

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

JAY JOEL JOHANNSEN,
Claimant,

HF 91, 2003/04

v.

DECISION

JOHN MORRELL & CO.,
Employer/Self-Insurer.

This is a workers' compensation proceeding before the South Dakota Department of Labor, pursuant to SDCL 62-7-12 and ARSD 47:03:01. Claimant appears pro se. Scott C. Folkers represents Employer/Insurer.

Issues

1. Whether Claimant's July 7, 2000, heat exhaustion is a major contributing cause of his current condition and need for treatment.
2. Whether Claimant's May 22, 2002, work-related shoulder injury is a major contributing cause of his current condition and need for treatment.

Claimant has failed to meet his burden of proof on either issue.

Facts

The parties stipulated that Claimant suffered injuries on or about the dates alleged: July 7, 2000, and May 22, 2002.

Claimant suffered an injury when he became overheated on July 7, 2000, while working for Employer/Self-Insurer. He was transported to the emergency room at Avera McKennan Hospital where he was treated with intra-venous fluids. Claimant was ordered off work until July 10, after which he returned to work without restrictions and with no apparent functional impairment. Although not separately pled, Claimant suffered another over-heating episode at work on August 7, 2001. Again he was treated and released with no restrictions and with no apparent permanent impairment.

Claimant alleges that he now suffers from persistent problems with muscle cramping and pain, and an ongoing need for prescription medications as a result of the July 7, 2000, event.

Claimant sought medical treatment for his shoulders on May 24, 2002, following an alleged injury on May 22, 2002. Claimant was treated through July 3, 2002, at which time his pain had resolved and he was released from treatment with no permanent restrictions and with no functional impairment assigned.

Claimant has not worked for Employer/Self-Insurer since August 5, 2002. He has continued to work in other physically demanding occupations since that date, including work as a mechanic and work in a hog confinement facility. Claimant alleges that he suffers from continuing shoulder problems as a result of his work duties at John Morrell & Co. and related to the May 2002 incident.

Analysis and Decision

SDCL 62-1-1(7)(a) provides that “[n]o injury is compensable unless the employment or employment related activities are a major contributing cause of the condition complained of[.]”

The parties do not dispute that Claimant suffered initial work-related injuries. However, these injuries do not automatically establish entitlement to benefits for Claimant’s current claimed conditions. In each case, Claimant must also establish that his injury is a major contributing cause of his current claimed condition and any need for treatment. Haynes v. McKie Ford, 2004 SD 99, ¶ 17, 686 NW2d 657.

“Where there is no obvious causal relationship the testimony of a medical expert may be necessary to establish the causal connection.” Kester v. Colonial Manor of Custer, 1997 SD 127, ¶ 19, 571 NW2d 376 (citations omitted).

The medical evidence and testimony was presented through a list of agreed exhibits, including the deposition of one of Claimant’s treating doctors, Dr. Michael Lastine.

The list of agreed exhibits included the following:

1. The report and affidavit of Dr. Jeff Luther
2. Office notes of Dr. Timothy M. Zoellner
3. Office notes of Dr. Ronald M. Rossing
4. Physical therapy notes of Michelle Munster, P.T. and Kim Weiner, P.T.
5. John Morrell & Co. accident investigation notes from July 7, 2000, and May 23, 2002.
6. John Morrell & Co. first aid nurses’ notes
7. Dr. Lastine’s deposition, and
8. A listing of Claimant’s medications.

Issue 1: Whether Claimant’s July 7, 2000, heat exhaustion is a major contributing cause of his current condition and need for treatment.

The only medical evidence indicating that Claimant’s July 7, 2000, incident may have resulted in his later problems with muscle cramping is Dr. Lastine’s October 15, 2003, letter addressed “To Whom It May Concern” at “The South Dakota Labor Board”. However, when deposed, Dr. Lastine testified that he had not treated Claimant for either the July 2000 or the August 2001 incidents of heat exposure, and, at the time of his October 15, 2003, letter, he was treating Claimant for a condition totally unrelated to his complaints of cramping. Dr. Lastine admitted that he has at no time treated Claimant for his complaints of cramping and that the opinions set out in his October 15, 2003, letter were based entirely on the history provided him by Claimant.

Dr. Lastine testified that the medications prescribed for Claimant were not prescribed for treatment of muscle cramping. After reviewing the records generated at the time of Claimant's incidents of heat exposure, Dr. Lastine testified that Claimant appeared to have suffered simple heat exhaustion at that time, a condition ordinarily treated by simply cooling the person down and administering fluids and electrolytes. He testified, in his experience: "I can't recall that I've ever seen this kind of thing before, where somebody continued to have episodes like this." Dr. Lastine further testified that he could not prove that the two incidents were causing Claimant's present cramping, "[o]r even that he has cramping. I cannot even prove that. I have not seen him with them." Ultimately, Dr. Lastine admitted that he could not provide an opinion, to a reasonable degree of medical certainty, that either of the two incidents constitute a major contributing cause of Claimant's current complaints of muscle cramping.

Dr. Jeff Luther, a board certified internal medicine and emergency medicine specialist, saw Claimant October 19, 2004, for the purpose of an independent medical examination. Dr. Luther reviewed Dr. Dan Kangley's July 7, 2000, emergency room notes and performed his own interview and physical examination of Claimant. Dr. Luther noted that Claimant's symptoms of heat exhaustion were reversed easily and quickly in the emergency room that day with only two liters of saline, and that his body temperature was not elevated at the time of his admission. He opined, to a reasonable degree of medical certainty, that neither Claimant's current complaints of nor any treatment for muscle cramping is causally related to the July 7, 2000, incident. Dr. Luther noted that Claimant suffered from simple heat exhaustion, a reversible problem, which would not cause a chronic cramping condition.

The opinions of Dr. Lastine and Dr. Luther are uncontroverted and will not be disregarded. Foltz v. Warner Transp., 516 NW2d 338 (SD 1994).

Claimant has not established by a preponderance of the evidence that his July 7, 2000, incident of simple heat exhaustion is a major contributing cause of any muscle cramping he may now be experiencing.

Issue 2: Whether Claimant's May 22, 2002, work-related shoulder injury is a major contributing cause of his current condition and need for treatment.

There is no medical record, report or opinion that Claimant's May 22, 2002, work-related shoulder injury is a major contributing cause of his current condition and need for treatment.

In the course of his IME, Dr. Luther reviewed the 2002 medical notes of Dr. Ronald Rossing (occupational medicine), Dr. Tim Zoellner (orthopedic surgeon), Dr. G.S. Markstad (occupational medicine), and the physical therapy notes of Michelle Munster and Kim Weiner.

Dr. Rossing noted a five year history of bilateral shoulder pain. He saw Claimant on May 24, June 5, June 12, and June 21, 2003, during the time Claimant was receiving physical therapy. Dr. Rossing's final treatment note, on July 3, 2002, included the following: "He indicates that he is continuing to do well and has not had any pain since his prior visit." Dr. Rossing concluded: "The plan is to return to regular activity and released from care. No recheck is scheduled. He is at MMI. No impairment is present."

Dr. Luther noted that Claimant has a long history of shoulder problems and prior treatment. Dr. Luther opined, to a reasonable degree of medical certainty, that Claimant's condition and need for treatment is not related to any of his work duties at John Morrell & Co.

Dr. Luther's opinion is uncontroverted and will not be disregarded. Id.

Claimant has not established by a preponderance of the evidence that neither the May 22, 2002, injury, nor any work duties at John Morrell & Co. constitute a major contributing cause of Claimant's shoulder complaints.

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

Dated: December 8, 2005.

SOUTH DAKOTA DEPARTMENT OF LABOR

Randy S. Bingner
Administrative Law Judge