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RE: HF No. 4, 2021/22 - Renatus Woodworks and Acuity v. Kevin Schmidt

Greetings:

This letter addresses Renatus Woodworks and Acuity's (Employer and Insurer) Motion to Bifurcate. All responsive briefs have been taken into consideration. This matter stems from a work-related injury that Kevin Schmidt (Schmidt) allegedly sustained on April 24, 2020, while working for Employer. Schmidt is currently receiving medical treatment related to this alleged injury, and Employer and Insurer are covering Schmidt's costs under a reservation of rights. Schmidt underwent lumbar surgery on September 13, 2021, and he is still recovering from his surgery. He is not anticipated to reach maximum medical improvement (MMI) until approximately September of 2022.

On September 10, 2020, Dr. Jeffrey Nipper performed an independent medical examination (IME) of Schmidt. Dr. Walter Carlson performed a review of Schmidt's records. Based on the findings of Dr. Nipper and Dr. Carlson, Employer and Insurer filed

this Petition for Hearing on July 9, 2021, contesting the causation of Schmidt's injury and his eligibility for workers' compensation benefits.

To prove he entitlement to benefits, Schmidt must "establish his work-related injury is a major contributing cause of his current claimed condition and need for treatment." *Darling v. West River Masonry, Inc.*, 2010 SD 4. ¶ 11, 777 N.W.2d 363, 367. Employer and Insurer have moved the Department to bifurcate this matter and hear the issue of whether his alleged work-related injury is a major contributing cause of his current claimed condition separately from the issue of his need for treatment.

Employer and Insurer urge the Department to consider SDCL 15-6-42(b) which provides:

The court, in furtherance of convenience or to avoid prejudice, or when separate trials will be conducive to expedition and economy may order a separate trial of any claim, cross-claim, counterclaim, or third-party claim, or of any separate issue or of any number of claims, cross-claims, counterclaims, third-party claims, or issues, always preserving inviolate the right of trial by jury as declared by the state or federal Constitution or as given by a statute.

While SDCL Chapter 15-6 governs procedures for circuit courts,

"[t]he Department of Labor frequently observes the rules of civil procedure, particularly when, as in this case, the parties are represented by excellent legal counsel. The rules of civil procedure provide litigants with the benefit of centuries of evolving jurisprudence. These rules are time tested and have weighed the conflicting policies confronted while litigating cases." *Homan v. Wal-mart & Am. Home Assurance Co*, 2009 WL 3199118, at *3 (S.D. Dept. Lab. Sept 30, 2009).

As both parties are represented, the Department considers it is appropriate to apply the rules of civil procedure in this matter. Therefore, pursuant to SDCL 15-6-42(b), the Department must conclude whether bifurcation in this matter is conducive to expedition and economy, furthers convenience, or avoids prejudice.

Employer and Insurer assert that bifurcating the issue of causation would best serve judicial economy and move the parties toward an expedient resolution of the matter. They argue that the issue of Schmidt's need for care will not be able to be resolved until he has recovered from his surgery which will take several months. During that time Employer and Insurer would still be covering Schmidt's benefits under a reservation of rights. Employer and Insurer also assert that they are incurring a cost in addition to the litigation of this matter as they are paying Schmidt's benefits. The issue of causation could be resolved much sooner. Employer and Insurer further argue that the bifurcation would benefit both parties because a determination by the Department that Schmidt cannot meet his burden of proving causation would resolve the matter. Similarly, if Schmidt proves causation, he would not need to establish his need for care once he reaches MMI.

Schmidt urges the Department to deny the motion as it is contrary to the purposes and principles of workers' compensation law. "The whole idea is to get away from cumbersome procedures ... and to reach a right decision by the shortest and quickest possible route." *Sowards v. Hills Materials Co.*, 521 N.W.2d 649, 652 (S.D. 1994). He further asserts that bifurcation would be prejudicial to claimant as it would cause him to incur double the costs, fees, and time necessary to receiving the benefits he is due under workers' compensation statute. He also argues that the issues of causation and need for treatment are connected and should remain consolidated.

The Department agrees that it is possible that addressing the causation issue could resolve the matter more expeditiously. However, it is equally possible that Schmidt would prevail, and thus an additional hearing would become necessary.

Further, as both issues are very closely connected, separating them would likely result in evidentiary repetition as well as the additional time and expense. Therefore, Employer and Insurer's Motion to Bifurcate is hereby DENIED.

Sincerely,



Michelle M. Faw
Administrative Law Judge

MMF/das