SOUTH DAKOTA DEPARTMENT OF LABOR & REGULATION
DIVISION OF LABOR AND MANAGEMENT

CODY SCHMITH, **HF No. 6, 2026/27**

Claimant,

v. **DECISION**

DELLS ELECTRIC, INC.,

Employer,

and

IMT INSURANCE,

Insurer.

This is a workers' compensation case brought before the South Dakota Department of Labor and Regulation, Division of Labor and Management pursuant to SDCL § 62-7-12 and ARSD 47:03:01. This decision will address Claimant's Motion of Protective Order, Motion to Compel, and Employer and Insurer's Motion to Quash. All responses to the various motions have also been considered.

Facts:

1. Cody Schmith (Claimant) was employed by Dells Electric (Employer) as an apprentice electrician.
2. Employer was represented for workers' compensation purposes at all times pertinent to this matter by IMT Insurance (Insurer).
3. On May 13, 2025, Claimant sustained an alleged work-related injury to his right knee while working for Employer.

4. At the time of the injury, Claimant was working approximately 40 hours per week and earning $23.00 per hour.
5. Claimant's average weekly wage is $836.09 and the rate is $557.42.
6. On May 14, 2026, Dr. Dustin L. Volkmer placed Claimant at Maximum Medical Improvement (MMI), provided him with permanent restrictions of no squatting or kneeling on his right knee, and provided him with an impairment rating to the lower extremity.
7. On June 10, 2026, the Department of Human Services (DHS) issued a letter to Claimant advising that he had been determined eligible for vocational rehabilitation services. The letter indicated that before any services can be approved, an Individualized Plan for Employment (IPE) needed to be jointly agreed upon. The letter further indicated that prior to the development of the IPE, DHS required Claimant to complete a psychological evaluation.
8. On June 24, 2026, Insurer sent Claimant an email indicating Insurer would consider the June 10, 2026, DHS letter as certificate of enrollment and would start voluntarily paying indemnity benefits effective as of that date.
9. On July 23, 2026, Insurer received an email from DHS stating Claimant underwent a psychological assessment and that DHS was developing an IPE that included mental health services and possibly some online courses.
10. On July 7, 2026, Claimant filed a Petition for Hearing regarding his right knee.
11. On August 5, 2026, Employer and Insurer filed their Answer.

12. Employer and Insurer retained Tom Karrow as their vocational expert. Mr. Karrow attempted to schedule a vocational assessment interview with Claimant.
13. On August 27, 2026, Claimant sent an email objecting to his attendance at a vocational assessment.
14. On September 8, 2026, DHS sent a letter to Claimant indicating that his vocational rehabilitation case had been closed.

Claimant has moved for a Protective Order to stay and prohibit any expert vocational evaluation or report by Thomas S. Karrow, or any other private vocational expert paid by Insurer. Whether Claimant can return to his usual and customary line of employment is an essential element in this matter pursuant to SDCL § 62-4-5.1, Employer and Insurer have the right to present evidence related to that issue in their defense of his claims. Therefore, Claimant's Motion for a Protective Order is DENIED.

Claimant has moved for an emergency order compelling Employer and Insurer to state the factual and legal basis for the cessation of his Temporary Total Disability (TTD) benefits, and to compel immediate reinstatement of interim TTD benefits.

Entitlement to rehabilitation benefits is governed by SDCL § 62-4-5.1 which states,

> If an employee suffers disablement as defined by subdivision 62-8-1(3) or an injury and is unable to return to the employee's usual and customary line of employment, the employee shall receive compensation at the rate provided by § 62-4-3 up to sixty days from the finding of an ascertainable loss if the employee is actively preparing to engage in a program of rehabilitation as shown by a certificate of enrollment. Moreover, once such employee is engaged in a program of rehabilitation which is reasonably necessary to restore the employee to suitable, substantial, and gainful employment, the employee shall receive compensation at the rate provided by § 62-4-3 during the entire period that the employee is engaged in such

> program. Evidence of suitable, substantial, and gainful employment, as defined by § 62-4-55, shall only be considered to determine the necessity for a claimant to engage in a program of rehabilitation.
>
> The employee shall file a claim with the employee's employer requesting such compensation and the employer shall follow the procedure specified in chapter 62-6 for the reporting of injuries when handling such claim. If the claim is denied, the employee may petition for a hearing before the department.

The South Dakota Supreme Court (Court) has established a five-part test for Claimant to prove entitlement to rehabilitation benefits:

> 1. The employee must be unable to return to his usual and customary line of employment;
> 2. Rehabilitation must be necessary to restore the employee to suitable, substantial, and gainful employment;
> 3. The program of rehabilitation must be a reasonable means of restoring the employee to employment;
> 4. The employee must file a claim with his employer requesting the benefits; and
> 5. The employee must actually pursue the reasonable program of rehabilitation.

Sutherland v. Queen of Peace Hosp., 1998 S.D. 26, ¶ 13, 576 N.W.2d 21, 25

"In a workers' compensation dispute, a claimant must prove all elements necessary to qualify for compensation by a preponderance of the evidence." *Arneson v. GR Mgmt., LLC*, 2024 S.D. 61, ¶ 16, 13 N.W.3d 206, 213, reh'g denied (Dec. 5, 2024)

At this time, Claimant has not provided vocational expert testimony to prove the various parts of the test provided by the Court, and Employer and Insurer have not been given time to provide a defense to Claimant's allegations. Therefore, the Department cannot decide that Claimant is entitled to the TTD benefits he claims.

Further, Claimant received the 60 days of compensation as directed by SDCL § 62-4-5.1 while he was actively preparing to engage in a program of rehabilitation. He believes he should have continued to receive benefits for his participation in a rehabilitation program. However, (1) he is not engaged in a program of rehabilitation and (2) in his responsive brief to his motion for protective order, Claimant has stated that the proposed plan was "severely distorted and deficient" indicating his belief that the proposed plan would not be effective vocational rehabilitation. Therefore, he has not met the requirements of parts 3 and 5 of the test provided by the Court.

Claimant currently has a matter before the Office of Hearing Examiners regarding the closure of his vocational rehabilitation case. The outcome of that matter does not change the fact that he is not currently enrolled in a rehabilitation program. For that reason, the Department finds that Claimant is not entitled to TTD benefits under SDCL § 62-4-5.1. Claimant's Motion to Compel is Denied, and his Petition is hereby DISMISSED with prejudice.

As this Petition has been dismissed, Employer and Insurer's Motion to Quash is hereby found to be moot. Other motions were presented in this matter. These motions do not have merit and will not be addressed unless specifically mentioned here. Otherwise, they should be assumed to be dismissed.

Dated this 4 day of Novembery 2026.

Sincerely,



Michelle M. Faw
Administrative Law Judge