

September 7, 2021

Shantel Fleming


Sent certified 7020 1810 0000 9854 8353

**LETTER DECISION ON MOTION TO
DISMISS**

Thomas J. Von Wald
Boyce Law Firm, LLP
PO Box 5015
Sioux Falls, SD 57117-5015

RE: HF No. 62, 2020/21 – Shantel E. Fleming v. Canistota Good Samaritan and
Sentry Insurance

Greetings:

The Department of Labor & Regulation (Department) received this Motion to Dismiss submitted by Canistota Good Samaritan Center and Sentry Insurance Company (Employer and Insurer) on July 27, 2021. All responses now have been considered.

In her Petition for Hearing submitted December 7, 2020, Shantel Fleming (Fleming) seeks workers' compensation benefits related to her contraction of COVID-19 on or about October 23, 2020. Fleming claims that she contracted COVID-19 while working. Employer and Insurer have deemed the claim as not compensable.

Employer and Insurer have requested the Department dismiss this claim pursuant to South Dakota Codified Law (SDCL) 15-6-12(b) alleging that Fleming has failed to state a claim upon which relief can be granted. SDCL 62-1-7(7) states,

only injury arising out of and in the course of the employment, and does not include a disease in any form except as it results from the injury. An injury is compensable only if it is established by medical evidence, subject to the following conditions:

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Thus, the only diseases that are compensable are those that result from an injury. Fleming is not claiming that her COVID-19 infection was caused by a work-injury. Therefore, the COVID-19 infection and related treatment are not compensable.

Further, the South Dakota legislature passed SDCL 21-68 which greatly limits potential compensation for COVID-19 exposure or infection. SDCL 21-68-2 states,

A person may not bring or maintain any action or claim for damages or relief alleging exposure or potential exposure to COVID-19 unless the exposure results in a COVID-19 diagnosis and the exposure is the result of intentional exposure with the intent to transmit COVID-19. In alleging intentional exposure with the intent to transmit COVID-19, a party shall state with particularity the circumstances constituting intentional exposure with the intent to transmit COVID-19 including all duty, breach, and intent elements and establish all elements by clear and convincing evidence.

The result of this statute is that only intentional exposure could potentially be compensable. As Fleming is not alleging intentional exposure, her claim is not compensable according to this statute.

Therefore, as her claim is barred by both SDCLs 62-1-7(7) and 21-68-2, the Department concludes that Fleming has not made a claim upon which relief can be granted.

It is hereby ORDERED that Employer and Insurer's Motion to Dismiss is GRANTED. Hearing file 62, 2020/21 is dismissed with prejudice. This is the final decision in this matter unless it is appealed in one of two ways:

- (1) The decision is appealed directly to circuit court within 30 days after the date of this decision, OR
- (2) A request for a Department of Labor and Regulation review is filed by mailing a letter of appeal to the Secretary, S.D. Department of Labor and Regulation, 123 W. Missouri Ave., Pierre, SD 57501 within 10 days after the date of this decision. The Secretary's Decision may be appealed to circuit court within 30 days after the date of the Secretary's decision.

Sincerely,


Michelle M. Faw
Administrative Law Judge