SOUTH DAKOTA DEPARTMENT OF LABOR
DIVISION OF LABOR AND MANAGEMENT

ANNA FAIR, **HF No. 15, 2002/03**
Claimant,

v. **DECISION**

NASH FINCH COMPANY,
Employer,
and

TRAVELERS INSURANCE COMPANY,
Insurer.

This is a workers' compensation proceeding brought before the South Dakota Department of Labor pursuant to SDCL 62-7-12 and Chapter 47:03:01 of the Administrative Rules of South Dakota. A hearing was held before the Division of Labor and Management on January 31, 2003, in Rapid City, South Dakota. Claimant, Anna Fair (hereafter Claimant), appeared personally and through her counsel, James D. Leach. Catherine Sabers represented Employer Nash Finch Company and Insurer Travelers Insurance Company (hereafter Employer/Insurer).

Issues:

1. Did Claimant sustain a work injury on or about March 2, 2001?
2. Did Employer/Insurer receive proper notice of this injury?
3. Did Claimant suffer an injury shortly before April 11, 2002?
4. If Claimant suffered an injury shortly before April 11, 2002, did Employer/Insurer receive proper notice of it?
5. Are Claimant's work injuries, if any, a major contributing cause of her medical treatment resulting in unpaid medical bills and temporary total disability?
6. Is Employer/Insurer entitled to reimbursement of medical expenses paid?

Facts:

The facts of this matter have been vehemently disputed. Employer/Insurer allege that the Claimant lacks credibility and the Department should find that she did not suffer an injury on or about March 2, 2001, and that Claimant did not provide proper notice of an injury if she did suffer one. The parties dispute whether or not Claimant suffered an injury in early April of 2002. The parties also dispute the causation of any injuries that required Claimant to receive medical treatment. Claimant seeks $1,568.00 in temporary total disability benefits, plus prejudgment interest. Claimant seeks $857.11 in medical expenses. In addition, Employer/Insurer demands reimbursement of $6,901.09 it paid in medical expenses.

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

1. Claimant is 70 years old.
2. She has worked at F.T.C. Express, a small grocery store in Rapid City, as a cashier since February 7, 1997. Claimant continued to work there at the time of hearing.
3. Claimant testified live at hearing. She was a credible witness.
4. On Friday, March 2, 2001, she was pulling a cart through a cash register lane when the cart scraped her left ankle, drawing blood. Claimant placed a tissue between her sock and the scrape to stop the bleeding.
5. The next day, she told a supervisor, Ty Fankhauser, about the incident.
6. The wound did not cause Claimant significant pain at first and she thought that it would heal on its own.
7. Because the wound had begun to show signs of infection, Claimant told the store's general manager, Jim Sands, on March 5, 2001, about the incident and that she wanted medical attention.
8. Sands reported the injury to Insurer on March 5, 2001, and completed a report of injury, dated March 5, 2001.
9. Employer/Insurer authorized medical treatment on March 5, 2001.
10. Claimant was treated by Dr. Robert C. Preston, M.D. at Rapid Care.
11. Dr. Preston's office called the store, spoke with Fankhauser, and obtained authorization for occupational medical treatment for Claimant before treating her.
12. Dr. Preston's office will not treat a workers' compensation injury unless it has specific authorization from the injured worker's employer.
13. Dr. Preston treated Claimant for what he diagnosed as an "ulcer on the inside of her [left] ankle."
14. Claimant treated with Dr. Preston, and based on his referral, went to High Plains Physical Therapy and Rapid City Regional Hospital Wound Care.
15. Her treatment concluded on September 13, 2001.
16. Claimant continued working throughout her treatment.
17. Claimant did not receive any medical treatment for an ankle ulcer between September 13, 2001, until April 11, 2002, when she went back to Dr. Preston.
18. A day or so before April 11, 2002, Claimant again scraped her left ankle with a cart while pulling it through the cash register lane. Claimant described this scrape as the same as in March of 2001, except not as hard, but it did break the skin.
19. Claimant reported this scrape to the assistant manager, John Heintz, the same day or the next day.
20. Upon hearing from Claimant that her ankle was again causing her problems, Heintz called Insurer to ask them what needed to be done.
21. Insurer instructed Heintz to send Claimant to the doctor.
22. Heintz authorized occupational medical treatment for Claimant at Rapid Care on April 11, 2002.
23. Kimm Wiley, a receptionist at Dr. Preston's office, testified live at hearing. She obtained John Heintz's authorization for medical treatment for Claimant on April 11, 2002.

24. Dr. Preston referred Claimant to Rapid City Regional Hospital Wound Care, then to Roger S. Knutsen, M.D., a Rapid City dermatologist.
25. Dr. Knutsen began treating Claimant on April 24, 2002, but was not satisfied with her progress.
26. On Wednesday, May 29, Dr. Knutsen told Claimant that she needed to be off work in order for her wound to heal. Dr. Knutsen related this delayed healing to Claimant's work activities, which caused her leg to be continually in a dependent position.
27. Employer/Insurer accepted Claimant's March 2, 2001, injury and treatment as compensable until they denied compensability over a year later, on July 3, 2002.
28. Employer/Insurer's denial was based on Claimant's alleged failure to report the March 2001 injury within three days, as required by SDCL 62-7-10.
29. March 2, 2001, was a Friday.
30. March 5, 2001, was a Monday.
31. Claimant's report of injury on March 5, 2001, was within three business days of her injury on March 2, 2001.
32. Claimant's testimony was credible. Despite some inaccuracies caused by poor memory for dates, Claimant's demeanor, attitude, and candidness during her live testimony convinced this finder of fact that she was and is credible.
33. Claimant is not lying about her March 2, 2001, injury.
34. Claimant is not lying about her early April 2002, injury.
35. Claimant's testimony is supported by the testimony of her supervisors, Ty Fankhauser, Jim Sands, and John Heintz.
36. Claimant's testimony is also supported by the medical records and the testimony of the experts.
37. Dr. Sarah K. Sarbacker, a board-certified dermatologist, conducted a records review and testified on behalf of Employer/Insurer. Dr. Sarbacker diagnosed Claimant with "severe venous stasis disease and recurrent ulceration." Dr. Sarbacker agreed with Dr. Knutsen's diagnosis of "severe varicosities."

Issue One

Did Claimant sustain a work injury on or about March 2, 2001?

The general rule is that a claimant has the burden of proving all facts essential to sustain an award of compensation. Day v. John Morrell & Co., 490 N.W.2d 720 (S.D. 1992); Phillips v. John Morrell & Co., 484 N.W.2d 527, 530 (S.D. 1992); King v. Johnson Bros. Constr. Co., 155 N.W.2d 193, 195 (S.D. 1967). The claimant must prove the essential facts by a preponderance of the evidence. Caldwell v. John Morrell & Co., 489 N.W.2d 353, 358 (S.D. 1992).

Claimant's credible testimony, the medical records of Dr. Preston, and the deposition testimony of Dr. Sarbacker, all demonstrate that Claimant suffered an injury on March 2, 2001. Employer/Insurer contend that Claimant is lying about getting hurt at work and reporting the injury in a timely manner. Claimant explained that her checkout lane is very narrow and it is sometimes difficult to get the carts through it.

Employer's report of injury, filled out by its general manager, reports an injury date of March 5, 2001. Even if Claimant was confused about the date of injury when questioned about it more than a year later, she was only wrong by a day or two at the most. Claimant was a credible witness at hearing when she stated that the injury was on the Friday before she went to see Dr. Preston. March 2, 2002, was a Friday. She is not lying about the injury. Claimant suffered an injury to her left ankle at work on March 2, 2001, when a grocery cart scraped her ankle, drawing blood.

Issue Two

Did Employer/Insurer receive proper notice of Claimant's March 2, 2001, injury?

"Notice to the employer of an injury is a condition precedent to compensation." Westergren v. Baptist Hosp. of Winner, 1996 SD 69, ¶ 17, 549 N.W.2d 390, 395 (*citing* Schuck v. John Morrell & Co., 529 N.W.2d 894, 897-98 (S.D. 1995)). SDCL 62-7-10 sets the rules for providing notice:

> An employee who claims compensation for an injury shall immediately, or as soon thereafter as practical, notify the employer of the occurrence of the injury. Written notice of the injury shall be provided to the employer no later than three **business** days after its occurrence. The notice need not be in any particular form but must advise the employer of when, where, and how the injury occurred. Failure to give notice as required by this section prohibits a claim for compensation under this title unless the employee or the employee's representative can show:
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> (1) The employer or the employer's representative had actual knowledge of the injury; or
> (2) The employer was given written notice after the date of the injury and the employee had good cause for failing to give written notice within the three business-day period, which determination shall be liberally construed in favor of the employee.

(Emphasis added). The proper test for determining when the notice period should begin has been explained: "The time period for notice or claim does not begin to run until the claimant, as a reasonable person, should recognize the nature, seriousness and probable compensable character of [the] injury or disease." Miller v. Lake Area Hospital, 1996 SD 89, ¶ 14. "Whether the claimant's conduct is reasonable is determined 'in the light of [his] own education and intelligence, not in the light of the standard of some hypothetical reasonable person of the kind familiar to tort law.'" Shykes v. Rapid City Hilton Inn, 2000 SD 123, ¶ 29 (citing Loewen v. Hyman Freightways, Inc., 1997 SD 2, ¶ 15). "The standard is based on an objective reasonable person with the same education and intelligence as the claimant's." Id. at ¶ 43.

The South Dakota Supreme Court summarized:

> The Workers' Compensation Act was enacted by the South Dakota Legislature in 1917. The purpose is to provide employees, who are injured within the scope of their employment, with reimbursement for medical care and wage benefits without having to prove the employer was at fault or negligent. Schipke v. Grad, 1997 SD 38, ¶ 11, 562 N.W.2d 109, 112. In turn, employers are "granted total immunity from suit for its own negligence in exchange for payment of workers' compensation insurance." Id. (citations omitted). However, an injured employee must also comply with the statutory notice requirements in order to recover.
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> "The purpose of the written notice requirement is to give the employer the opportunity to investigate the injury while the facts are accessible. The notice requirement protects the employer by assuring he is alerted to the possibility of a claim so that a prompt investigation can be performed." Westergren v. Baptist Hospital of Winner, 1996 SD 69, ¶ 18, 549 N.W.2d 390, 395. Therefore, "notice to the employer of an injury is a condition precedent to compensation." Westergren, 1996 SD 69, ¶ 17.

Shykes at ¶¶ 23-24.

The Department has found that Claimant suffered an injury to her left ankle while working on March 2, 2001. Claimant reported this injury to her employer on March 5, 2001. The sworn deposition testimony of Jim Sands, the general manager of the store at the time Claimant was injured, demonstrates that Claimant reported the injury on March 5, 2001. Employer/Insurer's First Report of Injury, which Jim Sands admitted he filled out personally, demonstrates that Employer/Insurer was notified on March 5, 2001, of Claimant's work-related injury on March 2, 2001. Furthermore, Jim Sands admitted that he called Insurer on March 5, 2001, to report the injury. Claimant credibly testified that when she realized she needed medical attention, she notified her employer. Claimant provided proper, timely notice of her March 5, 2001, injury.

Even if the injury happened before March 2, 2001, Claimant had good cause for failing to report the injury within three business days. Claimant did not recognize the nature, seriousness and probable compensable nature of the injury until the injury showed signs of infection. Claimant notified her Employer as soon as she knew she needed medical attention.

Furthermore, Employer/Insurer's denial is in direct violation of part of SDCL 62-6-3. Employer/Insurer waited one year and four months to deny the compensability of Claimant's injury on the basis that they did not receive proper notice of the injury pursuant to SDCL 62-7-10. SDCL 62-6-3 states, in relevant part:

> The insurer shall file a copy of the report required by § 62-6-2 with the Department of Labor within ten days after receipt thereof.

> The insurer or, if the employer is self-insured, the employer**, shall make an investigation of the claim and shall notify the injured employee and the department, in writing, *within twenty days from its receipt of the report*, if it denies coverage in whole or in part. This period may be extended *not to exceed a total of thirty additional days* by the department upon a proper showing that there is insufficient time to investigate the conditions surrounding the happening of the accident or the circumstances of coverage.** If the insurer or self-insurer denies coverage in whole or in part, it shall state the reasons therefor and notify the claimant of the right to a hearing under § 62-7-12.

(Emphasis added). Employer/Insurer's belated attempt to deny coverage after one year and four months of treating the claim as compensable is in violation of the emphasized portions in the above statute. Employer/Insurer had more than sufficient time to investigate Claimant's injury. Claimant provided timely notice to Employer of her March 2, 2001, injury as required by SDCL 62-7-10.

Issue Three

Did Claimant suffer an injury shortly before April 11, 2002?

The medical records clearly demonstrate that Claimant did not receive treatment for an ulcer on her left ankle from September 13, 2001, to April 11, 2002. On April 11, 2002, Claimant sought treatment from Dr. Preston for what he described as a "recurrence" of her problems. Dr. Knutsen described the event in his testimony:

Q: Doctor, the record of Dr. Preston from April 11th, 2002 which I'll show you [] says, "The patient is a 68-year-old female who presents for recurrence of a left ankle ulcer originally."
My question is whether you have any reason to disagree with Dr. Preston's statement that her treatment, on that day, was for a recurrence.
A: No. Well, I - - based on what I've read, I would say that it was a flare, an exacerbation.
Q: Tell us what you mean by a "flare" or "an exacerbation."
A: A "flare" is a worsening of an underlying, smoldering problem. A recurrence is a - - is a de novo recurrence of a problem that's otherwise had been healed.
Q: Doctor, assuming that [Claimant] testified, at her deposition, that, in early April of 2002, just before returning to see Dr. Preston, she bumped her ankle again at work - -
A: Uh huh.
Q: - - in the same place she bumped it in March of 2001, but not as hard as she had hit it on March 1st, 2001. Assuming that's true, was that kind of bump sufficient to be a major, contributing cause of the flare of her problem in April of 2002?
A: I would say that it would be very probable.

Q: And tell me why you say that, please.
A: Because it was a **repeated trauma** to an area that had been traumatized in the past, and an area that was just a setup for an ulcer.

(Emphasis added). Employer/Insurer's expert, Dr. Sarbacker did not offer an opinion on this issue. Claimant testified that on April 10, 2002, she scraped her ankle on a grocery cart in the very same place as in March of 2001 and that it later became "infected". Claimant recognized the signs that she needed medical treatment and sought medical treatment. Claimant's testimony is credible.

Dr. Sarbacker diagnosed Claimant with "severe venous stasis disease and recurrent ulceration." Dr. Sarbacker agreed with Dr. Knutsen's diagnosis of "severe varicosities." The medical testimony explains that Claimant's condition is chronic. Although Claimant suffers from a chronic condition in the veins of her left ankle, she sought medical treatment for a scrape that occurred at work, not for her chronic condition. Dr. Knutsen explained that in a normal person, such a scrape would mostly likely heal on its own without medical treatment, but for a person with Claimant's preexisting condition, a scrape over a chronically diseased area causes a more serious medical condition.

Claimant was released from her medical treatment relating to the March 2, 2001 injury on September 13, 2001. She did not treat again for an ankle ulcer until April 11, 2002, when she was treated for a new scrape on her ankle. Claimant credibly testified that she suffered an additional scrape on her ankle and that the scrape broke the skin on or about April 10, 2002. Claimant suffered a new injury on or about April 10, 2002, for which medical treatment was required.

The parties dispute whether the injury Claimant suffered on April 10, 2002, should be classified as a recurrence or aggravation under the last injurious exposure rule. See SDCL 62-1-1(7)(c). In Arends v. Dakotah Cement, 2002 SD 57, the Supreme Court explained the application of SDCL 62-1-1(7)(c):

> "Workers' compensation statutes should be applied without defeating the purpose of the overall statutory scheme." Grauel, 2000 SD 145 at ¶ 14, 619 N.W.2d at 264 (citation omitted). The Legislature intended this section of the statute to settle disputes between two or more employers or insurers. Application of the doctrine to the facts of this case would not advance this purpose. Here, we have a dispute between the employer and employee to determine whether the employer-caused injuries or the employee-caused injury is responsible for the condition. But such disputes are already settled under the causation portion of the analysis. Therefore, there is no need to reach the last injurious exposure rule.

Claimant did not have subsequent employment. This is a dispute between Employer and Claimant to determine whether the employer-caused injuries (the two scrapes to the left ankle) and Claimant's pre-existing condition is responsible for the need for medical treatment. The last injurious exposure rule does not apply in this matter.

Issue Four

Did Employer/Insurer receive proper notice of Claimant's April 10, 2002, work-related injury?

The statutes and case law governing proper notice are cited under the analysis of Issue Two and will not be repeated here. Employer/Insurer do not dispute Claimant's argument that they received proper notice. Claimant suffered a new injury on or about April 10, 2002. Heintz testified at hearing:

Q: And was there a time, in April of 2002, when [Claimant] came to talk to you about her ankle?
A: Yes.
Q: Who was there during that conversation?
A: To my recollection, it was just me and her.
Q: And where did that occur?
A: At the store, in my office.
Q: And what did Ms. Fair tell you about her ankle in that conversation?
A: She told me that she was having problems again.
Q: Did she explain to you when she started having problems again?
A: No, she did not.
Q: Did she state that she bumped, or scraped, it again?
A: No, she did not.
Q: Did she tell you that she scraped it on a cart again?
A: No, she did not.
Q: What did you do in response to this conversation?
A: **I proceeded to call the workmen's comp [sic] and ask them what we needed to do to see about looking into this again, and see about opening her case back up.**
Q: And if she didn't indicate whether it was work[-]related, or not, why did you call workmen's comp[sic]?
A: Basically, instinct, I guess. It seemed natural, that way.
Q: And what instructions did you give to Ms. Fair?
A: I told her to proceed to see about getting medical attention and to keep me posted what was going on.

(Emphasis added). Claimant, as a reasonable person, notified her employer as soon as she recognized the probable compensable nature of the scrape on her ankle. Employer was given the opportunity to investigate the injury and the events surrounding the injury. Employer received actual, timely notice of the injury. Furthermore, Claimant reported the injury as soon as she recognized the nature, seriousness, and probable compensable nature of her injury.

Issue Five

Is Claimant's work injury a major contributing cause of her medical treatment resulting in unpaid medical bills and temporary total disability?

Claimant "must establish a causal connection between her injury and her employment." Johnson v. Albertson's, 2000 SD 47, ¶ 22. "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). When medical evidence is not conclusive, Claimant has not met the burden of showing causation by a preponderance of the evidence. Enger v. FMC, 565 N.W.2d 79, 85 (S.D. 1997).

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

> "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.

There is no dispute that Claimant suffers from a preexisting condition, diagnosed as severe venous stasis disease. "While both subsection (b) and subsection (c) deal with preexisting injuries, the distinction turns on what factors set the preexisting injury into motion; if a preexisting condition is the result of an occupational injury then subsection (c) controls, if the preexisting condition developed outside of the occupational setting then subsection (b) controls." Byrum v. Dakota Wellness Foundation, 2002 SD 141, ¶15. (citing Grauel v. South Dakota School of Mines, 2000 SD 145, P8, 16-17, 619 N.W.2d 260, 262-265.) The parties do not dispute that Claimant's severe venous stasis disease is a preexisting condition that did not develop within the occupational setting.

The Department has found Claimant to be a credible witness. The Department has found that Claimant suffered work-related injuries consisting of scrapes to her left ankle on or about March 2, 2001 and on or about April 10, 2002. There is no dispute that Claimant's work-related injuries combined with her preexisting condition. Therefore, SDCL 62-1-1(7)(b) applies. The issue can be further narrowed because Claimant is making no claim for permanent disability or impairment. She is asking that her medical expenses be paid and she receive temporary total disability from May 31, to July 15, 2002.

Taking into consideration his knowledge, training, and experience, the course of treatment he had with Claimant, as well as the medical records provided to him, Dr. Knutsen testified:

Q: Doctor, my first question is whether [Claimant]'s injury on, or about, March 1st, 2001, is, based on a reasonable medical probability, "a" major contributing cause, for her need for treatment from March 5th, 2001 to July 8th, 2002.
A: Yes, I would say that that is likely.
Q: Tell us why you say that.
A: Because she had - - she had a predisposing problem, a chronic problem, of varicosities; that, when that area was injured, because of the underlying deranged physiology in that area, that that wound did not heal like it would in a person with normal veins, and would cause a prolonged problem - - injury.
Q: Am I understanding correctly that it's a combination of the underlying problem and the work injury?
A: Yes.
Q: Doctor, the record of Dr. Preston from April 11th, 2002 which I'll show you [] says, "The patient is a 68-year-old female who presents for recurrence of a left ankle ulcer originally."
My question is whether you have any reason to disagree with Dr. Preston's statement that her treatment, on that day, was for a recurrence.
A: No. Well, I - - based on what I've read, I would say that it was a flare, an exacerbation.
Q: Tell us what you mean by a "flare" or "an exacerbation."
A: A "flare" is a worsening of an underlying, smoldering problem. A recurrence is a - - is a de novo recurrence of a problem that's otherwise had been healed.
Q: Doctor, assuming that [Claimant] testified, at her deposition, that, in early April of 2002, just before returning to see Dr. Preston, she bumped her ankle again at work - -
A: Uh huh.
Q: - - in the same place she bumped it in March of 2001, but not as hard as she had hit it on March 1st, 2001. Assuming that's true, **was that kind of bump sufficient to be a major, contributing cause of the flare of her problem in April of 2002?**

A: I would say that it would be very probable.
Q: And tell me why you say that, please.
A: Because it was a repeated trauma to an area that had been traumatized in the past, and an area that was just a setup for an ulcer.
Q: Doctor, are all of the opinions that you have stated today based upon reasonable medial probability?
A: Yes.

(Emphasis added). Dr. Knutsen testified that nothing in Employer/Insurer's cross-examination caused him to change his opinions. Dr. Knutsen's opinions have substantial foundation, including his treatment of Claimant and his review of all her medical records.

Dr. Knutsen's opinions are more persuasive than Dr. Sarbacker's because they more clearly take into consideration the combination of Claimant's preexisting condition and her work injuries. Dr. Sarbacker's opinions do not adequately explain the complexities of Claimant's condition. SDCL 62-1-1(7)(b) requires that the combination of a preexisting condition and an injury be considered. Not only do Dr. Sarbacker's opinions lack the depth of explanation in Dr. Knutsen's opinions, they also are lacking the solid foundation of Dr. Knutsen's opinions. Dr. Sarbacker never treated Claimant, never examined Claimant, never talked with Claimant, and did not read Claimant's deposition. Dr. Sarbacker's opinions are rejected. Expert testimony is entitled to no more weight than the facts upon which it is predicated. Podio v. American Colloid Co., 162 N.W.2d 385, 387 (S.D. 1968). "The trier of fact is free to accept all of, part of, or none of, an expert's opinion." Hanson v. Penrod Constr. Co., 425 N.W.2d 396, 398 (S.D. 1988).

Dr. Knutsen explained the connection between Claimant's injury and her employment by stating, "I directly said that her ulcer is directly related to her varicosities, and having a history of significant varicosities, the healing would be considerably impeded when your leg is in a dependent position. It's my understanding that her leg needs to be in a dependent position a good share of the time in her present occupation; therefore I recommended that she be off work until her ulcer is completely healed."

Dr. Knutsen's opinions support a finding and a conclusion that Claimant's preexisting condition, combined with her work injury, caused and prolonged her need for treatment. Dr. Knutsen's opinions also support a finding that Claimant's ulcer is compensable because her employment and her employment-related injury was a major contributing cause of her need for treatment. It should be noted that Claimant no longer needs treatment for her condition, the ulcer created by the combination of her preexisting condition and her work injuries has healed.

Dr. Knutsen's testimony supports a finding that the work-related ankle scraps Claimant suffered on March 2, 2001, and April 10, 2002, are compensable injuries. Claimant is entitled to payment of her outstanding medical bills in the amount of $857.11.

Dr. Knutsen released Claimant from work on May 31, 2002, and approved a return to work on July 8, 2002. Employer/Insurer did not schedule Claimant to work until July 15, 2002. Claimant is entitled to $1,568 in temporary total disability benefits, plus prejudgment interest commencing July 15, 2002.

Issue Six

Is Employer/Insurer entitled to reimbursement of medical expenses it paid?

Employer/Insurer assert that Claimant has lied about being injured. This argument is based upon several inaccuracies in Claimant's hearing testimony, deposition testimony, and the medical records. None of these inaccuracies, when examined along with the entire record, and weighed against the demeanor and attitude of Claimant at hearing, lead this finder of fact to believe that Claimant is lying about being injured at work by a cart scraping her ankle on March 2, 2001, and April 10, 2002. Claimant's injuries have been found to be compensable. Employer/Insurer have made no showing that the medical expenses have not been reasonable and necessary. Employer/Insurer are not entitled to reimbursement of medical expenses it has paid for Claimant.

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

Dated this _____ day of August, 2003

SOUTH DAKOTA DEPARTMENT OF LABOR

_____
Heather E. Covey
Administrative Law Judge