SOUTH DAKOTA DEPARTMENT OF LABOR
DIVISION OF LABOR AND MANAGEMENT

CHARLES A. COOK, **HF No. 226, 2002/03**

Claimant, **DECISION**

vs.

MAGUIRE IRON, INC.,

Employer,

and

ACUITY,

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 March 30, 2004, in Sioux Falls, South Dakota. Charles A. Cook (Claimant) appeared personally and through his attorney of record, Bradley G. Bonynge. Michael S. McKnight represented Employer/Insurer (Employer). The two issues presented, as identified by the Prehearing Order, were causation and what benefits, if any, are due.

FACTS

1. Claimant started working for Employer on June 12, 2001, as a welder.
2. In January 2002, Claimant sustained a non-work injury to his knee. Claimant had knee surgery and was off work from January 14, 2002, to March 25, 2002.
3. Claimant's treating orthopedic surgeon, Dr. Timothy Zoellner, released Claimant to return to part-time, light duty work. When Claimant first returned to light duty work, he was welding "knuckles and fingers." Claimant had difficulty performing this job because of his knee injury so Claimant was assigned to assist Tadd Mahood, a Bliss press operator.
4. Claimant testified there were times when he alone worked the press job. However, according to Mahood, Claimant assisted Mahood and it was the two of them who worked the press operation.
5. Initially, Claimant worked in the press operator job four hours a day. Claimant eventually worked up to full-time.
6. Claimant worked as a Bliss press operator for approximately four weeks as his last day of work in this job was April 19, 2002.
7. The Bliss press is an 800-ton machine used to press or curve steel plates, which will later be fabricated into storage tanks. The press is located on the shop floor and two hoist systems are suspended above the press.

8. In this job, the operator picks up steel sheets of varying thickness and size off the floor using a hoist. The operator holds down the hoist button for three to five seconds in order to position the steel sheet in place.
9. When the sheet is properly positioned, the operator activates the press using the main console, which is approximately six feet away from the press. The operator uses his left hand to hold down both a button to activate the press and the dead man's switch for six to seven seconds. Once the press is made, the operator pushes another button with his right hand for seven or eight seconds to make the ram lift up.
10. During the course of the day, the operator is not continuously holding down buttons; rather, sometimes his hands are completely off the controls.
11. On average, approximately twenty-two steel sheets are pressed a day. Small sheets take about five to ten minutes to press and larger sheets take about fifteen to thirty minutes to press. This correlates to an average of 12.50 minutes of main console button activation in an hour. This time is not continuous, but accumulative as the operator must perform other duties while operating the press.
12. The press operators are not under any time constraints of production quotas and the job is classified as self-paced.
13. Either during the last week of March or the first week of April 2002, Claimant noticed numbness and tingling in his right hand while he was at home. Claimant did not have these symptoms in his left hand.
14. On April 9, 2002, Claimant had an appointment with Dr. Zoellner for his knee. During this appointment, Claimant mentioned to Dr. Zoellner that he was having some problems with his right hand. Dr. Zoellner's note stated, "[Claimant] is back with improvement in his knee but he has now developed right wrist swelling and pain. He has numbness and tingling. He is a welder and does c [sic] control the wire feed with his index finger." Claimant did not mention to Dr. Zoellner anything about operating a press.
15. Dr. Zoellner's impression was Claimant had carpal tunnel and prescribed a "cockup wrist brace."
16. Claimant returned to see Dr. Zoellner on April 23, 2002. Again, Claimant did not mention to Dr. Zoellner anything about his work as a press operator. Dr. Zoellner noted increasing carpal tunnel symptoms and ordered an EMG and nerve conduction studies. Dr. K.C. Chang performed these studies and concluded the tests showed Claimant had bilateral carpal tunnel syndrome with Claimant being more symptomatic on the right side.
17. On April 30, 2002, Claimant saw Dr. Jerry Blow, a physician in physical medicine and rehabilitation. Dr. Blow noted the following history provided by Claimant:

> [Claimant] presents to clinic today with complaints of wrist pain. This did not start at work. He reports that he had been off work for 1-2 weeks when he started getting some wrist pain. One week later he started getting numbness and tingling into the fingers of his first three digits. He reports that since this started, it has gradually worsened. The last two weeks it has been much worse. He reports the pain is primarily in his wrist. It is made worse by driving, gripping and twisting.

18. Dr. Blow understood that Claimant had been primarily operating a press since his knee injury. Dr. Blow thought Claimant had carpal tunnel syndrome, but would not make any comment on causation without a job site evaluation.
19. Dr. Blow performed a job site analysis on April 30, 2002. Dr. Blow evaluated Claimant's "major job tasks." Based upon his analysis, Dr. Blow opined Claimant's work for Employer was not a major contributing cause of his carpal tunnel syndrome.
20. On May 7, 2002, Dr. Zoellner referred Claimant to Dr. R. Blake Curd, an orthopedic surgeon, for a surgical evaluation.
21. Dr. Curd performed surgery, carpal tunnel release, on Claimant's right hand on May 30, 2002, and on Claimant's left hand on July 11, 2002.
22. Since having these surgeries, Claimant has had no problems or tingling in his wrists. Claimant's symptoms completely resolved.
23. Claimant was released to return to work without any restrictions.
24. Claimant's last day of employment with Employer was October 23, 2002.
25. Dr. Curd performed an impairment rating on January 13, 2003. Dr. Curd opined Claimant had a zero percent impairment rating bilaterally.
26. On September 11 and 22, 2003, Patrick Berry, Ph.D., performed a job analysis on the workload demands of the Bliss press operation. Dr. Berry authored a report dated November 3, 2003, and testified live at the hearing. Dr. Berry opined that the workload demands of the Bliss press operator was not a major contributing cause of Claimant's bilateral carpal tunnel syndrome.
27. Since his employment with Employer, Claimant worked various carpentry and welding jobs and is now employed as a welder for Gehl Industries.
28. Claimant's workers' compensation rate was $395 per week.
29. Other facts will be developed as necessary.

ISSUE

WHETHER CLAIMANT'S WORK ACTIVITIES WERE A MAJOR CONTRIBUTING CAUSE OF HIS CONDITION?

Claimant has the burden of proving all facts essential to sustain an award of compensation. King v. Johnson Bros. Constr. Co., 155 N.W.2d 183, 185 (S.D. 1967). 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 "must establish a causal connection between [his] injury and [his] employment." Johnson v. Albertson's, 2000 SD 47, ¶ 22. "The medical evidence must indicate more than a possibility that the incident caused the disability." Maroney v. Aman, 565 N.W.2d 70, 74 (S.D. 1997). Claimant's burden is not met when the probabilities are equal. Hanten v. Palace Builders, Inc., 558 N.W.2d 76 (S.D. 1997). SDCL 62-1-1 states, in part:

> (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 [.]

"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).

Dr. Curd opined Claimant's work was a major contributing cause of his condition. Dr. Curd testified Claimant had a predisposition to developing carpal tunnel and "that his work in the time period from when he went back to work, after being off for his knee surgery, up until the day he began to have symptoms probably aggravated his underlying predisposition for it and became a major aggravating or contributing factor when he went back to work." Dr. Curd explained because Claimant was predisposed for carpal tunnel syndrome, his work aggravated the underlying condition. He stated, "I think the work activities led to his symptom development, and, therefore, I believe them to be a major contributing cause to his symptom level which then led to his treatment." In other words, Dr. Curd concluded that Claimant's work did not cause a physiologic change in his carpal tunnel, but Claimant's work made him symptomatic. Dr. Curd acknowledged that his opinions were based solely on "the patient's complaint[s] and their relationship in time."

Dr. Curd's opinions lack foundation and must be 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. Curd's opinions are based on the premise that work is a major contributing cause where symptoms develop at work. The "mere occurrence of an injury at work does not mean it is ipso facto work-related." Grauel v. South Dakota Sch. of Mines & Tech., 619 N.W.2d 260, 265 (S.D. 2000). Claimant's statements of symptom development were inconsistent. Claimant testified, and Dr. Curd understood, that Claimant did not have symptoms before working as a press operator. However, according to Dr. Blow and the medical records, Claimant's symptoms began while he was off work. Dr. Curd based his opinions on incorrect facts and therefore, his opinions are flawed.

Dr. Curd's opinions also lack foundation because Dr. Curd did not perform a job site inspection or see the press job in operation. Dr. Curd did not know if Claimant operated the press using one hand, both hands or even if it was foot operated. Dr. Curd did not review any other testimony from Dr. Blow, Dr. Berry, Claimant or Tadd Mahood. Dr. Curd had insufficient foundation for his opinions and they are rejected.

After the appointment in April 2002, Dr. Blow could not opine on causation without a job site analysis. Once Dr. Blow toured the facility, spoke with the supervisors and observed the jobs Claimant performed, Dr. Blow opined Claimant's employment was not a major contributing cause of his condition. Dr. Blow concluded "I cannot see where operating the 800-ton Bliss press could in any way contribute to development of carpal tunnel. Nor can I see his work from June to January doing the 'fingers' job to be

a major contributing cause for the development of carpal tunnel." Dr. Blow wrote in his report:

> Apparently they have never had a carpal tunnel injury here at Maguire Iron and I think the reason is that they do a job task from beginning to end; they do not isolate the men into doing one particular weld, they do the weld from positioning the iron, to welding it, to buffering it, to re-welding it and therefore, no job is done for a prolonged period of time.

Dr. Blow concluded that Claimant's work for Employer was not a major contributing cause for his current symptomatology. Dr. Blow reviewed Dr. Berry's report and Dr. Curd's deposition. Dr. Blow testified nothing in the report or Dr. Curd's deposition would change his opinion that Claimant's work for Employer was not a major contributing cause of his carpal tunnel syndrome.

Dr. Berry is a human factors/ergonomics expert. Dr. Berry studies how work and workload demands impact a person and that person's ability to perform a job. Dr. Berry has expertise in workload demands as they relate to causation. During Dr. Berry's site analysis, he gathered information through interviews, observations and videotape demonstrations. During his second visit to Employer's facility, Dr. Berry observed a Bliss press operator for over one hour. In addition, Dr. Berry reviewed depositions of Dr. Blow, Dr. Curd, Claimant and Tadd Mahood.

In his report, Dr. Berry provided significant detail concerning the Bliss press operation. Based upon his research and observations, Dr. Berry opined that the workload demands of the Bliss press operator was not a major contributing cause of Claimant's bilateral carpal tunnel syndrome. Dr. Berry found that the workload of the press operator "cannot be classified as continuous or repetitive." Dr. Berry recognized that Claimant attributed his discomfort to pressing the buttons while operating the press. However, the buttons are not pressed for a prolonged period of time and "a number of different activities are occurring thus resulting in different hand, wrist, and arm movements. In other words, the operator must go through a progression of activities in forming a steel sheet before performing similar activities." Again, Dr. Berry found that processing the steel sheets requires 12.50 minutes of button activation per hour, but that this is not continuous activity. Dr. Berry concluded the force to press the buttons during operation of the press was within ergonomic guidelines. Also, the press operator was not required to use awkward positions and had the ability to modify and change positions. Dr. Berry noted that the press operator was under no time constraint and the job was self-paced. Based upon the totality of the information gathered, Dr. Berry opined that the press operator job did not expose Claimant to risk factors for carpal tunnel syndrome.

The opinions expressed by Dr. Blow and Dr. Berry are well-founded, well-reasoned and are more persuasive. Each expert conducted a thorough job site analysis. Each testified Claimant's employment was not a major contributing cause of his condition based upon the non-repetitive nature of Claimant's work, the ability for Claimant to vary his positions and take breaks and the lack of prolonged pressure. Both Dr. Blow and Dr. Berry reviewed all the depositions, reports and records. These credible opinions establish that Claimant's work activities were not a major contributing cause of his carpal tunnel syndrome.

Claimant failed to present medical evidence to support his burden. Claimant failed to establish by a preponderance of the evidence that his work activities were a major contributing cause of his carpal tunnel syndrome. Therefore, it is unnecessary to address the issue of what benefits are due. Claimant's Petition for Hearing must be dismissed with prejudice.

Employer shall submit Findings of Fact and Conclusions of Law, and an Order consistent with this Decision, and if necessary, proposed Findings and Conclusions within ten days from the date of receipt of this Decision. Claimant shall have ten days from the date of receipt of Employer's proposed Findings and Conclusions to submit objections 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, Employer shall submit such Stipulation along with an Order in accordance with this Decision.

Dated this 31st day of January, 2005.

SOUTH DAKOTA DEPARTMENT OF LABOR

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Elizabeth J. Fullenkamp
Administrative Law Judge