

May 15, 2013

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LETTER DECISION

Charles A. Larson
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PO Box 5015
Sioux Falls, SD 57117-5015

RE: HF No. 97, 2010/11 – Jeri L. Dahl v. Brookings Health System and Dakota Truck Underwriters

Dear Mr. McCarty and Mr. Larson:

I am in receipt of Employer/Insurer's Motion to Dismiss for Failure to Prosecute and supporting documentation in the above referenced matter. I have also received Claimant's Brief in Response to Employer/Insurer's Motion to Dismiss, Affidavits of Don McCarty, Jeri Dahl, and Employer/Insurer's Reply Brief in Support of Motion to Dismiss and Affidavit of Charles A. Larson. I have carefully considered each of these submissions.

Employer/Insurer move the Department to dismiss this Petition because Claimant has failed to prosecute this action for more than a year, and dismissal is warranted.

Claimant filed her Petition for Hearing on January 6, 2011. Employer/Insurer filed its Answer on January 27, 2011. Some discovery was conducted, including the taking of Claimant's deposition in 2012. The last activity of record occurred on March 26, 2012, when Employer/Insurer sent an email to counsel for Claimant with supplemental discovery. Claimant and her counsel have not responded or made effort to move the matter forward since that time.

ARSD 47:03:01:09 allows the Department discretion in dismissing a workers' compensation claim for want of prosecution. ARSD 47:03:01:09 provides,

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 activity for at least one year, unless good cause is shown to the contrary. Dismissal under this section shall be with prejudice.

Claimant does not dispute that there has been no record activity for at least one year. Claimant argues that she had good cause for the inactivity because she and her family had experienced financial difficulties and her financial situation has made it difficult to communicate with her attorney. She also stated that her husband had back surgery in November of 2011 and together with her own medical issues has been emotionally overwhelmed. She further argues that a military deployment by her attorney had an impact on preparation of the case and the period of inactivity.

Claimant's arguments that she had good cause for inactivity are without merit. If Claimant intended to pursue her workers' compensation claim, she could have written a letter, stopped into her attorney's office, or found some other way to let her attorney know that she intended to pursue her claim and was making efforts to seek employment, but she did not for well over a year. While the Department can appreciate that many Claimants often find themselves in difficult situations both physically and financially, this does not amount to good cause to not pursue their claim or at least give the opposing party notice of the delay. Claimant did not make any contact with her attorney or attempt to prosecute her claim in any way for a period of over one year.

Furthermore, counsel for Claimant was deployed prior to Claimant even filing the petition for hearing in this matter. He was clearly able to assist her in filing the petition, conducting initial discovery and participate in her deposition. Counsel's deployment does not amount to good cause for delay in this case.

Claimant's failure to pursue her case amounts to inaction warranting a dismissal. Employer/Insurer's Motion to Dismiss for lack of prosecution is granted at this time. Enclosed please find an Order of Dismissal.

Sincerely,

/s/ Taya M. Runyan

Taya M. Runyan
Administrative Law Judge