

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

**JAYNE M. NELSON,**

**HF No. 66, 2016/17**

**Claimant,**

**v.**

**DECISION**

**CITIGROUP, INC.,**

**Employer,**

**and**

**INSURANCE CO. STATE OF PA,**

**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 January 26, 2022. Claimant, Jayne M. Nelson, was present and proceeded pro se. The Employer Citigroup, Inc. and Insurer, Insurance Co. State of Pa was represented by Michael L. Snyder of Davenport, Evans, Hurwitz & Smith, L.L.P.

***Facts***

1. On August 5, 2014, Jayne M. Nelson (Nelson) was working at Citigroup, Inc. (Employer), which was at all times pertinent, insured for workers' compensation purposes by Insurance Co. State of Pa (Insurer). As she was walking into work, she caught her leg on a rug, tripped, and fell on her outstretched left arm and left shoulder. Nelson was seen by acute care and then occupational medicine the next day. Occupational medicine recommended she could return to work.

2. On December 11, 2014, Jason Hurd, MD suggested surgery for Nelson's left shoulder as it may result in subacromial decompression and AC joint resection. He did not believe it would relieve all of her symptoms.
3. On January 16, 2015, Dr. Paul Cederberg performed an independent medical evaluation (IME) of Nelson.
4. On February 11, 2015, Employer and Insurer denied that Nelson was entitled to additional workers' compensation benefits in accordance with the opinions of Dr. Cederberg.
5. On April 1, 2015, Geoffrey Haft, MD suggested surgery to Nelson's neck. Dr. Haft suggested that Nelson has multilevel degenerative disc disease in her cervical spine with multiple levels of central foraminal spinal stenosis which may have been aggravated by her fall at work.
6. On October 28, 2016, Nelson submitted a Petition for Hearing to the Department of Labor & Regulation (Department), alleging she suffered a workplace injury to her neck, left shoulder, left arm, left hip, and back.
7. On December 1, 2016, Employer and Insurer submitted their answer asserting that all workers' compensation benefits to which Nelson was entitled and of which Employer and Insurer are aware had been paid.
8. December 1, 2017, Christopher Janssen, MD performed an IME of Nelson.
9. On May 28, 2021, the Department granted Employer and Insurer's Motion for Partial Summary Judgment and Ordered that Nelson was limited to seeking only workers' compensation benefits, if any, potentially at issue as of December 1, 2017.

### ***Analysis***

To prevail in this matter, Nelson must first prove that the injury sustained on February 11, 2015, is a major contributing cause of her condition pursuant to SDCL 62-1-1(7). She has the burden of proving all facts essential to sustain an award of compensation. *Darling v. West River Masonry Inc.*, 2010 S.D. 4, ¶ 11, 777 N.W.2d 363, 367. She 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 also does not need to prove that her work activities were “‘the’ major contributing cause” of the injury; they only have to be “‘a’ major contributing cause.” *Peterson v. Evangelical Lutheran Good Samaritan Society*, 2012 S.D. 52, 21, 816 N.W.2d 843 at 850. “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.” *Horn v. Dakota Pork*, 2006 SD 5, ¶ 14, 709 N.W.2d 38, 41. “The fact that an employee may have suffered a work-related injury does not automatically establish entitlement to benefits for his current claimed condition.” *McQuay v. Fischer Furniture*, 2011 S.D. 91, ¶ 11 808 N.W.2d 107, 111 (citations omitted).

Both parties have offered expert medical testimony. “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).

Nelson has offered the expert medical opinion of Dr. Janssen who performed an IME and records review of Nelson on December 1, 2017, and then issued a report of his findings. Dr. Janssen noted Nelson complained of lower back and sacroiliac pain in the years prior to the injury. A record from October 2, 2014, noted that Nelson had an x-ray

of her spine and an MRI of her left shoulder. The x-ray revealed pre-existing, multi-level degenerative changes along Nelson's cervical spine, from levels C-3 to C-7. The MRI showed degenerative changes in Nelson's left AC joint, along with deteriorating cartilage of the glenohumeral joint. A March 20, 2015, record showed an MRI was taken of Nelson's cervical spine on March 10, 2015, which showed degenerative issues. Dr. Hurd believed Nelson had an underlying impingement of her AC joint in her left shoulder which could be related to her ongoing pain in that area. Dr. Haft reported on April 1, 2015, that Nelson's spine showed degenerative changes and an issue with her AC joint. He opined that the work incident on August 5, 2014, had aggravated a pre-existing condition for which only conservative care was appropriate.

Dr. Janssen found that Nelson did not have significant difficulties with her left shoulder, left low back, left hip, or left hand in the days, weeks, or months prior to the work incident on August 5, 2014. He found that she displayed tenderness to palpation over the greater tuberosity of the humerus, levator scapular muscle, upper trapezius muscle, left PS/IS, and greater trochanter. She also showed mildly increased pain with left hip internal rotation. Dr. Janssen diagnosed her with post-traumatic left subacromial bursitis, rotator cuff tendinopathy, and impingement syndrome. As well as, left SI joint pain and left-hand paresthesia.

Dr. Janssen opined that the work incident was a major contributing factor of her need for treatment and that there was no pre-existing condition that would explain her continuing symptoms. He also found the time course of her condition to be consistent with her work injury, and that she had an increased burden of care including physical therapy visits, numerous specialists, imaging, injections, and testing that she had not needed before the injury. Dr. Janssen further opined that the mechanism of injury, a fall,

is a common cause of musculoskeletal injury to the shoulder and SI joint area. He concluded that Nelson is at maximum medical improvement. He assessed her impairment rating as 4% left upper extremity impairment, 2% whole person impairment secondary to left shoulder injury, 2% whole person impairment rating secondary to SI joint injury, and a total combined whole person impairment rating of 4%.

Employer and Insurer have offered the expert medical opinion of Dr. Cederberg, who examined Nelson on January 16, 2015, as well as conducted a review of her pertinent medical records. Dr. Cederberg noted an MRI showed Nelson did not have a tear in her left shoulder, but instead showed degenerative issues such as arthritis and deteriorating cartilage. He also noted that Nelson had shown improvement with her neck, arm, and flank pain following 21 physical therapy visits over the previous three months. As a result of his physical examination of Nelson, Dr. Cederberg concluded that Nelson had a normal range of motion with her neck, full extension of her left knee up to 115 degrees of flexion, and her deep tendon reflexes were intact at her triceps, biceps brachioradialis, knees, and ankles. He noted full range of motion in her hips, she had a negative straight leg raising test, and that manual muscle testing her upper and lower extremities was normal.

From his examination, Dr. Cederberg opined that Nelson had experienced bruising to her left elbow, left shoulder, left hip, and left wrist, but she did not have any objective medical findings that would support her claimed injuries. He further opined that no additional treatment was warranted, nor would he recommend any additional injections, therapies, medications, or diagnostic testing. He specifically opined that Nelson was not a surgical candidate regarding her left shoulder. He also opined that she did not need any work restrictions related to her work injury. He did not understand

why she was taken off work when her job was light and sedentary. He concluded that Nelson had reached maximum medical improvement as of the date of his evaluation, and there was no objective medical evidence that would warrant an impairment rating.

Employer and Insurer assert that Dr. Janssen was not deposed and did not appear at hearing so he has not provided testimony to explain his methodology. Employer and Insurer also assert that Dr. Janssen did not adequately consider Nelson's pre-existing condition. In his report, Dr. Janssen noted multiple tests he conducted and the records he considered. Initially, he stated that Nelson did not have difficulties with her left shoulder, left low back, left hip, or left hand prior to the work injury. However, following the section where he assessed her medical records, he stated that Nelson had not had "significant" history of left shoulder, arm, neck, hand low back, or SI joint issues prior to the work injury. Dr. Janssen's report reflects that he did consider her prior records and pre-existing condition but concluded that there was no pre-existing condition that explained her current symptoms. The Department concludes that Dr. Janssen's opinion is supported by an adequate foundation.

The Department further concludes that Dr. Janssen's opinion is persuasive. The South Dakota Supreme Court has stated that we must not "rel[y] on a false connection between causation and temporal sequence." *Darling*, 2010 S.D. 4 at ¶18. However, in this matter, Dr. Janssen did not rely merely on the time course, but he also considered her pre-existing conditions, increased need for treatment, and mechanism of injury. Nelson's MRIs and x-rays reflect that she suffers from pre-existing degeneration in her spine and left shoulder. SDCL 62-1-1(7)(b) provides that an injury is compensable "[i]f 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.” The Department is persuaded that the medical evidence is sufficient to prove that Nelson’s fall on August 5, 2014, caused her need for treatment and therefore, pursuant to SDCL 62-1-1(7)(b) her injury is compensable.

***Additional Benefits***

In this matter, Nelson is seeking any and all medical bills to be paid to her by Employer and Insurer since her injury. Nelson also has asserted a request for benefits in the amount of \$500,000 which she believes would cover any current and future medical bills as well as her alleged permanent impairment. However, on May 28, 2021, the Department granted Employer and Insurer’s Motion for Partial Summary Judgment and Ordered that Nelson was limited to seeking only workers’ compensation benefits, if any, potentially at issue as of December 1, 2017. Therefore, the only benefits she is entitled to are those due at that time. Nelson has provided materials she asserts reflect her medical bills. Some of these items are explanation of benefit forms and not bills. Therefore, the materials she has provided are not sufficient to prove entitlement to these specific dollar amounts. ARSD 47:03:09:01 provides,

A properly submitted medical bill is a request by a provider for payment of health care services that meets the following requirements:

(1) Submitted to the employer according to the applicable reporting and coding standards of the Centers for Medicare and Medicaid Studies, the National Council for Prescription Drug Programs, or the American Dental Association; and

(2) Accompanied by sufficient medical records or reports that the employer can determine the reasonableness and necessity of the treatment provided.

A submission to a self-insured employer, insurer, medical bill reviewer, medical case management plan, third party administrator, claims adjuster, trustee, guarantor, or other entity having a similar association to the employer is considered submission to all such entities simultaneously. The employer may waive the requirements of this section.

To discern what medical bills were due on December 1, 2017, Nelson must provide billing documents that meet the requirements of ARSD 47:03:09:01. Once Nelson has done so, the Department will address the total amount of benefits due.

***Conclusion***

Nelson has proven that her work-related injury is and remains a major contributing cause of her current condition pursuant to SDCL 62-1-1(7)(b). Nelson must produce the medical bills at issue as of December 1, 2017, to Employer and Insurer.

Nelson 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. Employer and Insurer shall have an additional twenty (20) days from the date of receipt of Nelson's 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, Employer and Insurer shall submit such Stipulation along with an Order consistent with this Decision.

Dated this 6 day of July, 2022.

SOUTH DAKOTA DEPARTMENT OF LABOR & REGULATION



Michelle M. Faw  
Administrative Law Judge