

**SOUTH DAKOTA DEPARTMENT OF LABOR & REGULATION
DIVISION OF LABOR AND MANAGEMENT**

KRISTINE SCHMIDT

HF No. 49, 2017/18

Claimant,

v.

DECISION

**REGIONAL HEALTH NETWORK, INC.
n/k/a MONUMENT HEALTH
Employer and
Self-Insurer.**

This is a workers' compensation case brought before the South Dakota Department of Labor & Regulation, Division of Labor and Management pursuant to SDCL § 62-7-12 and ARSD 47:03:01. The case was heard by Michelle M. Faw, Administrative Law Judge, on July 13, 2022. Claimant, Kristine Schmidt, was present and represented by Michael J. Simpson of Julius & Simpson. Employer and Self-insurer were represented by Jennifer L. Wosje of Woods, Fuller, Shultz & Smith.

Facts:

1. In 2006 or 2007, Kristine Schmidt (Schmidt) sustained a low back strain that lasted about two to three days and then resolved.
2. On April 20, 2017, Schmidt sustained a work-related injury while employed as a home healthcare nurse by Regional Health Network, Inc. which is now known as Monument Health (Monument). The injury was accepted as compensable and medical treatment was paid.
3. On May 19, 2017, Schmidt was seen by PA Tara Carlson at the Monument Health Sturgis Clinic. PA Carlson noted that Schmidt was limping, had tenderness in her low back muscles, and a reduced range of motion. She also

noted Schmidt's straight leg test was positive on both her right and left. PA Carlson diagnosed a low back strain with spasming and prescribed Naproxen and Cyclobenzaprine. She also recommended an MRI if Schmidt did not improve. An x-ray taken that day of Schmidt's lumbar spine showed advanced degenerative disk disease within the lumbar spine with facet arthrosis.

4. On May 30, 2017, Schmidt was seen by PA Carlson who noted that her condition was improved but Schmidt was concerned about exacerbating it. PA Carlson referred Schmidt to a chiropractor and recommended she not lift over twenty pounds. Schmidt was taken off work until June 3, 2017.
5. On June 6, 2017, Schmidt was seen by PA Carlson who noted that Schmidt was improving with her chiropractic care but had severe pain the previous day when she was unable to bend, twist, or lift anything without significant pain. Schmidt was kept off work for an additional week. PA Carlson noted that Schmidt should look for other employment because home health involved a lot of heavy lifting which put her at high risk for another injury.
6. On June 20, 2017, PA Carlson examined Schmidt and noted that she had changed jobs. Schmidt's condition continued to improve although she had a setback when she used a riding lawn mower. PA Carlson recommended she continue with chiropractic care and her lifting restrictions of fifteen pounds. If Schmidt did not continue to improve, then an MRI would be recommended along with a referral to Rehab Doctors.
7. On July 12, 2017, Schmidt saw PA Carlson and reported that she continued to exacerbate her condition when bending or twisting. PA Carlson noted that Schmidt was not swimming up to the twenty-seven laps she had done prior to

her work injury and when her condition was exacerbated, she was only able to swim about five laps due to the pain. The exam showed diminished reflexes in Schmidt's right and left ankles and knees and a positive straight leg test on the right. PA Carlson recommended an MRI of Schmidt's lumbar spine due to persistent low back pain with radiculopathy into her right gluteus after a lifting and twisting work injury in April 2017.

8. On July 20, 2017, Schmidt underwent an MRI of her lumbar spine which showed broad-based right lateral disk protrusion with possible impingement on the right L4 nerve root at and beyond the foramen at L4-5 as well as marked degenerative disk disease at L3-4 through L5-S1 with no other disk herniations evident and no spinal stenosis.
9. On July 31, 2017, Schmidt was seen by Dr. Christopher Dietrich, a rehabilitation specialist. Dr. Dietrich took a history of Schmidt's April 20, 2017, injury and conducted a physical examination. His examination showed Schmidt had tenderness in her low back/lumbosacral region and pain with forward flexion. He noted that she showed a positive straight leg test at sixty degrees, and she had decreased right knee joint reflex compared to the contralateral side. She also showed tenderness to palpation at the L4-L5 region. Dr. Dietrich recommended a right L4-5 transforaminal epidural injection as well as physical therapy.
10. On August 24, 2017, Dr. Dietrich performed the injection at L4-5.
11. On September 19, 2017, Dr. Dietrich noted that Schmidt showed fifty percent improvement at the epidural injection, and she had increased her activity although she was not working. He further noted that Schmidt continued back

and leg radicular complaints and that her symptoms were somewhat better, but she still had ongoing pain. His exam showed radicular complaints and tenderness in her low back with limited forward flexion over back extension. Dr. Dietrich recommended repeating the right L4 epidural injection and continuing with physical therapy.

12. On October 4, 2017, Dr. Dietrich performed an L4-L5 transforaminal epidural injection.

13. On October 17, 2017, Dr. Dietrich noted Schmidt's leg pain was better after the injection although she still had pain across her back. He further noted that she was not able to stand for prolonged periods of time, ambulate, or do various activities.

14. On November 20, 2017, Dr. Dietrich saw Schmidt and noted that she had not yet been released to return to work. She was stretching, walking, and exercising for three and a half to four hours and was doing well. Her pain had somewhat decreased. His physical exam showed some mild tenderness in the low back and some limitations at the extremes of forward flexion and back extension with a negative straight leg test. He discharged Schmidt to an independent home exercise program, released her from restrictions, and placed her at maximum medical improvement.

15. On December 5, 2017, Dr. Dietrich responded to a letter from the workers' compensation case manager in which he opined that Schmidt had permanent work restrictions limiting lifting over sixty-one pounds as well as no bending, squatting, kneeling, twisting, turning, climbing steps and ladders, pushing/pulling, reaching and below knee work to three to four hours per day.

She was also limited in above-shoulder work to five to six hours per day. She was also limited to standing, walking, and sitting for seven to eight hours per day.

16. On October 26, 2017, Schmidt submitted a Petition for Hearing to the Department of Labor & Regulation (Department).
17. On December 7, 2017, Dr. Dietrich opined that Schmidt had a nine percent whole-person impairment for her lumbar spine based on an intervertebral disk herniation and degeneration as well as decreased range of motion, radicular symptoms down the leg, significant pain to palpation, and sensory and motor deficits.
18. December 28, 2017, Schmidt underwent a pre-placement screening at Monument Health. The results indicated her abilities met the demands of the position and that modifications were not required to safely fulfill the requirements. The results also indicated a 60-pound weight restriction.
19. February 12, 2018, Dr. Dietrich saw Schmidt and noted that she had some back, right buttock, and right leg numbness and tingling. He further noted that she was scheduled to start a director of nursing position at a retirement home in Basin, Wyoming. His physical exam showed tenderness in the low back region and limitation in extremes of forward flexion over back extension. He recommended she follow up in six months and continue her home management strategies.
20. On March 29, 2018, the Department entered an Order of Dismissal of Schmidt's Petition for Hearing per a stipulation by the parties.
21. On August 13, 2018, following an MRI, Schmidt was seen by Dr. Dietrich who noted that the MRI results showed right-side disk herniations at L4-5 and L5-S1.

He also noted that Schmidt had continued to experience right leg numbness and trouble with prolonged sitting and prolonged standing. Schmidt had been on work restrictions since August 2, 2018, and she had been working from home as she was not able to make the long drive to work in Wyoming. Dr. Dietrich's examination showed significant tenderness in the low back/lumbosacral region as well as radicular complaints in a right L4-L5 distribution and positive straight leg test. He recommended a right L4-5 transforaminal epidural injection.

22. On September 4, 2018, Dr. Dietrich performed the L4-5 transforaminal epidural.

23. On September 21, 2018, Schmidt was seen by Dr. Dietrich reporting that her back was still sore, but she had less sciatic pain and her numbness had improved since the epidural. He noted that she exhibited tenderness in the low back/lumbosacral region and radicular complaints down the right leg. He further noted that her pain was rated 3 and 4 out of 10 and that she was taking Motrin, using an inversion table two times a day, a TENs unit, and a home exercise program. He also noted she was not working.

24. On May 10, 2019, Dr. Dietrich saw Schmidt who was complaining of significant low back pain, spasms, and a feeling of instability in her back. He noted she was currently working as an interim director of nursing at the Winner skilled nursing facility and that she was using the inversion table two to three times per day. Following his examination, he recommended a surgical referral to Dr. Christian Gaffney.

25. On June 25, 2019, Schmidt was seen by Dr. Gaffney. He took a history of the April 20, 2017, work injury and noted that her symptoms had been worsening since that time.

26. On July 9, 2019, Dr. Gaffney saw Schmidt and reviewed an MRI that had been taken on July 1, 2019. The MRI showed multi-level degeneration. He opined that her degenerative conditions were not caused by the work injury but that the injury had set off her symptoms. He recommended physical therapy, work hardening, and a potential injection at L5-S1.
27. On November 4, 2019, Dr. Dietrich saw Schmidt who reported increased symptoms and right leg sciatic pain that was keeping her awake. His examination showed she had radicular complaints in her right L5-S1 distribution, significant tenderness in the low back, and trouble with activity or standing for longer than seven minutes. He recommended she continue with her core strength and stabilization and work hardening program. He also recommended an epidural injection and continued work restrictions.
28. On November 14, 2019, Dr. Dietrich performed an L4-5 transforaminal epidural injection.
29. On December 17, 2019, Schmidt was seen by Dr. Walter Carlson at Orthopedic Institute for an independent medical evaluation (IME). Dr. Carlson was asked to assess whether the April 20, 2017, work injury remained a major contributing cause of Schmidt's current condition, any disability, impairment, or need for treatment.
30. On December 20, 2019, Dr. Dietrich saw Schmidt who reported she was feeling better with a fifty percent improvement after the injection. He noted that Schmidt was off work but planned to resume working after January first.
31. On January 30, 2020, Dr. Carlson issued his IME report in which he opined that the April 20, 2017, injury was a cause but not a major contributing cause of her

current condition as she had other diagnoses of scoliosis, degenerative disc disease, spondylosis, spondylolisthesis, and foraminal stenosis which were the major contributing causes of her symptoms. He concluded that Schmidt had reached a point where no further treatment was required due to the work incident, and she did not require any restrictions.

32. On February 21, 2020, Dr. Dietrich responded to a letter from Schmidt's attorney. He opined that Schmidt's work injury is and remains a major contributing cause of her current medical condition and need for treatment as she did not have a need for treatment or pain prior to her work injury. Dr. Dietrich expected that Schmidt would need work restrictions, occasional injections, and a possible future surgery.

Also on this day, Monument notified Schmidt by letter of an overpayment of an additional 3% permanent partial disability (PPD) benefits for her back paid in error because she had previously received a 9% PPD for the back by Dr. Dietrich. Monument requested reimbursement under *Tiensvold v. Universal Transport, Inc.*, 464 N.W.2d 820 (S.D. 1991).

33. On March 20, 2020, Dr. Dietrich saw Schmidt who reported pain of 5 out of 10 severity and about a 50 percent improvement. He noted that she did not have hip or groin pain but had foot burning and numbness at times and some leg sciatica as well as pain across the back with prolonged standing, walking, and activity. He further noted that she was not currently working but was looking to start in mid-April and that she was no longer swimming but was walking half a mile and doing an elliptical for 20 minutes at a time.

34. On May 12, 2020, Dr. Dietrich examined Schmidt and noted that she had pain in her great toe and numbness in her right foot and her leg was unsteady when walking. He also noted that she had been doing home health training and in the last two weeks, her symptoms had gotten progressively worse. The physical exam showed significant back pain, right leg radicular pain, numbness, and tingling as well as a positive straight leg test with neural tension and some weakness in the L5-S1 distribution. Dr. Dietrich recommended an injection.
35. On May 22, 2020, Dr. Dietrich performed a right L4-5 transforaminal epidural injection.
36. On June 5, 2020, Dr. Dietrich examined Schmidt noting that her back pain went down from a 9 out of 10 to a 2 out of 10 after the injection. She was doing well, and her foot numbness was gone. He further noted that she was not currently working but was applying for jobs and was doing independent home exercise, swimming, and hiking. The physical exam showed improved gait and radicular complaints in the right L5-S1 distribution, some neural tension, and decreased lumbar range of motion.
37. On June 30, 2020, Schmidt submitted a second Petition for Hearing to the Department.
38. On August 7, 2020, Monument, then Regional Health, Inc., submitted its Answer and Cross-Petition for Hearing to the Department alleging a change of condition pursuant to SDCL § 62-7-33.
39. In November 2020, a Reservation of Rights was given.
40. On November 6, 2020, Dr. Dietrich saw Schmidt noting that she continued to have radicular complaints in her right leg and back as well as numbness and

tingling in her foot and toes. Schmidt had been working 70 hours a week at Spearfish Canyon Healthcare as director of nursing. He also noted that she had not been swimming as far and was using more Motrin. He recommended an injection.

41. On November 16, 2020, Dr. Dietrich performed a right L5-S1 transforaminal epidural injection.

42. On February 1, 2021, Schmidt was seen by Dr. Dietrich who noted relief following the injection and less pain into the knee and down the leg although she still had some numbness in her right foot and toes. Schmidt was working 40 hours a week as an interim director at a nursing facility in Meeker, Colorado.

43. On March 3, 2021, Schmidt saw Dr. Dietrich who noted her symptoms had flared and she exhibit leg dragging, pain, paresthesia, radicular symptoms down the right leg, and decreased sleep. Schmidt had finished her job in Colorado and was looking for a different position. He also noted that she was unable to hike. He recommended an injection.

44. On May 19, 2021, Dr. Dietrich performed a right L5-S1 transforaminal epidural injection.

45. On June 3, 2021, Schmidt visited Dr. Dietrich who noted her pain improved following the injection, and that she showed paresthesia down the leg in an L5-S1 distribution, trace weakness, a positive straight leg raise, limited forward flexion, and tenderness in the low back. He recommended another surgical consultation.

46. On July 14, 2021, Schmidt was seen by Dr. Gaffney who went over her MRI results and treatment history since he had seen her two years before. Dr.

Gaffney's examination did not show any pain with palpation of her low back, normal range of motion, and normal reflexes. He opined that her scoliosis and spondylolisthesis were not caused by her work injury but it seemed to have set them off. Dr. Gaffney concluded that considering she had exhausted all appropriate non-operative treatments that an L3-4, L4-5 and L5-S1 anterior lumbar interbody fusion surgery was appropriate.

47. On July 19, 2021, Schmidt underwent a lumbar spine MRI which revealed no significant changes since July 1, 2019.

48. On November 5, 2021, Dr. Gaffney responded to a letter from Schmidt's attorney. He opined that the April 20, 2017, work injury is and remains a major contributing cause of Schmidt's condition and need for surgery because she did not show symptoms prior to the incident even though she likely had degeneration in her spine.

49. On November 23, 2021, Schmidt was seen by Dr. Dietrich who noted she complained of pain and displayed limitation in her lumbar range of motion, trouble with walking and transitioning, pain to palpation in the low back and radicular symptoms and weakness in a right L5-S1 distribution. He recommended an injection.

50. On December 15, 2021, Dr. Dietrich performed a right L5-S1 transforaminal epidural injection.

51. On January 27, 2022, Dr. Dietrich saw Schmidt who reported a reduction in pain and improved movement following the injection. He noted that she had continued instability at the L5-S1 region and trouble with leg radicular pain and weakness.

52. On March 18, 2022, Dr. Dietrich saw Schmidt who complained of back, sciatic, and right leg radicular pain. He noted she had been going to physical therapy and swimming. He also noted that she was not working because she was not being hired due to her back and ongoing workers' compensation claim.

53. On May 29, 2022, Schmidt was seen by Dr. Dietrich who noted she showed pain in the right hip, low back area and instability at L5-S1 as well as paresthesia down the right leg in an L5-S1 distribution. He recommended she continue physical therapy and that they would need to consider transitioning to work hardening with the goal of getting her back to work.

54. On July 19, 2022, Dr. Dietrich examined Schmidt. He noted she continued to have difficulty with ambulating, transitions and getting back into the pool. He further noted she was noticing weakness in her right leg, decreased sleep, and difficulty with a variety of activities. He recommended an injection.

55. On August 8, 2022, Dr. Dietrich performed a right L5-S1 transforaminal epidural injection.

Issue:

The issues presented at hearing were

- a. Major contributing cause and entitlement to medical benefits;
- b. Change of condition under SDCL 62-7-33; and
- c. Monument's entitlement to reimbursement for benefits overpaid

Major Contributing Cause Analysis:

The work injury at issue in this matter occurred on April 20, 2017. In her position as a home healthcare nurse, Schmidt was at an elderly patient's home to provide wound care. The patient weighed around 70 or 80 pounds and could not move

because her joints were stiff. The patient's daughter who was a nurse had to hold the patient up while Schmidt worked on the wounds on her back. The patient was on a low bed and Schmidt was crouched forward in order to clean and irrigate the wounds.

As Schmidt began the wound care, there was a scream from the other room. The daughter quickly got up and ran out of the room requiring Schmidt to lurch forward to support the patient. Suddenly, a dog and two cats ran into the room and Schmidt had to crouch over the patient to protect the area. She held the woman up and kept the pets out of the sterile area for around five to ten minutes. She then was able to complete the patient's care. Following the incident, Schmidt felt pain in her lower back with radiated a little bit into her right leg. She believed she had strained her back or pulled a muscle.

Causation is a medical question, and both parties have offered expert medical opinions. "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 parties have offered the medical opinions of Dr. Dietrich, Dr. Gaffney, and Dr. Carlson.

Dr. Dietrich is a specialist in treating neck, back, and musculoskeletal injuries. He works at Rehab Doctors in Rapid City. He is board certified in physical medicine and rehabilitation as well as sports medicine and pain medicine. At his deposition, Dr. Dietrich opined that Schmidt sustained an acute disk herniation from the work-related injury on April 20, 2017. He stated that the multiple MRIs provided evidence

of a paracentral disk herniation at L4-5. He concluded it was the result of Schmidt having been flexed forward and bent over the patient on the bed. Dr. Dietrich also opined that since the injury she has had an exacerbation of a chronic degenerative back condition including degenerative scoliosis and spondylolisthesis, and the injury caused a permanent worsening of a pre-existing problem in her low back. While both scoliosis and spondylolisthesis are progressive degenerative conditions, he found it important that Schmidt did not complain of significant low back issues and worked productively before the injury. He opined that the listhesis had taken over as the primary source of her discomfort and instability leading to her surgical consultation.

Dr. Dietrich disagreed with Dr. Carlson's opinion that Schmidt had a strain of the lumbar spine that was presumed to be resolved approximately 12 weeks after the injury, as the MRI evidence supports a diagnosis of an acute herniation. Additionally, Dr. Dietrich opined that strains do not cause the type of leg radicular problems that Schmidt had experienced and the improvement in symptoms she experienced following the transforaminal epidural injections were diagnostically significant and indicated the issue was not a strain. It was Dr. Dietrich's opinion that the work injury is and remains a major contributing cause of Schmidt's need for surgery and that all of her medical treatment had been reasonable and necessary.

Schmidt has also offered the expert testimony of Dr. Gaffney, an orthopedic surgeon practicing in Rapid City. At his deposition, Dr. Gaffney opined that it was more likely than not that the work injury is a major contributing cause of the disk abnormality at L4-L5. He had reviewed the 2017 MRI report and believed it showed

a moderate disk bulge worse on the right side touching the L4 nerve root at L4-L5. He also believed that the 2019 MRI was essentially the same as that from 2017, and the disk bulge was still present.

In his clinic note for June 25, 2019, following his first visit with Schmidt, he noted that he believed she did not require surgical intervention to find relief and he recommended a nonoperative course. At that time, he also believed that her L5-S1 spondylolysis and spondylolisthesis were not caused by the work injury, but were, instead, degenerative in nature. Dr. Gaffney saw Schmidt again on July 14, 2021. He noted that her scoliosis at L5-S1, spondylolysis and spondylolisthesis were not caused by her work injury. He testified that his physical exam of Schmidt did not show any abnormal neurologic findings, and he did not conduct a straight leg test.

Dr. Gaffney proposed a three-level anterior and posterior fusion to address Schmidt's degenerative changes, bulging disks, and pinched nerves. He believed that the MRI results indicated that surgery was appropriate especially since Schmidt had exhausted non-surgical treatments. Additionally, Dr. Gaffney stated that it was well-documented that patients could have disk herniations and degenerative conditions while being asymptomatic. He found it to be reasonable for Schmidt to have degeneration in her back but to not have symptoms prior to the work injury. He believed that Schmidt's injury caused an inflammatory cascade that ultimately resulted in her need for surgery. Dr. Gaffney stated that the surgery would address multiple issues in Schmidt's back including the right-sided L4-5 herniation brought on acutely by the work injury. He added that the treatment for a disk herniation would be a microdiscectomy if Schmidt did not have symptoms other than those

caused by the disc herniation. Dr. Gaffney testified that without an MRI immediately prior to the injury, he could not conclude whether Schmidt's disc bulge was acute. However, he concluded that to a reasonable degree of medical probability, the work injury is and remains a major contributing cause of her condition and that the surgery he proposed would not be necessary if it were not for the injury.

Monument offered the expert testimony of Dr. Carlson who is board certified in orthopedic surgery. He performed his orthopedic residency at the Mayo Clinic in Rochester. He practiced orthopedic surgery at the Orthopedic Institute in Sioux Falls, South Dakota from 1983 until 2020. He retired from active orthopedic practice on January 4, 2020. He then began a consulting business where he provided medical/legal consultation, independent medical evaluation, medical records reviews, and other services associated with forensic orthopedics.

Dr. Carlson performed an IME on Schmidt on December 17, 2019, and he provided his deposition testimony on October 4, 2021. He testified that Schmidt's neurologic examinations at the IME were normal. He opined that Schmidt has an advanced degenerative disease of the discs of her lower back specifically spondylolisthesis and spondylosis. He concluded that the work injury caused a temporary exacerbation of her underlying degenerative disease of the spine as a result of a lumbar sprain/strain. He testified that the injury she experienced was a minor trauma. He further opined that Schmidt did not sustain an acute disc herniation on the date of the injury and that the radiologist who examined the MRI of July 20, 2017, concluded it does not show a disc herniation. He also believed that Schmidt's records indicate that she suffered from radiculitis and not radiculopathy.

Additionally, he opined that the way to determine whether the L4-5 disc is the source of Schmidt's pain would be to conduct a discogram. He testified that he would not operate on protruding disk such as that shown on Schmidt's MRIs. He does not believe that the proposed three-level fusion is reasonable and necessary. In Dr. Carlson's opinion, the work injury is not a major contributing cause of her injury as the degenerative conditions in her spine alone could account for her current symptoms and need for treatment.

To prevail in this matter, Schmidt must first prove that her work-related injury is a major contributing cause of her condition. While she is required to prove major contributing cause, Schmidt is "not required to prove [her] employer was the proximate, direct, or sole cause of [her] injury." *Smith v. Stan Houston Equip. Co.*, 2013 S.D. 65, ¶ 16, 836 N.W. 2d 647, 652. She must prove "that employment or employment-related activities [are] a major contributing cause of the condition of which she complained, or, in cases of preexisting disease or condition, that employment or employment-related injury is and remains a major contributing cause of the disability, impairment, or need for treatment." *Norton v. Deuel School Dist. No. 19-4*, 674 N.W.2d 518, 521 (S.D. 2004). The standard of proof for causation in a worker's compensation claim is a preponderance of the evidence. *Armstrong v. Longview Farms, LLP*, 2020 SD 1, ¶ 21, 938 N.W.2d 425, 430.

The South Dakota Supreme Court addressed major contributing cause in *Armstrong v. Longview Farms, LLP*, 2020 S.D. 1, 938 N.W.2d 425. In *Armstrong*, Armstrong sustained an injury to his left knee while working for Longview Farms. *Id.* at 426. The injuries were initially found to be compensable. *Id.* at 426. Armstrong

had already been diagnosed with osteoarthritis and other chronic issues after a previous injury. *Id.* at 427. At that time, he had been told he would require a knee replacement, but he opted for conservative treatment instead. *Id.* at 427. Following the injury at Longview Farms, Armstrong was offered the choice of conservative treatment or a knee replacement. *Id.* at 427. He chose the total knee replacement. *Id.* at 427. The insurer concluded that the work injury was not a major contributing cause of his left knee condition, and it was, instead, the result of chronic, preexisting conditions. *Id.* at 428. At hearing, the Department concluded that Armstrong had not proven that his injury was the major contributing cause of his need for knee replacement surgery. *Id.* at 429. On appeal, the Court stated,

[The] record contains uncontroverted evidence of Armstrong's preexisting degenerative osteoarthritis as it grew worse in the years leading up to the March 31 injury. Further, there is no evidence to support the view that Armstrong's osteoarthritis was related to his employment, either at Longview Farm or any previous employer. Armstrong was a candidate for total knee replacement for 11 years prior to his injury and during that time his medical providers noted he was experiencing ongoing, worsening pain in both knees. The fact that the March 31 injury may have been the unfortunate tipping point of Armstrong's knee symptoms does not mean that it displaced the degenerative effects of his preexisting condition. *Id.* ¶ 24, 938 N.W.2d at 431.

Like Armstrong, Schmidt suffers from a degenerative condition. However, her situation is distinguishable. Armstrong was receiving treatment and expecting to require surgery prior to the relevant work injury. Before her injury, Schmidt was not suffering from symptoms and did not require treatment. She was also very physically active both professionally and in her free time. After, Schmidt needed frequent treatments including epidural injections to manage her symptoms and her ability to work and engage in activities like swimming was diminished.

The fact that Schmidt suffers from a degenerative condition does not preclude her injury from compensability. SDCL § 62-1-1(7)(b) provides,

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;

Additionally, the Court has held that a work incident does not need to be “the” major contributing cause but need only be “a” major contributing cause. *Hughes v Dakota Mill Grain, Inc. and Hartford Insurance*, 2021 S.D.31, ¶ 21, 959 N.W.2d 903. As Dr. Gaffney testified, without an MRI from before the injury there is no way to be certain of the nature of the injury or its effect on Schmidt’s back. However, what can be observed is the course of treatment indicated by Schmidt’s medical record. Before the injury on April 20, 2017, Schmidt did not suffer from spinal symptoms. She did not require epidural injections or other medical treatments. She was able to carry out the tasks of her employment without difficulty and engage in physical leisure activities. After her injury, she began a course of medical intervention that continues to her current need for spinal surgery. While it is likely that her degenerative conditions contribute to her need for treatment, including surgery, both SDCL § 62-1-1(7)(b) and *Hughes*, provide that as long as the injury is a major contributing cause of her condition and need for treatment it is compensable.

The Department is persuaded by the opinions of Dr. Dietrich and Dr. Gaffney who have concluded that the injury is a major contributing cause of her current condition and need for treatment. Dr. Dietrich is familiar with Schmidt’s medical history, and he has treated her since 2017. Dr. Gaffney also is familiar with her records and history and

his opinion is well supported by the records and his experience as an orthopedic surgeon. While Dr. Carlson is familiar with Schmidt through her records and IME, his conclusions seem to be inconsistent with the records. Dr. Carlson believes that the work injury resulted in a sprain/strain from a minor trauma that resolved 12 weeks after the injury. However, Schmidt continued need for treatment indicates that nothing was resolved. Therefore, the Department finds Dr. Dietrich and Dr. Gaffney more persuasive. Schmidt has proven by a preponderance of the evidence that her work-related injury on April 20, 2017, is a major contributing cause of her condition and need for treatment.

Change of condition under SDCL § 62-7-33

Monument asserts that Schmidt's condition has changed and that her degenerative conditions are the cause of her current condition and not the work injury. The Court has addressed that such changes are possible, "That is, the preexisting disease may progress to the point where it could alone account for total disability, while the results of the compensable accident diminished to the point where they made no significant contribution to the disability." *Hayes v. Rosenbaum Signs & Outdoor Advertising, Inc.*, 2014 SD 64, ¶ 29, 853 N.W.2d 878, 886 (quoting Larson's Workers' Compensation Law, ' 131.03[1][d](2010)). However, per the analysis above, the progression of Schmidt's condition and the need for treatment since her injury is observable from her medical records, and the Department is persuaded that her work injury remains a major contributing cause of her condition.

Therefore, Monument has not shown that Schmidt has undergone a change of condition under SDCL § 62-7-33.

Monument's entitlement to reimbursement for benefits overpaid

On February 5, 2020, Monument wrote to Schmidt stating that a 3% impairment or permanent partial disability (PPD) rating would be paid to her pursuant to the opinion of Dr. Carlson. However, the letter was sent in error because Schmidt had previously received and been paid a 9% PPD rating for her back. Monument asserts that it overpaid Schmidt \$1,524 in PPD benefits and requests reimbursement under *Tiensvold v. Universal Transport, Inc.*, 464 N.W.2d 820 (S.D. 1991). Schmidt agreed that there has been an overpayment of \$1,524 overpayment and stated in her brief that she would arrange for repayment. Once the repayment is made the issue will be resolved.

Conclusion:

Schmidt has proven by a preponderance of the evidence that her April 20, 2017, work injury is a major contributing cause of her current condition.

Monument has not shown that Schmidt has undergone a change of condition under SDCL § 62-7-33.

Once the repayment of \$1,524 has been made the issue of the overpayment will be resolved.

Schmidt shall submit Findings of Fact and Conclusions of Law and an Order consistent with this Decision within twenty (20) days from the date of receipt of this Decision. Monument shall have an additional twenty (20) days from the date of receipt of

Schmidt Proposed Findings and Conclusions to submit objections thereto and/or to submit their own proposed Findings of Fact and Conclusions of Law. The parties may stipulate to a waiver of Findings of Fact and Conclusions of Law and if they do so, Schmidt shall submit such Stipulation along with an Order consistent with this Decision.

Dated this 12 day of January, 2023.

SOUTH DAKOTA DEPARTMENT OF LABOR & REGULATION

A handwritten signature in blue ink that reads "Michelle Faw". The signature is written in a cursive, flowing style.

Michelle M. Faw
Administrative Law Judge