

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

JAMES "JAKE" MORDHORST,

HF No. 13, 2014/15

Claimant,

v.

DECISION

FISCHER FURNITURE, INC.,

Employer,

and

DAKOTA TRUCK UNDERWRITERS,

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 Donald W. Hageman, Administrative Law Judge, on January 15, 2015, in Rapid City, South Dakota. Claimant, James "Jake" Mordhorst was represented by Michael J. Simpson. The Employer, Fischer Furniture, Inc. and Insurer, Dakota Truck Underwriters were represented by Michael S. McKnight.

Legal Issues:

The legal issue presented at hearing is stated as follows:

1. Whether Mordhorst's work injury on November 10, 2011, is a major contributing cause of his current condition?
2. Whether Mordhorst's treatment has been reasonable and necessary?

Facts:

The Department finds the following facts by a preponderance of the evidence:

1. James "Jake" Mordhorst (Mordhorst) was 24 year old at the time of the hearing. He began working for Fischer Furniture (Employer) located in Rapid City, South Dakota when he was 20 years old as an in-town delivery driver. In this job, he was responsible for delivering furniture such as sofas and Lazy Boys and beds and other types of furniture. His job description stated that he needed to be able

to lift 150 pounds. Mordhorst eventually began making out of town deliveries which had the same duties except that he had longer hours and bigger deliveries.

2. Mordhorst did not have any trouble doing the physical duties of a delivery driver. He worked 40 hours a week, sometimes working overtime. He also had no trouble performing his prior jobs which were all physically demanding.
3. On November 10, 2011, Mordhorst and another worker were unloading a sofa from a truck in Gillette, Wyoming. Mordhorst was on the ground getting cardboard out of the way and making sure everything was ready for unloading. While he was facing away from the truck, the sofa which was standing on end, tipped over and fell out of the truck, hitting him on the back of the head and pushed his head and neck downward and forcing him to the ground where he laid unconscious for a few seconds. The sofa weighed about 275 pounds. A wood support beam on the bottom of the sofa is what struck Mordhorst on the back of the head. Mordhorst helped his partner make a couple more deliveries and then they traveled back to Rapid City.
4. On November 11, 2011, Mordhorst went to work and told his supervisor that he was hurt and needed medical treatment.
5. On November 11, 2011, Mordhorst was seen at Rapid City Medical Center by physician's assistant Michelle Hagen. Hagen reported that a sofa fell from an upright position and hit him on the top of the head and his chin hit his mid-chest. Hagen reported that his front tooth hurts also from jamming his teeth together and that his neck has been really tight on the posterior and right side. He reported his pain at an eight and Hagen noted a bump on the anterior top of his head which measured approximately four centimeters. Hagen noted that range of motion of the cervical spine was limited due to pain and that right shoulder movement caused pain in the neck and radiculopathy into the first through third fingers. He was unable to fully extend his arm forward or do external rotation.
6. Mordhorst's neck, mid-back and right arm and hand were asymptomatic prior to the November 10, 2011 injury.
7. On November 14, 2011, Mordhorst was seen again by Hagen who noted he had been taking a Medrol dose pack and Flexeril two times a day and using Floector patches for pain. He was complaining of numbness which had moved into his entire hand and a constant headache at the base of his skull, frontal and the occipital area. He continued to have decreased range of motion of the right shoulder due to pain.
8. On November 14, 2011, an MRI was done of Mordhorst's cervical spine which showed a mild disk bulge at C3-C4 without definite neural compression.

9. On November 21, 2011, Mordhorst was seen again by Hagen. Mordhorst stated that his pain had significantly improved over the past week and he had mild pain on occasion with movement but only needs to take Advil about every other day. He did continue to have occasional tingling in his right fingers. Hagen noted that the patient has greatly improved and only has mild pain occasionally and that therefore he would be given one more week of work restrictions in order to fully recover from his injury.
10. On November 28, 2011, Mordhorst was seen by Hagen complaining of a little pain and "zings" especially with forward protrusion of his neck. Hagen referred him to chiropractor for further treatment as she had ruled out any severe nerve issues at this time.
11. On November 30, 2011, Mordhorst was seen by Dr. Strain at Strain Chiropractic Clinic. Mordhorst reported that he was getting very little relief with anything he had tried thus far and had pain and is tight in his neck and upper back on the right with pain and numbness into his thumb, pointer and middle finger on the right. Strain noted a decrease in sensation in the C6-7 dermatome on the right as well as tenderness and muscle spasm in his cervical and thoracic spine.
12. On December 5, 7, 13, 15, 22, and 29, 2011, January 5, and 10, 2012, Mordhorst was seen for chiropractic treatment. The treatment notes describe muscle spasms in his suboccipitals, cervical and thoracic paraspinals, upper and middle traps, levator scap, rhomboids, and intercostals at each visit.
13. On December 13, 2011, Dr. Strain noted Mordhorst was feeling a lot better and had some pain in his middle back but that his neck had been much better. Although he continued to have some numbness in his right hand in the middle three fingers his pinky numbness was gone and his thumb was also back to normal. By December 22, 2011, Mordhorst felt 50 percent of his neck and back pain was gone although he still had constant tingling in the middle three fingers.
14. On January 10, 2012, Mordhorst was continuing to have tingling in his middle three fingers but he felt that his neck and middle back were at a plateau. He stated he felt that he was about 75 percent better overall and continued to have stiffness in his left neck with looking down. Dr. Strain restricted Mordhorst to lifting 50 pounds occasionally and recommended physical therapy for continued pain in his neck and middle back and right hand.
15. On January 24, 2012, Mordhorst was seen by Matt Dormann, a physical therapist with Sports & Orthopedic Assessment and Rehabilitation, Inc. Mordhorst complained of pain and stiffness in his cervical spine that extends down into the mid-back and numbness and tingling in the first three fingers of his right hand. Mordhorst also reported popping in his mid-back that had been fairly frequent and his pain was fairly constant in the afternoon. Dormann noted that Mordhorst had limited thoracic rotation bilaterally and extension, tenderness to palpation

along the parascapular muscles on the right and increased tissue tension in the parascapular muscles and right upper trapezius. Dormann noted a positive nerve tension test in the right upper extremity and that Mordhorst had a positive compression test. Dormann concluded that Mordhorst had mechanical right upper quarter pain symptoms following an injury at work. Dormann further concluded that he demonstrated positive nerve tension that contributes to radicular symptoms into right upper extremity. Dormann recommended that Mordhorst be treated with the use of a home program initially focusing on improving upper quarter mobility and decreasing nerve tension.

16. On February 10, 2012, Mordhorst told Dormann that he felt the exercises were helping although he still having pain symptoms by the end of the day,
17. On February 7, 2012, Mordhorst was seen by Dr. Strain and reported that the physical therapy was really helping his mobility in the day time, but stated that he was still having considerable pain in his middle back, neck, and hand at the end of the day and continued to have tingling in the first three digits. Strain again found tenderness and muscle spasms at multiple areas in his cervical and thoracic spine. Strain referred Mordhorst to the Rehab Doctors for his continued middle back and neck pain and tingling in his right hand and also recommended a TENS unit for home use.
18. On February 28, 2012, Mordhorst was seen by Dr. Christopher Dietrich, a rehabilitation medicine specialist at the Rehab Doctors. Mordhorst complained of 75 percent neck pain with some radiation into the mid scapular and right arm. He noted his pain varied between a two out 10 at its best and 10 out of 10 at its worst. He noted that any bending forward or backward or lifting will increase his pain. He noted that the physical therapy and chiropractic treatment had given him about 50 percent improvement. Dietrich noted that Mordhorst had a head forward, scapular protracted posture which he believed was likely related to compensatory movement patterns and positioning following his work related injury. Dietrich recommended pursuing adjustment/correction in his physical therapy regime with focus on cervicothoracic and scapulothoracic stabilization, correction of his posture, and a trial of traction to settle down symptoms. Dietrich continued his same work restrictions of lifting no more than 40 pounds.
19. On April 3, 2012, Mordhorst was seen by Katie Steever, a physical therapist at About You Physical Therapy. Steever noted that Mordhorst was complaining of neck pain with radiation down his right upper extremity as well as mid to lower thoracic pain as well as complaints of rib pain. Mordhorst was also complaining of numbness and tingling down his right upper extremity and into his thumb, index, and middle finger of his right hand. He noted that day to day activities were difficult, including reaching over his head, getting out of bed, getting his shoes off and on, as well as any rotary movement. Mordhorst complained of pain between a four out of 10 and a 10 out of 10 which increased towards the end of his work day and evening hours. He stated that his pain consistently gets to 7-8

of 10. Steever also noted that Mordhorst demonstrated forward head, rounded shoulder posture with dorsum of hands shown in anterior view. Steever noted that Mordhorst demonstrated overall impaired posture, impaired range of motion, impaired muscle performance with pain limitations that further limit overall patient's functional ability at this time. She recommended physical therapy one to three times per week for two to six weeks.

20. On April 12, 13, 20, and 23, 2012, Steever saw Mordhorst for physical therapy. Mordhorst reported some improvement in his condition during these visits.
21. On May 1, 2012, Mordhorst was seen again by Dr. Dietrich. Dietrich noted that Mordhorst had been to physical therapy and he was working on cervicothoracic and scapulothoracic strengthening and stabilization. He also noted that Mordhorst had acquired a TENS unit and was using ibuprofen. Dietrich noted that Mordhorst had continued thoracic pain that becomes quite severe and causes severe tenderness and pain in through this area. Dietrich recommended obtaining imaging of his thoracic spine. Dietrich wrote "due to the weight of the object that fell on him, I am concerned that he may have a thoracic compression fracture and/or thoracic disc." Dietrich wrote "[I]f it was a sprain/strain I would expect that his symptoms would be resolved or settled down by now." Dietrich continued to recommend physical therapy.
22. On May 10, 2012, Mordhorst had an MRI which showed a shallow central disk protrusion abutting the ventral epidural space and cord with no significant compression. Mordhorst's physical therapy was stopped after he had his MRI.
23. On May 15, 2012, Dietrich saw Mordhorst and he noted the MRI results of a central disc protrusion at T7-8. Dietrich noted that Mordhorst continued to have thoracic kyphosis, scapular protraction and significant tenderness inferior to his shoulder but it is at the T7-8 area. Dietrich noted that these findings were consistent with his MRI findings of disc herniation at this level. Dietrich recommended a T7-8 thoracic epidural injection.
24. On May 29, 2012, Mordhorst had an epidural steroid injection at T7-8.
25. On June 21, 2012, Mordhorst was seen by Dietrich, who noted that after his epidural injection he had about two weeks of relief, but his pain was now coming back. Dietrich noted that Mordhorst had difficulty with bending and was working within his work restrictions and is still limited in many activities. Dietrich noted that even bending forward to grab the handle on the bathtub increases his mid-thoracic and his back pain. Dietrich noted continued thoracic kyphosis and significant pain in the T8 region as well as an area of numbness in the left paraspinal region. Dietrich recommended a neurosurgical consultation and prescribed Tramadol. Mordhorst continued with his 40 pound weight restrictions. Mordhorst was then referred to Dr. Teuber for a surgical opinion.

26. On July 12, 2012, Mordhorst was seen by Dr. Larry Teuber, a Rapid City neurosurgeon. Teuber noted that Mordhorst complained of a headache when his neck hurts which affects his sleep most evenings. Teuber noted Mordhorst had daily neck pain, going into his right trapezius mid-scapular to lower angle scapular discomfort, right shoulder pain, discomfort and aching in his right posterior arm at times and numbness and a diminished sensation in the first, second and third digits of his right hand. Teuber performed a physical examination which showed Mordhorst had slightly restricted range of motion of his cervical spine and tenderness in his paracervical muscle, and at the inferior angle and slightly lower than the scapula in approximately the T6-7 level. Teuber noted the thoracic disk herniation at the T7-8 level on MRI. Teuber noted that he has sustained a hyperflexion injury of the cervical spine and likely affecting the cervicothoracic fascia and muscles resulting in a soft tissue injury. This injury is persistent. It has improved somewhat but nonetheless does affect his sleep and his recreational activities as well as his work activity.
27. Dr. Teuber noted that it was possible there was a mild trauma to the brachial plexus which may have caused the sensory abnormality in the right hand. Teuber also noted that the abnormality might be caused by a median nerve compression commonly found at the carpal tunnel syndrome. Teuber noted the thoracic disk abnormality but did not believe it was a surgical lesion. Teuber believed that the discomfort which extends in a band of radicular discomfort primarily on the right side but does occasionally involve the left side could be a referred type of discomfort from the abnormality in the thoracic spine. Regarding future medical care, Teuber wrote, "The treatment of soft tissue injury, hyperflexion injury in this case which is basically a similar mechanism to a whiplash injury, is difficult and is frequently long term. There is no quick fix, no single remedy, and no assurance that any sort of treatment is going to resolve his symptoms."
28. Dr. Teuber concluded that Mordhorst should continue his adjustment of activity according to his discomfort level, continue his physiotherapy as best he can do so with the proper providers or doing so on his own. Teuber noted that Mordhorst did ask how long it would last, whether he is going to be 100%. Teuber stated "these are questions I can't answer, and I don't believe any provider could."
29. On August 6, 2012, Dr. Dietrich saw Mordhorst again. Mordhorst was having a relative increase recently in his symptoms with increasing mid-back pain with bending, lifting, or any overhead activities. Dietrich noted that Mordhorst had been doing price checks and marking at work and this had caused a significant flare or exacerbation of his symptoms. Dietrich noted some subjective tenderness in the T7-T8 mid-thoracic region. Dietrich noted that "I have serious concerns about him returning back to full, 100% work duties and, at this time, it is likely that he will need to consider a functional capacity evaluation for assessment of his abilities and limitations." Dietrich recommended that

Mordhorst continue with physical therapy, specifically cervicothoracic and scapulothoracic strengthening and stabilization.

30. On August 14, 2012, Mordhorst was seen again by Katie Steever at About You Physical Therapy. Steever noted that Mordhorst was currently on a 20 pound weight restriction for lifting and was taking ibuprofen as needed. She noted that evenings were worse for his symptoms and he was still getting daily headaches. He was using a TENS unit at home and using a decompression stretch that helps relieve his symptoms at night. He rated his neck pain at 4 out of 10 and his mid-back pain at a 4-5 out of 10 through 10 out of 10. Steever noted that his thoracic rotation was limited and he had tenderness in his cervical and thoracic spine and continued to demonstrate impaired posture with protracted shoulder blades with rounded shoulders and forward head.
31. On August 20 and 23, 2012, September 4 and 7, 2012, Mordhorst was seen by Steever for physical therapy. At the September 7, 2012 session, she noted he was feeling better although he still was symptomatic with neck and mid back pain.
32. On September 11, 2012, Mordhorst saw Dietrich. Dietrich noted that Mordhorst had found benefit from cervical traction and manual mobilization at the thoracic spine. Dietrich noted that he was at least 50 percent improved but had some continued and ongoing symptoms. Dietrich noted that Mordhorst was working with restrictions, primarily checking in trucks and was not doing any lifting or using the forklift at all. Dietrich noted continued thoracic kyphosis and scapular protraction and noted that "the plan will be to pursue continuation of his strengthening and stabilization and progression into a corrected posture position." Dietrich wanted to follow up with Mordhorst in four weeks and also pursue a functional capacities evaluation for a better characterization of his work capabilities, limits, and safe parameters. Dietrich also prescribed a foam roll for home use and a home cervical traction unit.
33. On September 20, 2012, the Insurer had Mordhorst see Dr. Nolan Segal for an independent medical evaluation. Dr. Segal issued a reported dated October 11, 2012. Dr. Segal noted that Mordhorst had neck and mid-back pain as well as headaches. Segal's physical exam revealed some limitation in range of motion of the thoracic and lumbar spine, discomfort in his cervical spine with movement and tenderness to palpation in his neck and upper and middle back. Segal noted mid-back pain between T6 and T8 as well as a reported tingling in the right hand. Segal reviewed Mordhorst's medical records and opined that he likely had an acute strain-type injury, but, this would have been temporary. Segal wrote, "[h]is work injury would have required the initial visits through November 28, 2011, [18 days after his injury] and his ongoing care and treatment following that would not be considered a result of that injury." Segal did not believe Mordhorst would require any specific restrictions on his work activities due to his work injury. Segal noted, "[b]ased on the significant discrepancy between his subjective

complaints and the radiologic studies and objective findings, there may well be a functional component to his pain complaints. I am concerned about his subjective complaints of disability and his apparent inability to do numerous things given the lack of radiologic and physical examination findings.”

34. Insurer denied Mordhorst's claim after received Dr. Segal's report. Mordhorst did not have any further physical therapy treatments in the fall of 2012 because he could not afford them.
35. On November 5, 2012, Mordhorst returned to Dr. Dietrich. Dietrich reported continued neck and thoracic region pain and that his symptoms "seem to be progressively worsening." Dietrich noted "he will have significant tenderness in the neck and mid-back and he will find benefit from use of his TENS unit, cervical traction device, foam roll, and home exercises." Dietrich noted that work comp was no longer authorizing or covering his claim. Dietrich released Mordhorst to work with restrictions including 25 pound weight restriction and recommended follow up in three months to assess status.
36. Mordhorst did not get any medical treatment for his neck, mid-back, and headaches, after the November 5, 2012, visit with Dr. Dietrich, until he returned to Dr. Dietrich on February 20, 2014. This was due to the fact that he could not afford further treatment.
37. On February 4, 2013, Mordhorst started a new job as a correctional officer. He took the job as a correctional officer because it was physically easier than what he was doing and it also had better pay. He and his wife also purchased a home in 2013.
38. On February 20, 2014, Mordhorst saw Dr. Dietrich again for treatment. He was complaining of a sharp burning pain and intermittent numbness in the mid-thoracic region which was at its best 2 out of 10 and at its worst 10 out of 10. He continued to complain of numbness and tingling in the right upper extremity as well as muscle spasms and weakness in the shoulders. Dietrich noted that he had had x-rays, MRI and had tried Tylenol, NSAIDS, muscle relaxants and topical agents. Dietrich noted that Mordhorst had significant tenderness in the mid-thoracic region and slight thoracic kyphosis. He also noted markedly limited thoracic range of motion at the extremes of forward flexion as well as significant tenderness and pain at the extremes of extension. Dietrich also noted reproduction crepitus and grinding in the mid-thoracic region. Dietrich recommended a return to physical therapy and use of modalities and mobilizations to return him back to neutral cervicothoracic and scapulothoracic position. He also recommended working on strengthening and stabilization and progression back to his home program. He also prescribed a trial of Lidoderm patches and Hydrocodone for when his symptoms are significantly flared.

39. On February 27, 2014, Mordhorst was seen again by Katie Steever at About You Physical Therapy. Steever noted he had mid-back, neck, and right upper extremity symptoms, with numbness into his thumb to middle finger. She noted that in his new job as a correctional officer he can walk anywhere between five and 12 miles per day and he's constantly taking Advil and Tylenol on a daily basis. She noted that his traction unit and TENS unit had been taken away from him because his work comp claim had been denied. She noted that he has pain most days as he is a new father and had difficulty holding his child due to pain. Steever noted her goals were "hold his child with decreased pain and sit, stand and walk without pain, decrease pain with sleeping." She noted that he had lost 75 pounds since last being seen. Steever recommended physical therapy with emphasis on manual therapy techniques, postural restoration institute exercises and progression of strengthening and stabilization modalities as needed.
40. On March 18, 2014, Dr. Dietrich wrote a letter to Mordhorst's attorney. Dietrich opined that the work injury is a major contributing cause of his current medical condition because "I believe that the furniture falling off the truck, hitting Mr. Mordhorst in the head, neck and upper back region is the major contributing cause of his injury. He has a thoracic disc herniation that has caused continuing ongoing pain, limitations in his function and abilities...." Regarding Dr. Segal's belief that Mordhorst's subjective complaints were not consistent with his objective physical exam findings, Dietrich stated "Mr. Mordhorst is not malingering or overstating his complaints." He wrote, "he has a thoracic disc herniation and when this is loaded or stressed this causes a significant increase in his pain. His pain has been consistent with all examiners, with physical therapy, and on numerous sequential evaluations by myself or in my office. His symptoms and subjective complaints are consistent with a thoracic disk herniation, cervical symptoms and subsequent injury and limitations because of this."
41. On March 24, 2014, Mordhorst saw Dr. Dietrich again. He reported that he started physical therapy and his neck was moving better but he still had some pain and significant tenderness in the mid-scapular region and mid-back region in the CT junction. Dietrich recommended continuation of his physical therapy, strengthening and stabilization program.
42. On May 27, 2014, Mordhorst was seen by Dr. Dietrich for follow up. Dietrich reported that Mordhorst had 12 visits at About You Physical Therapy where they were working on cervicothoracic and scapulothoracic posture, strengthening and stabilization. Mordhorst felt like they were making gains and he was getting stronger. Dietrich noted mid-thoracic pain and burning pain with certain activities as well as neck pain, shoulder pain, and mid-back pain. Dietrich again recommended continuing with physical therapy and advancing and progressing to an independent exercise program.

43. On July 23, 2014, Mordhorst was seen again by Dr. Dietrich who noted that since his last appointment he has had continued neck pain and mid-thoracic region pain. Dietrich noted that Mordhorst was working 88 to 109 hours every two weeks at the Pennington County Jail and his symptoms were up and down depending on what he does for activity. He noted that he had not been to physical therapy for two weeks and was doing independent home exercise. Dietrich noted that Mordhorst had improved posture but some tenderness at the CT junction and pain into the T7-8 region and pain with palpation as well as neck pain and arm symptoms. Dietrich recommended follow up in three months and potentially an EMG. However, Dietrich noted "due to current baby delivery tomorrow, they wish to hold off at the present time."
44. On October 2, 2014, Mordhorst was seen by Dr. Dietrich, who reported that since the last appointment, his symptoms have significantly worsened. Dietrich noted that Mordhorst was having neck pain, mid-back pain, daily headaches, and significant neck tightness and now was getting paraesthesias into bilateral upper extremities. Dietrich noted that Mordhorst was doing his independent home exercise program because he had been discharged from physical therapy due to his insurance benefits running out. Mordhorst was taking Hydrocodone, Zolof and Bupropion, p.r.n. Dietrich noted significant tenderness at the mid-scapular region and paraesthesias in the C5-6 and C6-7 distribution and bilateral upper extremities. Dietrich recommended pursuing an MRI of the cervical spine and lumbar spine as well as an EMG of right upper extremity.
45. On October 30, 2014, Dietrich saw Mordhorst after the cervical MRI. This showed a shallow disc displacement at C4-5. Dietrich noted continued mid-scapular and mid-thoracic region pain and tenderness and that Mordhorst was doing an independent home exercise program since additional physical therapy had been denied. Dietrich noted the EMG showed bilateral carpal tunnel syndrome and that Mordhorst was scheduled to see Dr. Eckrich to discuss additional options for this. Dietrich's physical exam revealed neck pain, arm tingling, mid-thoracic pain as well as a continued head forward, scapular protracted posture and some scapular winging. Dietrich noted diffuse tenderness in the mid-thoracic region and trouble with extremes of back extension. Dietrich recommended continuation of the home exercise program for the neck, back and headache condition.
46. Mordhorst testified at hearing that he is taking Gabapentin three times a day and also takes Advil, Motrin, Tylenol, or ibuprofen on a varied basis, He also takes Vicodin a couple of times a month when his pain is very bad. He does home exercises once or twice per day. Mordhorst no longer is able to use a TENS unit or home traction since his work comp benefits were denied. He testified the pain gets worse as the day goes on.
47. Dr. Dietrich is a doctor board certified in physical medicine and rehabilitation with additional certifications in pain management and sports medicine. Dietrich

testified during a deposition on October 14, 2014, that Mordhorst's November 10, 2011, work injury is a major contributing cause of his current medical condition and the thoracic disc herniation is a permanent condition. Dietrich explained that when he first saw Mordhorst in February of 2012, he had a lot of tenderness and a lot of abnormal movement patterns. Dietrich testified that he was very guarded, very protected, clearly had a lot of neck discomfort or neck pain, had pain in between the shoulder blades and pain that would go down into that upper extremity. Dietrich testified that he ordered the thoracic spine MRI in May of 2012 because he was concerned about a thoracic compression fracture due to the weight of what fell on him and the degree of pain that he was experiencing. He testified that the MRI which showed a central disk protrusion between T7 and T8 abutting the epidural space and the spinal cord "certainly explains a lot of the difficulty that he has in between his shoulder blades, a lot of that discomfort." Dietrich testified "and I think because of this disc protrusion or herniation, he adapted forward-flexed or bent-forward position that then has led to some of these additional symptoms of muscle spasms, muscle guarding, neck pain and some symptoms into the upper extremity." Dietrich testified that the cervical MRI did not really explain all of Mordhorst's symptoms, but the thoracic spine did provide more of an explanation.

48. Dr. Dietrich testified that "from day one" Mordhorst has described right arm pain and numbness going into his fingers. Dietrich stated that he believed that Dr. Teuber's suggestion that a mild trauma to the brachial plexus might be responsible for the problems he's having with his right upper extremity is "certainly a reasonable explanation". Dietrich explained "if the head gets flexed forward away from the shoulder, they can be essentially the equivalent of a football stinger, where the neck and the shoulder get stretched in opposite directions. That could cause a brachial plexus stretch injury or that type of a condition." Dietrich noted that an EMG did show some carpal tunnel findings which would explain some of the numbness and tingling but "from a causation perspective, he almost certainly had a neck stinger or a brachial plexus stretch type of injury from this falling on him the way that it did." Dietrich explained Mordhorst had experienced none of the symptoms prior to his work injury and then immediately afterwards has fairly consistently well documented findings in the right upper extremity in the same distribution. It seems consistent with something falling on your head and neck and stretching that."
49. Dr. Dietrich testified that his future plans for Mordhorst are to work on correction of his posture through physical therapy when he has significant flares or setbacks, some as needed medications, and possibly a repeat thoracic epidural injection.
50. Dr. Dietrich testified about Dr. Nolan Segal's opinion that Mordhorst had a temporary sprain/strain injury that healed just 18 days after he was injured or on November 28, 2011. Dietrich stated as follows:

Umm, I don't think it's just a sprain or a strain. I think clearly we have objective pathology. We have an MRI that shows us a disk herniation in a young, healthy male that wasn't having these problems prior to this incident. I think consistently, whether it's Dr. Strain, physical therapy, or my evaluation, the objective findings of muscle spasm, muscle tightness, postural alignment issues, have all been pretty much there and consistent from the beginning of this. It's not like it was a short term thing that resolved. It had persisted all the way up until when I saw him. And so I don't think this was something mild that just resolved. I think it was continual and ongoing.

51. Dietrich explained how the mechanism of the injury MATCHES Mordhorst resulting condition. He explained:

Clearly, that's a lot of weight just in and of itself, plus it was falling from a height. So you have the weight of the object and the fall hitting him from the back of the head, causing a neck hyperflexion, which certainly puts a stretch or a pull on muscles in the neck, potentially this brachial plexus like we discussed, causing him to hyper flex forward, which can certainly bend or flex the upper spine or the thoracic spine as well. Which I think that hyper flexion or motion is what caused the disc herniation at T7-8, the load of all this coming down on that spine. It was forceful enough to knock a big guy like Mr. Mordhorst down to the ground and to knock him unconscious for a short period of time, a significant amount of weight and force to do that. I think that's consistent with the types of injuries or the mechanism of what we are talking about.

52. During the time since Mordhorst November 10, 2011, Mordhorst has missed 7 days of work.

53. Dr. Nolan Segal, an orthopedic surgeon, was deposed on December 18, 2014. On direct examination, Dr. Segal testified that the work injury was a major contributing cause of the neck and mid back complaints initially but that those problems would have resolved by November 28, 2011, or 18 days after the injury. He also stated that Mordhorst's medical treatment was reasonable and necessary through of 2012 but that Mordhorst's medical appointment on November 5, 2012 was not. Segal explained that between August and December of 2012, he had evaluated Mordhorst on September 20, 2012 and found that Mordhorst's condition worsening by November 5, 2012, was inconsistent with his evaluation. He stated that he found no objective findings to support Mordhorst subjective complaints.

54. Mordhorst's testimony at hearing was credible. It was consistent and straightforward. He answered every question directly and did not hedge or dodge questions on cross examination. Mordhorst's wife's testimony was also credible.

55. Additional facts may be discussed in the analysis below.

Analysis:

Causation:

The Department's first inquiry is whether Mordhorst's work injury on November 10, 2011, is a major contributing cause of his current condition. Mordhorst, as the claimant, has the burden of proving all facts essential to sustain an award of compensation. Darling v. West River Masonry Inc., 2010 S.D. 4, ¶ 11, 777 NW2d 363, 367. The employee's burden of persuasion is by a preponderance of the evidence. Caldwell v. John Morrell & Co., 489 NW2d 353,358 (SD 1992).

SDCL 62-1-1(7) defines "injury" or "personal injury" as:

[O]nly 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

SDCL 62-1-1 (7).

"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). "A medical expert's finding of causation cannot be based upon mere possibility or speculation. Instead, "[c]ausation must be established to a reasonable medical probability." Orth v. Stuebner & Permann Const., Inc., 2006 SD 99, ¶ 34, 724 N.W. 2d 586, 593 (citation omitted).

In this case, Dr. Dietrich has opined that Mordhorst's November 10, 2011, work injury is a major contributing cause of his current neck, mid-back and right hand condition. Dr. Segal has opined that it is not and that his work injury was resolved as of November 28, 2011. The Department finds Dr. Dietrich's opinion is the more persuasive.

First, Dr. Segal contends that Mordhorst suffered a strain on November 10, 2011, that resolved by November 28, 2011. He contends that there are no objective findings to support Mordhorst's subjective complaints after that date. The Department disagrees. As Dr. Dietrich pointed out, Mordhorst has a disc herniation at the T7-8 location. His medical history indicates muscle spasms and muscle tightness that were observed by himself, Dr. Strain, and the physical therapists that treated Mordhorst after that date. In

addition, Mordhorst presented at Dr. Dietrich's office with a head forward posture that was caused by Mordhorst attempt to compensate for the pain. Dr. Segal admitted that he had seen such posture in his practice.

Next, Dr. Segal fails to explain why Mordhorst has continued to experience pain from the date of his injury to the present if his injury was resolved by November 28, 2011. Dr. Segal seems to completely disregard Mordhorst's pain since that date. The Department does not. Mordhorst had no neck, mid-back or right hand pain and numbness prior to the November 10, 2011 injury. Since that incident, Mordhorst has suffered nearly constant pain in those areas. While Mordhorst's pain has ebbed and wained at times, the pain has been constant and its location remained remarkably consistent.

While Dr. Segal may disbelieve Mordhorst's pain complaints, the Department does not. Mordhorst's testimony and that of his wife were both credible at hearing. Beyond that there is no apparent motivation for him to lie about his pain. He is not attempting to avoid work. From November 10, 2011 until the present, Mordhorst has only missed 7 days of work due to his pain. He has worked from 88 to over 100 hours during some two week periods in his job as a corrections officer. There is also no evidence of a drug motive. Since his injury, he has often been on nothing other than over-the-counter pain medication. Finally and most importantly, during his May 1, 2012 office visit, Dr. Dietrich ordered an MRI of Mordhorst's thoracic spine because Mordhorst was experiencing symptoms that could not be explained from his cervical imaging. The Department finds it more than coincidental that the MRI showed a disc herniation at the precise location that Mordhorst had been experiencing pain and tenderness.

While Mordhorst's carpal tunnel may account for some of the numbness and tingling in his right hand, Dr. Dietrich testified that "from a causation perspective, he almost certainly had a neck stinger or a brachial plexus stretch type of injury from this falling on him the way that it did." Dietrich explained Mordhorst had experienced none of the symptoms prior to his work injury and then immediately afterwards has fairly consistently well documented findings in the right upper extremity in the same distribution."

Mordhorst has met his burden of showing that his November 10, 2011 work injury is a major contributing cause of his current neck, mid-back and right hand pain.

Reasonable and Necessary Treatment:

The Department must next determine whether Mordhorst's treatment has been reasonable and necessary. It is in the doctor's province to determine what is necessary or suitable and proper. When a disagreement arises as to the treatment rendered or recommended by the physician, "it is for the employer to show that the treatment was not necessary or suitable and proper." Stuckey v. Sturgis Pizza Ranch, 793 N.W.2d 378, 387-88 (SD 2011).

Dr. Dietrich is of the opinion that Mordhorst's treatment has been reasonable and necessary and that Mordhorst's condition will require medications, physical therapy and occasional injections in the future. Dr. Segal opines that no treatment for the work injury was necessary after November 28, 2011. In light, of the determination above, the Department agrees with Dr. Dietrich's opinion regarding Mordhorst's past and future treatment. Employer and Insurer have failed to show that Mordhorst's treatment was unnecessary.

Conclusion:

Mordhorst shall submit Findings of Fact and Conclusions of Law and an Order consistent with this Decision, and if desired Proposed Findings of Fact and Conclusions of Law, within 20 days after receiving this Decision. Employer and Insurer shall have an additional 20 days from the date of receipt of Mordhorst's Findings of Fact and Conclusions of Law to submit Objections and/or Proposed Findings of Fact and Conclusions of Law. The parties may stipulate to a waiver of formal Findings of Fact and Conclusions of Law. If they do so, Mordhorst shall submit such stipulation together with an Order consistent with this Decision.

Dated this 8th day of May, 2015.

/s/ Donald W. Hageman
Donald W. Hageman
Administrative Law Judge