SOUTH DAKOTA DEPT. OF LABOR & REGULATION

LABOR & MANAGEMENT DIVISION
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December 19, 2022

Scott Niles
PO Box 155
White Lake, SD 57383

Sent Certified: 7022 0410 0002 9514 1994

LETTER DECISION ON MOTION FOR SUMMARY JUDGMENT

Tracye L. Sherrill
Lynn, Jackson, Shultz & Lebrun, PC
110 N. Minnesota Ave., Ste 400
Sioux Falls, SD 57104

RE: HF No. 52, 2018/19 – Scott Niles v. IUOE Local 49 and SFM Mutual Insurance Company

Dear Mr. Niles and Ms. Sherrill:

This letter addresses Employer and Insurer's Motion for Summary Judgment and all responsive submissions. International Union of Operating Engineers a/k/a IUOE Local 49 and SFM Mutual Insurance Company (Employer and Insurer) have moved the Department of Labor & Regulation (Department) for summary judgment against Claimant, Scott Niles (Niles) as he has failed to disclose his medical experts by the date provided by the Department. The Department gave Niles until October 6, 2022, to disclose and identify his experts. As of the time of this decision, Niles has failed to provide an expert and he has also failed to provide good cause for a delay.

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, Niles cannot meet his burden of proving that his work injury is a major contributing cause of his condition. Employer and Insurer do not dispute that Niles sustained work-related injuries on November 17, 2016, or that the injuries were previously held to be compensable. However, they assert that Niles was found to be at maximum medical improvement for his myofascial trigger points and left-side hearing loss by Dr. Jack Hubbard and therefore, no further treatment can be provided for those conditions. Dr. Hubbard also found that there was no disability associated with Niles' conditions. As of April 4, 2022, Employer and Insurer have denied any further treatment to Niles.

To prevail in this matter, Niles must be able to prove that his work-related injury of November 17, 2016, is and remains a major contributing cause of his current condition. Niles has provided medical records. However, records alone are not enough to meet this burden. Additionally, Niles' medical records were not submitted with the required notarized Affidavit of Physician and Notice of Affidavit.

"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 his work-related injury is a major contributing cause of his 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.

Niles has provided medical records, but without a medical expert to testify regarding the relationship between the medical evidence and his condition, Niles 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 Niles is unable to prove that his November 17, 2016, injury is the major contributing cause of his current condition, no genuine issue of material fact remains, and Employer and Insurer are entitled to judgment as a matter of law.

In accordance with the decisions above, it is hereby ORDERED that Employer and Insurer's Motion for Summary Judgment is GRANTED. Hearing file 52, 2018/19 is hereby dismissed with prejudice.

The Parties will consider this letter to be the Order of the Department.

Sincerely,

Michelle M. Faw
Administrative Law Judge