September 5, 2019

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RE: HF No. 7, 2018/19 – Michelle M. Pieper v. Watertown School District and ASBSD Workers' Compensation Fund

Greetings:

This letter addresses the following submissions by the parties:

July 29, 2019	Employer and Provider's Motion to Quash and Motion for Protective Order; Employer and Provider's Brief in Support of Motion to Quash and Motion for Protective Order; Affidavit of Laura K. Hensley in Support of Motion to Quash and Motion for Protective Order;
August 9, 2019	Claimant's Brief Opposing Employer and Provider's Motions to Quash and for Protective Order; Affidavit of Liam M. Culhane;
August 19, 2019	Reply Brief in Support of Motion to Quash and Motion for Protective Order; and Supplemental Affidavit of Laura K. Hensley in Support of Motion to Quash and Motion for Protective Order.

FACTS:

The facts of this case as reflected by the above submissions are as follows:

1. On and before March 2, 2017, Michelle Pieper (Pieper or Claimant) was struck on the left leg by a steel legged chair thrown by one of her students while working as a Kindergarten teacher at McKinley School in the Watertown School District.
2. On March 5, 2017, Pieper called Principal Shannon Knopf to tell her she would be unable to make it to work due to pain in her leg.
3. On March 6, 2017, Pieper called Brown Clinic to be seen for her leg. However, there were no appointments available in the morning. Pieper had a previously scheduled appointment that afternoon for her thyroid condition, and she decided to wait until then. During the afternoon appointment, Dr. McAreavey discussed Pieper's thyroid medication and diagnosed her with the flu. He did not address her leg issues.
4. On March 8, 2017, Pieper called Brown Clinic to follow up about her leg pain.
5. On March 11, 2017, Pieper was taken to the Avera emergency room in Sioux Falls by her husband.
6. On July 18, 2018, Pieper filed a Petition for Hearing with the Department of Labor & Regulation (Department). Pieper seeks workers' compensation benefits related to the medical condition of her left knee which include post-septic changes in the left knee with joint space narrowing, osteophyte formation, and subchondral sclerosis which resulted her in need for a complete left knee replacement. Pieper seeks medical benefits, temporary total disability benefits, permanent partial disability benefits, pharmaceutical benefits, rehabilitation benefits, compensation for permanent disfigurement, and wage benefits.

Employer and Provider have moved for an order quashing Pieper's Notice of Deposition of Shannon Knopf, the Notice of the 30(b)(6) deposition of the Watertown School District, the Subpoena Duces Tecum of Kelly Rud, and the Subpoena Duces Tecum of Jennifer Selzler, and a protective order pursuant to SDCL 15-6-26(c).

Employer and Provider do not dispute that an incident occurred which resulted in an injury to Pieper's shin. Employer and Provider assert that the only issue before the Department is whether the work-related incident of March 2, 2017 is a major contributing cause of her hospitalization on March 12 when she was diagnosed with sepsis, DVT and also her April 2018 knee surgery. Employer and Provider argue that as the issue is a medical one, the depositions of the requested fact witnesses are not reasonably calculated to lead to the discovery of relevant information. Therefore, the depositions are beyond the scope of discovery and should be quashed.

Jennifer Selzler is a Multiline Claims Adjuster and Workers' Compensation Supervisor for Claims Associates. Selzler became involved with Pieper's claim once the Petition for Hearing was filed. Kelly Rud is a Nurse Case Manager at Claims Associates. Employer

and Provider state that Rud was involved in Pieper's claim briefly, and neither Rud nor Selzler have any factual information that is relevant to the current issues before the Department. Shannon Knopf is the McKinley School Principal. Employer and Provider assert that any relevant information Knopf may offer has already been provided through discovery requests. Further, the question before the department is a medical one and Knopf is not able to offer medical opinion. Employer and Provider assert that 30(b)(6) deposition is unnecessary, as like Knopf, all potential information that a representative of Watertown School District could offer, has already been provided.

Employer and Provider argue that the information sought by Pieper is irrelevant to the medical question before the Department and is merely an attempt to gather information for a claim of vexatious conduct. They argue that the requested depositions are unreasonably duplicative as the information has already been produced. Further, if the intent is to gather information on vexatious conduct, that is not an issue to be considered, until it has been proven that a claimant is entitled to benefits.

Pieper asserts that through these depositions she is seeking to determine what knowledge, documents, and tangible things the Employer and Provider have in their possession regarding the nature and extent of her injuries. Pieper argues that as Employer and Provider have denied the nature and extent of her injuries, these witnesses and the evidence they provide may reasonably lead to admissible evidence.

The Department must decide whether the depositions are within the scope of discovery. The South Dakota Supreme Court has stated, "(d)iscovery rules are designed 'to compel the production of evidence and to promote, rather than stifle, the truth finding process.'" *Dudley v. Huizenga*, 2003 SD 84 ¶11, 667 N.W.2d 644, 648. SDCL 15-6-26(b)(1) states, in pertinent part,

> "Parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of any other party, including the existence, description, nature, custody, condition and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of any discoverable matter. It is not ground for objection that the information sought will be inadmissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence."

The scope of discovery is broad to allow parties to identify the most useful and relevant information. As the requirement for proper discovery is merely that the information sought appear reasonably calculated to lead to the discovery of admissible evidence, the Department is not persuaded that it is necessary or proper to quash Pieper's depositions in this matter. At the discovery stage, the goal is evidence gathering and the Supreme Court has stated that the process should be encouraged and not stifled. Whether information and evidence gathered during discovery ultimately is deemed irrelevant will be established by the fact finder as the hearing process progresses.

Employer and Provider have also requested a protection order under SDCL 15-6-26(c) which provides:

> Upon motion by a party or by the person from whom discovery is sought or has been taken, or other person who would be adversely affected, accompanied by a certification that the movant has in good faith conferred or attempted to confer with other affected parties in an effort to resolve the dispute without court action, and for good cause shown, the court in which the action is pending, on matters relating to a deposition, interrogatories, or other discovery, or alternatively, the court in the circuit where the deposition is to be taken may make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, including one or more of the following:
>
> (1) That the discovery not be had;
>
> (2) That the discovery may be had only on specified terms and conditions, including a designation of the time and place;
>
> (3) That the discovery may be had only by a method of discovery other than that selected by the party seeking discovery;
>
> (4) That certain matters not be inquired into, or that the scope of the discovery be limited to certain matters;
>
> (5) That discovery be conducted with no one present except persons designated by the court;
>
> (6) That a deposition after being sealed be opened only by order of the court;
>
> (7) That a trade secret or other confidential research, development, or commercial information not be disclosed or be disclosed only in a designated way;
>
> (8) That the parties simultaneously file specified documents or information enclosed in sealed envelopes to be opened as directed by the court;
>
> (9) That depositions, interrogatories, admissions, other discovery, documents, and exhibits attached to motions, or portions of such documents, be sealed unless and until opened at the direction of the court.
>
> If the motion for a protective order is denied in whole or in part, the court may, on such terms and conditions as are just, order that any party or person provide or permit discovery. The provisions of subdivision 15-6-37(a)(4) apply to the award of expenses incurred in relation to the motion.

Employer and Provider request that the Department expressly limit the scope of information sought at the Depositions to only information relevant to the workers' compensation claim. However, the requirement is that the information sought appear reasonably calculated to lead to the discovery of admissible evidence. Pieper has argued that these witnesses may provide necessary foundational evidence. Pieper's deposition of these witnesses is reasonable as they may have relevant information. The Department is not persuaded that a protective order is necessary or beneficial in this matter. The Department reserves the right to employ methods available to ensure discovery is fair and appropriate, such as *in camera* previewing of potentially protected documents.

Pieper has requested that the Department order that the depositions of Rick Hohn, Jennifer Selzler, Kelly Rud, and Shannon Knopf be scheduled to take place no later than thirty days from the order on this motion. The Department is not going to set a

thirty-day deadline in this matter. However, in order to keep this matter moving forward, the Department encourages both parties to continue discovery and resolve scheduling issues in a timely manner.

ORDER:

In accordance with the conclusions above, Employer and Provider's Motion to Quash and Motion for Protective Order are denied.

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

Sincerely,

Michelle M. Faw
Administrative Law Judge

MMF/pas