

SOUTH DAKOTA DEPARTMENT OF LABOR
Division of Labor and Management

HIRAM FRANK MAHONEY,
Claimant,

HF 124, 2003/04

v.

DECISION

JERRY REMINGTON,
Employer, and
SAFECO INSURANCE,
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, Mahoney, appeared pro se. Michael S. McKnight, of Boyce, Greenfield, Pashby and Welk, L.L.P, represents Employer/Insurer.

Issues

The issues are as follows:

1. Whether Mahoney suffered any injury to his lower right leg on June 5, 2003.
2. Whether the June 5, 2003, incident remains a major contributing cause of Mahoney's current condition or need for medical treatment.
3. Whether Mahoney gave notice to his employer, as required by SDCL 62-7-10, of any injury to his leg.
4. Whether Mahoney remains entitled to any workers' compensation benefits.

Mahoney did not prove by a preponderance of the evidence that he suffered any injury to his lower right leg on June 5, 2003. Even assuming Mahoney cut, scraped or bruised his lower right extremity on that date, Mahoney did not prove by a preponderance of the evidence that the June 5, 2003, incident remains a major contributing cause of his current condition or need for treatment. Having decided Issues 1 & 2 in the negative, it is not necessary to reach issues 3 or 4.

Facts

Mahoney was working for Employer on June 5, 2003, washing dishes in a restaurant owned by Employer, when he slipped and fell, cutting his finger. Mahoney now claims he also injured his lower right extremity in the fall, and seeks workers' compensation benefits due to the condition of his lower right leg.

Mahoney has a long and extensive medical history of vascular problems and skin ulcerations involving his lower right leg. The bulk of these medical records predate the June 5, 2003, fall by several years. Hearing Exhibit #1 contains 225 pages of Mahoney's medical records. Significant medical records pertaining to Mahoney's right leg include the following:

- Page 011: June 5, 2003, note of Dr. John W. Herbst, Rapid City Community Health Center. This is the first medical record after the June 5 fall. It does not mention any leg injury. It notes only “Laceration, right middle finger.”
- Page 012: Dr. Herbst’s June 11, 2003, follow-up note concerning Mahoney’s lacerated finger. Dr. Herbst also notes: “He has some venous stasis on his leg. When he fell, he scraped his left ankle and there is a little bit of weeping from a small, nickel-sized area. There is no signs of secondary infection. He does have some slight pitting edema.”
- Page 041: July 21, 2004, note by Dr. John J. Lassegard, Rapid City Community Health Center. Dr. Lassegard wrote, in part:

[Mahoney] describes that according to Dr. Bedingfield’s letter, he has had venous problems with his legs **but they really were not much of a problem and did not need treatment until he injured his right leg at work in June of last year**, and that precipitates the leg problems, otherwise he would not have needed this medical care. (emphasis added).

- Page 043: (In contrast to the highlighted statement above, the following is one of many treatment notes predating the June 5, 2003, fall that demonstrate an extensive history of right lower leg problems.) A January 8, 1998, treatment note by Dr. John R. Bedingfield, Rapid City Medical Center. Dr. Bedingfield noted, more than 5 years prior to the June 2003, fall, concerning his examination of Mahoney’s right leg, that Mahoney had a history of venous status ulcers, and had an ulcer at the time of this examination: “He has had problems with persistent recurrent venous stasis ulcers with persistent varicosities.” “Further examination reveals that the small venous stasis ulcer is seemingly healing slowly, but it is still about the same 1.5 – 2 cm size as previously noted.”
- Page 048: Dr. Bedingfield’s January 19, 1998, note reads, in part:

Mr. Mahoney comes in today for injection sclerotherapy of some varicosities around the ulceration in the right lateral ankle area. The patient was recently hospitalized for workup and was found to have an old obliteration of the superficial femoral artery, and the superficial femoral vein in the mid thigh level, with collateralization around both. This interruption was due to an old injury many years ago. He was felt to not require any type bypass at this point in time, but it was felt that he would benefit from obliterating the venous channels right around the ulcerations.

- Page 051: Dr. Bedingfield’s October 17, 2003, letter, addressed “To Whom It May Concern” includes his opinion on causation:

The patient is now asking whether or not the problem which he has experienced with his right lower leg is job related or not. The patient’s history indicates an injury to that extremity while at work and to that extent the problem is indeed job related. The underlying difficulty, however, that of venous insufficiency is not necessarily job

related and is the primary reason in my opinion that the wound has not healed properly.

In summation, I believe that his work related injury created a problem which was aggravated by a pre-existing condition. Therefore, his nonhealing ulceration is only partly work related but there would appear to be some definite contribution to the problem by injury at work.

- Page 070: Mahoney was admitted to the Rapid City Regional Hospital on July 22, 2003. Dr. Bedingfield's hospital admission patient history notes on that date include the following:

The patient has a history of having been hospitalized in 1998 for an evaluation of arterial and venous insufficiency of the right lower extremity. His history really goes back to 1975, when he sustained a gunshot wound to the right thigh and at that time had surgery to repair the damage from that injury. He subsequently had quite a bit of swelling in the right leg.

* * *

He tells me that the ulceration which he has currently is similar to ulcerations he has had over the years, but the healing has been quite a bit slower.

- Page 071: Dr. Bedingfield's physical examination notes of the same date, include:

The patient does indeed have a half-dollar sized ulceration just above the medial malleolus, right lower extremity. There is chronic hemosiderin deposition in the tissue circumferentially above the ankle, consistent with chronic venous insufficiency.

IMPRESSION:

1. Chronic venous insufficiency and chronic arterial insufficiency, right lower extremity.
2. Ulceration, right lower extremity, apparently initiated by trauma based on his history, with poor healing secondary to the chronic venous back pressure.

Under PAST SURGICAL HISTORY, Dr. Bedingfield also noted, "He also had a pelvis fracture after an MVA with intestinal and bladder repair in 1966."

His ASSESSMENT included:

1. Venous insufficiency.
2. Venous stasis ulcer.

- Page 081: Mahoney was admitted to Rapid City Regional Hospital on August 3, 2003, with pain and swelling in his left leg. He was ultimately diagnosed with and treated for DVT in the left thigh.
- Page 085: Consultation notes of Dr. Richard Tenglin include the statement: "Right leg is bandaged just above the ankle, and the bandage was not removed; however, there are chronic

skin changes consistent with venous insufficiency.” He also wrote, “This patient meets the definition of anticoagulation failure. He presented with a thrombosis of the lower extremities while receiving adequate anticoagulation.”

- Page 109: An April 19, 1989, Admitting Record from the Weston County Memorial Hospital, in Newcastle, Wyoming, includes the Principal Diagnosis: 1. Cellulitis right leg, 2. Chronic venous insufficiency.
- Page 113: History taken in connection with Mahoney’s April 19, 1989, hospital admission notes a gunshot wound to the right leg in “1973”, pelvic fracture with bladder rupture in 1966, femoro-popliteal bypass in 1973, and included the following note:

The patient is a 52 year old white male who was seen in the clinic prior to admission with complaints of cellulitis and pain of the right lower leg.

* * *

He has been having increasing problems with flaking and sloughing of the skin. He denies any significant weeping of the wound. He has had previous problems with infection of the right lower leg secondary to peripheral vascular insufficiency resulting from gunshot wound in the right thigh. He had a fempop bypass in 1966 [sic] secondary to the gunshot wound. Due to the severity of the cellulitis [sic] patient subsequently was admitted for aggressive intravenous antibiotic therapy and local wound care.

- Page 116: The April 19, 1989, admission notes continue: “Right lower legs [sic] showed marked erythema between the ankle and knee with superficial skin sloughing noted along the medical aspect of the tibia. Small amount of exudates noted over one superficial ulcerated area.”
- Page 117: The April 19, 1989, notes conclude with a summary sheet and diagnosis: “Final diagnosis: 1. cellulitis, right leg, 2. chronic venous insufficiency[.]” Mahoney was ultimately discharged on April 23, 1989.
- Pages 154-155: On May 4, 1989, Mahoney was referred to a Dr. James Anderson for “severe venous stasis in his right lower extremity.”
- Page 158: On August 18, 1989, Dr. Anderson noted: “He still has venous stasis but no ulceration.”
- Page 161: An August 29, 1989, physical therapy evaluation by a Jim Simons, physical therapist, includes: “The patient states he has a lot of problems with ulcers on the right leg and they take a long time to heal.” “The patient has a dry 4x4 gauze over an ulcer on the medical aspect of his right leg above the malleolus. Both the bandage and the wound appear dirty.” “The right foot is grossly swollen[.]” “There are two open areas above the medial malleolus[.]” “The edges of the wounds are ragged in appearance with dried skin and a yellow necrotic tissue covers the ulcers.”

- Page 164: On February 9, 1990, Dr. Anderson noted:

Mr. Mahoney is a 53-year-old white male with severe venous stasis changes in his right lower leg and large venous ulcer which has recently healed. He has severe venous stasis and would benefit from a stripping of his lower leg varicosities to help relieve his problems with ulcerations.

- Page 166: Following the procedure, on May 18, 1990, Dr. Anderson noted “definite improvement[.]”
- Page 182: Mahoney received treatment on April 29, 1993, at a Newcastle, Wyoming clinic for a 1 ¼ inch by ¾ inch venous stasis ulcer on his right leg.
- Page 183: Mahoney was treated on December 15, 1997, again in Newcastle, Wyoming, at the Weston County Memorial Hospital, for “R ankle ‘infection’ x 2 months, hurting, will not heal”. The diagnosis was “ulcer right lateral ankle.”
- Page 184: Dr. Lanny Reimer’s December 15, 1997, emergency room note included: “history of vascular insufficiency of his right leg.” His assessment: “1. Ulcer, right lateral ankle, 2. probable venous insufficiency right lower extremity.”
- Page 188: On December 16, 1997, a Dr. Edward Picardi noted: “The patient has been plagued with venous ulcers and looking on the lateral malleolar area, the patient has a really significant 2-3 cm ulcer which is fairly deep.” He noted his impression as: “chronic venous stasis.”
- Page 203 is Dr. Bedingfield’s March 10, 1998, note, seven weeks after Mahoney underwent injection sclerotherapy of veins in the lower part of his right lower extremity. Dr. Bedingfield noted apparent good results from the procedure, but noted also:

He still has a palpable saphenous vein medially and with him in standing position there is some venous distention over the dorsum of his foot as well as in the upper posterior calf area. He has known venous insufficiency because of interruption of the deep femoral vein at mid thigh level from an old gunshot wound. Further venous obliteration was felt to be undesirable due to the venous insufficiency mentioned above.

Dr. Bedingfield concluded: “I think one has to be cautious not to do too much to this gentleman’s leg in view of this venous insufficiency primarily.”

Jacqueline Schiraldi testified at the hearing for Mahoney. Mahoney stated, “She was employed right beside me that day. She saw what went on and saw Jerry lift and help pick me up off the floor[.]” In fact, however, Schiraldi did not witness the fall. She testified she was “outside on a break[.]” She did see Mahoney shortly after the fall. Mahoney’s cut hand was wrapped in a towel, bleeding. As to whether Mahoney injured his right leg in the fall, Schiraldi testified as follows:

Q. What do you know about the leg, the right leg?

A. He just said it was hurting and it was ugly. You know, he had a laceration on there, whatever, you know. And so - -.

Q. Did you look at the leg?

A. Yeah.

Q. What did you see?

A. I saw an owie, a big ugly thing. **It was seeping out, you know, like moisture or pus or whatever.** (emphasis added).

Mahoney also called his daughter, Tammy Mahoney, as a witness. He stated, “She knows that day I didn’t have no ulcers when I went to work[.]” However, Tammy Mahoney was living in Hill City at that time and Mahoney was living in Custer. She had no knowledge of the condition of his leg before the fall, and did not see Mahoney’s right leg until August, two months or more after the fall.

Analysis

Claimant has the burden of proving all elements necessary to qualify for compensation. Day v. John Morrell & Co., 490 NW2d 720, 724 (SD 1992).

SDCL 62-1-1(7) provides:

“Injury” or “personal injury,” only injury arising out of and in the course of the employment, and does not include a disease in any form except as it results from the injury. An injury is compensable only if it is established by medical evidence, subject to the following conditions:

- (a) No injury is compensable unless the employment or employment related activities are a major contributing cause of the condition complained of; or
- (b) If 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.
- (c) If the injury combines with a preexisting work related compensable injury, disability, or impairment, the subsequent injury is compensable if the subsequent employment or subsequent employment related activities contributed independently to the disability, impairment, or need for treatment.

Whether Mahoney’s injury arose out of and in the course of his employment.

For Mahoney to recover workers’ compensation benefits, he “must prove by a preponderance of the evidence that [he] sustained an injury ‘arising out of and in the course of the employment.’” SDCL 62-1-1(7), Norton v. Deuel School District #19-4 ¶ 7, 2004 SD 6, 674 NW2d 518.

Mahoney’s medical record the date of his fall does not mention any leg injury.

He has extensive medical evidence of ulcers on his lower right leg predating the fall.

Mahoney's own eye witness, Schiraldi, testified that she saw Mahoney's leg immediately after the fall and it was "seeping" and she observed "pus". Neither observation indicates that she saw a new wound or what one would expect to see on observing a fresh cut, scrape or wound. Schiraldi's observations support the conclusion that Mahoney was suffering from an existing ulceration at the time of the fall and did not suffer a new injury on June 5, 2003.

Whether Mahoney's employment or employment related activities were a major contributing cause of his condition, impairment, or need for treatment.

Even assuming that Mahoney suffered an injury to his right ankle at the time of his June 5, 2003, fall, he has the burden to prove that injury is and remains a major contributing cause of his condition or need for treatment. SDCL 62-1-1(7)(a-b).

"Where there is no obvious causal relationship the testimony of a medical expert may be necessary to establish the causal connection." Howe v. Farmers Coop. Creamery, 81 SD 207, 212, 132 NW2d 844, 846 (1965); see also Hanten v. Palace Builders, Inc., 1997 SD 3 ¶10, 558 NW2d 76, 78.

The medical evidence must be examined to determine whether Mahoney established by a preponderance of the medical evidence that any injury he may have suffered on June 5, 2003, is and remains a major contributing cause of his current condition and need for treatment.

There is no medical opinion that Mahoney's June 5, 2003, fall is and remains a major contributing cause of his current condition and need for treatment.

Dr. Jeff Luther performed an independent medical records review, at the request of Employer/Insurer, on April 7, 2004. He testified by his September 13, 2004, deposition. Dr. Luther also completed a written report, which is attached to his deposition as Exhibit 2.

Dr. Luther reviewed the First Report of Injury and extensive medical records dating back to 1989, as set out in his written report. Dr. Luther noted that the First Report of Injury, filed on Mr. Mahoney's behalf three months after the incident in question, on September 9, 2003, did not mention a right leg injury. He also noted that Mahoney "has a long-standing history of venostasis, including ulcerations of the right lower extremity, bilateral edema and deep venous thrombosis. He has records dating back to 1989 documenting this condition."

Dr. Luther's report concludes with a diagnosis: "The patient has a long standing history of substantial and significant documentation of peripherovascular disease, including venostasis with venostasis dermatitis and recurrent venostasis ulcers, also a history of arterial insufficiency."

Dr. Luther testified, within a reasonable degree of medical certainty, that Mahoney's June 5, 2003, incident is not even a contributing factor to his need for treatment.

Dr. Luther also reviewed Dr. J. Michael Bacharach's August 9, 2004, independent chart review. Dr. Bacharach is a board certified cardiologist with additional training in vascular abnormalities. Dr. Bacharach reviewed "the extensive documentation of Mr. Mahoney's reported medical records and therapy." Dr. Luther agreed with Dr. Bacharach's opinion that:

Mr. Mahoney's venous stasis ulcerations and evidence of arterial insufficiency **are in no way related to his fall on 6-05-03**. It is my opinion from review of the records, that he has an antecedent history of arterial occlusive disease based on the gunshot wound as well as chronic venous stasis changes that predate the June 2003 event. His ulceration is likely the result of long standing sequaelae related to his venous insufficiency and **totally unrelated to the fall**. (emphasis added).

The opinions of Dr. Luther and Dr. Bacharach are accepted. They are well reasoned and based on Mahoney's extensive medical history of lower right extremity problems.

Mahoney did not meet his burden of proving by a preponderance of the evidence that he suffered a work-related injury to his right leg on June 5, 2003. He did not prove by a preponderance of the medical evidence that the June 5, 2003, incident is and remains a major contributing cause of his current condition or his current need for treatment.

Counsel for Employer/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. Mahoney shall have an additional 10 days from the date of receipt of Employer/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/Insurer shall submit such stipulation together with an Order consistent with this Decision.

Dated: April 26, 2005.

SOUTH DAKOTA DEPARTMENT OF LABOR

Randy S. Bingner
Administrative Law Judge