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Michael J. Simpson
Simpson Law Firm, Prof. LLC
1600 Mountain View Rd., Ste 110
Rapid City, SD 5770

**LETTER DECISION ON MOTION FOR
SUMMARY JUDGMENT**

Justin G. Smith
Woods, Fuller, Shultz & Smith, P.C.
P.O. Box 5027
Sioux Falls, SD 57117-5027

RE: HF No. 61, 2023/24– Trina Akiona-Loterbauer v Menard, Inc. and AIU Insurance Co.
(National Union Fire of Pitts PA).

Greetings:

This letter addresses Employer and Insurer’s Motion for Summary Judgment. All responses have been considered. Employer and Insurer asserts that Claimant’s workers’ compensation claim is only based on a mental injury. To prove an injury under Title 62, she must prove by clear and convincing evidence that some form of physical injury is and remains a major contributing cause of her mental injury. Employer and Insurer move for summary judgment on the grounds that Claimant lacks the qualified medical opinions to meet her burden of proof.

Claimant responds that her claim is for depression and anxiety caused by her brain injury as well as restrictions caused by her post-concussive syndrome. She has offered expert testimony including the opinions of Dr. Dietrich, Dr. Ashokar, and Valerie Frie. Claimant argues that summary judgment is not appropriate for those reasons and issues remain.

The Department's authority to grant summary judgment is established in ARSD

47:03:01:08 which provides:

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.

In matters of summary judgment, the moving party 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.

Upon reviewing the submissions, the Department concludes that many issues of material fact still remain making disposition by summary judgment inappropriate. The matter will go forward to hearing. The parties shall consider this letter to be the Order of the Department.

Sincerely,

A handwritten signature in blue ink that reads "Michelle Faw". The signature is written in a cursive, flowing style.

Michelle M. Faw
Administrative Law Judge