

June 15, 2020

James D. Leach
Attorney at Law
1617 Sheridan Lake Road
Rapid City, SD 57702-3783

**AMENDED LETTER DECISION ON
MOTION TO FILE AMENDED
ANSWER**

Kristi Geisler Holm
Davenport, Evans, Hurwitz & Smith, LLP
P.O. Box 1030
Sioux Falls, SD 57101-1030

RE: HF No. 61, 2017/18 – Melissa Dittman v. Rapid City School District v. Dakota
Truck Underwriters

Dear Mr. Leach and Ms. Holm:

This letter decision is regarding Employer and Insurer's Motion to File Amended Answer submitted on April 20, 2020; Claimant's Objection to Employer and Insurer's Motion for Leave to File Amended Answer submitted April 23, 2020; and Employer and Insurer's Reply Brief in Support of Motion to File Amended Answer submitted May 15, 2020.

The Department previously issued a decision in this matter which was appealed to the Circuit Court. The Circuit Court issued its Order affirming in part, reversing in part, and remanding this matter for further proceedings.

Employer and Insurer have moved the Department for leave to file an amended Answer pursuant to SDCL 15-6-15(a), which states:

A party may amend his pleading once as a matter of course at any time before a responsive pleading is served or, if the pleading is one to which no responsive pleading is permitted and the action has neither been placed upon

the trial calendar, nor an order made setting a date for trial, he may so amend it at any time within twenty days after it is served. Otherwise a party may amend his pleading only by leave of court or by written consent of the adverse party; and leave shall be freely given when justice so requires. A party shall plead in response to an amended pleading within the time remaining for response to the original pleading or within ten days after service of the amended pleading, whichever period may be the longer, unless the court otherwise orders.

Employer and Insurer argue that justice requires that they be allowed to amend their Answer to more specifically respond to the assertions made in the Petition for Hearing in accordance with the Circuit Court's Order. Employer and Insurer have voluntarily paid benefits to Claimant without assuming responsibility for their provision into perpetuity, as is appropriate under South Dakota law. The South Dakota Supreme Court has stated, "employers and insurers have an obligation to pay claims promptly. That obligation would be adversely affected if paying claims precluded the later denial of liability when sufficient medical evidence developed to justify a denial." *Martz v. Hills Materials*, 2014 SD 83, 857 N.W.2d 413, ¶ 21. Employer and Insurer assert that Claimant will not be prejudiced by the amended Answer, but that they will suffer significant prejudice if their motion to amend is denied.

Claimant argues that the Motion to Amend should be denied because it is legally insufficient. ARSD 47:03:01:02:01 states, in pertinent part, "The response shall be in writing and need follow no specific form. The response shall state clearly and concisely an admission or denial as to each allegation contained in the petition for hearing." Claimant argues that the amended answer does not admit or deny that Claimant sustained an injury arising out of the course of her employment, and therefore, does not comply with ARSD 47:03:01:02:01. Claimant further argues that the proposed Amended Answer asserts that compensability of the injury at issue has not been denied, but the Circuit Court ruled that it has been denied. The Circuit Court's ruling is binding on remand.

The Department agrees with Employer and Insurer. First, ARSD 47:03:01:02:01 does not require a specific form. Claimant asserts the answer is not following the rule to admit or deny each allegation. However, Claimant merely asserting that Employer and

Insurer's answer is unsatisfactory does not render it insufficient. Employer and Insurer have responded to the Petition in such a way as to acknowledge that Claimant has received benefits, but not to obligate themselves to paying such benefits in perpetuity. The Department concludes that this answer is sufficient pursuant to ARSD 47:03:01:02:01.

Second, it has been Employer and Insurer's position throughout this litigation that they have not denied Claimant's workers' compensation claim. The Circuit Court concluded that there had been a denial based on the language in Employer and Insurer's Answer. Thus, Employer and Insurer wish to clarify and refine the Answer to accurately reflect their position. The Department agrees that Claimant will not be prejudiced by allowing this amendment to the Answer. For matters of justice and clarity, the Department agrees that it is appropriate that Employer and Insurer amend their Answer.

ORDER:

In accordance with the decisions above, Claimant's Motion to File Amended Answer is Granted.

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

SOUTH DAKOTA DEPARTMENT OF LABOR & REGULATION

Michelle M. Faw
Administrative Law Judge