

**SOUTH DAKOTA DEPARTMENT OF LABOR & REGULATION  
DIVISION OF LABOR AND MANAGEMENT**

**TIMOTHY HALSTEAD,**

**HF No. 118, 2011/12**

**Claimant,**

**v.**

**DECISION**

**J & R WELL DRILLING  
SERVICE, LLC,**

**Employer,**

**and**

**ZURICH NORTH AMERICA,**

**Insurer.**

This is a workers' compensation case brought before the South Dakota Department of Labor & Regulation, Division of Labor and Management pursuant to SDCL 62-7-12 and ARSD 47:03:01. This case was heard by Donald W. Hageman, Administrative Law Judge on August 1, 2013. Claimant, Timothy Halstead, was represented by James G. Sword. Employer, J & R Well Drilling Service, LLC, and Insurer, Zurich North American were represented by William P. Fuller.

***Issues:***

This Decision deals with the following legal issue:

1. Whether Halstead is entitled to permanent total disability benefits (PTD)?
2. Whether Halstead is entitled to vocation rehabilitation benefits for a four year petroleum engineering program?

***Facts:***

The following facts are found by a preponderance of the evidence:

1. Timothy Halstead (Halstead) was born on August 29, 1981 and was 25 years old on December 5, 2006.
2. At all times relevant for this case, Halstead worked for J & R Well Drilling Service, LLC (J & R) who was insured by Zurich North America (Zurich) for workers' compensation purposes.

3. Halstead began working for J & R in July, 2006. He worked as a derrick hand. A derrick hand is a strenuous and repetitive job. Halstead was required to "trip pipe." This required him to manipulate a 500 pound, 64 foot length of pipe while standing on an 18 inch wide platform about 90 feet off of the ground.
4. Prior to working with J & R, Halstead worked as a firefighter, a roofer and cook. Halstead had attended a community college in Wyoming for a short time after high school, but did not complete any program. The only other training Halstead had was a "couple of random classes with the Forest Service."
5. On December 5, 2006, Halstead was injured on the job while Halstead was giving directions to a payloader operator. While the loader was stopped, Halstead went over to adjust the load when the loader began to move. Halstead fell and the front wheel of the loader rolled over Halstead's right foot and leg. When the payloader operator saw what was happening, he turned the front wheels. At that point, Halstead felt a "crunch" and "a wall of pain" ran up his leg.
6. Halstead was transported from the accident site to the Emergency Room at the Southwest Healthcare Services in Bowman, ND. Given the severity of his injury, Halstead was transported by ambulance to Rapid City Regional Hospital. Dr. Schleusener immediately diagnosed Halstead with a crush injury to his right foot.
7. On October 7, 2008, Dr. Fraser voiced his concerns about Halstead working on the top of a derrick with foot pain that could compromise his balance and the ability to work safely. Dr. Fraser stated that it was not reasonable for Halstead to manipulate pipe, carry 50 to 60 pounds, and work six to seven hours without a break with as much as three hours standing.
8. Dr. Fraser restricted Halstead to four hours of total weight bearing per day with breaks and no longer than one hour intervals, and limited to carrying 25 pounds occasionally but no repetitively. He summarized that given Halstead's limitations he was a potential safety hazard to himself and others on the rig.
9. On October 27, 2010, Dr. Lawlor saw Halstead. Dr. Lawlor did not believe that any further physical therapy was likely to benefit Halstead. In addition to many of the same or similar restrictions that Dr. Fraser had made, Dr. Lawlor noted:
  - a. Mr. Halstead is restricted to a sedentary physical demand level b. Mr. Halstead cannot return to his usual and customary employment as an oil field worker/derrick hand.
  - c. Mr. Halstead's employment history includes firefighter, roofer, carpenter, and cook. These occupations are no longer suitable for Mr. Halstead, due to his post injury physical restrictions.
  - d. These restrictions and recommendations are permanent.
10. Dr. Ruttle, J & R and Zurich's expert, concurred with Dr. Lawlor's recommendations.

11. At the time of his injury, Halstead's average weekly wage was \$797.
12. When working for J & R, Halstead lived in Powell, Wyoming. After his injury, Halstead chose to move to Laramie, Wyoming to pursue a four year degree in petroleum engineering from the University of Wyoming.
13. In Wyoming, starting petroleum engineers earn \$60,000 to \$70,000 with potential to earn much more with experience.
14. Additional facts may be discussed in the analysis below.

**Analysis:**

***Permanent Total Disability:***

Halstead first seeks permanent total disability benefits. That determination is controlled by SDCL 62-4-53. That statute states:

An employee is permanently totally disabled if the employee's physical condition, in combination with the employee's age, training, and experience and the type of work available in the employee's community, cause the employee to be unable to secure anything more than sporadic employment resulting in an insubstantial income. An employee has the burden of proof to make a prima facie showing of permanent total disability. The burden then shifts to the employer to show that some form of suitable work is regularly and continuously available to the employee in the community. The employer may meet this burden by showing that a position is available which is not sporadic employment resulting in an insubstantial income as defined in subdivision 62-4-52(2). An employee shall introduce evidence of a reasonable, good faith work search effort unless the medical or vocational findings show such efforts would be futile. The effort to seek employment is not reasonable if the employee places undue limitations on the kind of work the employee will accept or purposefully leaves the labor market. An employee shall introduce expert opinion evidence that the employee is unable to benefit from vocational rehabilitation or that the same is not feasible.<sup>1</sup>

If an employee chooses to move to an area to obtain suitable employment that is not available within the employee's community, the employer shall pay moving expenses of household goods not to exceed four weeks of compensation at the rate provided by § 62-4-3.

SDCL 62-4-53 (emphasis added).

---

<sup>1</sup> The emphasizes portion of SDCL 62-4-53, above, was added to the statute during the 1999 session of the South Dakota Legislature, (SL 1999, ch 261, § 7), four years after the South Dakota Supreme Court decision in . Spitzack v. Berg Corporation, 532 N.W.2d 72 (S.D. 1995)

This statute requires Halstead to introduce evidence that he would not benefit from vocational rehabilitation before he can qualify for permanent total disability. Halstead has not done so. Moreover, both parties have gone to effort to show that rehabilitation is appropriate here. In addition, Halstead has enrolled at the University of Wyoming to pursue a four year degree. Under these, circumstances, Halstead is not entitled to permanent total disability.

***Vocational Rehabilitation:***

Halstead has requested vocational rehabilitation benefits in the form of a four year degree in petroleum engineering. J & R and Zurich counter, arguing that the petroleum engineering program is not an appropriate program for rehabilitation because it would elevate Halstead's position in life and that they are not required to pay for such a program under the workers' compensation laws.

An injured employee's entitlement to rehabilitation benefits is governed by SDCL 62-4-5.1.<sup>2</sup> The South Dakota Supreme Court has interpreted this statute on several occasions and established a five-part test for evaluating a program:

1. The employee must be unable to return to his usual and customary line of employment;
2. Rehabilitation must be necessary to restore the employee to suitable, substantial, and gainful employment;
3. The program of rehabilitation must be a reasonable means of restoring the employee to employment;
4. The employee must file a claim with his employer requesting the benefits; and,
5. The employee must actually pursue the reasonable program of rehabilitation.

Sutherland v. Queen of Peace Hosp., 1998 S.D. 26, ¶ 13, 576 N.W.2d 21, 25. To

---

<sup>2</sup> SDCL 62-4-5.1. If an employee suffers disablement as defined by subdivision 62-8-1(3) or an injury and is unable to return to the employee's usual and customary line of employment, the employee shall receive compensation at the rate provided by § 62-4-3 up to sixty days from the finding of an ascertainable loss if the employee is actively preparing to engage in a program of rehabilitation as shown by a certificate of enrollment. Moreover, once such employee is engaged in a program of rehabilitation which is reasonably necessary to restore the employee to suitable, substantial, and gainful employment, the employee shall receive compensation at the rate provided by § 62-4-3 during the entire period that the employee is engaged in such program. Evidence of suitable, substantial, and gainful employment, as defined by § 62-4-55, shall only be considered to determine the necessity for a claimant to engage in a program of rehabilitation.

The employee shall file a claim with the employee's employer requesting such compensation and the employer shall follow the procedure specified in chapter 62-6 for the reporting of injuries when handling such claim. If the claim is denied, the employee may petition for a hearing before the department.

