

SOUTH DAKOTA DEPARTMENT OF LABOR
DIVISION OF LABOR AND MANAGEMENT
WORKER'S COMPENSATION

JEAN KESSLOFF,
Claimant,

HF No. 148, 2005/06

vs.

RAPID CITY MEDICAL CENTER,
Employer,

DECISION

and

GENERAL CASUALTY,
Insurer.

This is a workers' compensation proceeding before the South Dakota Department of Labor, pursuant to SDCL 62-7-12 and ARSD 47:03:01. Michael J. Simpson, of Julius & Simpson Law Office, represents Claimant, Jean Kessloff (Claimant). Michael S. McKnight & Charles A. Larson, of Boyce, Greenfield, Pashby & Welk, L.L.P., represents Employer/Insurer (Employer). This case was submitted to the Department of Labor on a stipulated record, specifically, Claimant's deposition, medical records, and medical bills.

ISSUES:

- I. Was Claimant's employment with Employer a major contributing cause of Claimant's medical condition?
- II. Is Claimant entitled to future medical benefits?
- III. Are medical expenses incurred by Claimant compensable?

FACTS:

1. Claimant is a 54 year old woman who worked for the Rapid City Medical Center from March 18, 2002 to March 2005.
2. Claimant's job was that of a patient accounts representative.
3. Employer hired Claimant to work 24 hours per week. Employer gradually increased her work hours to 32 hours per week. Claimant worked this schedule from September 27, 2004 until March 2005.
4. Claimant voluntarily resigned her position in March 2005 due to a personality conflict with a supervisor.

5. Claimant's job duties included inputting information onto the computer, opening mail, filing information, and answering phones. Claimant spent approximately 5 ½ hours per day keyboarding.
6. Claimant was not allowed to take breaks until July 30, 2004, when her treating doctor, Dr. Lawlor, required Claimant to take a 15 minute break during her 5 ½ hour shift.
7. Claimant is an active individual who has numerous hobbies, some of which involve working with her hands. Claimant bicycles, bowls, sews, gardens, and works on household improvement projects.
8. Claimant treated with her chiropractor, Dr. Lecy, for a number of different medical issues, while employed with Employer.
9. Claimant first saw Dr. Lecy for wrist pain on January 29, 2002.
10. Claimant mentioned her wrist pain to Dr. Lecy again on March 7, 2002.
11. On May 10, 2002, Claimant informed Dr. Lecy that her wrists were better, but that she thinks she sprained her thumbs pulling carpet.
12. Claimant did not treat with Dr. Lecy for her upper extremities again until January 4, 2003, when she informed Dr. Lecy that her arms were going numb. Claimant fell at home, off an outside step, onto her hands and knees.
13. On February 21, 2003, Claimant told Dr. Lecy that her arms were numb and tingling and both wrists were sore from the fall.
14. On March 5, 2003, Claimant reported to Dr. Lecy that she had sore wrists from scrubbing a shower. Claimant was diagnosed with a wrist sprain.
15. On March 26, 2003, Claimant indicated to Dr. Lecy that her wrists were sore from taking down an old ceiling.
16. On November 29, 2003, Claimant had a bicycle wreck on an icy road. Claimant fell and caught herself with her right arm outstretched. Claimant was diagnosed with a wrist sprain.
17. On February 4, 2004, Claimant was painting a door and trim and felt tingling in her upper arms. Claimant's hands were going to sleep.
18. On February 13, 2004, Claimant reported that her hands were swollen when she awoke in the morning. Claimant received treatments on her hands and wrists.
19. Claimant reported a work-related injury to Employer on February 23, 2004.
20. Employer/Insurer accepted compensability of Claimant's medical treatment at that time.
21. Claimant sought treatment for stiff and swollen hands.
22. The treating physician, Dr. Abernathie, diagnosed bilateral wrist pain with polyarthralgias.
23. Claimant also saw a doctor at the Rapid City Medical Center, Dr. Kevin Weiland, M.D., on February 23, 2004. Dr. Weiland diagnosed probable bilateral carpal tunnel syndrome.
24. Dr. Weiland's initial plan of treatment for Claimant was to modify her work station, take an anti-inflammatory drug, and wear wrist splints at night. This treatment continued without change in Claimant's condition.
25. On April 7, 2004, Claimant reported to Dr. Lecy that she had pain and tingling in her hands. This had been going on for about 1 ½ months.

26. Dr. Lecy performed a Phalen's test on Claimant in April 2004. Claimant showed positive signs of bilateral carpal tunnel syndrome, with localized pain in the thumb, index, and middle fingers.
27. Claimant's complaints related to her hands and arms continued. Dr. Lecy treated Claimant on a regular basis for arm and wrist pain, as well as neck and spine pain.
28. Claimant treated with Dr. Lawlor, a physiatrist from April 16, 2004 to June 20, 2007.
29. Lawlor diagnosed Claimant with upper extremity overuse syndrome, bilateral hand swelling and carpal tunnel syndrome without median neuropathy at the wrist.
30. Claimant saw Lawlor 14 times. At most of the appointments, Lawlor noted objective findings of Claimant's conditions.
31. Dr. Lawlor's objective findings in April 2004, that supported his diagnosis were: mild swelling of the MCP joint in the right and left hands, positive squeeze test in the right and left hand, tenderness in the lateral and medial epicondylar region, pain with abduction and forward flexion of the shoulders, some tenderness in the subacromial region and biceps tendon laterally, and minimal limitation of Claimant's cervical range of motion.
32. Dr. Lawlor performed bilateral epicondylar injections in October 2004. Claimant responded well to these injections
33. Claimant started in a bowling league in September 2004.
34. On November 1, 2004, Claimant noted that her arms would go numb and she gets dizzy when she sits up. The onset of these symptoms was when she started with the bowling league.
35. In November 2004, Claimant reported to Dr. Lecy that her back and neck were bothering her and that she had numbness down her arms.
36. Dr. Lawlor released Claimant to work without restrictions on January 17, 2005.
37. On January 31, 2005, Claimant met with Dr. Lawlor. The evidence indicates that Claimant continued to have pain in the lateral epicondylar region and had pain with resisted wrist extension. Dr. Lawlor performed an epicondylar injection at that time. On February 28, 2005, Dr. Lawlor discharged Claimant from his care and instructed her to continue her exercise program. Claimant's maximum lift limit was 10 pounds with the upper right extremity.
38. Claimant did not seek treatment from Dr. Lawlor from February 28, 2005 through October 26, 2005.
39. Claimant voluntarily quit her job with Employer in March 2005 for reasons unrelated to her injury.
40. Claimant received a manipulation to wrists from Dr. Lecy on April 13 and May 19, 2005.
41. On October 6, 2005, Dr. Lecy performed orthopedic tests for the forearm, wrist, and hand. Claimant had a negative Tinel's sign, bilaterally, and a positive Phalen's test on the right.
42. Claimant received only a few more wrist manipulations from Dr. Lecy, after she returned to Dr. Lawlor treatment. Dr. Lecy noted that Claimant's treatment for the carpal tunnel syndrome may be aggravating her fibromyalgia.

43. Claimant saw Dr. Lawlor again on October 26, 2005. Claimant had been sanding a door and her hands, neck, and back were hurting and her right arm had fallen asleep.
44. Dr. Lawlor noted that Claimant had a positive Finkelstein's test bilaterally and a positive carpal tunnel compression test bilaterally. The diagnosis continues to be bilateral upper extremity overuse syndrome.
45. When Claimant performs any repetitive task, such as cleaning, she experiences pain in her hands and arms. Claimant first experienced this ongoing symptom in February 2004.
46. On January 17, 2006, an Independent Medical Exam was performed by Dr. Paul Cederberg at the request of Employer/Insurer.
47. Dr. Cederberg opined that Claimant's current carpal tunnel syndrome was not work-related, as "she does not use any vibratory tools on a regular basis."
48. On January 27, Employer/Insurer denied coverage of Claimant's medical treatment for carpal tunnel syndrome.
49. Claimant continued conservative treatment with Dr. Lawlor after being denied by Employer/Insurer.
50. Dr. Lawlor has opined that Claimant's work for Employer was a major contributing cause of her current condition.
51. Claimant has not received an impairment rating from her treating physician.

ANALYSIS & DECISION:

To prevail on a workers compensation claim, a claimant must establish a causal connection between [her] injury and [her] employment. That is, the injury must have its origin in the hazard to which the employment exposed the employee while doing [her] work. *Rawls v. Coleman-Frizzell, Inc.*, 2002 SD 130, 20, 653 NW2d 247, 252 (citation omitted) (alteration in Rawls).

Employees need not prove that their employment activity was the proximate, direct, or sole cause of their injury, only that the injury arose out of and in the course of employment. SDCL 62-1-1(7). And, an injury is not compensable unless the employment or employment related activities are a major contributing cause of the condition complained of[.] SDCL 62-1-1(7)(a); *Caldwell v. John Morrell & Co.*, 489 NW2d 353, 358 (SD 1992) (citations omitted).

Vollmer v. Wal-Mart Store, Inc., 2007 SD 25, ¶13, 729 NW 2d 377, 382 (footnote omitted).

"The claimant must prove the essential facts by a preponderance of the evidence." *Caldwell v. John Morrell & Co.*, 489 NW2d 353, 358 (SD 1992). Claimant must prove that her work-related injury, reported to Employer on February 23, 2004, continues to be the major contributing cause of her continued bilateral upper extremity overuse syndrome and carpal tunnel syndrome. Claimant must show by a preponderance of

the evidence that her current condition arose out of and in the course of her employment with Employer.

The parties' case must be fully supported by the medical evidence and testimony. "The evidence necessary to support an award must not be speculative, but rather must 'be precise and well supported.'" *Horn v. Dakota Pork*, 2006 SD 5, ¶14, 709 NW2d 38, 42. "[T]he testimony of medical professionals is crucial in establishing that a claimant's injury is causally related "to the injury complained of 'because the field is one in which [laypersons] ordinarily are unqualified to express an opinion.' Indeed, SDCL 62-1-1(7) requires 'medical evidence.'" *Vollmer* at 382 (internal citations omitted).

Employer/Insurer accepted responsibility for the initial treatment of Claimant, while she was still employed with Employer. However, they denied benefits after Claimant had reached maximum medical improvement (MMI), left work, and had a recurrence of symptoms several months later. "Even if there is no dispute that a claimant 'suffered an initial work-related injury, that injury does not automatically establish entitlement to benefits for her current claimed condition.' Rather, a claimant must establish that such injury 'became a major contributing cause of her current claimed condition.'" *Vollmer* at 382 (quoting *Haynes v. McKie Ford*, 2004 SD 99, ¶17, 686 NW2d 657, 661) (emphasis omitted).

Medical Evidence

Claimant's treating physician, Dr. Brett Lawlor, opined that Claimant's work-related injury is a major contributing cause of her current condition. Dr. Lawlor wrote, "[Claimant's] pain came at a time when she was doing repetitive work with her hands. Her complaints were consistent with a repetitive upper extremity type problem."

Dr. Lawlor is a specialist in rehabilitation/physical medicine. He treats non-surgical musculoskeletal injuries and conditions such as upper extremity repetitive use syndrome and carpal tunnel syndrome. His opinions have been accepted, on at least two occasions, by the SD Supreme Court as being more persuasive than the opposing IME doctors or surgeons. See *Haynes*, 686 NW2d at 662-664 and *Vollmer*, 729 NW2d at 383-387. The Supreme Court reasoned that Lawlor's opinion was more persuasive due to his credentials and experience in treating musculoskeletal injuries. In both cases, Dr. Lawlor's testimony was presented by deposition and reviewed *de novo* by the Court. In this case, Dr. Lawlor was not deposed and did not testify.

The Independent Medical Examination (IME) was performed by Dr. Paul Cederberg, M.D., on January 18, 2006. Dr. Cederberg is an Orthopedic Surgeon from Minneapolis, MN. He performs IMEs for Evalumed. There is no evidence in the record as to Dr. Cederberg's credential, experience, or certifications, other than he is an orthopedic surgeon who performs IMEs.

The IME of Claimant was conducted in person in Rapid City in January 2006. Claimant had an unrelated facial surgery on December 9, 2005 and was on pain medication (Vicodin) at the time of the IME. Dr. Cederberg remarked that between the time of her facial surgery and the IME, Claimant had not had any symptoms. Dr. Cederberg conducted a physical examination of Claimant and reviewed Claimant's medical history with her. Dr. Cederberg reviewed Claimant's medical records from Dr. Lawlor and from Promotion Rehabilitation Center (the physical therapist). He did not review Claimant's 5 years of ongoing chiropractic records.

Dr. Cederberg concluded the following:

I cannot find any relationship between [Claimant's] original injury of February 23, 2004, and her current complaints/condition. She was treated for bilateral hand pain and numbness and elbow pain through January 17, 2005, when she was allowed to return to work without restrictions. She was not working at [Employer] when she had a flare-up of symptoms from doing home projects such as sanding a door in October 2005. Therefore, she sustained a new recurrence due to her home activities and not due to any work activities at [Employer].

Cederberg added that "[Claimant] also has an idiopathic right carpal tunnel syndrome unrelated to her work activities of any type, as she does not use any vibratory tools on a regular basis." He goes on to explain that Claimant's pain recurrence in October of 2005 was caused by a sanding a door on one occasion. This explanation is illogical in that Claimant did not use vibrating tools on a regular basis at work to cause the carpal tunnel, but then has a recurrence because of one incident of sanding a door.

Neither Dr. Lawlor, nor Dr. Cederberg were deposed or testified in this matter. Their opinions are part of the medical records. The crux of this matter is which medical opinion is more persuasive. Dr. Lawlor is the treating physician and saw Claimant on a regular basis for this condition. Dr. Lawlor examined Claimant's full file and has objective findings which support his conclusion. On the other hand, Dr. Cederberg saw only part of Claimant's medical file and examined Claimant when she was still on narcotics and recovering from facial surgery. Dr. Cederberg found objective symptoms but also found them to be idiopathic. For the foregoing reasons, Dr. Lawlor's opinion's regarding Claimant's condition, and its cause, are more persuasive than Dr. Cederberg's and are accepted.

Claimant sustained a work-related injury on or about February 23, 2004. Claimant's work for Employer is a major contributing cause of her medical condition for which she is currently receiving treatment. Employer is responsible for the medical treatment of Claimant (current bill of \$306.80) and future medical care as directed by her treating physician under SDCL 62-4-1.

Counsel for Claimant shall submit proposed Findings of Fact and Conclusions of Law and an Order consistent with this Decision, within 20 days of the receipt of this

Decision. Employer/Insurer shall have an additional 20 days from the date of receipt of Claimant's proposed Findings of Fact and Conclusions of Law to submit objections. The parties may stipulate to a waiver of formal Findings of Fact and Conclusions of Law. If they do so, counsel for Claimant shall submit such stipulation together with an Order consistent with this Decision.

Dated March 12, 2008.

SOUTH DAKOTA DEPARTMENT OF LABOR

Catherine Duenwald
Administrative Law Judge