

September 16, 2016

Al Scovel
Scovel Law Office
2902 West Main St., Ste. 1
Rapid City, SD 57702-8174

LETTER DECISION AND ORDER

Comet H. Haraldson
Woods, Fuller, Shultz & Smith PC
PO Box 5027
Sioux Falls, SD 57117-5027

RE: HF No. 55, 2015/16 – William R. Baker v. Rapid City Regional Hospital and Hartford Insurance

Dear Counsel:

Employer/Insurer filed a Motion for Summary Judgment relative to this matter on or about June 17, 2016. Claimant responded to that Motion July 28, 2016, and Employer/Insurer replied August 16, 2016.

The undisputed facts are these:

1. On November 7, 2013, Claimant, William Baker, was struck by a patient while working for Employer.
2. Claimant filed a first report on that day, the injury being described as “CONTUSION, Assaulted by pt. (patient) with no warning.” The code used for “Body Part Injured” on the form was 90, which describes a multiple injury.
3. Claimant sought medical treatment on two occasions in connection with this injury; in the emergency room on the date of injury, and again in the emergency room on November 9, 2013, when he said he had lost his prescription for Naprosyn.
4. Employer/Insurer paid the medical expenses associated with the two emergency visits.

5. Claimant was off work for nine days in connection with this injury, and Employer/Insurer paid him temporary total disability benefits based on a weekly compensation rate of \$520.11 for those days.
6. Claimant filed a second injury report on December 11, 2014, this injury being described as "CONCUSSION, Pt struck staff in the right side of head." The code used this time for "Body Part Injured" was 12, for a brain injury.
7. Claimant did not seek any medical treatment in connection with a work injury from November 9, 2013 until December 11, 2014, nor did he lose any time from work during that period.
8. On June 27, 2015, Dr. Thomas G. Gratzer, M.D. performed an independent psychiatric examination on behalf of Employer/Insurer. Dr. Gratzter concluded Claimant "is not disabled from working as a result of his psychiatric condition," "does not have psychiatric restrictions," and "does not have permanent partial disability or impairment from a psychiatric standpoint at this time." He diagnosed Claimant as having post-traumatic stress disorder (PTSD), anxiety disorder not otherwise specified (n.o.s.), depressive disorder n.o.s., and having a history of alcohol abuse.
9. Teri Hastings, Ph. D., opined on December 18, 2015 that Claimant received concussions on both November 7, 2013 and December 11, 2014. She believes Claimant began suffering PTSD at the time of the November 7, 2013 assault, and suffers it currently.
10. On July 8, 2016, Dr. Harry Hamlyn, M.D. gave the opinion in a letter that Claimant could not work until at least January, 2017 due to anxiety and depression issues. Claimant saw Dr. Hamlyn that day for a followup appointment in connection with Claimant's PTSD and depressive disorder.
11. On July 13, 2016, Dr. Stephen P. Manlove, M.D. performed a forensic psychiatric evaluation at Claimant's request. He had met with Claimant on October 15, 2015, October 16, 2015, and January 28, 2016. Dr. Manlove concluded Claimant was permanently partially disabled as a result of the November 7, 2013 and December 11, 2014 patient assaults, rating his impairment at 22 %. He opined these injuries caused cumulative Post Concussive Disorder and PTSD.
12. Dr. Manlove concluded Claimant cannot maintain employment at this time due to his neuropsychiatric problems (post concussive disorder and PTSD) and that his disability will likely be permanent.
13. Claimant filed a pro se petition for hearing dated September 17, 2015, alleging he suffered a brain injury on November 7, 2013 from a patient assault, and that

this assault caused PTSD and chronic pain. He did not claim he was reinjured on December 11, 2014. The petition requested any benefits to which Claimant is entitled under the South Dakota workers' compensation act. He has since become represented by counsel.

14. Claimant has not since amended his petition to claim a second work injury on December 11, 2014, nor any benefits in connection with that injury.

Additional facts may be discussed in the analysis below.

Analysis & Decision:

Employer/Insurer filed a Motion for Summary Judgment in this matter pursuant to ARSD 47:03:01:08:

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.

Employer/Insurer asserts Claimant's failure to plead the December 11, 2014 assault as a basis for his claim, when coupled with the fact that Employer/Insurer paid all benefits to which Claimant was entitled from the time of his first injury in November, 2013 until December, 2014, leads to the result that no factual issues remain, therefore Claimant's petition must be dismissed.

A pleading may be amended to conform to the evidence presented at any time, so long as the opposing party is not prejudiced by the amendment. E.g., *Isakson v Parris*, 526 N.W.2d 733, 736 (S.D. 1995). At best, it would be premature to deny Claimant's petition because he did not specifically allege an injury in December, 2014. Claimant has requested all benefits to which he is entitled under the workers' compensation laws. He specifically pled he suffered an injury to his brain, with PTSD as a result, in his petition.

Claimant has come forward with sufficient facts to claim he was injured in both November, 2013 and December, 2014, and has also come forward with the minimum proof to survive summary judgment that he has claims for temporary and permanent disability. Drs. Hamlyn and Manlove have taken him completely and indefinitely off work, and Dr. Manlove has given him a 22 % permanent impairment rating. That these conclusions were reached a long time after Claimant's most recent injury is of little or no consequence. Dr. Gratzer does not agree with these conclusions, but even he admits

Claimant has PTSD, anxiety and depression. He differs as to these conditions' effect on Claimant's ability to work, and suggests much of Claimant's condition was not caused by work, but these are genuine factual issues which remain to be resolved.

Order:

The Department finds that there are genuine issues of material fact that remain. Employer/Insurer's motion for summary judgment must therefore be denied.

The Parties may consider this Letter Decision to be the Order of the Department.

Sincerely,

 /s/ Sarah E. Harris
Sarah E. Harris
Administrative Law Judge