

SOUTH DAKOTA DEPARTMENT OF LABOR
Division of Labor and Management

JEFF A. SISCOE,

Claimant,

v.

MUELLERS FEED MILL,

Employer, and

MILLERS FIRST INSURANCE

COMPANIES,

Insurer.

HF 37, 2003/04

DECISION

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 Simpson, of Julius & Simpson, L.L.P., represented Claimant. Dennis W. Finch, of Finch Bettmann Maks & Hogue, P.C., represented Employer/Insurer.

Issues

1. Whether Siscoe's April 5, 2000, fall at work constitutes a major contributing cause of his current condition.
2. Whether Siscoe is entitled to permanent and total disability benefits.

Factual Background

Siscoe began working for Mueller's Feed as a laborer in November 1998. He worked part-time, about 24 hours per week, sacking feed, and loading and unloading trucks.

Siscoe suffered an injury at work on April 5, 2000. He was standing at the top of a raised tractor bucket when the tractor rolled back and he fell. Estimates of the distance from the top of the raised bucket to the ground vary, but it was as much as ten to thirteen feet. It is not clear whether Siscoe landed on his feet or his buttocks. He does not recall how he landed and the only other person then at the site had his back turned at the time of the fall. In any event, the medical conclusions and opinions do not require a specific finding whether Siscoe landed on his feet.

Siscoe dislocated his right shoulder in the fall and was taken by ambulance to the emergency room at the Bennett County Healthcare Center.

Dr. Larry Weitzenkamp saw Siscoe at the Bennett County Healthcare Center emergency room. The April 5, 2000, emergency room record indicates, under the heading "Physical Exam and Treatment", that Siscoe had "severe pain in his right shoulder and mild pain in his low back" and that his legs "are not painful." Under the heading "Diagnosis", Dr. Weitzenkamp noted, "Dislocation of right shoulder, now reduced. Back pain."

Dr. Weitzenkamp referred Siscoe to Dr. Lee Ahrlin for evaluation of his shoulder injury. He also noted, in his April 5 referral letter, that Siscoe had “some back pain associated with the fall.”

A First Report of Injury filed in regard to the April 5, 2000, incident, signed by Siscoe, described the injury as a “Dislocated Shoulder”, with no mention of any back injury.

Dr. Weitzenkamp’s notes entered pursuant to follow-up visits on May 12 and May 15, 2000, five and six weeks after the fall, do not contain any mention of back or leg pain.

Dr. Ahrlin put Siscoe in a shoulder immobilizer and returned him to work doing light duty. When Siscoe continued to have problems with his shoulder, Dr. Ahrlin recommended an MRI. A May 22, 2000, MRI showed “abnormal signs for tears in the tendons of the right shoulder.” Siscoe submitted to surgery on June 6, 2000, to stabilize the shoulder. Siscoe continued to work at light duty at Mueller’s, limited by his shoulder injury, until Dr. Ahrlin released him to regular duty on January 29, 2001.

Dr. Ahrlin’s January 29, 2001, release note states, “He is back working at the Feed Mill pretty much full time and getting by there pretty well. If he should have any further trouble, I would be happy to see him anytime.”

Siscoe wrote a March 27, 2001, letter to Donn Voorhees, of Crawford & Company, stating that his first onset of back pain was some time after his release from Dr. Ahrlin. Siscoe states that he told Dr. Ahrlin “repeatedly” that he was having numbness in his right foot. However, Dr. Ahrlin’s records from April 6, 2000, to January 29, 2001, do not contain a single reference to any complaints by Siscoe concerning any low back or leg symptoms.

Siscoe saw Dr. Brian Tschida, a neurologist, on January 17, 2001, for evaluation of his shoulder. Dr. Tschida took a history from Siscoe. He made no notation of back pain. As to any leg pain, Dr. Tschida noted: “He really does not have any difficulty with his legs other than occasional numbness of the left heel.” Siscoe agreed that this was what he told Dr. Tschida on that date.

During the time Siscoe worked light duty at Mueller’s, between April 2000 and January 29, 2001, there is no evidence that he ever complained to his employer or any co-worker that he was experiencing any problems with his back or legs.

Siscoe testified that he had “minor symptoms” in his low back and numbness in his right foot following the April 5, 2000, fall, and that a few weeks after his January 29, 2001, release to regular duty, he began having more significant low back and leg symptoms, including numbness, tingling and burning.

On March 3, 2001, approximately five weeks after his return to full duty, and 11 months after his April 2000 fall, Siscoe saw Dr. Ceremuga, a family practice doctor in Martin, with complaints related to his back and legs.

Dr. Ceremuga's March 3, 2001, note is the first medical record referencing back or leg symptoms after the initial emergency room record reference to back pain. Dr. Ceremuga's March 3 note indicates that Siscoe told Dr. Ceremuga he had been experiencing intermittent right foot numbness since the time of his April 5, 2000, fall at Mueller's.

Siscoe's medical history includes two discectomies in the L5-S1 area of his low back in 1992. Neither of these two back surgeries were work-related. After these surgeries, Siscoe was eventually returned to work with no restrictions. Dr. Ceremuga's March 3, 2001, note indicates that Siscoe told Dr. Ceremuga that he had not had a lot of back pain since the 1992 back surgeries, but that the trauma of the fall April 2000 had "flared it up off and on more than normal."

Siscoe returned to Dr. Ceremuga again on March 5 and March 9, 2001, still complaining of back pain. On March 15, 2001, Dr. Ceremuga recommended physical therapy.

Dr. Ceremuga's March 30, 2001, treatment note includes the following:

Jeff is a 40 year old male that has had some **significant back pain since April 2000**. It has been intermittent and now has flared up recently." (emphasis added).

Dr. Ceremuga's assumption that Siscoe had "significant back pain since April 2000" is not supported by any other medical record.

Siscoe completed a Patient Information intake sheet on March 19, 2001, before beginning physical therapy:

Q. How long have you had the Pain? A. About 6 weeks.

Q. Did the pain begin gradually? A. Yes.

Q. What caused the pain to start? A. no particular incident, poss. related to a fall on 4/00

Siscoe's answers on this intake questionnaire stand in contrast to Dr. Ceremuga's assumption that Siscoe had been experiencing significant back pain since April 2000, or even intermittent pain on any consistent basis during that time period.

Siscoe's own trial testimony tends to minimize any symptoms he was experiencing following the April 2000 fall:

Minor symptoms in my back during the recovery from my shoulder. Nothing that really caught my attention until after my full release to work by Dr. Ahrlin who did my shoulder surgery.

Siscoe testified that he had some numbness in his right foot during this time.

Dr. Ceremuga referred Siscoe to Dr. Ganz, a neurosurgeon. Dr. Ganz saw Siscoe for the first time on March 15, 2001. Dr. Ganz eventually recommended a bilateral L5-S1 hemilaminotomy and microdiscectomy, which he performed on May 21, 2001.

Dr. Ganz's report of this operation noted "significant scarring particularly on the left side where the prior surgery had been performed". He removed "a moderate amount of degenerative disc material" as well as "several large free fragments" "which immediately decompressed the thecal sac, as well as the right S1 nerve root."

After this surgery, which Dr. Ganz termed a "redo L5-S1 decompressive lumbar laminectomy and bilateral microdiscectomies", Siscoe had good relief of his right leg symptoms, but continued to have burning pain in the left lower extremity. Dr. Ganz's June 28, 2001, note states: "These symptoms in the left lower extremity most likely are related to the prior lumbar laminectomies that he had at this level[.]"

Siscoe was referred to Dr. Steven Schwartz, another neurologist, after Dr. Ganz moved. Dr. Schwartz performed an April 11, 2002, fusion surgery at L4-5 and L5-S1.

Dr. Schwartz cleared Siscoe to return to work with no restrictions on July 15, 2002. However, Siscoe experienced increasing problems with his back and increasing symptoms in his legs over the winter of 2002 and is now seeking additional workers' compensation benefits.

Dr. Wayne Anderson performed an independent medical examination (IME) for Employer/Insurer on August 4, 2003. Dr. Anderson concluded that Siscoe's lumbar pain was not caused by his April 5, 2000 fall.

Analysis

Siscoe argues that his April 5, 2000, fall constitutes a major contributing cause of his disability, impairment, or need for treatment. SDCL 62-1-1(7)(b).

Siscoe has the burden to prove by a preponderance of the evidence "all facts essential to compensation." Westergren v. Baptist Hosp., 1996 SD 69, ¶10, 549 NW2d 390, 393 (citations omitted).

"Where there is no obvious causal relationship the testimony of a medical expert may be necessary to establish the causal connection." Howe v. Farmers Coop. Creamery, 81 SD 207, 212, 132 NW2d 844, 846 (1965); see also Hanten v. Palace Builders, Inc., 1997 SD 3 ¶10, 558 NW2d 76, 78.

Siscoe relies on the opinions of Dr. Ceremuga and Dr. Ganz to support his position that the April 5, 2000, fall is and remains a major contributing cause of his back condition.

Dr. Ceremuga testified by his December 15, 2003, deposition. Dr. Ganz's opinions are contained in his medical records.

Dr. Ceremuga did not see or examine Siscoe until 11 months after the April 5, 2000 fall. His conclusions and opinions are based on the history provided to him by Siscoe that he had suffered symptoms continuously from and after the date of the fall.

Siscoe was not a credible witness. His testimony concerning when he began to experience back or leg symptoms, the severity of such symptoms, and the relation of these symptoms to the April 2000 fall can not be believed. There is substantial evidence in the record, in the form of Siscoe's prior inconsistent statements to Donn Voorhees, and contained in his physical therapy patient questionnaire, and in the form of the total absence of medical records to support or corroborate his statements.

As further evidence of Dr. Ceremuga's reliance on an inaccurate foundation is Dr. Ceremuga's June 18, 2003, letter to Donn Voorhees:

Apparently the Workman's Comp [sic] organization needs dates that he was off work due to his back pain. Jeff was never able to return to work at the feed mill from his accident in April 2000. He suffered chronic low back pain with subsequent multiple surgeries and time off for those surgeries that were performed by Dr. Ganz and Dr. Schwartz.

Contrary to Dr. Ceremuga's assertions in this letter, Siscoe did return to work shortly after the fall, eventually to full duty, and any work he missed was due solely to his shoulder injury. A correct response to Donn Voorhees would have admitted that Siscoe had not missed work due to back or leg complaints before March 2003.

Dr. Ganz wrote a letter to Dr. Ceremuga on March 15, 2001, stating his understanding that Siscoe "had good relief [following his first back surgeries] until April 2000 when he fell backwards, injuring his right shoulder as well as noticing the recurrence of left lower extremity radicular pain similar to what he had prior to his first surgery."

Dr. Ganz's chart note of the same date states: "Mr. Siscoe is a 40-year-old male patient who sustained a fall while at work approximately 14 feet down onto the buttocks in which he also sustained a dislocated shoulder. Shortly thereafter he was complaining of pain going down the left leg greater than the right and also some numbness in the foot." Dr. Ganz also noted, under the heading "Medical Decision Making": "Since [the 1992 surgeries] he has had complete relief of his symptoms until April 2000. He reports he was at work, fell backwards approximately 14 feet on his buttocks [and] lower back[.] Following this he immediately noted low back pain as well as recurrent pain radiating down his left lower extremity."

Dr. Ganz responded to a March 29, 2001, letter from Donn Voorhees on April 25, 2001, in which he expressed his opinion on causation: "I do believe with reasonable medical certainty that the disc herniation is related to his fall on April 5, 2000, while at work."

Dr. Ganz' opinion that Siscoe's disc herniation "is related to" the April 5, 2000, fall, is not stated to the required standard. Siscoe is required to prove that this fall is and remains a major contributing cause of his condition.

Ignoring the fact that Dr. Ganz stated his opinion to the incorrect standard, he also stated in his April 25 letter: "If there had been a completely pain free period between the time of his fall in April 2000 and the onset of his bilateral lower extremity pain[,] I would say that the work related fall was not related to his current symptoms but since he has complained of low back pain continuously since his fall and had been asymptomatic before, I do believe it is related to his fall to the work related fall [sic]."

"The trier of fact is free to accept all of, part of, or none of, an expert's opinion." Johnson v. Albertsons, 2000 SD 47, ¶26, 610 NW2d 449, 455, (citations omitted).

"The value of the opinion of an expert witness is no better than the facts upon which it is based. It cannot rise above its foundation and proves nothing if its factual basis is not true. It may prove little if only partially true." Id. citing Podio v. American Colloid Co., 83 SD 528, 532, 162 NW2d 385, 387 (1968).

The opinions of Dr. Ganz and Dr. Ceremuga are each dependant on Siscoe's contention that he had back and leg symptoms continuously since the April 5, 2000, fall.

Any opinion of Dr. Ceremuga or Dr. Ganz that the April 5, 2000, fall is and remains a major contributing cause of Siscoe's back condition is rejected.

Because Siscoe was lacking in credibility and because the opinions of Dr. Ceremuga and Dr. Ganz were based in large part on the history he provided them, "the opinions of those experts lack an adequate foundation. A long-accepted premise is that the purpose of expert testimony is to assist the trier of fact and not to supplant it." Johnson v. Albertsons, 2000 SD 47, ¶25, 610 NW2d 449, 455 (citing Bridge v. Karls' Inc., 538 NW2d 521, 525 (SD 1995) (citations omitted)).

Dr. Wayne Anderson, who is certified in occupational medicine, testified live at the hearing for Employer/Insurer. Dr. Anderson performed an IME on August 4, 2003.

Dr. Anderson met personally with Siscoe and obtained his medical history from him. Dr. Anderson's IME report states, "He states his back began bothering him about one month after he obtained a full release to work from Dr. Ahrlin. He went back to work his usual 24 hours per week at the feed store, His legs started hurting[.]"

Dr. Anderson also reviewed Siscoe's complete relevant medical records, including those of Dr. Weitzenkamp, Dr. Ahrlin, Dr. Tschida, Dr. Ceremuga, and Dr. Ganz.

Dr. Anderson opined, in his report and in his testimony at the hearing, that Siscoe's April 5, 2000, work injury did not cause or contribute to his back condition.

Dr. Anderson's reasoning is that Siscoe's low back pain and leg symptoms did not begin until one month after he was released to full work by Dr. Ahrlin on January 29, 2001. Siscoe had seen Dr. Ahrlin in December 2000 and there was no mention of low back pain in Dr. Ahrlin's notes. Siscoe met on January 17, 2001 with Dr. Tschida and, again, there was no mention of back pain in Dr. Tschida's notes. The first medical entries for back pain following the emergency room record are Dr. Ceremuga's March 3, 2001, notes. In addition to the eleven month gap between the fall and any medical note of back pain, Dr. Anderson also noted Dr. Ganz's surgery notes, which call the surgery a "redo" of Siscoe's two previous lumbar surgeries, and that Dr. Ganz's surgical findings noted old scarring and degenerative changes, not caused by the April 2000 fall.

Finally, Dr. Anderson opines that if Siscoe had herniated a disc on April 5, 2000, it would have been difficult for him to go almost eleven months without any complaints and without seeking any medical treatment.

Dr Anderson's opinions are accepted. His opinion on causation is more consistent with the medical records.

Dr. Ganz's opinion that Siscoe's left lower extremity symptoms are related to his 1992 lumbar laminectomies is also accepted. Dr. Ganz's opinion, stated in his April 25, 2001, letter to Donn Voorhees: "If there had been a completely pain free period between the time of his fall in April 2000 and the onset of his bilateral lower extremity pain[,] I would say that the work related fall was not related to his current symptoms[.]" Is also accepted.

Conclusion

Siscoe has not proven by a preponderance of the evidence that his April 5, 2000, fall at work is and remains a major contributing cause of his current condition. Siscoe's lack of significant low back or leg symptoms for eleven months after his fall at work supports this conclusion.

Counsel for Employer/Insurer shall submit proposed Findings of Fact and Conclusions of Law, and an Order, consistent with this Decision, within 10 days of the receipt of this Decision. Counsel for Siscoe shall have an additional 10 days from the date of receipt of Employer/Insurer'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 Employer/Insurer shall submit such stipulation together with an Order consistent with this Decision.

Dated: March 21, 2005.

SOUTH DAKOTA DEPARTMENT OF LABOR

Randy S. Bingner
Administrative Law Judge