

October 31, 2025

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LETTER DECISION ON MOTION TO DISMISS

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RE: HF No. 62, 2024/25– Saray Olivares-Guzman v Ten Corp, Inc. and ACMO Insurance Company.

Greetings:

This letter will address Ten Corp, Inc. (Ten Corp) and ACMO Insurance Company's (Insurer) Motion to Dismiss. All responses have been considered. First, the Department of Labor & Regulation (Department) will briefly state the background of this matter. Saray Olivares-Guzman (Claimant) is a resident of Harrisburg, South Dakota. Brothers Construction (Brothers) is a South Dakota company with a place of business in Harrisburg. Ten Corp is an Iowa corporation that retained Brothers to perform construction work on one of its buildings in Iowa. On January 27, 2023, Claimant sustained an alleged injury while working on the building project. Brothers has denied Claimant was an employee at the time of the work event. Brothers is not insured for workers' compensation purposes. Ten Corp and Insurer have moved to dismiss Claimant's Petition for Hearing on the grounds that the Department does not have jurisdiction over Ten Corp or statutory jurisdiction over this matter.

Claimant asserts that under South Dakota law, he can seek workers' compensation benefits against his immediate employer's general contractor pursuant to SDCL § 62-3-10. Claimant argues Ten Corp is the general contractor or principal for the project and thus is liable for compensation to Claimant to the same extent as Brothers. Claimant states that Ten Corp's assertion that it is an owner, not a general contractor under SDCL § 62-3-10 is improper, and the Department should determine the merits of his Petition in the light most favorable to him. Claimant states there is a dispute in material fact regarding the relationship between Claimant, Brothers, and Ten Corp that makes dismissal improper.

Ten Corp argues that it is not an "employer" under South Dakota's workers' compensation law. It asserts that it hired Brothers as an independent contractor to construct a building on its property in Iowa. Ten Corp did not instruct Brothers on how to perform the work, had no control over the methods used to perform the work, and did not supervise the performance.

The Department concludes that it lacks personal jurisdiction over Ten Corp. Claimant asserts that Ten Corp was the general contractor for the building project and is therefore able to be held responsible for this claim. The evidence offered to support this assertion is largely based on the website of the company which provides information about cattle barns built by Ten Corp. However, the project on which Claimant was hurt took place on Ten Corps property and there has not been evidence provided to establish that the building was a cattle barn. It appears that Ten Corp, as owner, required a building to be constructed on its property and hired Brothers to handle the construction. Ten Corp did not supervise Claimant nor instruct Brothers on how to

complete the building project. Additionally, Ten Corp did not award part of an existing contract to Brothers. Ten Corp was not the general contractor in this matter under SDCL § 62-3-10 nor is it Claimant's employer under SDCL § 62-1-2. For these reasons, the Department does not have jurisdiction over Ten Corp.

Regarding jurisdiction over the injury, the question remains whether Claimant was employed by Brothers which is essential to establishing the Department's jurisdiction. However, as Brothers is not insured for workers' compensation purposes, the Department does not have statutory jurisdiction over that company pursuant to SDCL § 62-5-7. Thus, the Department will not conduct further analysis of whether sufficient contacts with South Dakota exist to establish employment within this state.

Employer and Insurer's Motion to Dismiss is GRANTED. Hearing file #62, 2024/25 is hereby DISMISSED. 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