

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

KELLY SAMMELI,
Claimant,

HF No. 112, 2010/11

v.

DECISION

DALE'S TIRES,
Employer,

and

ACUITY,
Insurer.

This is a workers' compensation proceeding brought before the South Dakota Department of Labor and Regulation 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, in Rapid City, South Dakota. Claimant, Kelly Sammeli appeared personally. Charles A. Larson represented Employer, Dale's Tires and Insurer, Acuity.

Issue

1. Causation and Compensability of Claimant's Carpal Tunnel
2. Medical Expenses

Facts

Based upon the evidence presented and live testimony at hearing, the following facts have been established by a preponderance of the evidence:

On November 23, 2004, Claimant, Kelly Sammeli was involved in a motor vehicle accident while driving a company vehicle for Employer, Dale's Tires. Sammeli sustained an injury to his right small finger. Dr. David Lang treated Sammeli's injuries and performed several surgeries which ultimately resulted in amputation of the right small finger on June 1, 2010.

The injury was accepted as a compensable work related injury by Employer/Insurer and medical bills related to the five surgeries and subsequent physical therapy have been paid by Employer/Insurer. Additionally, Dr. Lang assigned a 27% permanent impairment rating which has also been paid by Employer/Insurer.

Claimant at some point following the amputation developed numbness and tingling in his middle and ring fingers on his right hand. Dr. Lang recommended carpal tunnel surgery. Claimant seeks additional workers' compensation benefits as well as coverage for surgery to correct the carpal tunnel symptoms causing this numbness and tingling.

Additional facts will be developed as necessary.

Analysis

The general rule is that a claimant has the burden of proving all facts essential to sustain an award of compensation. *Horn v. Dakota Pork*, 2006 SD 5, ¶14, 709 NW2d 38, 42 (citations omitted). SDCL 62-1-1(7) provides that, "[n]o injury is compensable unless the employment or employment related activities are a major contributing cause of the condition complained of [.]"

In applying the statute, we have held a worker's compensation award cannot be based on possibilities or probabilities, but must be based on sufficient evidence that the claimant incurred a disability arising out of and in the course of his employment. We have further said South Dakota law requires [Claimant] to establish by medical evidence that the employment or employment conditions are a major contributing cause of the condition complained of. A possibility is insufficient and a probability is necessary.

Gerlach v. State, 2008 SD 25, ¶7, 747 NW2d 662, 664 (citations omitted).

Claimant relies on the therapy records and medical records of his treating physician, Dr. David Lang. Following the amputation of Sammeli's right small finger, he attended physical therapy with Patrick R. Person. On June 28, 2010, Person noted, "[t]he patient doing well. Still having numbness in his ring finger." At a postsurgical exam with Dr. Lang on June 30, 2010, Sammeli complained of weakness and inability to make a full fist. Dr. Lang noted in his records, "sensory exam abnormalities were noted, the patient complains of global sensation in the ring finger." No mention of numbness or tingling was reported during the next several appointments with Person. Sammeli again reported to Person that he experienced numbness in the right ring finger on August 26, 2010, which continued to report over the next several appointments. On September 8, 2010, Person noted that "patient continues to have numbness in ring finger and now in the middle finger." At a postoperative exam on September 8, 2010, Dr. Lang noted the new numbness in the long finger as well as the ring finger, and ordered an EMG which revealed carpal tunnel syndrome.

Employer/Insurer relies on the testimony of Dr. Michael Genoff, who performed an independent medical exam (IME) on November 19, 2010. Dr. Genoff stated in his report that Sammeli's right hand symptoms as well as his electrodiagnostic studies of mild carpal tunnel syndrome were not related to his small finger amputation. Dr. Genoff testified via deposition that if the swelling due to amputation had caused the problem,

symptoms would have developed immediately following surgery and remained that way, however in Sammeli's case, there were no complaints of numbness and tingling in the median nerve distribution after June 30, 2010, until early September, nearly three months after his amputation. Dr. Genoff explained further that there were some diffuse degenerative joint changes, as well as a reported fall on August 13, 2010, about two weeks prior to the first report of symptoms that could possibly cause the reported symptoms.

Sammeli testified at hearing that he has experienced the numbness and tingling all along and that this is not a new symptom. Despite Sammeli's credible testimony, his claim is not supported by the medical records which do not reflect any complaints of numbness or tingling for a period of several weeks after the initial post-operative swelling. Claimant has failed to establish by a preponderance of the evidence that his work related injury remains a major contributing cause of his carpal tunnel symptoms and need for treatment. Claimant's Petition for additional workers' compensation benefits is denied.

Conclusion

Employer/Insurer shall submit proposed Findings of Fact and Conclusions of Law, and an Order consistent with this Decision within ten (10) days from the date of receipt of this Decision. Claimant shall have ten (10) days from the date of receipt of Employer/Insurer's proposed Findings of Fact and Conclusions of Law to submit objections thereto or to submit 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/Insurer shall submit such Stipulation along with an Order in accordance with this Decision.

Dated this 6th day of July, 2011.

SOUTH DAKOTA DEPARTMENT OF LABOR AND REGULATION

/s/ Taya M Runyan

Taya M. Runyan
Administrative Law Judge