

July 18, 2008

LETTER DECISION

Wm. Jason Groves
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Daniel E. Ashmore
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RE: HF No. 92, 2007/08 – Richard L. Jones v. Homestake Mining Company

Dear Mr. Groves and Mr. Ashmore:

Employer/Self-Insurer Homestake Mining Company (Homestake) filed a Motion to Dismiss Claimant's Petition to Set Aside Compromise Settlement Agreement and Release. Claimant responded by letter dated July 8, 2008. Homestake filed its Reply to Claimant's response on July 14, 2008.

Homestake seeks an order dismissing Claimant's pending Petition to set aside the Compromise Settlement Agreement and Release approved by the Department of Labor on January 24, 2002. Homestake admits that a change in condition issue is properly before the Department of Labor pursuant to SDCL 62-7-33, but argues that SDCL 62-7-5 renders the issue of Claimant's physical condition at the time of compromise agreement *res judicata*. Claimant argues that Claimant should be allowed to present his case of change in condition. The Department agrees, reserving ruling on Homestake's *res judicata* arguments because further discovery appears necessary. Claimant's allegations of a change in condition pursuant to SDCL 62-7-33 will not be dismissed.

The rest of Claimant's Petition for Hearing will be dismissed. The Department of Labor lacks jurisdiction over all other issues raised in the Petition. The general rule is that "administrative agencies have only such adjudicatory jurisdiction as is conferred upon them by statute." O'Toole v. Board of Trustees of South Dakota Retirement System, 2002 SD 77, ¶ 15 (citations omitted).

Claimant's argument that the South Dakota Supreme Court expanded the Department's jurisdiction in Sopko v. C & R Transfer Company, Inc, 1998 SD 8, is rejected.

Counsel for Homestake shall submit an order consistent with this Letter Decision.

Sincerely,

Heather E. Covey
Administrative Law Judge