SOUTH DAKOTA DEPT. OF LABOR & REGULATION

LABOR & MANAGEMENT DIVISION
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December 15, 2021

Maria Acosta de Guerra
1531 N. Wayland Avenue
Sioux Falls, SD 57103

Decision on Motion for Summary Judgment

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RE: HF No. 83, 2018/19 - Maria Acosta de Guerra v. Smithfield Foods, Inc.

Greetings:

This letter addresses Smithfield Foods' (Smithfield) Motion for Summary Judgment. Maria Acosta de Guerra (Acosta de Guerra) was given an opportunity to respond to the Motion but did not do so.

Background

On June 21, 2018, while employed by Smithfield, Acosta de Guerra reported waking up with pain in her left leg that continued up her thigh. She did not report an incident having occurred at work. She was diagnosed with muscle strain injury by Dr. Brian Kidman who also noted that she had essential hypertension that started on November 10, 2014 and knee pain that had started on August 14, 2014. On August 1, 2018, Acosta de Guerra was seen by Dr. Thomas Ambrose II, who determined she has a moderately severe primary osteoarthritis in her left knee. She received three Visco supplementation injections, but she reported that the injections offered no major

improvement. Dr. Ambrose recommended Acosta de Guerra undergo arthroscopy of her left knee. Regarding whether the knee pain was related to a work injury, Dr. Ambrose opined that degenerative meniscal tears are consistent for individuals in her age group. Acosta de Guerra underwent a left knee arthroscopy on September 20, 2018. The report of the operation noted that she had moderately severe patellofemoral osteoarthritis, moderately severe medial compartment osteoarthritis, and a degenerative tear of the posterior 1/3 of the medial meniscus. Following the knee surgery, Acosta de Guerra attended regular physical therapy and was then cleared to return to work without restrictions.

On April 15, 2019, Acosta de Guerra was examined by Dr. Patrick O'Brien who noted that she had bilateral knee pain, left knee greater than right knee, ongoing for the past five years. He referred her to Dr. Travis Liddell, who recommended a right knee-intra-articular steroid injection and left total knee arthroplasty. The arthroplasty was performed on May 29, 2019, and Acosta de Guerra was able to return to work without restrictions on September 1, 2019.

Acosta de Guerra filed both a Petition for Hearing on February 19, 2019 and an Amended Petition for Hearing on June 2, 2020 regarding a work-related injury she allegedly suffered on June 21, 2018. Smithfield has moved the Department for summary judgment on the grounds that Acosta de Guerra lacks the medical evidence necessary to sustain her burden of proof and establish a causal connection between her June 21, 2018 work injury and her current condition and need for treatment.

The Department's authority to grant summary judgment is established in ARSD 47:03:01:08:

> A claimant or an employer or its insurer may, any time after expiration of 30 days from the filing of a petition, move with supporting affidavits for a summary judgment. The division shall grant the summary judgment immediately if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.

The party seeking summary judgment bears the burden of demonstrating the lack of any genuine issue of material fact, and all reasonable inferences from the facts are viewed in the light most favorable to the non-moving party. *Stromberger Farms, Inc. v. Johnson*, 2020 S.D. 22, ¶ 31, 942 N.W.2d 249, 258-59 (citations omitted). The non-moving party must present specific facts showing that a genuine issue of material facts exists. *Id.* at ¶ 34. "A fact is material when it is one that would impact the outcome of the case 'under the governing substantive law' applicable to a claim or defense at issue in the case." *A-G-E Corp. v. State*, 2006 SD 66, ¶ 14, 719 N.W.2d 780, 785.

"No recovery may be had where the claimant has failed to offer credible medical evidence that [their] work-related injury is a major contributing cause of [their] current claimed condition." *Darling v. West River Masonry, Inc.*, 2010 S.D.4, ¶ 13, 777 N.W.2d at 367. The testimony must establish causation to "a reasonable degree of medical probability, not just possibility." *Jewett v Real Tuff, Inc.*, 2011 S.D. 33, ¶ 23, 800 N.W. 2d 345, 350. Acosta de Guerra has not provided a response to Smithfield's motion and has, therefore, not shown specific facts indicating a genuine issue of material fact exists. She has further failed to provide medical evidence to show that her alleged work-

related injury is a major contributing cause of her current condition. Therefore, Claimant is unable to sustain her burden of proof and summary judgment is proper.

It is hereby ORDERED that Employer and Provider's Motion for Summary Judgment is GRANTED. Hearing file 83, 2018/19 is dismissed with prejudice.

The Parties may consider this Letter to be the Order of the Department.

This is the final decision in this matter unless you appeal 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.

If you have any questions regarding this Letter Order of Dismissal, please contact the Department.

Sincerely,

Michelle M. Faw
Administrative Law Judge