

January 15, 2020

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LETTER DECISION

Michael J. Simpson
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Richard L. Travis
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RE: HF No. 50, 2016/17 – Daniel Blomquist v. Wheeler Manufacturing Company, Inc. and Hartford Accident and Indemnity Company and Phoenix Insurance Company

Dear Mr. Von Wald, Mr. Simpson, and Mr. Travis:

This letter addresses the following submissions by the parties:

November 20, 2019	Phoenix Insurance Company's Brief in Support of SDCL 62-7-38 Coverage Adjudication;
	Affidavit of Thomas J. Von Wald in Support of Phoenix Insurance Company's Brief in Support of SDCL 62-7-38 Coverage Adjudication;
November 21, 2019	Brief of Hartford Accident and Indemnity Company to Determine Payment of Benefits Pursuant to SDCL 62-7-38;
December 5, 2019	Phoenix Insurance Company's Response to Hartford's Brief to Determine Payment of Benefits Pursuant to SDCL 62-7-38;

December 9, 2019

Reply Brief of Hartford Accident and Indemnity
Company to Determine Payment of Benefits Pursuant
to SDCL 62-7-38.

Phoenix Insurance Company (Phoenix) and Hartford Accident and Indemnity Company (Hartford) have conceded that Daniel Blomquist (Blomquist) is entitled to permanent total disability benefits. Pursuant to SDCL 62-4-53, the parties have entered into a Stipulation agreeing that Phoenix and Hartford would equally split payment of benefits and costs to Blomquist. Phoenix and Hartford further agreed to equally split the future costs of any reasonable and necessary medical treatment casually related to Blomquist's work injury. The parties disagree as to which insurer is ultimately responsible for paying these benefits and have agreed that the Department of Labor & Regulation (Labor) would reserve jurisdiction to resolve this question.

BACKGROUND:

Blomquist began working at Wheeler Manufacturing (Wheeler) in July 1988. He worked at least 40 hours per week. During his first three years at Wheeler, Blomquist primarily soldered jewelry. Around 1991, Blomquist began working as a diamond cutter, and he continued in this position for the remainder of his time at Wheeler. Diamond cutting required the use of a high-speed drill, and the significant use of his fingers, hands, and arms.

In 1999, Blomquist began experiencing pain, numbness, and a weakened grip in both hands; his symptoms were more severe in his left hand. Blomquist underwent a left carpal tunnel release surgery in 1999. The surgery provided some relief, but Blomquist remained symptomatic. Around that time, he also received a right wrist injection which helped reduce pain.

After the 1999 procedures, Blomquist's left and right wrist pain gradually increased. In 2009, Blomquist underwent a second left wrist surgery which resolved the numbness in his fingers but not the pain. He also received another right wrist injection. Hartford provided Wheeler's worker's compensation insurance at this time and paid Blomquist indemnity and medical benefits related to his carpal tunnel treatment. Since 2009, Blomquist has experienced symptoms in both wrists. After the 2009 surgery, Blomquist's left wrist pain became sharper and he began losing his grip. His right wrist also got worse. Blomquist was first seen by Dr. Peter Vonderau in February 2010.

Hartford provided worker's compensation insurance for Wheeler from May 1, 2007 to April 30, 2011. Phoenix began writing Wheeler's workers' compensation coverage on May 1, 2013. Blomquist's employment with Wheeler ended in July 2013.

Additional facts may be developed in the issue analysis below.

ANALYSIS:

Phoenix and Hartford have submitted this matter to the Department through briefs to adjudicate which insurer is responsible for paying future workers' compensation benefits to Blomquist and reimbursing the other for past benefit payments. The parties have offered the medical testimony of Dr. Vonderau for consideration in this matter. Dr. Vonderau has confirmed the nature and timing of symptoms described by Blomquist, and he has further opined that at no point since at least 2009 did Blomquist's wrist symptoms ever resolve. Dr. Vonderau confirmed that Blomquist's symptoms have become progressively worse, and he relates Blomquist's carpal tunnel syndrome to his work activities at Wheeler. He opines that Blomquist suffered a material and substantial worsening of his physical condition between April 2011 and August 2016.

To establish which insurer is responsible for Blomquist's benefits, the Department applies the last injurious exposure rule. "Under that rule, [w]hen a disability develops gradually, or when it comes as a result of a succession of accidents, the insurance carrier covering the risk at the time of the most recent injury of exposure bearing a causal relation to the disability is usually liable for the entire compensation." *Kassube v. Dakota Logging*, 2005 S.D. 102, ¶ 43, citing *Enger v. FMC*, 1997 S.D. 70, ¶ 12. The South Dakota Supreme Court stated further in *Kassube*, "[w]e have interpreted the last injurious exposure rule to exclude a mere 'recurrence' of a previous injury but to include an 'aggravation' of a previous injury." *Id.*

The Department must establish whether Blomquist suffered a mere recurrence or an aggravation of injury during the time Phoenix acted as insurer for Wheeler. In *Titus v. Sioux Valley Hosp.*, 2003 S.D. 22, the Court stated:

To find that the second injury was an aggravation of the first, the evidence must show:

1. A second injury; and
2. That this second injury contributed independently to the final disability

To find that the second injury was a recurrence of the first injury, the evidence must show:

1. There have been persistent symptoms of the injury; and
2. No specific incident that can independently explain the second onset of symptoms.

Id. At ¶¶ 14-15. "The original employer or insurer will be liable if the second injury is a recurrence of the first. However, if the second injury is an aggravation that independently contributes to the final disability, the subsequent insurer or employer is liable." *Id.* At ¶ 13.

Blomquist's testimony about the course of his injury and Dr. Vonderau's medical testimony both confirm that Blomquist suffered ongoing pain and other symptoms of carpal tunnel syndrome since 1999. These symptoms have become progressively worse over time. Dr. Vonderau has stated that that it is common for carpal tunnel syndrome to progressively

worsen, especially with repetitive activity with the hands. Dr. Vonderau is not aware of structural changes in Blomquist's wrist or of a secondary injury. However, Dr. Vonderau testified that he considered Blomquist's work activities at Wheeler between 2010 and 2013 to have contributed independently to Blomquist's condition, because he experienced worsening symptoms over that time period.

The Court held in *Titus*, "the contribution of the second injury, however slight, must be the causation of the disability" (Emphasis removed). *Id.* At ¶17 citing *Enger*, 1997 SD 70 at ¶ 17, 565 N.W.2d at 84. In this matter, Blomquist suffered ongoing symptoms of carpal tunnel syndrome since 1999. The symptoms progressively worsened. Applying the guidance provided by the Court in *Titus*, the Department is persuaded that Blomquist's condition is a recurrence of his initial carpal tunnel syndrome as there have been persistent symptoms of that injury since 1999 and there has not been a specific incident during the three months Phoenix covered Wheeler for worker's compensation purposes to explain a second onset of symptoms. Blomquist has suffered from carpal tunnel syndrome for two decades and his current condition is the result of the progression of that syndrome.

ORDER:

In accordance with the conclusions above, the Department finds that the Hartford Accident and Indemnity Company is responsible for paying future workers' compensation benefits to Blomquist and reimbursing Phoenix Insurance Company for past benefit payments.

The Parties will consider this letter to be the Order of the Department.

Sincerely,

Michelle M. Faw
Administrative Law Judge

MMF/ps