

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

BRENDA L. VANDER BROEK

HF No. 125, 2012/13

Claimant,

v.

DECISION

CONWAY FREIGHT,

Employer,

and

TRAVELERS INSURANCE COMPANY,

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. The case was heard by Michelle M. Faw, Administrative Law Judge, on March 31, 2022. Claimant, Brenda L. Vander Broek, was present and represented by Bram Weidenaar of Alvine Law Firm. The Employer, Conway Freight and the Insurer, Travelers Insurance Company were represented by Charlie Larson of Boyce Law Firm.

Facts:

- 1.** Brenda Vander Broek (Vander Broek) was born on February 14, 1961.
- 2.** In 1979, she graduated from high school. She then attended higher education nursing courses for some time until deciding to go to truck driving school.
- 3.** In December of 1981, Vander Broek graduated from trucking school. She then drove truck with her late husband until 1993, and then continued to drive for various companies.

4. On April 11, 2005, Vander Broek reported having back and neck pain.
5. On April 21, 2006, Vander Broek Complained of bilateral arm pain that was so bad she was in bed for three days.
6. On May 5, 2006, Vander Broek's treating physician noted she had reported numbness in her upper extremities which could be possible cervical spine disease.
7. In the winter of 2008, Vander Broek lost her trucking job. She began working other jobs including at a convenience store.
8. On November 12, 2009, Vander Broek reported to her treating physician that her back pain had been increasing after sitting at her job, with pain that radiated down the back of her right leg into her left hip. Vander Broek noted it was difficult to stand up straight.
9. On January 29, 2010, Vander Broek complained of lower back pain shooting down into her lower legs.
10. In January 2011, Vander Broek reported that being on her feet, lifting, and bending bothered her. She complained of pain in the back of her left leg to above her knee which was not helped with Ibuprofen.
11. On March 24, 2011, Vander Broek received chiropractic treatment. She was experiencing lower back pain that shot into her left leg which was so severe she had to take time off work. She reported the pain was steadily getting worse over the past month.
12. On March 31, 2011, Vander Broek went to Falls Community Health for back pain. She complained of left-sided lower back pain which radiated down into her left leg, and she reported she had arthritis and degenerative disc disease. She

reported the pain was so severe she could no longer work her job at a convenience store.

- 13.** On June 1, 2011, Vander Broek was seen by Dr. Suzannah Spencer at Falls Community Health. She reported lower back pain, which radiated into her right buttocks and posterior thigh. She also reported having difficulty getting out of her chair or bed and requested a prescription for pain medication. Dr. Spencer prescribed hydrocodone two times orally as needed for pain.
- 14.** In August of 2011, Vander Broek was hired by Conway Freight (Employer).
- 15.** On November 3, 2011, Vander Broek refilled the prescription for hydrocodone pain medication.
- 16.** On and before December 17, 2011, Vander Broek was working for Employer which was at all times pertinent insured for workers' compensation purposes by Travelers Insurance Company (Insurer).
 - a. Vander Broek was working as a truck driver doing a line haul from Sioux Falls, SD to Tomah, WI.
 - b. That evening, Vander Broek was driving east on I-90 near mile marker 264 in Minnesota.
 - c. Wind hit the side of Vander Broek's truck and pushed it through the median of the highway. She came to a stop facing east in the westbound lane.
 - d. During the accident, Vander Broek struck her head on the window, her back on the edge of the metal seat, and was thrown from the driver's seat.

- e. Vander Broek was able to get the truck turned around and she went to Tomah.
- f. She started back to Sioux Falls but had to stop at La Crosse, WI due to pain.
- g. Employer sent another employee to drive her truck and Vander Broek drove the employee's pickup truck back to Sioux Falls.
- h. Due to her symptoms, Employer directed her to go to occupational health.

17. On December 19, 2011, Vander Broek went to Sanford Occupational Medicine and was seen by Dr. Clayton Van Balen. She explained that she had injured her lower back and right leg in a truck accident on December 17, 2011. Dr. Van Balen diagnosed her with a lumbar strain and ordered an x-ray of her lumbar spine. The x-ray revealed multilevel degenerative disk changes at the L5-S1 levels and no lumbar compression fractures, a grade 1 spondylolisthesis of the L4 and L5, approximately 4 mm retrolisthesis of the L2 on L3, and lumbar dextroscoliosis. He prescribed physical therapy, the use of ice and heat, and an exercise program. Dr. Van Balen assigned work restrictions consisting of alternating between sitting and standing, no repetitive bending or twisting at the waist, no crawling, kneeling, or safety-sensitive jobs, and a five (5) pound lifting restriction.

18. On December 23, 2011, Vander Broek returned to Dr. Van Balen complaining of right leg pain and lower back pain. His examination showed lower back tenderness to palpation over the right paraspinal muscles, positive straight leg raise on right, pain upon movement, and reduced range of motion. Dr. Van

Balen recommended Vander Broek continue physical therapy, heat, and ice. He continued the physical restrictions.

19. On December 27, 2011, Vander Broek again saw Dr. Van Balen with continued complaints of right leg and lower back pain. Dr. Van Balen found the same results as the previous visit. He also noted muscle spasms in the right paraspinal muscles. The notes reflect that Vander Broek reported that her pain level was a 1/10 and that she felt her she was improving significantly. She stated she was currently not having symptoms, was back to her daily activities, and had some aches and pain that got better with movement. Vander Broek stated she would like to be lifted from restrictions. He diagnosed her with lumbar strain and neuritis. He continued the physical therapy and ice treatments. He further limited Vander Broek to standing and sitting as tolerated, with no repetitive bending or twisting at the waist, and a lifting restriction of twenty-five (25) pounds.

20. On December 30, 2011, Vander Broek returned to Sanford Occupational Medicine and was seen by Kathie Daak, PA-C. PA-C Daak concluded that Vander Broek's pain had resolved based on Vander Broek's report of having no pain. She recommended that Vander Broek continue with physical therapy, and she released her to work without restriction.

21. On February 1, 2012, PA-C Daak responded to questions asked by Insurer. She indicated that Vander Broek was at maximum medical improvement (MMI) and that she did not have any impairment pursuant to the AMA Guidelines for the Rating of Impairment. She also opined that Vander Broek did not have any physical restrictions.

- 22.** On February 10, 2012, and February 17, 2012, Vander Broek complained of diarrhea and had a CT scan performed on her abdomen and pelvis, which showed she had lumbar dextroscoliosis and spondylosis, extensive atherosclerosis, and changes from prior hysterectomy and colectomy. The medical records show that Vander Broek requested a note for work regarding her long-term bouts of diarrhea.
- 23.** On March 9, 2012, Vander Broek was seen at Sanford Clinic in Canton, SD by Dr. Michelle Johnson. She complained of neck pain and a headache. She was given an injection of Toradol and a Medrol Dosepak. Dr. Johnson ordered an x-ray of Vander Broek's cervical spine which was negative for any acute bony changes or significant degenerative changes. Dr. Johnson also thought a spinal tap may be necessary.
- 24.** On March 12, 2012, Vander Broek called Dr. Johnson's office and indicated that she had not been able to work due to neck pain. Dr. Johnson arranged for an MRI. Vander Broek visited the emergency room at Sanford for headaches and tingling sensations in her arms. At the emergency room, Dr. Singh ordered a CT of Vander Broek's head and spine which was negative. Vander Broek was discharged to follow up with her primary doctor.
- 25.** On March 13, 2012, Vander Broek returned to Dr. Johnson complaining of neck pain and headaches.
- 26.** On March 14, 2012, Vander Broek underwent a spinal tap. Dr. Johnson noted that the culture from the tap was normal.
- 27.** On March 16, 2012, Dr. Spencer noted Vander Broek complained of tingling in the extremities, headache with weakness on the left side of her body, drooping

eyes, dry heaves, pain all over her body, and her face felt like it was drooping. Dr. Spencer observed that despite Vander Broek's reports of weakness on her left side, she moved her left arm well when she was filling out paperwork, she could indicate and point during her exam, and her neurological examination was not consistent with her history and actions in the room. Vander Broek did not report pain in her lower back.

- 28.** On March 26, 2012, Vander Broek underwent an MRI of the cervical spine which no suspicious or acute bone abnormalities. It revealed minimum degenerative changes to her cervical spine without significant spinal canal or neural foraminal narrowing.
- 29.** On March 30, 2012, Vander Broek was seen by Dr. Johnson for left arm weakness and pain. She reported that she was worried she would lose her job. Dr. Johnson refilled her prescription and referred her for a neurological consultation. She indicated Vander Broek was to remain off work.
- 30.** On April 5, 2012, Dr. Johnson saw Vander Broek for continued symptoms of left arm pain, numbness, tingling, and headaches. She increased her prescription of gabapentin and instructed her to continue Celexa. She further directed Vander Broek to keep her appointment with neurology. Dr. Johnson kept Vander Broek off work.
- 31.** On April 6, 2012, Vander Broek was seen by Dr. Johnson for left arm pain, numbness, and headaches. Dr. Johnson noted that Vander Broek had experience pain and numbness in her left side since her accident. Dr. Johnson referred Vander Broek to Sanford Physical Medicine and Rehabilitation. She also wanted her to have a stress test before returning to work.

- 32.** On April 3, 2012, Dr. Jerome Freeman saw Vander Broek on a referral from Dr. Johnson. Vander Broek reported headaches as well as numbness and weakness in her arm and leg. Dr. Freeman noted that he did not think that the totality of her symptoms was a result of the accident. He recommended additional laboratory tests and an MRI of Vander Broek's brain and lumbar spine. He also recommended a formal psychiatric consultation.
- 33.** On April 12, 2012, Vander Broek was seen by Dr. Freeman at Sanford Neurology. He examined Vander Broek and found her motor examination results were inconsistent. She underwent a nerve conduction study which revealed moderate bilateral carpal tunnel syndrome and slight left ulnar nerve dysfunction. Dr. Freeman concluded that Vander Broek had a combination of physical and emotional factors contributing to her lower back condition. He recommended a formal psychiatric consultation, and he opined that he did not think the totality of her symptoms are the result of the truck accident.
- 34.** On April 16, 2012, Vander Broek was seen by Dr. Johnson for left arm pain, numbness in both arms, and left leg numbness which progressively worsened since the accident. Dr. Johnson noted that Vander Broek was anxious to return to work. She wanted her to be seen by Dr. Thomas Boetel at Sanford Physical Medicine and Rehabilitation. She continued Vander Broek's prescriptions for gabapentin and pain medication, and she indicated she should stay off work.
- 35.** On April 17, 2012, Vander Broek was seen by Dr. Chad Tieszen at Tieszen Chiropractic Clinic. She reported lower back pain which radiated into her left leg and neck pain with numbness into her left arm since her accident. Dr. Tieszen diagnosed her with multilevel segmental dysfunction with accompanying

myofasciitis and spasm producing significant pain through the neck, upper back, and lower back. Dr. Tieszen treated Vander Broek with electrical stimulation and chiropractic adjustments to the affected areas. Vander Broek had twelve additional chiropractic treatments between April 19, 2012, and June 22, 2012.

36. On April 19, 2012, Vander Broek was seen by Dr. Johnson complaining of bilateral arm pain, numbness in her hands, and left leg weakness. Dr. Johnson noted the symptoms started when Vander Broek was in the accident. She also noted that Vander Broek also developed left leg and lower back pain within weeks of the accident. Dr. Johnson ordered blood tests, x-rays, and an MRI. She also ordered steroids for the arm pain. She prescribed Lortab and instructed Vander Broek to return in a month.

37. On April 21 and 22, 2012, Vander Broek was seen by Dr. Johnson for left arm pain, bilateral arm numbness, and left leg numbness. Dr. Johnson noted that the MRI of Vander Broek's c-spine was unremarkable. Dr. Johnson wanted to wait for the appointment with Dr. Boetel to see if he had any further treatment options.

38. On April 26, 2012, Vander Broek was seen by Dr. Boetel. She told him that her headaches, neck pain, and back pain began on December 17, 2011. Dr. Boetel recommended a lumbar MRI. He prescribed Flexeril and recommended a home exercise program.

39. On April 29, 2012, Vander Broek was seen by Dr. Johnson for left arm numbness and pain, left leg numbness, and headache. Dr. Johnson recommended an MRI of the brain and lumbar spine. She prescribed Percocet and Mobic.

- 40.** On May 4, 2012, Vander Broek was seen by Dr. Johnson for left arm pain, left leg pain, and back pain. Dr. Johnson indicated that Vander Broek could not work while going to physical therapy.
- 41.** On May 15, 2012, Vander Broek returned to Dr. Boetel for continued low back pain and bilateral leg pain. Dr. Boetel reviewed the MRI results and indicated the most significant findings of the MRI were at the L2-3 level of her lumbar spine where there was a central and lateral recess stenosis on the left which contributed to the irritation of the left L3 nerve root. He wanted her to continue with physical therapy for another month and if there was no improvement to proceed with an epidural steroid injection.
- 42.** On May 26, 2012, Dr. Johnson saw Vander Broek for left arm, left leg, and lower back pain. Vander Broek described the pain as constant. Dr. Johnson refilled her prescriptions and kept Vander Broek off work while in physical therapy.
- 43.** On May 30, 2012, Vander Broek had an MRI of the lumbar spine which revealed:
- a. Mild L2-3 central spinal stenosis with a narrowing of the left lateral recess at L2-3 possibly irritating the L3 nerve root;
 - b. Mild spondylotic left L2-3 neural foraminal narrowing;
 - c. Minimal grade 1 degenerative spondylolisthesis of the L4 and L5 without spinal stenosis or nerve root impingement.
 - d. Mild spondylotic right L5-S1 neural foraminal narrowing and
 - e. Dextorconvex curvature of the lumbar spine
- 44.** On June 20, 2012, Vander Broek was seen by Dr. Johnson. She requested an MRI and return to work as she stated she could do desk work. Vander Broek

was referred to neurosurgery to determine whether surgical intervention was warranted, and she received a note releasing her to work a seated job where she could stand and walk periodically.

45. On June 21, 2012, Dr. Scott Atchison performed a left interlaminar L2-3 epidural steroid injection with epidurogram.

46. On June 20, 2012, Dr. Johnson referred Vander Broek for a neurological consultation. She continued her prescription for Percocet and released her to work with restrictions that she had a seated job with optional standing and walking periodically and no heavy lifting.

47. On June 25, 2012, Dr. Bryan Wellman saw Vander Broek upon referral from Dr. Johnson. Vander Broek reported that she was experiencing left-sided back pain which radiated into her left leg. Dr. Wellman noted that Vander Broek had weakness of her iliopsoas consistent with L2 radiculopathy. He recommended a L2-3 epidural injection. He also indicated that if she did not receive relief from the epidural injection she would be a candidate for an L2-3 lateral interbody fusion.

48.

49. On June 29, 2012, Vander Broek called Dr. Wellman's office and reported that she did not receive any relief from the epidural injection and wanted to proceed with the surgery.

50. On August 29, 2012, Dr. Wellman performed an interbody fusion with rod and pedicle screw fixation at the L2-3 level with recessed foraminal decompression.

51. On September 9, 2012, Vander Broek was seen in the emergency room with increased lower back pain, right leg pain, and incontinence of bowel and

bladder. An MRI was ordered. The emergency room doctor increased Vander Broek's prescription of Percocet and started her on a Medrol Dosepak.

52. On January 10, 2013, Vander Broek informed Dr. Wellman she was moving to Florida. Dr. Wellman indicated Vanderbroek should remain off work until she recovered. He noted that Vander Broek did not want to return to work as a truck driver.

On the same day, Dr. Paul Cederberg performed a review of Vander Broek's medical records. He noted she had been diagnosed with (1) resolved lumbar strain from alleged motor vehicle accident; and (2) pre-existing lumbar degenerative disc disease at L2-3. Dr. Cederberg opined that future treatment was no longer necessary related to the accident, as Vander Broek was released with her insistence on December 30, 2011. He opined that she had reached MMI on that date. He found no evidence of permanent partial disability as a result of the accident.

53. On June 10, 2013, Vander Broek had been working as a limousine driver. On that day, she was admitted to North Okaloosa Medical Center as she had been found unconscious on the floor due to loss of blood pressure. After she woke, she had left-sided facial droop and a headache. A CT scan was performed of her brain which showed signs of infarction and edema.

54. On August 21, 2013, Dr. David Hoversten performed an independent medical examination (IME) of Vander Broek. He found significant pain and stiffness in her hip, likely due to osteoarthritis. Dr. Hoversten opined that the accident may have caused a flare-up of back pain which was appropriately treated and diagnosed by Dr. Van Balen. He found that the temporary exacerbation lasted

only about a month until Vander Broek returned to her pre-injury self. Dr. Hoversten opined that Vander Broek's psychological issues played a substantial part in her claims of disability. He further found that the spinal surgery was appropriate, but the reason for the surgery was chronic degenerative changes and severe scoliosis. He opined that her back deterioration had started long before the accident.

- 55.** On January 10, 2014, Dr. Stephen Kazi performed a review of Vander Broek's medical records. He found that the accident caused a temporary exacerbation of Vander Broek's underlying degenerative changes but did not result in a structural change to the spine. He opined that Vander Broek had age-related multiple level degenerative disc disease and bilateral carpal tunnel. Dr. Kazi further found that there was no injury to Vander Broek's C-Spine, and her subsequent treatment for lower back pain. He determined she reached MMI on December 30, 2011, when she denied any pain and was released to work without restrictions.
- 56.** On July 2, 2014, Vander Broek was seen by The Vein Center for bilateral pain in both legs. She was recommended for the management of cellulitis and antibiotic therapy. She was instructed to follow up if her symptoms worsened.
- 57.** On April 29, 2015, Vander Broek was seen by Dr. Mark J. Katzenstein for fatigue, tiredness, and chest pain. An EKG showed right axis deviation with left bundle. He ordered further testing.
- 58.** On July 8, 2015, Vander Broek was seen by Dr. Aaron B. Montgomery for swelling in her calves. He ordered a bilateral lower extremity venous ultrasound which showed normal results.

- 59.** On August 21, 2015, Vander Broek underwent a cardiac stress test which showed no abnormalities.
- 60.** On October 21, 2015, Vander Broek was seen by Dr. Montgomery for lower leg swelling with discoloration in her toes. He ordered bilateral lower extremity venous ultrasound which showed normal vascular flow. He prescribed compression hose and told her to follow up in twelve (12) months.
- 61.** On October 22, 2015, Vander Broek went to the North Okaloosa Medical Center emergency room for shortness of breath. She underwent a stress test which was negative.
- 62.** On March 31, 2016, Vander Broek went to Dr. Marcello Borzatta for right leg pain. He ordered an ultrasound which was negative.
- 63.** On September 22, 2016, Vander Broek was seen by Dr. Nicholas Nagrani for chronic kidney disease.
- 64.** On September 29, 2016, Vander Broek underwent an MRI the results of which were normal. She also underwent a chest x-ray which showed no acute cardiopulmonary disease.
- 65.** On April 29, 2015, Dr. Katzenstein saw Vander Broek for a follow-up for hypertension and a left bundle branch block.
- 66.** On May 10, 2017, Vander Broek underwent an EKG which was abnormal. Dr. Katzenstein referred Vander Broek to Dr. Michael Yanel for a stress test.
- 67.** On October 21, 2015, Vander Broek was seen by Dr. Montgomery for swelling in her legs and discoloration of her toes. He performed a lower extremity ultrasound which showed no deep vein thrombosis, venous reflux, and complete

closure of varicosities following foam ablation. He diagnosed her with asymptomatic varicose veins in her legs.

- 68.** On November 9, 2015, Vander Broek went to Crestview-Okaloosa Cardiology after being hospitalized for hyperlipidemia and hypertension with accompanying chest pain. Dr. Katzenstein ordered an EKG as well as a right and left heart catheterization.
- 69.** On February 8, 2016, Vander Broek went to the Gulf Coast Pain Institute for chronic low back pain. She was recommended to continue physical therapy and prescribed Ultram and Zanaflex.
- 70.** On February 12, 2016, Vander Broek had an MRI of her lumbar spine which showed severe scoliosis, but no gross disk protrusions or herniation.
- 71.** On February 26, 2016, Vander Broek was seen at Gulf Coast Pain Institute for chronic intractable back pain following a failed back surgery.
- 72.** On April 25, 2016, Vander Broek was seen for lower back pain with leg pain. She was prescribed one month of Percocet then transitioned to tramadol.
- 73.** On June 16, 2015, Vander Broek was seen at the Mayo Clinic. She reported that sometime two years prior in 2013 she had fallen and struck the left side of her neck.
- 74.** On June 22, 2016, Vander Broek was seen for her lower back pain. Audrey Sisney, NP noted that hydrocodone was not relieving her pain, so she started her on Percocet. She also scheduled a dorsal medial branch block.
- 75.** On July 20, 2016, Dr. David Fairleigh saw Vander Broek for lower back pain. He recommended a dorsal medial branch block with follow-up treatment including rhizotomy. Vander Broek underwent the recommended treatment that day.

- 76.** On July 26, 2016, Vander Broek saw Sisney for lower back pain radiating into her legs. Sisney thought the pain might be discogenic. She instructed Vander Broek to take the Percocet consistently and prescribed Decadron.
- 77.** On August 17, 2016, Vander Broek was seen by Dr. Fairleigh for low back pain that radiated into her legs. He recommended intralaminar epidural injection under fluoroscopy.
- 78.** On September 27, 2016, Vander Broek was seen by Sisney for lower back pain that radiated into her legs. Sisney noted the dorsal medial branch block had provided no pain relief.
- 79.** On October 3, 2016, Vander Broek was seen at the Fort Walton Beach emergency department for left-sided headache, left arm pain, and nausea. The emergency room ordered blood tests, chest x-ray, EKG, and CT of the brain. Vander Broek was diagnosed with headache and narcotic withdrawal.
- 80.** On November 22, 2016, Vander Broek was seen by Sisney for lower back pain with radiculopathy into her lower extremities. Sisney indicated a spinal cord stimulator was appropriate and scheduled her for psychological clearance.
- 81.** On January 7, 2017, Vander Broek was seen by Paige Stephenson, Psy.d. to assess Vander Broek's psychological candidacy for a spinal cord stimulator. Dr. Stephenson recommended Vander Broek for the surgery and that afterwards she participate in cognitive behavioral therapy with a focus on pain coping skills.
- 82.** On February 21, 2017, Vander Broek was seen by Sisney who ordered blood testing to determine whether she was complying with her narcotic drug regimen. Norco was prescribed.

- 83.** From March 7, 2017, to September 1, 2017, Vander Broek was seen multiple times for low back pain.
- 84.** On September 18, 2017, Vander Broek was seen at Gateway Medical Clinic. She was diagnosed with hypertension, hyperlipidemia, COPD, neuropathy, vitamin D deficiency, chronic kidney disease (stage 3), anxiety, bipolar disorder, ADHD, osteoporosis, fatigue, varicose veins in the lower extremity, intermittent urinary incontinence, right eye cataract, and obesity.
- 85.** On September 29, 2017, Sisney saw Vander Broek for low back pain. She noted Vander Broek suffered constant pain in her lower back with increased activity. Sisney prescribed Percocet and oxycodone. She referred Vander Broek to Baptist Neurosurgery Group because the hardware implanted in her back had loosened.
- 86.** On October 13, 2017, Vander Broek was seen by Sisney for a follow-up for chronic pain management for failed lumbar surgery.
- 87.** On January 30, 2018, Dr. Fairleigh saw Vander Broek for low back pain and lower extremity radicular pain. She received an injection of Toradol and a refill on her medication.
- 88.** On June 17, 2019, Vander Broek was admitted to the Mayo Clinic's emergency room for acute respiratory failure with hypoxia. She was nonresponsive and intubated. She was treated with physical therapy and occupational therapy. The notes reflect she also suffered severe back pain. Vander Broek reported her pain was exacerbated by a left shoulder injury resulting in fracture. She was prescribed Percocet and Narcan nasal spray.

- 89.** On August 28, 2019, and September 24, 2019, Vander Broek was seen for lower back pain
- 90.** On October 15, 2019, Vander Broek underwent an x-ray after she sustained a fall at home. The x-ray revealed mild to severe osteoarthritis most evident along the inferior lumbar spine.
- 91.** On October 28, 2019, Vander Broek was seen by Kimberly Jackson, NP after suffering a left wrist fracture and bruised ribs following a fall at home.
- 92.** On November 13, 2019, Christopher Menster, PA-C saw Vander Broek for lower back pain with radicular symptoms. He noted her pain was severe and she had poor balance. He recommended x-ray, CT myelogram, MRI, and pain management.
- 93.** On December 4, 2019, Vander Broek underwent an MRI which showed dextroscoliosis curvature of the L spine with prior L2-3 fusion, no significant bulge, herniation or central canal stenosis, mild multilevel degenerative changes with small bulges, and multilevel facet arthropathy with scoliotic curvature causing mild to moderate neural narrowing.
- 94.** On December 10, 2019, Vander Broek was seen by Dr. Hoang Vu Do at Florida Pain and Rehabilitation for right hip pain and lower back pain. The notes indicate she suffered from lumbar post-laminectomy syndrome, lumbar radiculopathy, long-term drug therapy, low back pain, and right hip pain. Dr. Do noted that Vander Broek had been experiencing lower back pain with radiculopathy since the date of the accident and was on chronic opiate therapy. Dr. Do recommended Vander Broek undergo testing to determine her suitability for insertion of a pain pump.

- 95.** On December 11, 2019, Vander Broek was seen for lower back pain that radiated into her legs. Jay Nagel, PA-C recommended pain management and possibly a pain pump.
- 96.** On December 18, 2019, Vander Broek was seen by Dr. Hares Akbary. Vander Broek reported having pain in her lower back that radiated into her legs from the truck accident, and that the pain had progressively worsened. Dr. Michael Hanes performed lumbar medial branch blocks at the visit.
- 97.** On January 8, 2020, Vander Broek was seen by Dr. Do for lower back pain with associated lower extremity radiculopathy. Dr. Do started her on a trial of Fentanyl. He directed her to use the Percocet for break through pain.
- 98.** On February 2, 2020, Vander Broek was seen by Dr. Jackson for medical clearance for the insertion of a pain pump. Vander Broek was not cleared due to high blood pressure.
- 99.** On January 7, 2020, Dr. Hanes saw Vander Broek for lower back and leg pain. He referred her for psychological evaluation prior to implantation of an intrathecal pain pump trial.
- 100.** On February 6, 2020, Vander Broek was seen by Dr. Joseph Mignone for osteoporosis. He noted that she had a fusion of L2-3 after a motor vehicle collision in 2011, and since that time, she had suffered lower back pain that radiated into her lower extremities. He diagnosed her with idiopathic osteoporosis.
- 101.** On February 7, 2020, Dr. Hanes placed the pain pump. Vander Broek reported significant pain relief without side effects as a result of the procedure.

102. On March 8, 2020, Vander Broek was seen for chronic low back pain. A morphine pump was recommended.
103. On March 9, 2020, Vander Broek saw Dr. Jackson for inability to do household chores due to back pain and lack of mobility. Vander Broek reported she had several falls because of her low back pain which presented a safety concern. Dr. Jackson approved the use of a motorized wheelchair for Vander Broek. Vander Broek's cardiology report came back satisfactorily, and Vander Broek was cleared for the insertion of a pain pump.
104. In April 2020, Vander Broek suffered a fall resulting in a fractured radius requiring surgery and resulting in infection.
105. In June 2020, Vander Broek reported to Jacksonville Spine & Pain Center with a suspected compression fracture. She had multiple compression fractures in her mid-back.
106. On June 10, 2020, Vander Broek was seen by Vinh-Loc Nguyen, PA for lumbar post-laminectomy syndrome. Nguyen ordered urodynamic testing.
107. Between June 30, 2020, and August 26, 2020, Vander Broek's medications were adjusted by Dr. Hanes.
108. On July 22, 2020, an MRI of Vander Broek's spine revealed she had advanced facet disease at L4-5 and L5-S1 and mild anterior compression deformity at T11, T12, and L1.
109. In September 2020 Vander Broek had a morphine pain pump implanted.
110. Additional facts may be developed in the issue analysis below.

Issue:

The issues presented at hearing were

- a. Causation
- b. Nature and extent of injury
- c. Permanent and total disability

Causation and Nature and Extent of Injury Analysis:

To prevail on the issues of causation and nature and extent of injury, Vander Broek must first prove that the motor vehicle accident on December 17, 2011, is a major contributing cause of [her] condition pursuant to SDCL 62-1-1(7) which provides,

- (7) "Injury" or "personal injury," only injury arising out of and in the course of the employment, and does not include a disease in any form except as it results from the injury. An injury is compensable only if it is established by medical evidence, subject to the following conditions:
 - (a) No injury is compensable unless the employment or employment related activities are a major contributing cause of the condition complained of; or
 - (b) If the injury combines with a preexisting disease or condition to cause or prolong disability, impairment, or need for treatment, the condition complained of is compensable if the employment or employment related injury is and remains a major contributing cause of the disability, impairment, or need for treatment;
 - (c) If the injury combines with a preexisting work related compensable injury, disability, or impairment, the subsequent injury is compensable if the subsequent employment or subsequent employment related activities contributed independently to the disability, impairment, or need for treatment.

Vander Broek is "not required to prove [her] employer was the proximate, direct, or sole cause of [her] injury." *Smith v. Stan Houston Equip. Co.*, 2013 S.D. 65, ¶ 16, 836 N.W. 2d 647, 652. She also does not need to prove that her work activities were "'the' major contributing cause" of the injury; they only have to be "'a' major contributing cause." *Peterson v. Evangelical Lutheran Good Samaritan Society*, 2012 S.D. 52, 21, 816 N.W.2d 843 at 850. She must prove "that employment or employment-related activities [are] a major contributing cause of the condition of which she complained, or, in cases

of preexisting disease or condition, that employment or employment-related injury is and remains a major contributing cause of the disability, impairment, or need for treatment.” *Norton v. Deuel School Dist. No. 19-4*, 674 N.W.2d 518, 521 (S.D. 2004). The standard of proof for causation in a worker’s compensation claim is a preponderance of the evidence. *Armstrong v. Longview Farms, LLP*, 2020 SD 1, ¶ 21, 938 N.W.2d 425, 430.

Causation is a medical question, and both parties have offered expert medical opinion. “The testimony of professionals is crucial in establishing this causal relationship because the field is one in which laymen ordinarily are unqualified to express an opinion.” *Day v. John Morrell & Co.*, 490 N.W.2d 720, 724 (S.D. 1992).

Vander Broek has offered the medical opinion of Dr. Johnson and Dr. Wellman. Dr. Johnson graduated from Northwestern College and attended medical school in Des Moines, Iowa. In 2006, she began practicing family medicine in Sioux Falls. Then in 2009, she began working at the Canton Medical Clinic. Dr. Johnson was Vander Broek’s primary care physician from March 2002 to August 2012. At her deposition in 2014, Dr. Johnson opined that the truck accident on December 17, 2011, was a major contributing factor of Vander Broek’s neck and lower back injury. She also opined that the medical treatment Vander Broek received for her neck, arm, lower back, and leg pain was reasonable and necessary. Dr. Johnson concluded that Vander Broek is at MMI, and that she suffers and will continue to suffer severe, debilitating, and chronic pain in her lower back and left leg. She further concluded that Vander Broek was to remain off work due to the pain in her lower back and left leg.

At the time of her deposition, Dr. Johnson had not reviewed the IME reports of Dr. Hoversten and Dr. Kazi or the IME report of Dr. Cederberg. She has not provided an updated expert report since her deposition. Dr. Johnson testified at deposition that she would defer to the opinions of the orthopedic surgeons and to Dr. Boetel's analysis of Vander Broek's lumbar MRI which showed multilevel degenerative changes. She also stated she would defer to Dr. Freeman's opinion regarding the potential psychological contribution to Vander Broek's physical condition.

Dr. Johnson based her opinion largely on what was reported to her by Vander Broek. She was not aware of Vander Broek's treatment in Florida or her instances of falling. Dr. Johnson stated she would need to review Vander Broek's records from Florida in order to form an opinion regarding whether the accident remained a major contributing cause of her current condition. Dr. Johnson also testified that she was not aware of an objective reason for Vander Broek's continued complaints.

Dr. Wellman is a graduate of Case Western Reserve College and the University of Pennsylvania Medical School. He graduated from medical school in 1993 and completed his residency in neurosurgery at the University of Iowa in 1999. Following his graduation, he went into private practice in the suburbs of Chicago for two years. He practiced in Sioux Falls from 2002 to 2022. Dr. Wellman is certified by the American Board of Neurosurgery and 80% of his practice is devoted to spinal surgery. He is licensed to practice medicine in South Dakota.

Dr. Wellman ordered an epidural injection at the L2-3 lateral interbody of Vander Broek's spine. She did not receive any relief from the procedure, and he

thus concluded she was a surgical candidate. Dr. Wellman performed an extreme lateral interbody fusion of the L2-3 on Vander Broek on August 29, 2012. He opined that the truck accident was a major contributing factor to Vander Broek's symptoms and need for surgery. Dr. Wellman has not seen Vander Broek or reviewed any of her records since 2012. During his deposition, he stated he did not know her current condition or its cause. He further stated that he believed Vander Broek did not have issues before the truck accident that warranted care and that it was important to take prior symptoms into account when forming a causation opinion. He based his opinion on what Vander Broek reported to him, and she said her symptoms were related to the accident. Dr. Wellman testified in deposition that if Vander Broek had the exact symptoms before the accident, then it would indicate the accident was unrelated. He opined that an individual may appear to get better for a period of time but then the pain will return. Therefore, he concluded that someone feeling better would not indicate an issue had been resolved.

Dr. Wellman reviewed Vander Broek's post-accident MRI which revealed scoliosis, degeneration, and spondylolisthesis in the area he felt caused her issues. He testified that spondylolisthesis could be asymptomatic, or it could cause pain in the back and leg. He also stated it was not uncommon for degenerative disk disease, scoliosis, and spondylolisthesis to worsen over time. Dr. Wellman did not connect the degeneration shown in the MRI to the truck accident. He opined that Vander Broek's pain complaints were related to the narrowing of her spine which was caused by scoliosis with which Vander Broek was either born with or developed over time. Dr. Wellman stated that the MRI did not reveal anything that connected

Vander Broek's condition to the accident, but that was not unusual for imaging. He further stated that whether Vander Broek's degenerative changes were caused by the accident was unknown and it is possible the changes were there before the incident. He opined that it was possible for degenerative changes to be caused by an accident. However, he stated that he did not believe that the degenerative disk disease or scoliosis were caused by the accident.

Employer and Insurer have offered the expert medical opinion of Dr. Eric M. Deal. Dr. Deal is a practicing Orthopedic Spine Surgeon at Twin Cities Orthopedics. He graduated from the University of North Dakota School of Medicine & Health Sciences in 2007. He then completed a fellowship for spine surgery in Phoenix, Arizona. Dr. Deal is licensed in Minnesota and certified by the American Board of Orthopedic Surgery.

Dr. Deal performed a review of Vander Broek's medical records including records from before and after the accident. At his deposition, he testified that having medical records preceding the injury was vital to forming a causation opinion. He also reviewed the depositions in this matter. Following his review, Dr. Deal opined that the accident was not a major contributing cause of any treatment Vander Broek received after December 30, 2011, or for the surgery performed by Dr. Wellman. Dr. Deal found it significant that Vander Broek had required treatment and narcotic medication for her back pain at times prior to the accident from at least 2005. He further opined that an injury was not necessary to have back pain.

Dr. Deal also testified that a diagnosis of a sprain/strain from the accident was the most common diagnosis when a patient presents with acute onset low back pain

in the lumbar spine. At his deposition, Dr. Wellman also opined that someone could have had a sprain/strain, recover, and then have issues with their lumbar spine unrelated to the sprain. Dr. Deal noted that Vander Broek's MRI did not show objective findings to explain her positive straight-leg test. He noted that the x-ray of her spine taken on December 20, 2011, showed scoliosis and degenerative changes which were not caused by the accident. He specifically noted that her L2 vertebra had rocked backward onto her L3 vertebra, a condition called retrolisthesis. Dr. Deal stated that degenerative disc disease worsens over time. He also stated that the spinal stenosis shown in Vander Broek's MRI might cause pinched nerves, but it would not have been caused by an accident as it usually takes time to develop. He further found the MRI showed spondylitic left L2-3 neuroforaminal narrowing and that such changes are equivalent to arthritis. He opined that none of the MRI findings were acute, and that the accident was not a major contributing cause of the findings.

Dr. Deal opined that a sprain/strain is painful, but recovery is expected within 3 to 6 weeks. He explained that Vander Broek's report of no pain and a negative straight-leg test by December 30, 2011, was consistent with sprain/strain. He concluded that she had recovered from her sprain/strain and had reached MMI on December 30, 2011. Dr. Deal considered Vander Broek's representations to her physicians inconsistent. Specifically, he found her complaint of low back pain and left leg pain on March 9, 2012, would not be consistent with the right-sided pain she complained of right after the incident. He also noted it would be unusual for her to have injured a disk and not have symptoms for three months. He concluded that

there was no objective basis or medical evidence to explain Vander Broek's lower back pain aside from the degenerative changes. Further, Dr. Deal agreed with Dr. Freeman's assessment that Vander Broek's mental health could play a role in her symptoms.

Upon review of the above facts and the medical experts' opinions, the Department concludes that Vander Broek has failed to meet her burden of proof that the accident on December 17, 2011, is a major contributing cause of her current condition. Both Dr. Johnson and Dr. Wellman have opined that the accident was a major contributing cause. However, during their depositions, both doctors provided testimony that countered that assertion. Both of Vander Broek's experts relied heavily on her own account of her condition and its origin. Thus, both doctors were of the belief that Vander Broek did not suffer symptoms before the accident, which is incorrect. Vander Broek had a history of lower back pain and leg pain prior to the accident. In addition to not having a firm basis for their opinion, neither doctor had been provided Vander Broek's subsequent medical records or provided an updated expert report. The South Dakota Supreme Court has provided that "[e]xpert testimony is entitled to no more weight than the facts upon which it is predicated." *Darling v. West River Masonry Inc.*, 2010 S.D. 4, ¶ 13, 777 N.W.2d 363, 367. The medical evidence provided "must not be speculative, but rather must be 'precise and well supported.'" *Vollmer v. Wal-Mart Store, Inc.*, 2007 S.D. 25, ¶ 14, 729 N.W.2d at 382 (citations omitted). Dr. Johnson testified that without updated medical records she could not render a causation opinion regarding the major contributing cause of Vander Broek's current condition. Dr. Wellman stated that he was not providing an opinion regarding Vander Broek's

current condition. Additionally, Dr. Deal's opinion that Vander Broek suffered a sprain/strain which resolved by December 30, 2011, is well-supported. Dr. Deal considered Vander Broek's condition both before and after the accident, and his conclusions are consistent with the common course of a sprain/strain injury and the fact Vander Broek reported no pain on December 30, 2011. Therefore, Vander Broek has failed to provide well-supported, medical expert opinion regarding her current condition or need for treatment, and she cannot meet her burden of proof.

To be entitled to permanent and total disability, Vander Broek must prevail on the issues of causation and nature and extent of injury. As she has failed to prove causation, the Department will not consider her eligibility for permanent and total disability.

Conclusion:

Vander Broek has failed to prove that her work injury is a major contributing cause of her current condition. The Department will not decide whether Vander Broek is permanently totally disabled as she has failed to prove causation.

Employer and Insurer shall submit Findings of Fact and Conclusions of Law and an Order consistent with this Decision within twenty (20) days from the date of receipt of this Decision. Vander Broek shall have an additional twenty (20) days from the date of receipt of Employer and Insurer's Proposed Findings and Conclusions to submit objections thereto and/or to submit their own 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 and Insurer shall submit such Stipulation along with an Order consistent with this Decision.

Dated this 13 day of October, 2022.

SOUTH DAKOTA DEPARTMENT OF LABOR & REGULATION

A handwritten signature in blue ink that reads "Michelle Faw". The signature is written in a cursive, flowing style.

Michelle M. Faw
Administrative Law Judge