

THURSDAY, APRIL 24, 2008  
9:00 A.M.

NO. 1

#24680

LEWIS F. STEINMETZ,  
Appellant,

vs.

STATE OF SOUTH DAKOTA, DOC  
STAR ACADEMY,

and

STATE OF SOUTH DAKOTA,  
BUREAU OF PERSONNEL,  
Appellees.

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(FOR APPELLANT)

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(FOR APPELLEES)

The Honorable James W. Anderson  
Sixth Judicial Circuit  
Hughes County

(CIV 07-276)

20-20-10

STATEMENT OF LEGAL ISSUES**I. Does SDCL 62-7-6 grant to the Department of Labor an absolute, undefined discretion to determine an equivalent lump sum amount?**

The Department of Labor did not directly address this issue but concluded that equivalent lump sum amount as used in SDCL 62-7-6 does not have to be equivalent to what economists or what other experts might declare it to be.

*Affiliated Distillers Brands Corp. v. Gillis*, 130 N.W.2d 597, 599 (S.D.1964)  
*E.g., O'Toole v. Board of Trustees of South Dakota Retirement System*, 2002 SD 77, 648 N.W.2d 342 (2002)  
*Haas v. Independent School District No. 1 of Yanton*, 69 S.D. 303, 9 N.W.2d 707 (1943)  
*Steinkruger v. Miller*, 612 N.W.2d 591 (S.D. 2000)  
 SDCL § 62-7-6  
 SDCL § 62-4-7

**II. Does ARSD 47:03:01:07 produce an equivalent lump sum amount as required by SDCL 62-7-6?**

The Department of Labor concluded that the administrative rule does not conflict with SDCL 62-7-6 as it includes a method for calculating probable future payments and a method for capitalizing those payments based on an interest rate set by the Department.

*Gloe v. Union Insurance Company*, 2005 SD 30, ¶ 8, 694 N. W.2d 252 (2005)  
*The American Heritage® Dictionary of the English Language, Fourth Edition*.  
 Houghton Mifflin Company, 2004. 31 May. 2007  
*Bjornson v. City of Aberdeen*, 296 N.W.2d 896 (S.D. 1980)  
*Sciarotta v. Bowen*, 735 F. Supp. 148 (D.N.J. 1989)  
 SDCL § 62-4-7  
 SDCL § 62-7-6  
 SDCL § 2-14-1  
 SDCL § 2-14-2  
 ARSD 47:03:01:07

**III. What is the equivalent lump sum amount of Appellant's benefits pursuant to SDCL 62-7-6?**

The Department's calculation of lump sum amount, under its administrative rule, was \$269,897.91. (Appendix 4.)

SDCL § 62-4-7  
 SDCL § 62-7-6

**IV. Does the record show that it is in Appellant's best interest to have a lump sum pursuant to SDCL 62-7-6?**

The Department concluded that Claimant failed to establish it was in his best interests to have a lump sum, by finding that the record did not establish an exceptional financial need nor was there an outstanding attorney fee claim to be paid requiring a partial lump sum.

*Thomas v. Custer State Hospital*, 511 N.W.2d 576 (S.D.1994)  
*Enger v. FMC*, 2000 SD 48, 609 N.W.2d 132 (2000)  
*Wulff v. Swanson*, 69 S.D. 539, 543, 12 N.W.2d 553, 555 (1944)  
 SDCL § 62-7-6

**V. Does an injured worker's attorney have an interest in determining the equivalent lump sum amount for calculation of attorney fees?**

The Department did not address this issue in its decision but did enter its Order (Appendix 4) preserving counsel's interest in an "equivalent lump sum amount."

*Lagge v. Corsica Co-op*, 2004 SD 32, ¶ 38, 677 N.W.2d 569, 578 (S.D. 2004)  
*Stanton v. Hills Materials Co.*, 1996 SD 109, ¶ 20, 553 N.W.2d 793, 797  
 SDCL § 62-7-6