SOUTH DAKOTA DEPARTMENT OF LABOR
DIVISION OF LABOR AND MANAGEMENT

JOAN HAAGENSON, **HF No. 43, 2004/05**

Claimant, **DECISION**

v.

CONCENTRA MANAGED CARE, INC., a/k/a CONCENTRA INTEGRATED SERVICES, INC.,

Employer,

and

TRAVELERS INDEMNITY 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 September 19, 2006, in Sioux Falls, South Dakota. Joan Haagenson (Claimant) appeared personally and through her attorney of record, Bram Weidenaar. Steven J. Morgans represented Employer and Insurer (Employer). The issues presented at hearing, as identified by the Prehearing Order entered on May 11, 2006, included:

1. Medical causation as to on-going medical issues;
2. TTD;
3. PPD; and
4. Medical expenses.

Claimant was the only witness who testified live at hearing. The parties stipulated to foundation of the medical records received into evidence as Exhibit 1. The depositions of Dr. Jerry Blow, Dr. Mark Fox, Dr. K. C. Chang and Dr. Gilbert Westreich were also received into evidence.

FACTS

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

Claimant started working for Employer in 1998 as a field based case manager. Claimant was educated and licensed as a Registered Nurse. Claimant worked out of her home arranging medical care and assisting injured workers with return to work efforts. Claimant's job included a significant amount of traveling to attend medical appointments.

In November 1999, Claimant had a series of x-rays taken of her cervical spine because she was experiencing headaches. On November 23, 1999, the films showed "degenerative cervical spondylosis at C5-6 with mild foraminal stenosis and no appreciable central spinal stenosis." In June 2000, Claimant was helping her husband with a fence at her home. Claimant was holding a fence post and a loader bucket dropped down and struck her head. Claimant sustained a laceration and went to the hospital. A cervical spine series was completed and compared to the previous films from November 1999. The current films showed "no acute injury to cervical spine. No significant progression of uncovertebral spondylotic degenerative change vs. 11/23/99." Claimant's cut healed and she did not experience any symptoms with her neck or left arm until after the work-related accident in January 2002.

On January 31, 2002, Claimant was injured in a serious car accident. Claimant was traveling to attend a medical appointment in Sioux City, Iowa, as part of her job duties for Employer. As Claimant was driving south on Interstate 29, the weather conditions rapidly deteriorated due to a snowstorm. Claimant attempted to pass a semi, which was creating poor visibility conditions. After Claimant entered the left lane, her vehicle collided with the back of a snowplow. Employer does not dispute that Claimant was acting in the course and scope of her employment at the time of the accident.

Claimant lost consciousness for a brief period of time. Claimant was taken by ambulance to the emergency room in Vermillion, South Dakota. Claimant complained of pain in her face, chest, and abdomen and was having difficulty breathing secondary to that pain. Claimant was admitted to the hospital for observation and pain control. Claimant remained in the hospital for three days and upon discharge, she was instructed to follow-up with her own physician.

Claimant decided to treat with Dr. Jerry Blow, a specialist in physical medicine and rehabilitation, as he was an acquaintance through work. On February 2, 2002, Dr. Blow evaluated Claimant for the injuries she sustained as a result of the motor vehicle collision. Dr. Blow treated Claimant from February 2nd through March 28, 2003.

During the initial appointment with Dr. Blow, Claimant's "biggest complaints" were shortness of breath, chest pain, abdominal pain and constipation. At that time, Claimant reported no numbness, tingling or neck pain. Claimant also had a lot of contusions on her face. Dr. Blow's impression was that Claimant had "bilateral knee contusion, right breast contusion, intercostal neuralgia, probable rib fractures, constipation, history of elevated liver enzymes, persistent chest pain, [and] shortness of breath." Dr. Blow prescribed intercostal nerve blocks for the chest pain and various medications.

Over the course of the next few months, Claimant continued to treat with Dr. Blow for these injuries. Claimant was also diagnosed with and treated for a mild traumatic brain injury. Dr. Blow treated Claimant for the most emergent conditions. Initially, during the first month to month and a half of Claimant's treatment, Dr. Blow paid particular attention to Claimant's chest pain due to her significant pain. Dr. Blow was concerned about possible damage to Claimant's lungs, heart or the vascular blood supply within the chest wall. Ultimately, it was discovered that Claimant had fluid in her left chest wall, for which there is no specific treatment. According to Dr. Blow, the condition is uncomfortable, but usually resolves without treatment.

It took some time for Claimant's chest pain to subside. She had pain on the left and right side of her ribs and she was extremely sore. Once Claimant's chest condition began to improve, Dr. Blow's focus shifted to Claimant's head injury. Claimant was

tearful, fatigued and had difficulty concentrating. Dr. Blow explained this was the next most serious condition as a result of Claimant's accident on January 31, 2002. Dr. Blow treated Claimant with medications, speech therapy and rest.

Two to three months after the accident, in either late March, April, or early May 2002, Claimant noticed she had pain in her left shoulder going down into her left arm. Claimant could not recall a specific date that her pain started. Claimant noticed this pain after she began feeling better with respect to her chest condition. Claimant stated, "I was on very high test pain medications. Hydrocodone for one will mask an awful lot of symptoms, and my chest involvement was so severe at that time that that is really about all I could think about, when I could think, because when - - also with the head injury, I was pretty foggy." During the first few months of her injury, Claimant was bedridden and spent most of her time on the couch. As she became more active, Claimant started noticing the pain in her left shoulder and arm "because [she] was then putting pressure and holding [her] arms down."

Dr. Blow noted in May and June 2002 that Claimant described numbness and tingling in her left hand. On May 15, 2002, Claimant reported that she had arm pain. On June 3rd, Claimant described to Dr. Blow that she continued to suffer from neck and back pain. Claimant experienced pain "when she turns her head in either direction. She gets pain down her left arm." Dr. Blow's impression was "history of mild traumatic brain injury with consistent left hand, wrist and arm pain." On June 24th, Claimant reported that she had numbness and tingling occasionally in her left fifth finger. On examination, Dr. Blow found Claimant had numbness and tingling with cubital tunnel testing. In July 2002, Claimant reported to Dr. Blow that her left arm pain continued. Dr. Blow recommended a TENS unit and prescribed additional physical therapy.

In the summer and fall of 2002, Dr. Blow thought Claimant's left arm pain was coming from muscles and ligaments. On August 27, 2002, Dr. Blow noted that Claimant fell at Wal-Mart earlier in the spring due to balance difficulties and experienced left arm symptoms. Claimant credibly testified her left arm symptoms began prior to her fall at Wal-Mart. Dr. Blow continued with conservative treatment, but Claimant's left arm discomfort persisted. Eventually Dr. Blow ordered an EMG of her left upper extremity "to rule out any nerve compression at the elbow or wrist."

On September 4, 2002, Dr. K. C. Chang, a physiatrist, performed electrodiagnostic testing of Claimant due to her complaints of numbness in her left third, fourth and fifth fingers and pain in her neck that radiated into the left arm. According to Dr. Chang, the EMG and nerve conduction study showed "electrical evidence indicating a mild carpal tunnel syndrome on the left, just involving the sensory fibers. However, no electrophysiological evidence to indicate ulnar neuropathy at the wrist or the elbow area. Also, no electrical evidence of cervical radiculopathy identifiable on the left side."

In January 2003, Dr. Blow ordered a cervical MRI, which showed "minimal degenerative facet changes within the mid and lower cervical facets." According to Dr. Blow, the MRI did not show a disc herniation or a nerve root compression. X-rays from the same date as the MRI showed signs of "degenerative disk disease at C5-6 and C6-7 interspaces." After reviewing these results, Dr. Blow did not think that Claimant's numbness and tingling were secondary to the changes shown on the MRI because "they were mild in nature. She didn't have a herniated disk that was compressing on a nerve root, and I could recreate her symptoms with palpation so I felt that - - that it

wasn't the cause." Dr. Blow continued to think the cause of Claimant's problems was a muscle ligament problem.

Dr. David Hoversten, an orthopedic surgeon, performed an independent medical examination (IME) of Claimant on February 21, 2003. Dr. Hoversten diagnosed "[n]eck pain with numbness and tingling of the left hand, weakness and poor function of the left hand, consistent with possible nerve impingement in the neck at C5-6." Dr. Hoversten also noted Claimant had rib injuries and a blunt contusion that have fully resolved. Dr. Hoversten concluded "[t]hese are the only things directly related to the accident." Dr. Hoversten recommended epidural steroid injections in Claimant's neck, which were performed later.

On March 31, 2003, Dr. Todd Zimprich, a physician with Neurology Associates, examined Claimant for her left arm pain. Claimant informed Dr. Zimprich that her left arm pain and symptoms began to develop gradually several months after her accident in January 2002. Dr. Zimprich noted Claimant has undergone conservative treatment with little success. Dr. Zimprich found that Claimant's symptoms "certainly have a neuropathic quality to them. They are most suggestive of a cervical radiculopathy, perhaps C5-6." Dr. Zimprich ordered an additional EMG of Claimant's left upper extremity.

On April 9, 2003, Claimant underwent another EMG to evaluate her left arm pain. The EMG "is essentially normal. There is no convincing evidence of a left cervical radiculopathy[.]" Claimant continued with her treatment for her left arm pain complaints, including cervical epidural injections.

On April 29, 2003, Dr. Gilbert Westreich, who is board certified in neurology, performed an IME of Claimant. Dr. Westreich reviewed Claimant's medical records available at the time, diagnostic testing and examined Claimant. The physical examination lasted no more than twenty to thirty minutes. Dr. Westreich concluded Claimant "may have had a mild muscle strain to the [left] arm, but I am unable to make any diagnosis neurologically concerning the pain in the left upper and lower arm." Dr. Westreich opined the injury of January 31, 2002, does not continue to be a contributing factor to Claimant's left arm symptoms.

Claimant saw Dr. Zimprich on two more occasions in May and July of 2003. Dr. Zimprich found Claimant's "history and slight findings on the neurologic examination continue to be consistent with a left C5-6 radiculopathy, even though there are no significant findings on the MRI of the cervical spine or EMG." Claimant's neck and left arm pain persisted and Dr. Zimprich referred Claimant to a neurosurgeon due to the suggestion of a C5-6 radiculopathy.

On August 4, 2003, Dr. Mark Fox, a neurosurgeon, examined Claimant to evaluate her left arm pain. Claimant presented a history including:

> Mrs. Haagenson is a 58-year-old woman who has had problems for the past year. She was involved in a motor vehicle accident on 1-31-02. At that time, she had a fair amount of pain in her chest as well as her shoulder area, but denied any significant symptoms going down her arms. As her chest was feeling better, she began to notice more and more problems with her posterior neck and traveling down her arm and into her thumb and index finger. Her arm also became hypersensitive. She feels that her symptoms have been getting progressively worse. She has undergone a fair amount of physical therapy as

> well as a number of epidural steroid injections, all of which have helped, between 2 [and] 4 weeks at a time. She is here to see if any surgical options might exist for her. When she does lean her head back she will get symptoms into the shoulder blade and also down into the first and second digits on the left. She denies any significant right arm symptoms.

Dr. Fox reviewed an MRI scan of Claimant's cervical spine, which showed "mild foraminal stenosis at C5-6 on the left. This is certainly different when compared to the foramen on the right." After his examination, Dr. Fox opined, "I believe that Mrs. Haagenson has symptoms which are likely related to the foraminal stenosis at C5-C6 on the left. This likely bruised the nerve at the time of her injury, and she has had ongoing symptoms since that time."

Dr. Fox recommended surgery due to Claimant's failure to improve despite aggressive physical therapy and injections. Dr. Fox stated, "I discussed with her that since epidural injections have helped, that does suggest a spinal etiology for her pain. The C5-6 foramen is narrowed, which would compress the C6 nerve root, which fits clinically well with her symptoms." Claimant agreed to proceed with surgery.

Dr. Fox performed a right anterior cervical diskectomy and fusion of C5-C6 and left C6 foraminotomy on October 14, 2003. Claimant tolerated the procedure well and her condition improved. After the surgery, Claimant still had some arm pain and numbness in her hand. Claimant received treatment from Dr. Robert Van Demark, who performed an injection into the bicep tendon. Claimant's pain resolved and she was doing very well and did not require further medical treatment for her cervical condition.

Claimant's workers' compensation benefit rate was $468.00 per week. Claimant missed three weeks of work after the October 2003 surgery. In addition, the parties stipulated at hearing that Dr. Hoversten provided a five percent whole person impairment rating for Claimant's cervical condition.

Claimant worked for Employer from 1998 until April 2002. Claimant then obtained a job with Ohara Managed Care in June 2002. Claimant is currently employed with Ohara as the supervisor of field based case managers. Claimant supervises nurses and case managers in four states.

Claimant was a credible witness at the hearing. This is based on the totality of the evidence presented, Claimant's consistent testimony, which was substantiated by the medical evidence, and based on the opportunity to observe her demeanor at the hearing. Other facts will be developed as necessary.

ISSUE

> WHETHER CLAIMANT'S WORK-RELATED INJURY ON JANUARY 31, 2002, WAS A MAJOR CONTRIBUTING CAUSE OF HER CERVICAL 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). Under SDCL 62-1-1(7), Claimant must establish she suffered an injury arising out of and in the course of her

employment, and, by medical evidence, establish that her employment or employment related activities were a major contributing cause of her condition. "'Our law requires a claimant to establish that [her] injury arose out of [her] employment by showing a causal connection between [her] employment and the injury sustained.'" Wise v. Brooks Constr. Serv., 2006 SD 80, ¶ 17 (citations omitted). "'The claimant also must prove by a preponderance of medical evidence, that the employment or employment related injury was a major contributing cause of the impairment or disability.'" Id. (citations omitted). "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). "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 (citation omitted). Claimant "must introduce medical evidence sufficient to establish causation by a preponderance of the evidence." Enger v. FMC, 565 N.W.2d 79, 85 (S.D. 1997).

Again, Employer did not dispute that Claimant suffered an injury arising out of and in the course of her employment on January 31, 2002. However, Employer disputed that Claimant's work-related injury was a major contributing cause of her cervical condition and need for treatment and surgery. Therefore, it is necessary to examine the medical evidence. Dr. Blow did not offer any opinions concerning the causation of Claimant's cervical condition.

Claimant presented Dr. Fox's opinions through his deposition testimony and medical records. Dr. Fox has been a neurosurgeon since 1994. Dr. Fox has a general practice with emphasis on complex spine and spinal instrumentation. Dr. Fox treated and examined Claimant on three occasions and performed her surgery.

After his initial visit with Claimant, Dr. Fox opined Claimant's cervical condition was caused by the accident on January 31, 2002. Dr. Fox recognized Claimant had foraminal stenosis at C5-C6 on the left. Dr. Fox explained that "[t]his likely bruised the nerve at the time of her injury[.]" Dr. Fox was aware that Claimant did not have "any significant symptoms going her arms" after the accident and that Claimant began to notice neck and arm pain once her chest started feeling better. This information did not alter Dr. Fox's opinions.

Dr. Fox reviewed the MRI of Claimant's cervical spine taken on January 7, 2003. Dr. Fox also reviewed the EMG results provided by Dr. Chang, which showed no electrical evidence of cervical radiculopathy on the left side. Dr. Fox explained these results did not change his opinions concerning the causation of Claimant's cervical condition. Dr. Fox testified:

> Patients that have arm pain or numbness or tingling or weakness can have these nerve studies which are remarkable for nerve root abnormality, or patients can have perfectly normal electrical signals going through that nerve. So if it's a positive study, it confirms our belief that that nerve is sick. It it's a negative study, it does not tell us that that nerve is not sick. So the fact that it was positive doesn't really influence my recommendations or opinions with regards to her nerve problems.

Dr. Fox further explained that a negative study "doesn't tell my anything. . . . What's most important about Mrs. Haagenson's history is that, as I stated in my note here, that

the symptoms go down into her thumb and index finger which is exactly the nerve that leaves the foramen at C5-C6. There are multiple nerves going into the arm and hand. And the nerve that leaves through that bony foramen between C5 and C6 goes exactly to the thumb and the forefinger."

Dr. Fox also found it significant during Claimant's examination that "as she tilts her head towards the left or extends her neck backwards that she does recreate the symptoms going down her shoulder and her arm." Dr. Fox explained, "[p]atients that tilt their head back or towards the side narrow that bony channel further compressing that nerve. And if that brings on the exact symptoms that they're complaining of, that generally indicates that that nerve is under pressure." Based upon his neurological examination, Dr. Fox opined Claimant had a C6 radiculopathy. Dr. Fox thought "the narrowing of that bony channel to which that nerve exited the spinal region was the source of her symptoms." Dr. Fox opined that the impact of Claimant's accident caused the nerve root to make contact with the foramen, which was narrower, and this in turn caused the radiculopathy. Dr. Fox recommended surgery "because her symptoms went down into her thumb and forefinger, which is indicative of a C6 radiculopathy, we could provoke her symptoms with tilting her head backwards or to the side, that I felt that decompression of that nerve by opening up that nerve root foramen would be her best option at this time."

Dr. Fox opined "that the motor vehicle accident caused a compression of the C6 nerve root on the left as a result of an impact from the accident itself and that gave rise to her pain which subsequently led to the surgery." Dr. Fox unequivocally opined that Claimant's work-related accident on January 31, 2002, was "the" major contributing cause of Claimant's injuries, including the cervical condition, and need for treatment and surgery.

Dr. Westreich disagreed with Dr. Fox's opinions. Dr. Westreich testified:

> First of all, the symptoms didn't occur until four or five months after the accident which is unusual. Secondly, the degenerative changes in her neck were present for a long time back to at least '99. To suggest the accident caused it is not medically supportive. The EMGs aren't perfect, but [they] are a good test of nerves, and they didn't show anything. The physical examination didn't show any changes. There was no atrophy in the muscles or twitching that would go along with nerves being involved, and the history was not consistent with a nerve being involved.

Dr. Westreich opined that Claimant's injury does not continue to be a contributing factor to her left arm symptoms because "there [are] no abnormalities on examination by me on the EMG or by any X rays that [would] demonstrate any nerve involvement involving the left arm." Dr. Westreich did not note any neurological deficits or nerve impingements. Dr. Westreich was the only physician upon physical examination who could not reproduce the tingling and numbness in Claimant's left upper extremity.

Prior to giving his deposition testimony, Dr. Westreich reviewed additional medical records describing Claimant's treatment after the April 2003 IME. Dr. Westreich was aware that Dr. Fox performed Claimant's surgery in October 2003. Dr. Westreich opined Claimant's work-related accident was not a major contributing factor for the need for surgery or treatment. Dr. Westreich stated "[t]he accident was not a

predominant precipitating or basis cause for the need for the operation." Dr. Westreich could not associate Claimant's symptoms, which appeared three to four months later, with the accident on January 31, 2002.

Diagnostic testing in 1999 and 2000 revealed Claimant had degenerative cervical spondylosis at C5-6 with mild foraminal stenosis. Dr. Fox was aware of Claimant's history, but he opined, as early as his first visit with Claimant, that the nerve was bruised at the time of her injury in January 2002. Claimant's injury did not combine with her preexisting condition to cause or prolong her disability. According to Dr. Fox, the impact from the accident caused a compression of the C6 nerve root on the left. The compression from the impact caused or created Claimant's pain and symptoms, which led to the need for surgery. Therefore, Claimant must establish the work-related accident in January 2002 was a major contributing cause of her cervical condition.

Dr. Fox consistently opined the work-related accident in January 2002 was a major contributing cause of her cervical condition. In fact, Dr. Fox specifically opined the work-related accident was "the" major contributing cause of Claimant's cervical condition and need for treatment and surgery. Dr. Fox's opinion is stated to a greater standard than what is required to establish causation under SDCL 62-1-1(7). "A claimant does not need 'to prove that the work injury was "the" major contributing cause, only that it was "a" major contributing cause, pursuant to SDCL 62-1-1(7).'" Orth v. Stoebner & Permann Constr., Inc., 2006 SD 99, ¶ 42 (citations omitted). Dr. Fox is competent and qualified to express opinions concerning the causation of Claimant's cervical condition given his extensive experience and training as a neurosurgeon and based upon the fact that he actually treated Claimant over multiple visits and performed her surgery. Dr. Fox's opinions are logical, well-founded, very persuasive, and are accepted.

To the contrary, Dr. Westreich's opinions are not persuasive 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). First, Dr. Westreich opined Claimant's injury in January 2002 does not continue to be a contributing factor to her left arm symptoms. Unlike Dr. Fox's testimony, this opinion fails to satisfy the requirements of SDCL 62-1-1(7). While it is true there are no "magic words" needed to express and expert's degree of medical certainty, this opinion from Dr. Westreich clearly fails to meet the appropriate standard. Later, Dr. Westreich opined Claimant's work-related accident was not a major contributing factor for the need for her surgery or treatment. While this opinion was proffered to the appropriate standard, it pales in comparison to Dr. Fox's more persuasive opinions concerning the causation of Claimant's cervical condition. Dr. Westreich did not provide any treatment to Claimant. Dr. Westreich was hired by Employer to perform an IME and examined Claimant for only twenty to thirty minutes. Dr. Westreich's examination and report were not as thorough when compared to Dr. Fox. Dr. Westreich's opinions are not persuasive and are rejected.

Based upon her credible testimony and Dr. Fox's credible medical opinions, Claimant established by a preponderance of the evidence that her work-related injury on January 31, 2002, was a major contributing cause of her cervical condition and need for treatment and surgery. Employer is responsible for workers' compensation benefits associated with Claimant's cervical condition, including medical expenses, temporary

total disability benefits for the three weeks Claimant was off work after surgery, and permanent partial disability benefits based on Dr. Hoversten's five percent whole person impairment rating. For a more detailed accounting of the award of benefits, Claimant is entitled to workers' compensation benefits as set forth in Claimant's Post-Hearing Brief on pages 14-16.

Claimant 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. Employer shall have ten days from the date of receipt of Claimant'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, Claimant shall submit such Stipulation along with an Order in accordance with this Decision.

Dated this 3rd day of August, 2007.

SOUTH DAKOTA DEPARTMENT OF LABOR

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Elizabeth J. Fullenkamp
Administrative Law Judge