

September 23, 2021

Namrata Raut


Sent certified

LETTER DECISION ON MOTION TO DISMISS

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RE: HF No. 96, 2020/21 – Namrata Abhishek Raut v. Sanford USD Medical Center and Hospital and Dakota Truck Underwriters.

Greetings:

The Department of Labor & Regulation (Department) received this Motion to Dismiss submitted by Sanford USD Medical Center and Hospital and Dakota Truck Underwriters (Employer and Insurer) on July 23, 2021. Namrata Abhishek Raut (Raut) was given the opportunity to respond by August 30, 2021 but did not do so.

In her Petition for Hearing submitted March 4, 2021, Raut seeks workers' compensation benefits related to her contraction of COVID-19 on or about November 21, 2020 while working as a physician for Employer. Employer and Insurer denied the claim. Employer and Insurer moved the Department to dismiss this claim pursuant to SDCL 15-6-12(b) alleging that Raut has failed to state a claim upon which relief can be granted and thus is not entitled to any benefits as a matter of law.

Raut's claim for benefits is based on her contraction of COVID-19. SDCL 62-1-7(7) defines injury and it 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:

Thus, the only diseases that are compensable are those that result from an injury.

Raut 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 under SDCL 62-1-7(7).

Further, during the 2021 legislative session, the South Dakota Legislature passed SDCL 21-68 which specifically 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.


Raut is not alleging intentional exposure, therefore her claim is not compensable according to this statute. Additionally, the Act to Limit Liability for Certain Exposures to COVID-19 was enrolled as a Session Law on February 8, 2021. Section 7 of the Act states, “[t]his Act applies to any exposure to COVID-19, injury, latent injury, damages, claim, cause of action, or loss that occurs, accrues or begins, whether known, unknown, or latent between January 1, 2020 and December 31, 2022.” Therefore, the also Act applies retroactively. Thus, Raut’s November 2020 alleged infection would be covered by the Act. As her claim is barred by both SDCL 62-1-7, the Act to Limit Liability for Certain Exposures to COVID-19, and SDCL 21-68-2, the

Department concludes that Raut 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 96, 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