

January 8, 2024

Nighisti Seyoum
5113 E 10th Street
57110 Sioux Falls SD

Thomas J. Von Wald
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PO Box 5015
Sioux Falls, SD 57117-5015

RE: HF No. 73, 2019/20 – Nighisti Seyoum v. Good Samaritan Luther Manor and Sentry Insurance

Greetings:

Good Samaritan Luther Manor and Sentry Insurance (Employer and Insurer) have moved the Department of Labor & Regulation (Department) to dismiss for lack of prosecution as no activity has occurred in this matter since approximately July 28, 2021.

Nighisti Seyoum (Seyoum) filed her Petition for Hearing on January 8, 2020, alleging claims for medical, temporary total disability, and temporary partial disability benefits. Employer and Insurer filed their Answer on March 9, 2020. On July 9, 2020, the Department entered its Scheduling Order and Notice of Telephonic Prehearing Conference. On or about July 23, 2021, Seyoum's attorney moved to withdraw. The Department granted the Motion on July 28, 2021, and directed Seyoum that she has the burden to move the matter forward with or without counsel. On August 9, 2021, Seyoum sent a letter to the Department. On August 10, 2021, the Department mailed a letter to

Seyoum advising her to provide copies of anything sent to the Department to Employer and Insurer's counsel. Seyoum was also provided a copy of the Workers' Compensation Hearing Handbook for Unrepresented Claimants at that time.

On October 12, 2023, Attorney Dean N. Nasser, Jr. sent an email to the Department and Employer and Insurer's attorney. Mr. Nasser explained that he had previously accepted a limited engagement with Seyoum to investigate her case. He further explained that Seyoum had left South Dakota without prior notification sometime in early 2023. He had not had contact with her since her initial inquiry in February of 2022.

Seyoum has responded to the Motion to Dismiss by letter which outlined her perspective on her injury and condition. She asks the Department to hold her case until she can get a lawyer and treatment outside of Sioux Falls, SD. However, she does not provide good cause for why she has not moved this matter forward in the last year nor did she mention any specific activity that has occurred over the last year that was not present in the record.

The Department's authority to grant dismissal for want of prosecution is established in ARSD 47:03:01:09.

With prior written notice to counsel of record, the division may, upon its own motion or the motion of a defending party, dismiss any petition for want of prosecution if there has been no record of activity for at least one year, unless good cause is shown to the contrary. The "record" for purposes of establishing good cause shall include the following non-exhaustive list: settlement negotiations between the parties or their counsel, formal or informal discovery proceedings, the exchange of any pleadings, and written evidence of agreements between the parties or counsel which justifiably result in delays in prosecution. Dismissal under this section shall be without prejudice.

Upon review of the record and the parties' submissions, the Department concludes that Seyoum has failed to show good cause for her failure to move this matter forward and therefore, dismissal is appropriate.

As the record does not show any activity by Ms. Seyoum since August 9, 2021, the Department hereby Orders that Employer and Insurer's Motion to Dismiss is GRANTED. This Worker's Compensation Hearing File No. 73 2019/20 is dismissed without prejudice.

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