

SOUTH DAKOTA ONE CALL BOARD

**OFFICE OF HEARING EXAMINERS
PIERRE, SOUTH DAKOTA**

OHE 20-03

**IN THE MATTER OF THE COMPLAINT
FILED BY MONTANA DAKOTA
UTILITIES CO., RAPID CITY, SD,
AGAINST DARWIN TOOF, RAPID CITY,
SD, FOR AN INCIDENT OCCURRING
ON OCTOBER 15, 2020, AT 815 E NEW
YORK STREET, LOT 29, RAPID CITY,
SD.**

**FINDINGS OF FACT,
CONCLUSIONS OF LAW,
AND ORDER OF DISMISSAL**

The above-entitled matter came on for Hearing before a quorum of the South Dakota One Call Board on Tuesday, May 4, 2021. The Hearing was held via Zoom, an internet videoconference. Presiding over the SDCL Ch. 1-26 Hearing was Catherine Williamson, Chief Hearing Examiner, Office of Hearing Examiners. Mr. Darwin Toof (Toof) appeared at the hearing and presented testimony. Attorney Lindsey Riter-Rapp represented Montana Dakota Utilities (MDU). Also present and testifying for Montana Dakota Utilities was Marcus Christensen.

ISSUES

1. Whether Mr. Toof violated SDCL 49-7A-8?
2. Whether Mr. Toof violated SDCL 49-7A-12?
3. Whether penalties shall be imposed?

FINDINGS OF FACT

1. On October 15, 2020, at 815 East New York Street, Lot 29, Rapid City, South Dakota, a hole was dug or excavated to fix a sewer line break.
2. Mr. Toof is employed as a maintenance man by the owner of the mobile home court located at 815 East New York Street, Rapid City, SD.
3. Mr. Toof was instructed by his employer to excavate for the purpose of fixing the sewer line.
4. Mr. Toof called the 811 Board for utility markings to be made before excavating. He testified that he gave the one-call service the address of his employer.
5. The ELM locating service marked the utility lines prior to his excavating the ground.
6. Mr. Toof excavated a hole using hand tools and did not see the gas line. He then proceeded to use a mechanical excavator to remove dirt around the sewer line.
7. During the excavation, a gas line owned by MDU was cut, and gas blew from the cut line.

8. Mr. Toof credibly testified that his fiancée, who was assisting him with this job, telephoned 911. Mr. Toof telephoned 811 and MDU to shut off the gas line.
9. Mr. Toof gave credible testimony that the police and fire department arrived on the scene prior to ELM or MDU.
10. ELM sent a damage report to MDU. ELM investigates the damage, takes photos of the scene, and writes notes about the violation.
11. Field Operations Coordinator for MDU, Marcus Christensen reviewed the ELM report and determined that possible one-call violations had occurred. He did not speak with Mr. Toof or any other witnesses to the violation.
12. MDU filed a complaint with the Board on October 30, 2020.
13. On November 2, 2020, a copy of the Complaint and an Offer of Complaint Resolution was sent to Mr. Toof at 6770 Willow Drive, Rapid City, SD.
14. Mr. Toof does not live on Willow Drive and did not receive any complaint or mail from the 811 Board.
15. Mr. Toof did not respond to the Complaint as he did not receive it. Mr. Toof also testified that he did not believe his employer received any complaint.
16. The One-Call Enforcement Panel met on December 17, 2020 and found probable cause that violations of the law had likely occurred.
17. Sometime later, Mr. Toof received a phone call from the 811 Board staff regarding this complaint. He told the staff he had no knowledge of a complaint filed against him. At that time, he requested a hearing.
18. Mr. Toof signed a Request for Hearing form on February 1, 2021.
19. To the extent any of the foregoing are improperly designated and are, instead, conclusions of law, they are hereby redesignated and incorporated herein as conclusions of law.

CONCLUSIONS OF LAW

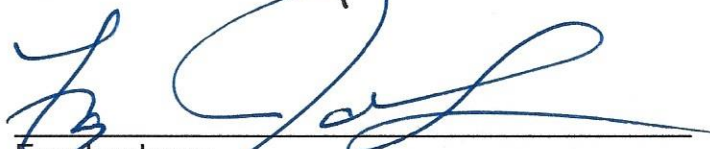
1. The Board has jurisdiction in this matter pursuant to SDCL Chapters 1-26 and 49-7A and ARSD 20:25.
2. SDCL 49-7A-23. Upon receipt of a complaint and the appointment of a panel, the panel shall forward to the respondent a statement of the complaint and a notice requiring the respondent to satisfy the complaint or answer it in writing within twenty days from the date of service of the notice or within such further time as may be specified by the board.
3. SDCL 49-7A-24. The respondent shall, within the time fixed by the notice served upon it, satisfy the complaint or answer the complaint by filing the original and two copies of the answer in the office of the board and serving a copy on each complainant.
4. SDCL 49-7A-25. A determination of probable cause shall be made by the panel solely on these submissions and no other evidence shall be considered.
5. SDCL 49-7A-27. Following the hearing, the board shall either render a decision dismissing the complaint for insufficient evidence or shall impose a penalty pursuant to the provisions of § 49-7A-18 or 49-7A-19.

6. To the extent any of the foregoing are improperly designated and are, instead, findings of fact, they are hereby redesignated and incorporated herein as findings of fact.

ORDER of DISMISSAL

The Board, by a vote of the majority, determined that this complaint against Mr. Toof shall be dismissed pursuant to SDCL 49-7A-27. These Findings of Fact and Conclusions of Law and Order of Dismissal are hereby signed and ordered by the South Dakota One Call Notification Board.

Dated this 12th day of July 2021.

A handwritten signature in blue ink, appearing to read 'Fay Jandreau', is written over a horizontal line. The signature is stylized and cursive.

Fay Jandreau
Board Chairman

CERTIFICATE OF SERVICE

I certify that on July 12, 2021, a true and correct copy of this Findings of Fact, Conclusions of Law, and Order of Dismissal was mailed and e-mailed to each party listed below.



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