be submitted by November 18, 2010.

No Response was filed by Claimant in this matter. Employer/Insurer has requested that the Department make a ruling on this matter as all deadlines for submissions have lapsed. On December 16, 2010, Ms. Smith wrote the Department on December 16, 2010, requesting yet another extension due to Mr. Schumacher's absence.

Claimant's Counsel has had ample time to review the record and prepare a response to the pending Motion for Summary Judgment. Counsel's Request for an extension is denied.

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 move the Department for summary judgment in its favor on the issue of its entitlement to reimbursement of all payments previously made to or on behalf of Claimant's workers compensation claim.

At a hearing on the merits, the Department determined that Claimant failed to meet his burden to demonstrate that he sustained a compensable injury arising out of and in the course of his employment and that Claimant's employment is and remains a major contributing cause of Claimant's Injury. The Department denied Claimant's request for worker's compensation benefits. Any benefits that Employer/Insurer had paid prior to the Department's Decision were to be reimbursed.

The South Dakota Supreme Court has held,

[W]e hold that there must be a repayment of the overpayment made in good faith by UTI. We base our holding upon the general premise that an employer is entitled, upon the award of compensation being made against it, to credit or reimbursement for any payments which may have already been made to the worker in advance by way of compensation for the injury in question.

Tiensvold v. Universal Trans., Inc., 464 N.W.2d 820, 825 (SD 1991). There is no genuine issue as to any material fact and Employer/Insurer is entitled to judgment as a matter of law. Employer/Insurer's Motion for Summary Judgment is hereby granted and Employer/Insurer is awarded reimbursement of benefits in the amount of \$7,692.46 from Claimant.

This letter shall serve as the Department's Order.

Sincerely,

Taya M. Runyan
Administrative Law Judge

