SOUTH DAKOTA DEPARTMENT OF LABOR
DIVISION OF LABOR AND MANAGEMENT

JACKI L. HERMAN,
Claimant,

HF No. 48, 2005/06

v.

DECISION

RAPID CITY CARE CENTER,
Employer,

and

CONSTITUTION STATE SERVICES,
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 18, 2008, in Rapid City, South Dakota. Michael J. Simpson represented Claimant. Joseph Ashley Parr represented Employer

Issues:

The issues, as stated in the Prehearing Order, are:

Causation of Claimant's injury.
Payment of medical expenses incurred by Claimant.

Facts:

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

1. Jacki Herman (Claimant) was 48 year old at the time of the hearing.
2. Claimant went to school through the ninth grade at Douglas High School and was in special classes during her younger years.
3. Claimant has difficulty with reading and writing. Her daughter, Amy Roney helps Claimant with reading and completing forms, such as intake forms at doctor's appointments.
4. Claimant worked as a cook at the Rapid City Care Center from 1995 until approximately 2000.
5. Prior to September 26, 1998, Claimant had no significant or ongoing lower back or leg pain.

6. On September 26, 1998, Claimant injured her low back while working at Rapid City Care Center. The injury occurred when Claimant and a co-worker took the garbage out. Two people were required because the garbage was heavier than usual. While they were lifting the garbage, the co-worker's grip on the garbage slipped shifting most of the weight onto Claimant, twisting her back.
7. Claimant did not feel any pain at the time of the trash lifting incident. She first felt pain a couple hours later.
8. The report of injury form states, "employee was lifting the garbage into the garbage container and strained lower back." A Supervisor's Accident Investigation report dated September 28, 1998 describes the incident as follows: "Lifting the garbage can into the garbage container" and noted that Claimant had a sprain or strain of her lower back.
9. Claimant saw a doctor on September 28, 1998, at Health South. The medical record states "Patient comes in with a work comp injury. She states the afternoon of Saturday, 9/26/98, she was helping to lift a bag of trash into a dumpster and received acute onset right lateral lower lumbar back pain. She has treated it with Tylenol. There is just some slight radiation into the posterior proximal region of the right leg."
10. Claimant was seen at Health South on September 28, and 30, 1998, October 6, and 11, 1998, and then was seen at Health South Physical Therapy on October 19, 20, 22, 26, 28, 29, 30, 1998 and November 2, 1998. During this time Claimants medical records indicated that her back and leg pain continued and generally waxed and waned.
11. On October 14, 1998, Claimant was seen by orthopedic surgeon Stuart Fromm. At that time, Claimant complained of pain in her low back going down the lateral side of her right leg and into her great toe. She also complained of numbness over the lateral thigh. Fromm performed a physical examination and ordered x-rays. The x-rays of her lumbar spine were unremarkable and showed the vertebral alignment was excellent with no obvious arthritic changes Fromm recommended physical therapy.
12. On November 13, 1998 Claimant saw another physician, Dr. Simonson. a specialist in rehabilitation medicine Dr Simonson's records state: "On 9/26/98 she was emptying garbage at work and she as lifting [sic] the garbage up at about chest level and rotating to the left when she had immediate onset of pain in her right lateral lumbar area like it was "strained." She then developed a throbbing pain there." He noted that she was working only four hours per day, four days per week and was taking extra strength Tylenol for pain. She was complaining of 75% back pain and 25% leg pain which ranged between a four out of ten at its best and a seven out of ten at its worst.
13. An MRI of Claimant's lumbar spine was taken November 6, 1998. The MRI showed all of her lumbar disks were normal, there was no thecal sac or nerve root impingement, the conus was well seen and normal, and there was no acute bony abnormality identified.

14. During a November 13, 1998 examination, Dr Simonson noted that the MRI demonstrated mild facet joint degenerative disease at the L4-5 and L5-S1 levels, without nerve root or thecal sac impingement.
15. Simonson noted that plain films dated October 14, 1998 demonstrated a transitional S1 with the possibility of pseudoarthroses of the transverse process at the ilium bilaterally, spina bifida occult at the transitional S1 segment, and that the disk spaces appear well maintained although there was facet sclerosis at the L4-5 and L5-S1 levels. Simonson also noted that Claimant appeared to have some facet joint degenerative disease at the lower lumbar levels and questioned whether she may have some pain related to pseudoarthrosis of the right S1 transitional transverse process with the ilium." Simonson recommended injection of the L4-5 and L5-S1 facets as well as a cortico steroid injection at the junction of the transitional transverse process with the ilium. He also recommended continued physical therapy, continuation of her work restrictions of four hours per day and prescribed Tylenol and Aleve.
16. On November 25, 1998, Dr. Simonson saw Claimant during an examination. Simonson recommended physical therapy and increased her work to six hours per day, no lifting more than 20 pounds, no pushing more than 50 pounds on wheels, no lifting from floor to knee level.
17. On December 9, 1998, Simonson noted that Claimant's symptoms were worse and again recommended physical therapy and consideration of the injections mentioned earlier. He took her off work for duration of two weeks due to her worsened symptoms.
18. On December 10, 1998, Claimant was seen at ProMotion Physical Therapy for an initial evaluation. She was complaining of pain between six and nine out of ten in her right lumbosacral region. Physical therapist Sonia Anderson recommended physical therapy three times a week for three weeks.
19. Claimant was seen on December 14, 16, 21, 1998 for physical therapy at ProMotion.
20. On December 23, 1998, Claimant was seen by Simonson. Simonson noted that Claimant continued to complain of right low back pain, pain into the right groin, and anterolateral thigh pain on the right although it was not constant like before and at its worst was a six out of ten. He noted that she had been doing physical therapy at ProMotion. Simonson released her from work for another two weeks. At that time, Simonson recommended continued physical therapy and medications.
21. Claimant was seen again for physical therapy on December 29, 31, 1998 and January 4, and 6, 1999.
22. Claimant was seen again by Dr. Simonson on January 6, 1999. At that time, he noted that she had reported some improvements although she had exacerbation of symptoms at times. Simonson noted "Ms. Herman continues to demonstrate slow improvement." He recommended continuation of medications, continuation of current physical therapy program and returned her to work at a sedentary level. He noted if she

plateaus in therapies he would recommend L4-5 and L5-S1 facet joint injections.

23. Claimant was seen for physical therapy at ProMotion on January 8, 11, 13, 20, 22, and 25, 1999. The physical therapy notes showed waxing and waning back and leg pain.
24. On January 27, 1999 Simonson saw Claimant and noted that she felt that she was doing much better. She was not taking any medications at that time and was working four hours per day, three days per week. She was performing a home exercise program approximately three times per day. Although Claimant continued to improve she was extremely concerned about re-injuring her back. Simonson recommended continuing off the medications, continuing with physical therapy, and continuing at the sedentary level increasing from four hours per day, three days per week to five days per week.
25. Claimant was seen for physical therapy on February 2, 3, 5, 8, 16, 17, 19, 24, and 26, 1999 and March 1, 1999.1999. The physical therapy notes again indicate waxing and waning low back and leg pain.
26. On February 17, 1999, Simonson noted that she continued with some symptoms in the right lower extremity and her right great toe and thigh but overall she was continuing to improve. He noted she had been using about three extra strength Tylenol per day and continued to work four hours per day, three days per week. Simonson recommended he continue her medications, physical therapy and again re-wrote her work release for the sedentary level, four hours per day, five days per week.
27. Claimant saw Simonson several times from March 2 through 22, 1999. During this time Claimant continued to experience pain in her lower back and leg. She experienced periods of improvement with occasional flares. Claimant also continued with physical therapy.
28. On March 22, 1999, Simonson gave Claimant bilateral L4-5 and L5-1 facet joint injections.
29. On April 5, 1999, Simonson noted that Claimant had reported no benefit from the injections and that her symptoms had increased, if anything, over the last few weeks. He noted she was only able to tolerate a half day of work. Simonson noted that Claimant's case had been unusual with much improvement and request to return to work full time, and then increase in symptoms and requesting off work today. Simonson recommended a trial of a TENs unit as well as a possible functional capacity evaluation.
30. Claimant was given a TENs unit at physical therapy on April 5, 1999 and Dr. Simonson on April 19, 1999 noted "Ms. Herman has used the TENs and found it quite helpful." At that time she had eliminated her pain medications and was tolerating four hours per day at work, utilizing the corset with lifting and utilizing the TENs.
31. From May through August of 1000, Claimant continued to see Simonson. Her lower back and leg pain continued to wax and wane. She treated the pain with over the counter pain relievers. During this time her work scheduled varied depending on her level of pain.

32. Claimant had a functional capacity evaluation performed on September 20, 1999 at ProMotion. The evaluation recommended Claimant return to work full duty at a medium work classification.
33. On September 30, 1999, Simonson saw Claimant and discussed the functional capacity evaluation with her. Simonson noted that the evaluation demonstrated the ability to lift 35 pounds occasionally from floor to waist, 20 pounds occasionally from waist to eye level and the ability to occasionally push and pull 30 pounds of force and the ability to stand constantly.
34. After leaving the employment of the Care Center, Claimant attempted to work at the School of Mines in the kitchen for a short time, but could not do the job because of back pain. Claimant then tried to work at SCI for a short time but again left due to back pain.
35. On July 6, 2000, Claimant returned to Simonson with complaints of her usual symptoms which had worsened over the last few weeks. Simonson noted that she was using her TENs about four times a day for 45 minutes each time and this helped with the pain. Simonson recommended re-starting physical therapy for a two to three week course and anticipated she would do well. He also recommended acetaminophen 500 milligrams.
36. Prior to July 11, 2000, Employer/Insurer paid for all medical treatment provided to Claimant related to the lower back and leg pain that she encounter since the September 26, 1998 work injury.
37. On July 11, 2000, Claimant appeared for her physical therapy appointment. The note from ProMotion indicated “however work comp would not approve therefore will reschedule when work comp approves.”
38. There was no medical treatment for Claimant’s low back or leg symptoms from July of 2000 until February 10, 2005.
39. At the hearing, Claimant, her daughter, Amy Roney and her co-worker, Tom Miller provided testimony regarding Claimant pain and activities during the 2000 through 2005 time period. Their testimony was forthright and credible.”
40. From September, 2001 through 2006, Claimant worked at the Bandit Inn as a cook. The Bandit Inn is associated with Ellsworth Air Force Base. The Bandit Inn hired civilians to work when the military was deployed. Claimant would work for several months, and then be laid off when the military deployment ended. She would then be called back to work during the next deployment. During the military deployments, Claimant worked 37 hours per week at the Bandit Inn.
41. On September 4, 2001, Claimant applied for health insurance through the Bandit Inn. This insurance paid for Claimant’s yearly exams with her ob/gyn and sinus infections and ear infections.
42. Claimant’s health insurance paid for her second injection in 2007 but no other bills were paid by her health insurance for her back injury.
43. Claimant talked to her boss Pat Condon at the Bandit Inn about the health insurance. Condon told her that her health insurance would not cover treatment for her low back pain.

44. During the time that Claimant worked at the Bandit Inn, she continued to expense pain in her lower back and leg similar to the pain that she experienced since September of 1998. Some days the pain was tolerable and on other days her pain was more severe. While employed at the Bandit Inn, she worked a limited schedule and refrained from lifting heavy objects. She also continued to use the TENs unit on a regular basis.
45. After being told by Pat Condon that her back pain would not be cover by her health insurance, Claimant rarely sought treatment for the pain during her regular doctor's appointment6s until February, 2005
46. On February 10, 2005, Claimant saw Dr. Simonson who noted that "she reports her same symptoms, no significant change since I last saw her. She wears the TENs unit on a regular basis and gets good relief from it."
47. On August 11, 2005, Claimant went back to the Rehab Doctors describing lower back and right leg pain which had been ongoing for seven years. She described 75% back pain and 25% leg pain which was there all the time unless she used the TENs unit.
48. Claimant was seen by Dr. Dietrich because Dr. Simonson had left the practice. Dr Dietrich noted that she was having a flare in her lower lumbar pain that was no longer being handled by her TENs unit. He recommended she see physical therapy for a trial of an NMES unit and also recommended Lidoderm patches and fluroscopic guided injections into the right sided L4-5 and L5-1 facets. He also recommended getting into an abdominal strengthening and dynamic lumbar stabilization program.
49. Dr. Dietrich is a physical medicine/rehabilitation specialist with subspecialties in sports and pain medicine. Physical medicine/rehabilitation medicine is a specialty that involves non-operative treatment of muscle, joint, ligamentous and spine injuries or pathologies. Dietrich has been practicing in this field in Rapid City for three years and at the Mayo Clinic for three years prior to that time.
50. On September 9, 2005, Dietrich performed a right L4-5 and L5-1 facet injection. Dietrich noted that since the injection Claimant had a 50-70% improvement in her lower lumbar facet pain and that she was markedly better and is able to ambulate and perform many more daily activities than before. He noted that she had been working with physical therapy and also found this to be beneficial. She currently was not working and feels like she was making progress in physical therapy.
51. On October 19, 2005, Dietrich noted in Claimant's medical records that she had a 1998 work related back injury that significantly injured and flared up her lower lumbar facets. These were calmed down and improved with a series of injections performed by Dr. Simonson on March 22, 1999. She then had a re-flare in August of 2005 of the exact same symptoms in the exact same region. Not only were repeat facet injections in 9/9/05 therapeutic, but they were also diagnostic, confirming the exact same location of her pain. She since has had excellent relief and has been able to manage her symptoms with the use of a NMES stim unit and the

Lidoderm patches provided. She has progressed with a home exercise program and is now set to return to work, limiting to four hour shifts for four weeks.

52. On January 18, 2006, Dietrich performed a right sided L4-5 and L5-S1 lumbar facet rhizotomy which caused improvement in Claimant's symptoms. A right sided L4-5 and L5-1 diagnostic medical branch block was performed on Claimant which decreased her pain from eight out of ten to zero out of ten. As a result of this diagnostic procedure she was given the facet rhizotomy. Dietrich performed another lumbar facet injection at L4-5 and L5-S1 on July 26, 2006 due to increased low back pain. This injection also caused improvement in her condition and on August 9, 2006 Dietrich noted that since her injection Claimant was doing better"

53. Dietrich performed additional lumbar facet injections on March 12, 2007, radiofrequency ablation procedure at L4-5 and L5-1 on May 9, 2007 (HE 5 at 004109), lumbar facet injections at the right L4-5 and L5-S1 on October 10, 2007, another right L4-5 and right L5-S1 lumbar facet injection on February 20, 2008.

54. Dietrich performed a right L4-L5 and right L5-S1 lumbar facet radiofrequency neuroablation procedure on March 19, 2008 and a right L3, right L4, right L5, right sacral notch radiofrequency neuroablation on September 8, 2008.

55. Since February of 2005, Claimant has incurred $29,013.13 in medical bills primarily for her treatment with Dr. Dietrich.

56. Claimant's health insurance has paid for some of her medical bills since 2005. However, a balance of $10,014 remains on the Rehabilitation Doctors out of total charges of $12,696.20. In addition, the Black Hills Surgery Center has a current balance of $11,525.86.

57. During a deposition conducted on February 21, 2008, after reviewing Claimant's medical files, Dr. Dietrich opined that the September 26, 1998 work injury was a major contributing cause of Claimant's current medical condition and need for treatment. Dietrich concluded:

> Prior to the injury and at least per review of records in November of '98, prior to her injury of September she did not have any back problems, had denied any additional treatment or difficulties, had no other significant trauma or injury. From that day forward she has had pain, difficulties with her back, affected function of her back, and the need for treatment. It has been localized to the lumbar facet joints consistently, has responded to treatment at those joints consistently. I believe that the mechanism of injury is consistent with lumbar facet mediated pain or injury."

58. During the February 21, 2008 deposition, Dietrich explained how someone could have an injury in 1998 and still need treatment ten years later. Dietrich stated

> I believe that she has had injury to the joint surface resulting in a loss of the protective cartilage in support of that joint. Also, due to her pain, she has had a level of de-conditioning or loss of fitness which indirectly leads to loss of strength and stability around her low back and the ability to protect that area. Also, she is working on concrete floors, performing you know, lengthy days or work shifts, standing for prolonged periods of time on you know, hard, unforgiving surfaces.

59. During his deposition Dietrich explained, "[m]y interpretation of this mechanism of injury was that she had a lifting back extension injury or mechanism that loaded the facet joints, put pressure on them, and then as she twisted or turned, it led to the flare or injury of the facets in the posterior region." Dietrich continued:

> If you were to lift an object, hold it up, extend your back, you put a lot of pressure and strain through the joints, and then if you twist to dump, you know, the garbage in this instant, into the receptacle, you create a gliding or shearing stress across that joint while it is already loaded or has pressure across it which rubs those surfaces together in an intense fashion."

60. Dietrich opined that Claimant's outstanding medical bills were reasonable, necessary, and causally related to the September 28, 1998 injury.
61. Dr. Dale Anderson is a Rapid City orthopedic surgeon. He has practiced as an orthopedic surgeon since 1979. Forty percent of his practice is in hand and upper extremity problems with the rest in lower extremity, back and hip and knee problems. Anderson does not perform any back surgeries or procedures and does not consider himself a "back doctor" or a "spine surgeon."
62. Anderson saw Claimant for an independent medical evaluation at the request of the insurance company in September of 2005. Anderson noted that Claimant had pain and discomfort in her low back since 1998 after a work injury and that she had had increased pain in her back since August 25, 2005 from a more recent injury on the job. Anderson in his report opined that Claimant's current symptoms were the result of the injury which occurred August 25, 2005 and were probably not related to her initial work injury of September 1998. He believed she suffered from a low back sprain/strain in 2005.
63. Anderson opined that Claimant's current complaints and need for treatment were not related to her work injury of September 1998 because "the medical records that I reviewed indicated that there was no evidence of an injury to the lumbar spine in 1998 and the follow up evaluations and medical treatments that were provided to her did not indicate that her

problem was coming from the lumbar spine." Anderson explained that he reviewed the MRI done in November of 1998 and based on his reading of the MRI there was no evidence of a facet joint or bony injury and therefore Claimant suffered from a muscle strain and ligament strain at that time. Dr. Anderson also believed the result of the bone scan done in May of 1999 showed that Claimant did not have an injury to her facet joints.

64 Anderson's opinion was based in large part upon his review of the MRI and the bone scan and his belief that the "hiatus" or break in her treatment plan from 2000 to 2005 showed that she was asymptomatic during that time. Anderson explained, "with a separation of some four years of time of no treatment or complaints of back pain, I find it difficult to believe that her back pain was still the result of an injury that occurred in 1998 that could not be demonstrated by any of the testing that had been done."

66 Krafka is a radiologist who read the November 1998 MRI of the lumbar spine. Krafka was deposed on August 6, 2008. Dr. Krafka explained that he interpreted the MRI as showing mild facet joint degenerative disease. He testified that that disease would have existed from months to years prior to the time the MRI was taken. He was not able to say how long the condition had been there and stated it could have happened from a single injury but usually there are wear and tear injuries. Krafka was stated that the MRI provided no evidence to support Dr. Dietrich's opinion regarding damage to the facet joints.

67 Additional facts may appear in the analysis of this design.

Analysis

Causation

The general rule is that the 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 Brothers Construction Co., 155 N.W.2d 193, 195 (S.D. 1967). "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:

> [O]nly 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.

The South Dakota Supreme Court has noted that there is a distinction between the use of the term "injury" and the term "condition" in this statute. See Grauel v. South Dakota School of Mines and Technology, 2000 SD 145, ¶ 9. "Injury is the act or omission which causes the loss whereas condition is the loss produced by an injury, the result." Id. Therefore, "in order to prevail, an employee seeking benefits under our workers' compensation law must show both: (1) that the injury arose out of and in the course of employment and (2) that the employment or employment related activities were a major contributing cause of the condition of which the employee complained, or, in cases of a preexisting disease or condition, that the employment or employment related injury is and remains a major contributing cause of the disability, impairment, or need for treatment." Id. (citations omitted).

In this case, the evidence clearly indicates that an injury "arose out of and in the course of employment" on September 26, 1998. To determine whether that injury is a major contributing cause of Claimant's current medical problems, we must consider conflicting medical opinions..

Dr. Christopher Dietrich, Claimant attending physician, opines that Claimant's September, 1998 work injury is the major contributing cause of her current medical condition and need for treatment. His opinion is consistent with conclusions made by Claimant previous physician, Dr, Simonson, as stated in Claimant's medical records.

Conversely, Dr. Dale Anderson, who was retained by Insurer to evaluate Claimant opines that Claimant's current medical problems are the result of a more recent injury which occurred in August of 2005 and that the September

1998 injury was not a major contributing factor. Anderson's opinion is supported by observations made by Dr. Krafka, after reviewing Claimant's MRIs.

In this case, Dr. Dietrich's opinion is the more persuasive. First, Dr. Anderson's opinion is based on the mistaken notion that Claimant suffered no lower back pain during the 4 ½ year period from July of 200 through February 2005. He based this on the fact that Claimant did not seek medial treatment for her back pain during this period of time. However, Dr. Anderson's assumption was incorrect.

A preponderance of the evidence indicates that Claimant suffered the same lower back and leg pain during the 200 through 2005 period that she experience shortly after her 1998 injury. Further the record indicates that Claimant continued to utilize the TENs unit and refrained from lifting heavy weights during this time period.

Claimant's reasons for avoiding medical treatment for her back pain during the 2000 through 2005 period are plausible. Workers Compensation had quit paying for her physical therapy and her boss informed her that her health insurance would not cover her prior work injury. Under these circumstances, it is understandable that an individual with Claimant's education and background would refrain from seeking medical treatment for her symptoms. During the time since Claimant's 1998 injury, she had become accustomed to coping with the waxing and waning pain on a daily basis.

The South Dakota Supreme Court held that "the value of the opinion of an expert witness is no better than the facts upon which they are based. It cannot rise above its foundation and proves nothing if its factual basis is not true." Podio v. American Colloid Co., 162 N.W.2d 385, 387 (SD 1968). Dr. Anderson's premise that Claimant experienced no back pain from July of 2000 until February of 2005 was incorrect. Consequently, his medical conclusion is likewise suspect.

Dr. Dietrich's opinion is bolstered by the fact that Claimant experienced no significant lower back or leg pain prior to her 1998 injury. Yet, since that injury, Claimant has suffered the same back pain and symptoms on a nearly continuous basis subject to periods of improvement after treatment. It is also worth noting that Dr. Dietrich as Claimant's treating physician has had more opportunity to consider her case and observe Claimants response to treatment.

Further, Dr. Dietrich's opinion is grounded in his experience as a specialist in the treatment of lumbar facet injuries. Dr. Anderson admitted that he is not a "back doctor" and that he would refer patients with facet joint problems to Dr. Dietrich. The medical opinion of an expert witness with more expertise in the treatment of a condition is entitled to greater weight than a medical expert with less expertise or experience in treating that condition. *Haynes v. Ford,* 686 N.W.2d 657, 662-664 (SD 2004).

Claimant has met her burden of proof on this issue. Claimant has shown by a preponderance of the evidence that the work injury Claimant suffered on September 26, 1998 is a major contributing cause of her current medical condition and need for treatment.

Medical Expenses

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 182, 185 (S.D. 1967. Claimant has met that burden.

Since February of 2005, Claimant has incurred $29,013.13 in medical bills primarily for her treatment with Dr. Dietrich. Claimant's health insurance has paid for some of her medical bills since 2005. However, a balance of $10,014 remains on the Rehabilitation Doctors out of total charges of $12,696.20. In addition, the Black Hills Surgery Center has a current balance of $11,525.86.

Dr. Dietrich opined that Claimant's outstanding medical bills were reasonable, necessary, and causally related to the September 26, 1998 injury. Consequently Claimant is entitled to payment for those expenses.

Conclusion

Claimant has demonstrated that her September 26, 1998, work related injury is a major contributing cause of her current lumbar facet joint condition and treatment. Claimant has also shown that she is entitled to payment for unpaid medical expenses since February 2005 related to that condition.

Counsel for Claimant shall submit proposed Findings of Fact, Conclusions of Law and Order consistent with this Decision, within 20 days of the receipt of this Decision. Counsel for Employer/Insurer shall have an additional 10 days from the date of receipt of Claimant's Proposed Findings of Facts and Conclusions of Law to submit objections thereto, or submit Proposed Findings of Facts and Conclusions of Law. The parties may stipulate to a waiver of formal Findings of Fact and Conclusions of Law. If they do so, counsel for Claimant shall submit such stipulation together with an Order consistent with this Decision.

Dated this _9th___ day of January, 2009.

SOUTH DAKOTA DEPARTMENT OF LABOR

___Donald W. Hageman_____
Donald W. Hageman
Administrative Law Judge