

SOUTH DAKOTA DEPARTMENT OF LABOR
DIVISION OF LABOR AND MANAGEMENT

GARY LEE BAHR,
Claimant,

HF No. 109, 2008/09

v.

DECISION

GEHL COMPANY,
Employer,

and

SENTRY INSUARANCE,
Insurer.

This is a workers' compensation proceeding brought before the South Dakota Department of Labor pursuant to SDCL 62-7-12 and Chapter 47:03:01 of the Administrative Rules of South Dakota. A hearing was held before the Division of Labor and Management, in Madison, South Dakota. Claimant, Gary Lee Bahr appeared personally and on his own behalf, Michael S. McKnight represented Employer, Gehl Company and Insurer Sentry Insurance.

Issue

Whether Claimant's employment remains a major contributing cause of the condition complained of or need for treatment pursuant to SDCL 62-1-1(7).

Facts

Based upon the record and the live testimony at hearing, the following facts are found by a preponderance of the evidence.

Gary Bahr (Claimant) worked for Employer, Gehl Company (Gehl) for several years. On April 25, 2008, during a blizzard, Claimant was walking across the yard carrying a propane tank on his shoulder. Claimant was struck by a forklift carrying a skid loader and knocked to the ground. Claimant testified that he was pushed approximately 100 feet in the yard. Claimant testified that when the forklift stopped, he was experiencing neck, back, and elbow pain. Claimant was taken to the Madison Community Hospital emergency room by ambulance.

Claimant was seen in the emergency room by Dr. Mary W. Beecher. X-rays and CT scans taken of the cervical spine and lumbosacral spine revealed degenerative changes, without evidence of an acute fracture and/or dislocation. Claimant returned to see Dr. Beecher on April 28, 2008, for a follow-up appointment. Claimant presented with new findings of numbness in the hands and arms. Dr. Beecher kept Claimant off work and recommended

physical therapy. Dr. Beecher also referred Claimant to Dr. Mark Fox for a neurosurgical consultation.

Dr. Fox found that Claimant that in regard to his arm symptoms, "it certainly could be from the disc herniations at the 3rd, 4th, or 5th areas, but again it is difficult to know that for sure at this point." Dr. Fox recommended that if the arm pain did not resolve in a week, Claimant might consider a cervical epidural injection. Dr. Fox kept Claimant off work for another week. Dr. Fox recommended continued physical therapy and follow up with Dr. Beecher.

Claimant returned to Dr. Beecher on May 15, 2008. The numbness in his arms was occurring more frequently, however Claimant elected not to proceed with the epidural injections since he was improving with stretching and physical therapy. Dr. Beecher returned Claimant to work at light duty with no lifting greater than 25 pounds. Claimant continued with physical therapy and treated with Dr. Beecher and P.A. Mitch Poppens at the Interlakes Medical Center.

On June 17, 2008, Claimant saw Dr. Robert Suga, and orthopedic specialist at the Orthopedic Institute. Dr. Suga observed some spondylosis particularly at L5-S1 and diagnosed a lumbar strain. Dr. Suga recommended conservative care and continued physical therapy. Claimant returned on July 14, 2008, for a recheck presenting with continued back pain. Dr. Suga opined that Claimant was suffering from symptoms related to a lumbar strain and recommended continued conservative management. Dr. Suga returned Claimant to work without restriction on July 14, 2008. On September 16, 2008, Claimant returned to Dr. Suga with persistent back pain. Dr. Suga noted that neurologically, Claimant checked out well. Dr. Suga opined that Claimant's pain was due to a combination of factors including lumbar spondylosis and superimposed strain.

On November 21, 2008, Dr. Farnham performed an independent medical exam (IME) at the request of Employer/Insurer. Dr. Farnham's diagnosed Claimant as physically normal. Dr. Farnham noted that Claimant probably did sustain a cervical sprain/strain in combination with lumbosacral sprain/strain as a result of the April 25, 2008, injury, however at the time of his examination, Dr. Farnham opined that Claimant had reached maximum medical improvement and that there was no permanent impairment rating based upon the American Medical Association Guides 4th Edition. Dr. Farnham also noted that Claimant suffered from non-work related degenerative, evolutionary, non-traumatic changes of the cervical spine and lumbosacral spine as evidenced on X-rays and CT scans. Dr. Farnham opined that Claimant's current complaint of low back pain is the result of those degenerative changes which were not related to the work related injury of April 25, 2008.

As a result of Dr. Farnham's opinion that Claimant's current complains were not causally related to the work related injury of April 25, 2008, Insurer denied further coverage of Claimant's medical expenses.

On December 19, 2008, Claimant began treating with Dr. Jason T. Evans, a chiropractor for his back pain. Dr. Evans recommended stretching, trigger point therapy and chiropractic

treatments twice a week for 4-6 weeks. Claimant testified at the hearing that seeing Dr. Evans had been helping.

Claimant continues to work at Gehl without any work restrictions. Claimant is currently able to perform all his usual duties and responsibilities at work.

Other facts will be developed as necessary.

Analysis

Was Claimant's employment a major contributing cause of his injury?

The general rule is that a claimant has the burden of proving all facts essential to sustain an award of compensation. *Horn v. Dakota Pork*, 2006 SD 5, ¶14, 709 NW2d 38, 42 (citations omitted). To recover under workers' compensation law, a claimant must prove by a preponderance of the evidence that she sustained an injury "arising out of and in the course of the employment." SDCL 62-1-1(7); *Norton v. Deuel School District #19-4*, 2004 SD 6, ¶7, 674 NW2d 518, 520. The claimant must also prove that "the employment or employment-related activities are a major contributing cause of the condition complained of." SDCL 62-1-1(7)(a).

Claimant sustained an injury that arose out of and in the course of his employment with Employer, Gehl ON April 25, 2008. Employer/Insurer contends that Claimant's current need for treatment is not related to his work related injury. SDCL 62-1-1(7) provides that "[n]o injury is compensable unless the employment or employment related activities are a major contributing cause of the condition complained of[.]"

In applying the statute, we have held a worker's compensation award cannot be based on possibilities or probabilities, but must be based on sufficient evidence that the claimant incurred a disability arising out of and in the course of [her] employment. We have further said South Dakota law requires [Claimant] to establish by medical evidence that the employment or employment conditions are a major contributing cause of the condition complained of. A possibility is insufficient and a probability is necessary.

Gerlach v. State, 2008 SD 25, ¶7, 747 NW2d 662, 664 (citations omitted).

Claimant argues that his current condition is related to his work related injury of April 25, 2008. Claimant argues that because he did not experience any back pain between 2003-2008, that his current pain was not related to the preexisting degenerative changes, but rather the acute injury suffered at Gehl.

Claimant's medical records reflect that he has suffered from prior work related injuries while working for Rosco and a history of non-work related back pain. The records reflect that Claimant began treating with Dr. Evans in September of 2000 for neck, arm and shoulder pain related to a work injury at Rosco. Claimant continued to treat with Dr. Evans off and on until July of 2003, for various neck, upper back and lower back pain.

Claimant's medical records from Dr. Wayne A Wetzberger and P.A. Mitch Poppens also reference chronic neck pain, cervical sprain, cervical spondylosis, and lumbar degenerative disc at L4-L5 as early as 2003.

The X-ray's and CT scans ordered by Dr. Beecher on the day of Claimant's work related injury revealed evidence of degenerative changes and the medical records corroborate that Claimant had a history of degenerative changes to his low back.

On July 14, 2008, Dr. Suga opined that after seeing Claimant, it was his belief that Claimant's symptoms were related to a lumbar strain, but was optimistic that the issue would resolve with conservative treatment alone. On September 16, 2008, when Claimant presented with persistent back pain, Dr. Suga opined that Claimant's pain was due to a combination of factors, lumbar spondylosis and a superimposed strain.

Dr. Farnham testified to a reasonable degree of medical probability that Claimant's work related injury on April 25, 2008, was not a major contributing cause of Claimant's current condition and need for treatment. Dr. Farnham opined that Claimant's current condition and need for treatment was due to non-work related degenerative, evolutionary, non-traumatic changes to the cervical spine and lumbosacral spine and a long history of tobacco use.

Based upon the medical evidence presented, Claimant failed to meet his burden to demonstrate that Claimant's employment remains a major contributing cause of Claimant's injuries and need for treatment. Claimant's request for relief is hereby denied.

Conclusion

Employer/Insurer shall submit proposed Findings of Fact and Conclusions of Law, and an Order consistent with this Decision within ten (10) days from the date of receipt of this Decision. Claimant shall have ten (10) days from the date of receipt of Employer/Insurer's proposed Findings of Fact and Conclusions of Law to submit objections thereto or to submit proposed Findings of Fact and Conclusions of Law. The parties may stipulate to a waiver of Findings of Fact and Conclusions of Law and if they do so, Employer/Insurer shall submit such Stipulation along with an Order in accordance with this Decision.

Dated this 11th day of December, 2009.

SOUTH DAKOTA DEPARTMENT OF LABOR

Taya M. Dockter
Administrative Law Judge