SOUTH DAKOTA DEPARTMENT OF LABOR
DIVISION OF LABOR AND MANAGEMENT

FRANCIS KRUMM, **HF No. 5, 2002/03**

Claimant, **DECISION**

vs.

SCHAEFFER & ASSOCIATES,

Employer,

and

LE MARS MUTUAL INSURANCE 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 August 15, 2003, in Aberdeen, South Dakota. Claimant appeared personally and through his attorneys of record, Chet Groseclose and Robert M. Ronayne. Timothy A. Clausen represented Employer/Insurer. The issue presented at the hearing is whether Insurer owes for Claimant's prosthetic replacement and his replacement liners.

FACTS

1. At the time of the hearing, Claimant was thirty-nine years old and lived in Hague, North Dakota.
2. On June 18, 1987, while working for Employer as a steel welder, Claimant was electrocuted. Claimant suffered various injuries and received extensive medical treatment. Claimant's right leg was amputated below the knee and the front half of his left foot was amputated. Claimant was eventually fitted with prostheses for both lower extremities. Claimant's prostheses allow him to engage in physical activity without restrictions.
3. Despite his significant injuries, Claimant was able to return to work. Claimant is self-employed as a farmer and also owns and operates a grain elevator business and a custom combine business.
4. Claimant is very physically active and works fifteen hours a day, six days a week. In the course of farming and operating his businesses, Claimant wore out several of his prostheses.
5. Between 1995 and 2001, William Hineman, a certified prosthetist, fitted and built five prostheses for Claimant's amputated right leg and liners to go with these prostheses. Hineman also replaced prostheses for Claimant's left partial foot amputation.

6. In a letter to Insurer dated June 20, 1995, Hineman stated, "[Claimant] will require a new prosthesis every other year or possibly every year due to shrinkage of the residual limb, weight loss, weight gain, or for the fact that he wears these prostheses out." Hineman also wrote, "he is going to wear out his prosthesis due to wear and tear, shrink out of them due to atrophy, weight loss, or weight gain. You wear out the prosthesis in a certain period of time. You need to have these replaced."
7. Insurer paid for replacement prostheses and the accompanying liners until 2001.
8. In March 2002, Claimant's right leg prosthesis was "in remarkably poor condition." Claimant contacted Hinemen to build a new prosthesis. Hineman confirmed that a new prosthesis was medically necessary and built a new prosthetic device for Claimant on March 22, 2002.
9. On March 29, 2002, Insurer denied Claimant's request for payment of the right leg prosthesis. Insurer advised Claimant "we only have to pay for the replacement of prosthetic devices if they are damaged from a work related accident, and not if they need to be replaced due to wear and tear."
10. Claimant filed his Petition for Hearing with the Department and a hearing was conducted thereafter. Claimant requested Insurer pay medical expenses in the amount of $26,475.90 plus interest and penalty.
11. Hineman's opinion concerning the medical necessity of replacement prosthetic devices for Claimant is persuasive.
12. Claimant was a credible witness. This is based on Claimant's consistent testimony and on the opportunity to observe Claimant's demeanor at the hearing.

ISSUE

WHETHER INSURER OWES FOR CLAIMANT'S PROSTHETIC REPLACEMENT AND HIS REPLACEMENT LINERS?

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). Claimant was injured on June 18, 1987. "The law in effect when the injury occurred governs the rights of the parties." Westergren v. Baptist Hosp. of Winner, 549 N.W.2d 390, 395 (S.D. 1996).

At the time of his injury, SDCL 62-4-1 stated:

> The employer shall provide necessary first aid, medical, surgical, and hospital services, or other suitable and proper care including medical and surgical supplies, apparatus, artificial members and body aids during the disability or treatment of an employee within the provisions of this title. Repair or replacement of damaged prosthetic devices, hearing aids, prescription eyeglasses, eyeglass frames, contact lenses and dentures shall be considered a medical service, under this section, if such devices were damaged or destroyed in an accident which also causes other injury which is compensable under this

law. The employee may elect to secure his own physician, surgeon, or hospital service at his own expense.

"It is long-standing public policy that worker's compensation statutes be liberally construed in favor of injured employees." Mills v. Spink Elec. Coop., 442 N.W.2d 243 (S.D. 1989).

SDCL 62-4-1 sets forth two circumstances in which an employer would pay for a prosthetic devices. An employer must pay for a prosthesis if it constitutes "suitable and proper care including medical and surgical supplies, apparatus, artificial members and body aids during the disability or treatment of an employee within the provisions of this title." The other instance in which an employer would pay for repair or replacement of a damaged prosthetic device is when such device was "damaged or destroyed in an accident which also causes other injury which is compensable under this law." The first sentence of SDCL 62-4-1 is applicable to the facts of this case.

Claimant must show that his prosthesis constitutes suitable and proper care "during [his] disability or treatment." Insurer argued Claimant is no longer "during the disability or treatment" for his 1987 work-related injury. Insurer's argument is misplaced. Claimant testified that he is no longer actively treating with a physician, except for getting new prostheses. Claimant consults with Hineman when he needs a replacement of a damaged prosthetic device. Claimant is still within "the disability" of his 1987 work-related injury. Claimant's disability is permanent as he had to undergo two amputations due to his work-related injury. Therefore, Claimant seeks payment for necessary prosthetic devices.

Hineman was the only medical provider to offer opinions in this matter. Hineman opined on several occasions that the replacement prostheses for Claimant are necessary and suitable and proper medical expenses. Hineman acknowledged that Claimant is a "heavy user of his prosthesis." However, Hineman stated Claimant would require a new prosthesis every year or every other year "due to shrinkage of the residual limb, weight loss, weight gain, or for the fact that he wears these prostheses out." Hineman concluded prosthetic devices wear out in time and need to be replaced. Insurer did not present any medical opinions contrary to those expressed by Hinemen.

Insurer argued if SDCL 62-4-1 applies to Claimant's situation, Claimant's need for replacement prostheses was not causally related to his 1987 work-related injury. The causation requirement is met if Claimant's work injury was a contributing factor to his need for prosthetic devices. Gilchrist v. Trail King Indus., 2000 SD 68, ¶ 18. "'Where there is no causal relationship the testimony of a medical expert may be necessary to establish the causal connection.'" Id. (citation omitted). Claimant lost his right leg and part of his right foot due to his 1987 work-related injury. Claimant's work injury is a contributing factor for his need for prosthetic devices. With these prosthetic devices, Claimant is able to fully function and lead a normal and very productive life.

Claimant established by a preponderance of the evidence that Insurer is responsible to pay for his replacement prostheses and replacement liners. Insurer is responsible to pay Claimant's outstanding medical expenses in the amount of $26,475.90, plus prejudgment interest. Claimant's request for assessment of a penalty against Insurer is denied because there was a genuine dispute concerning payment for the outstanding medical expenses.

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 thereto 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 15th day of January, 2004.

SOUTH DAKOTA DEPARTMENT OF LABOR

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Elizabeth J. Fullenkamp
Administrative Law Judge