

Appellees appealed to the Circuit Court for Hughes County, the Honorable Steven L. Zinter presiding. After submission of briefs and receipt of oral argument, the court issued its bench decision on October 19, 2001, (App. 11), which reversed the Department of Labor's ruling that Kennedy's latex sensitivity was a compensable injury under SDCL 62-1-1(7).

Kennedy appeals the Circuit Court's Findings of Fact, Conclusions of Law and Order of November 13, 2001, as a matter of right pursuant to SDCL 15-26A-3.

STATEMENT OF ISSUES

- I. DID THE CIRCUIT COURT ERR AS A MATTER OF LAW WHEN IT CONCLUDED THAT KENNEDY'S LATEX SENSITIVITY WAS NOT A COMPENSABLE INJURY UNDER SDCL 62-1-1(7)?

The Circuit Court reversed the DOL's ruling that Kennedy's latex sensitivity was a compensable injury.

- II. DID THE CIRCUIT COURT ERR WHEN IT RULED THAT KENNEDY FAILED TO PROVIDE TIMELY NOTICE UNDER THE OCCUPATIONAL DISEASE STATUTES?

The Circuit Court affirmed the DOL's ruling that Kennedy failed to provide timely notice of an occupational disease.

- III. DID THE CIRCUIT COURT ERR WHEN IT RULED THAT APPELLEES ARE NOT ESTOPPED TO DENY RECEIPT OF TIMELY NOTICE?

The Circuit Court held that Appellees were not estopped to deny timely receipt of notice of occupational disease.

- IV. DID THE CIRCUIT COURT ERR BY CONCLUDING THAT THE DOL'S DECISION TO ALLOW KENNEDY TO HAVE A REMEDY UNDER SDCL 62-1-1(7) VIOLATES SDCL 62-8-4?

The Circuit Court held that the DOL's ruling violated SDCL 62-8-4.

- V. DID THE CIRCUIT COURT ERR BY ENTERING FINDINGS OF FACT WHEN ITS RULING WAS BASED SOLELY ON INTERPRETATION OF LAW?

The Circuit Court entered Findings of Fact over Kennedy's objection.

- VI. DID THE CIRCUIT COURT ERR WHEN IT FAILED TO CONCLUDE THAT ACCEPTANCE OF ST. LUKE'S ARGUMENTS REGARDING AN AGGRAVATION OF KENNEDY'S CONDITION OCCURRING IN MINNESOTA WOULD VIOLATE KENNEDY'S RIGHTS UNDER THE SOUTH DAKOTA CONSTITUTION BY DEPRIVING HER OF BOTH THE ADMINISTRATIVE AND TORT REMEDIES?

The Circuit Court ruled that there was no constitutional deprivation.

- VII. DID THE CIRCUIT COURT ERR IN FAILING TO RECOGNIZE THAT ACCEPTANCE OF ST. LUKE'S ARGUMENTS REGARDING AN AGGRAVATION OCCURRING IN MINNESOTA WOULD VIOLATE THE EQUAL PROTECTION CLAUSE OF THE U.S. CONSTITUTION BECAUSE KENNEDY WOULD BE PLACED IN A DIFFERENT CLASSIFICATION OF WORKERS FROM OTHER EMPLOYEES COVERED BY THE WORKERS' COMPENSATION ACT?

The Circuit Court ruled that no constitutional rights were violated.