

SOUTH DAKOTA'S NEW WORKERS' COMPENSATION
SMALL MEDICAL CLAIMS ACT
By James Leach

As of July 1, some workers' compensation claimants have a new option, a workers' compensation small medical claims procedure, if compensability of an injury has been established. The new law results from years of effort to create a forum where people can get small workers' compensation matters heard promptly, efficiently, and without a lawyer.

You didn't hear much about the Act as it made its way through the Legislature, because compromises in the Act before it was introduced made it non-controversial. The Act passed both chambers of the Legislature by a wide margin.

The Act incorporates concepts from South Dakota small claims courts and from unemployment insurance appeals. As originally drafted, the Act would have allowed initial small workers' compensation claims to be heard. Insurance industry representatives asked that the small claims jurisdiction of the department be limited. As a result, two limitations were imposed which severely restrict the small claims jurisdiction of the department. First, the small claims procedure may be used only for a medical expense claim. Second, the small claims procedure may be used only if the department has adjudicated the underlying injury as compensable, or has approved an agreement as to compensation or a memorandum of payment for permanent partial disability. SDCL 62-2-12.

When the Act was introduced into the Legislature, it provided for a maximum claim amount of \$5,000. The sole change made by the Legislature was to increase the maximum amount to \$8,000. SDCL 62-2-12.

A claimant begins the process by completing a form provided by the department. SDCL 62-2-14. The department notifies the party claimed against. SDCL 62-2-15. The party claimed against may assert any setoff or counterclaim that is within the department's jurisdiction. SDCL 62-2-16.

All relevant medical records must be exchanged by the parties, even without request. Any party shall disclose to the other party any medical record that is within the party's possession and is relevant to the claim in dispute. SDCL 62-2-19. On request, claimant must provide a medical release sufficiently before the hearing to allow the party claimed against to obtain claimant's medical records. *Id.*

A claimant may be represented by an attorney, or by a duly authorized agent. An employer or insurer may be represented by an attorney, an employee, or a corporate officer. Fees charged to a claimant must be approved by the department. Fees charged to an employer or insurer are not subject to department approval. SDCL 62-2-21.

As in civil small claims and unemployment insurance claims, the rule against hearsay does not apply, and there is no requirement to prove foundation. Any medical record, correspondence, medical bill, and expert report and correspondence is admissible as evidence. SDCL 62-2-18. An employer or insurer has the right to an Insurance Medical Exam under SDCL 62-7-1.

The department conducts a hearing in accordance with SDCL 1-26. In regular workers' compensation proceedings, there is often significant delay in getting a hearing set and a decision made. South Dakota is much slower than many states in setting hearings and resolving workers' compensation cases. The small medical claims procedure provides that the department shall expedite any hearing to the extent possible. SDCL 62-2-17. Unemployment insurance appeals are heard promptly by the department; hopefully small claims will be heard just as promptly.

A small claims decision may be appealed to the secretary of labor. A decision of the secretary is the final decision of the department. Any final decision of the department is appealable in the same manner as any

other contested case decision. SDCL 62-2-20.

The findings, conclusions, and decision have no claim preclusive or issue preclusive effect between the parties or anyone else. Any finding of fact, conclusion of law, decision, or final order made in a small claims proceeding may not be used as evidence in any separate or subsequent action or proceeding between anyone in any tribunal, agency, or court of this state or the United States, regardless of whether the prior action was between the same or related parties or involved the same facts. SDCL 62-2-22. This mirrors SDCL 61-7-24, which makes unemployment insurance determinations inadmissible in any separate or subsequent actions or proceedings.

As this article goes to print, a hearing is scheduled in Pierre on Monday, July 24, to consider proposed rules 47:03:01:18 to 47:03:01:29. One proposed rule provides that the department shall conduct the hearing on a small claim in as informal a manner as possible, and that the department may allow a party to participate by telephone or teleconference. Most of the proposed rules are innocuous, but two proposed rules are, in my opinion, inconsistent with the statute.

Proposed rule 47:03:01:20 provides that if a setoff or counterclaim exceeds \$8,000, the small claims petition will be treated as a formal petition for hearing, which will require that the matter be adjudicated in the ordinary manner. If this proposed rule is adopted, an employer or insurer can take the claim out of small claims procedure merely by filing a setoff or counterclaim exceeding \$8,000. The proposed rule would deny the claimant the right, created by SDCL 62-2-12, to have a medical claim not exceeding \$8,000 heard by the department in a small claims proceeding where the other requirements of 62-2-12 are satisfied (that the department has adjudicated the underlying injury as compensable, or has approved an agreement as to compensation or a memorandum of payment for permanent partial disability).

Similarly, proposed rule 47:03:01:24 provides that if a formal petition for hearing is filed while a small claims action is pending, the department may hold the small claims action in abeyance, dismiss the small claims petition for hearing, or consolidate the actions. Any of these actions (stay, dismissal, or consolidation) would deny claimant the right, granted by 62-2-12, to have an appropriate medical claim heard in a small claims proceeding.

The new small medical claims procedure is a step forward in allowing some people to have their claims decided without a lawyer, in a simplified, non-technical proceeding similar to those already used in small civil claims and unemployment insurance appeals. The limitations of the law are frustrating, but were necessary compromises to make the Act politically viable. The Legislature's increase in the jurisdictional amount from \$5,000 to \$8,000 suggests that it could be open to possible future expansions of small workers' compensation claims jurisdiction.