

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

**JUDY ELVING,
Claimant,**

HF No. 162, 2003/04

v.

DECISION

**CCC INFORMATION SERVICES,
Employer,**

and

**BROADSPIRE (as third-party
administrator for Kemper Services,
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 16, 2005, in Sioux Falls, South Dakota. Claimant, Judy Elving (Claimant) appeared personally and through her counsel, Mark Welter. Steve Morgans represented Employer CCC Information Services, and Insurer Broadspire (as third-party administrator for Kemper Services (Employer/Insurer).

Procedural history:

On May 9, 2005, the Department entered a Prehearing Order that listed the following issues to be presented at hearing:

1. Is Claimant's disability, impairment, or need for treatment compensable under SDCL 62-1-1(7)?
2. If Claimant's disability, impairment, or need for treatment is compensable, is she entitled to medical expenses (SDCL 62-4-1), temporary total/partial disability benefits (SDCL 62-4-5 and 62-4-5.1), permanent partial disability benefits (SDCL 62-4-6), and/or permanent total disability benefits (SDCL 62-4-7 and SDCL 62-4-52 through 55).

The parties stipulated that Claimant "met the requirements of SDCL 62-7-10 in notifying Employer/Insurer of her injury". The parties further stipulated to the foundation of "all invoices, bills, and explanation of benefits" and all of Claimant's medical records. The parties also stipulated that Claimant possessed "the right within 30 days of [August 16, 2005] to secure the deposition testimony of Dr. Thomas Ripperda for use at this hearing." The parties also stipulated that Employer/Insurer possessed "the right to supplement the testimony of Dr. Blow as rebuttal only to such testimony of Dr.

Ripperda.” Claimant did not choose to offer the deposition testimony of Dr. Ripperda after hearing.

Summary of the evidence presented:

1. Claimant reported to Employer that on February 18, 2003, she suffered injuries from a fall outside the building where she worked. She alleged that she fell onto her left hip and right arm/elbow and that maybe the “wind was knocked out of” her. Claimant later alleged that she hit her head when she fell.
2. Claimant began working for Employer/Insurer on December 22, 2000, as an “Evaluator II”. An Evaluator II evaluates total loss vehicles for various insurance companies. Claimant duties did not involve travel. She used a computer connected to many databases.
3. Claimant worked sitting at a computer eight hours a day, forty hours a week with the goal of working approximately 95 files per day.
4. Claimant received periodic performance evaluations. A review of those evaluations demonstrates that Claimant’s productivity and attendance had not been consistent and that she had been placed on a 3-month performance plan in October of 2001 because of poor performance. Claimant successfully completed this performance plan.
5. Claimant’s attendance at work was affected by her numerous medical conditions. The medical evidence demonstrates that Claimant suffers from many medical conditions that predate the February 18, 2003, fall.
6. Claimant’s medical history for treatment of back pain and chronic pain is extensive. From 1995 right up to the time of her fall in 2003, on occasions too numerous to repeat in full here, Claimant sought treatment for back pain, described in medical records as “constant”, “constant with no relief”, “sharp”, “radiating”, “excruciating”, “no position of comfort”, “nearly disabling”, “severe”, and “uncontrollable”.
7. Before February of 2003, Claimant treated with many other doctors and medical providers for treatment of her low back and left buttock pain. She treated with orthopedic specialists, including Dr. Robert C. Suga, Dr. D. G. MacRandall, Dr. Walter O. Carlson, Dr. J. Cass, and Dr. Wilson T. Asfora, as well as others. Claimant also treated with Dr. Bryan Wellman, Dr. Kathryn Florio, and Dr. Mark Gregg, neurology specialist. Dr. John K. Erie, an orthopedic surgeon, performed injections. Claimant also consulted Dr. Joseph Fanciullo, a rheumatologist.
8. Claimant’s family physician, Dr. Leonard Gutnik, was her primary treating physician. He began treating Claimant for various health conditions in approximately 1999. His records detail Claimant’s pain complaints. For example, on July 24, 2000, Dr. Gutnik stated in his records, “The (left hip and back pain) is chronic. She wakes up with it most days. It is nearly disabling. Her pain is in the low back and the left buttock. It sometimes is sharp. It radiates down the back of her thigh. This is a chronic, nearly disabling problem for Judy.” On June 25, 2001, Dr. Gutnik noted that Claimant’s pain

- would become “intolerable” when she attempted to decrease her intake of pain medication.
9. Claimant’s condition led Dr. Gutnik to refer her to orthopedic specialists, including Dr. Carlson, who referred Claimant to Dr. John Erie. On February 19, 2002, Dr. Erie examined Claimant. Dr. Erie’s record reflects that Claimant complained of “left buttock pain.” He found her to have “some tenderness over the left SI joint¹ and also the left piriformis muscle².” His assessment was “left sacroilitis and left piriformis muscle syndrome.” Dr. Erie performed a “left SI joint injection” and a “left piriformis muscle injection” in an effort to alleviate her left buttock pain.
 10. Claimant was hospitalized twice in 2002 for management of her low back and buttock pain.
 11. Dr. Gutnik prescribed for Claimant a handicapped parking permit due to “10 out of 10” hip and leg pain prior to her fall in 2003.
 12. In an effort to relieve her significant back, hip, and leg pain before February of 2003, Claimant participated in physical therapy, received chiropractic treatment, was referred to the Mayo Clinic, had many diagnostic tests, and injections. No treatment alleviated her pain for any significant period of time.
 13. Prior to February 2003, Claimant used Percocet and Vicodin for back and leg pain.
 14. Prior to February 2003, Claimant complained of sleep disturbances and was prescribed medication to help her sleep.
 15. Claimant and Dr. Asfora discussed the possibility of implanting a morphine pump for control of her back pain before February of 2003.
 16. On January 17, 2003, Claimant sought treatment at the Sioux Valley Emergency Room complaining of “chronic back pain radiating down into her left leg.” She reported her pain as a “10 out 10” on a scale of 0-10, 10 being the worst pain. Claimant explained to the Sioux Valley nurse that she was scheduled for trigger point injections the next week, but that her low back and leg pain was “too painful to wait.” Claimant explained that she had throbbing pain in her low back that radiated to the back of her mid-thigh in the left leg.
 17. Claimant sought emergency treatment for intolerable back and leg pain at least six times in the few years before her 2003 fall.
 18. On January 20, 2003, Claimant reported to Dr. Florio that the longer she sits, the worse her back pain gets.
 19. Claimant received an injection into her left piriformis muscle on January 21, 2003. She reported significant improvement after this injection.
 20. Claimant received another injection into her left piriformis muscle on January 31, 2003, reporting that her back and leg pain had been rather constant at that time.
 21. Dr. Gutnik found on February 3, 2003, that Claimant’s problems included:

¹ “SI” is an abbreviation for the term sacroiliac. The sacroiliac joint is, in non-technical language, the joint that connects the bottom of the spine (the sacrum) to the pelvis.

² The piriformis muscle is a muscle that stretches from the sacrum to the femur and is used to laterally rotate the hip.

1. Back and leg pain.
 2. Vascular disease.
 3. Restless legs.
 4. Chronic pain in the back and legs.
 5. GI reflux.
 6. Gallbladder out.
22. Dr. Gutnik also noted on February 3, 2003, that Claimant's "[s]ciatic pain is an 8 on a scale of 0 to 10, throbbing, constant." Claimant's medications at that time included Parafon Forte (a muscle relaxer), Percocet (a narcotic pain medication), quinine (an anti-spasm medication), Premarin (female hormone replacement therapy), and Maalox (an over the counter medication for relief of GI problems).
23. Dr. Gutnik also noted on February 3, 2003, that Claimant was in the middle of a series of injections to her back and that with her first injection, Claimant's pain had improved 10%.
24. After the fall on February 18, 2003, Claimant received immediate outpatient treatment at McKennan Hospital. The treatment records describe the incident:

This 50-year-old female presents with injuries after falling this morning. The patient fell and struck her right elbow. She also landed on her buttocks area. This was sore on the right side but her pain is actually more on the lower back and the left pelvis area.

The patient's husband was able to help her up and she has been able to bear some weight. However, motion aggravates her discomfort.

The patient has no pain radiating into the legs. She does have a history of sciatica on the left but again no pain radiating into the leg at this time. No complaints of any loss of bladder or bowel control.

Patient's injuries occurred this morning when she fell. She has no loss of consciousness with today's injury.

25. The emergency room note also indicated that Claimant suffers from "chronic sciatica."
26. Claimant was sent home after receiving shots of Demerol and Vistaril. She was instructed to ice the sore areas and check in with her doctor if her pain persisted.
27. Claimant followed up with Dr. Gutnik, who performed additional testing to determine the extent of her injuries from the fall. His additional testing did not reveal any significant, objective evidence of an injury.
28. Dr. Gutnik noted throughout the next few months Claimant's pain levels were usually around a six, which was lower than before the fall, and that therapy was helping her situation.

29. In April of 2003, Claimant was placed on a three-month performance plan at work due to her poor productivity in the first quarter of 2003 and in 2002. Her evaluation for 2002 indicated that Claimant's fourth quarter performance was "remarkable", although "it may have been just a bit too late" because her overall performance for 2002 was below expectations.
30. Claimant did not meet the objectives of her performance plan in the second quarter of 2003, and she was fired on July 3, 2003.
31. Claimant continued to treat with Dr. Gutnik for her numerous medical problems.
32. Other facts will be developed as necessary.

Issue One

Is Claimant's disability, impairment, or need for treatment compensable under SDCL 62-1-1(7)?

Claimant "must establish a causal connection between her injury and her employment." Johnson v. Albertson's, 2000 SD 47, ¶ 22. "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). When medical evidence is not conclusive, Claimant has not met the burden of showing causation by a preponderance of the evidence. Enger v. FMC, 565 N.W.2d 79, 85 (S.D. 1997).

SDCL 62-1-1(7) defines "injury" or "personal injury" as:

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.

Claimant's burden must be analyzed in three steps. First, whether Claimant's fall is and remains a major contributing cause of Claimant's ongoing medical treatment. Second, whether Claimant's fall is and remains a major contributing cause of her need for psychiatric treatment. Third, whether Claimant's fall is and remains a major contributing cause of her claim for permanent and total disability benefits.

Whether Claimant's fall is and remains a major contributing cause of her need for ongoing medical treatment.

There is no dispute that Claimant suffers from a multitude of preexisting conditions. "While both subsection (b) and subsection (c) deal with preexisting injuries, the distinction turns on what factors set the preexisting injury into motion; if a preexisting condition is the result of an occupational injury then subsection (c) controls, if the preexisting condition developed outside of the occupational setting then subsection (b) controls." Byrum v. Dakota Wellness Foundation, 2002 SD 141, ¶15. (citing Grauel v. South Dakota School of Mines, 2000 SD 145, P8, 16-17, 619 N.W.2d 260, 262-265.) The parties do not dispute that Claimant suffered prior back problems and a prior chronic pain condition that constitute a preexisting condition that did not develop within the occupational setting. Therefore, subsection (b) controls.

In support of her claim, Claimant presented the opinions of her treating physician, Dr. Gutnik. Dr. Gutnik is a specialist in internal medicine. He described his practice:

I take care of people over the age of 50, unless they have vascular problems and then I take care of them at any age, and try to diagnose what's wrong with people and help them sort through their health issues. We don't do any surgery.

He further explained that his specialty encompasses "all sorts of problems" including "musculoskeletal chronic pain problem[s]." He offered the opinion that Claimant's fall of February 18, 2003, is and remains a major contributing cause of her need for medical treatment for her back pain. However, Dr. Gutnik also opined that Claimant's condition, given all of her medical problems, would have eventually deteriorated to the condition she is in regardless of the fall. Dr. Gutnik explained that Claimant's chronic pain is a combination of all of her conditions, including her back problem. With respect to her piriformis syndrome, Dr. Gutnik admitted that if it predated her fall, then the fall could not have caused it. He testified:

Q: And you mentioned the piriformis syndrome. Are you aware of whether that diagnosis was determined or discussed before the fall on February 18th, 2003?

A: As far as I know, it was a diagnosis made after the fall.

Q: And would it be significant, in your opinion, at all, if it had been diagnosed before the fall?

A: Only in the sense that she would have it, then, before and not after.

Q: And, therefore, if it had been diagnosed before, obviously the condition itself was not created by the fall?

A: Correct.

The medical evidence, especially Dr. Erie's assessment in February of 2002 and Dr. Florio's diagnosis in January of 2003, demonstrates that Claimant was diagnosed with the piriformis syndrome before she fell on February 18, 2003. Dr. Gutnik's opinion that the fall of 2003 is and remains a major contributing cause of Claimant's back condition and chronic pain is not persuasive.

Employer/Insurer presented the medical opinions of Dr. Jerry Blow, a specialist in physical medicine. Dr. Blow works with people suffering from "acute, subacute and chronic pain." Dr. Blow examined Claimant on August 15, 2003. In conjunction with a physical exam, Dr. Blow also reviewed Claimant's medical records and took a history from Claimant. Dr. Blow testified live at the department hearing. He used a model of the bones and nerves of the human spine in explaining Claimant's condition and his opinions on the causation of that condition. As a physiatrist, Dr. Blow is specially trained in treating problems similar to Claimant's condition. His testimony was credible and persuasive.

Dr. Blow opined that Claimant's fall of February 18, 2003, "was not a major contributing cause for her ongoing pain complaints and her need for treatment." Dr. Blow explained the basis for his opinion:

The basis is that she's had a long-term history of low back pain and leg pain dating back to 1995. That she's had increasing pain complaints over the years. And in, for example, like 2000, 2001, she was being maintained on narcotics to continue her at work. That she had been referred to Dr. MacRandall regarding her back and leg pain way back in 2000 with complaints of hip pain and leg pain. That she had been hospitalized twice in February of two thousand - - January, February of 2002 and then in August of 2002 with the same complaints of back and leg pain. There are times when Dr. Gutnik says - - there's a visit where he talks about Judy being miserable and that she's - the only way she's staying at work is because of her narcotics, and that's in like 2000, 2001. That Dr. MacRandall talks about her having left buttock pain. Dr. Erie in 2002 - I'm sorry, 2001 injects her piriformis, her SI, her greater trochanteric bursa. So all of these people are talking about the same pain in the same locations. And over the years, the intensity of her pain increases to the extent that she has to be hospitalized twice. That just prior to this, she's seen Dr. Asfora and Dr. Wellman - Dr. Wellman in December of 2002 - saying that he thinks that she's got either a lumbar plexicitis or a piriformis. Plexicitis is where a whole bunch of nerves are irritated. She goes to Dr. Florio, Dr. Florio says, no, this isn't - since her EMG's normal, this has to be piriformis - or this is most likely piriformis. She sends her to an anesthesiologist for an injection and that injection does make her feel better, just like it did with Dr. Erie the year before. So she's had a long history of piriformis syndrome symptoms. Normal MRIs, normal bone scans, normal EMGs, so piriformis would be the diagnosis.

Her piriformis syndrome was so severe that Dr. Asfora was talking about putting a morphine pump in for it. She was getting Percocet at that time. Her pain levels were ten plus in leg prior to the injury. And so her pain levels are the same, her interventions are the same. She – I don't think she's been hospitalized since the injury for the back and leg pain, but she was hospitalized twice before so – and she was given injections just shortly before her fall.

So it appears to me clearly that she – it was a preexisting condition. That the fall was only a minor incident in her progression of pain, her progression of treatment. I mean if she had piriformis syndrome a couple years ago and hadn't had treatment for, you know, a year or even six months, perhaps one could say that the work did substantially aggravate her condition. However, to me it's pretty clear she was pretty severe with ten plus pain prior to the fall, so her current condition is in no way related to that fall in my opinion. That it's simply a natural progression.

Dr. Blow's opinions are accepted. Based upon Dr. Blow's opinions and the medical evidence, the Department finds that Claimant's low back pain and left buttock pain are caused by "piriformis syndrome", which predated her work-related fall. The Department finds that Claimant's fall was "a minor incident in the progression of her pain [and] progression of treatment." Based upon Dr. Blow's opinions and the medical evidence, the Department finds that Claimant's chronic pain condition predated her work-related fall. The Department concludes that Claimant has failed to demonstrate that the fall in February 2003 is and remains a major contributing cause of her need for medical treatment, including the treatment for her piriformis syndrome and her chronic pain.

Whether Claimant's fall is and remains a major contributing cause of her need for psychiatric treatment.

SDCL 62-1-1(7) provides that the term "injury"

Does not include a mental injury arising from emotional, mental, or nonphysical stress or stimuli. A mental injury is compensable only if a compensable physical injury is and remains a major contributing cause of the mental injury, as shown by clear and convincing evidence. A mental injury is any psychological, psychiatric, or emotional condition for which compensation is sought.

Claimant's claim for compensation for depression, including depression medication and psychiatric therapy, must fail in light of the finding that her physical injury which she claims caused her mental injury is not and does not remain a major contributing cause of her need for medical treatment. However, in spite of that finding, her claim for psychiatric treatment will be addressed.

In support of her claim for psychiatric treatment, Claimant offered the deposition testimony of Dr. Gary L. Dickinson, a Ph.D. in clinical psychology. He has been treating Claimant since August of 2003. Dr. Dickinson opined that Claimant's fall in 2003 was a

substantial and major contributing cause of her psychological condition which in turn causes, in part, her disability from work.

Dr. Dickinson's opinion must be rejected. Dr. Dickinson admitted on cross-examination that he had not had the opportunity to review the records of the medical treatment Claimant received prior to her fall in 2003. Because of this lack of knowledge of Claimant's prior back symptoms and treatments, Dr. Gutnik's prior diagnosis of chronic pain and her treatments for other non-work-related conditions, which Dr. Gutnik admitted contributed to her chronic pain, Dr. Dickinson's opinions are rejected as lacking in appropriate foundation. Expert testimony is entitled to no more weight than the facts upon which it is predicated. Podio v. American Colloid Co., 162 N.W.2d 385, 387 (S.D. 1968). "The trier of fact is free to accept all of, part of, or none of, an expert's opinion." Hanson v. Penrod Constr. Co., 425 N.W.2d 396, 398 (S.D. 1988).

Claimant has failed to support her claim for a mental injury with clear and convincing evidence that her fall in February 2003 is and remains a major contributing cause of her need for psychiatric treatment.

Whether Claimant's fall is and remains a major contributing cause of her claim for permanent and total disability benefits.

In support of her claim that her fall in February 2003 is and remains a major contributing cause of her claim for permanent and total disability benefits, Claimant offered the opinions of Dr. Gutnik and Dr. Dickinson. Dr. Dickinson's opinions have already been rejected because they lack foundation.

Dr. Gutnik attributed Claimant's disability to her:

Muscle pain, and I believe that includes the piriformis syndrome and kind of a diffuse fibromyalgia kind of thing, and then she has, I believe, some arthritis, and then she has some circulation problems that along the way have been reasonably serious, and then she has this chronic pain on top of all of that and then, of course, the emotional problems.

He opined that Claimant's fall in February of 2003, was "the straw that broke the camel's back" in terms of Claimant's ability to function. However, Dr. Gutnik admitted that given all of her very serious medical conditions, she would have ended up disabled without the fall in February of 2003. Claimant's piriformis syndrome predated the fall in 2003. Her chronic back pain predated the fall. Claimant's severe vascular disease predated the fall. While the evidence does show that Claimant's productivity at work decreased after her fall, the evidence also shows that Claimant was struggling to maintain her productivity before she was injured and had not achieved a satisfactory level of production. Claimant was having significant employment difficulties before her fall in 2003. Dr. Blow opined that her narcotic medications were probably the only thing keeping her employed before the fall. Furthermore, Claimant sought total disability

benefits from the Social Security Administration for her back pain before fall in February of 2003. Dr. Gutnik's opinions are not persuasive.

Claimant also alleged that an impairment rating done by Dr. Myung Cho, a physical medicine and rehabilitation physician, proved that Claimant's permanent disability is caused by her fall. Dr. Cho found Claimant to have a 5% permanent impairment. Dr. Cho attributed 50% of Claimant's 5% permanent partial impairment to her fall of 2003. In light of the extensive testimony of Dr. Blow and the Department's acceptance of his opinions, Dr. Cho's opinion is not persuasive.

Claimant's burden is by a preponderance of the evidence. She must show that the fall of 2003 is and remains "a major contributing cause of her disability." She has failed to meet that burden.

Claimant has failed to demonstrate that her fall of February 18, 2003, remains a major contributing cause of her ongoing medical and psychiatric treatment and claim for permanent disability benefits. Her claim for benefits must be dismissed.

Issue Two

If Claimant's disability, impairment, or need for treatment is compensable, is she entitled to medical expenses (SDCL 62-4-1), temporary total/partial disability benefits (SDCL 62-4-5 and 62-4-5.1), permanent partial disability benefits (SDCL 62-4-6), and/or permanent total disability benefits (SDCL 62-4-7 and SDCL 62-4-52 through 55).

Medical Expenses:

The medical invoices, bills, and explanations of benefits included in Exhibit 5 and stipulated for admission by the parties, includes invoices dated after mid-August 2003. The Department considered only those medical bills to be at issue. In light of the finding that the fall of 2003 does not remain a major contributing cause of her disability, impairment, or need for treatment, Claimant's claim for medical expenses after mid-August 2003 is denied. The Department will retain jurisdiction to make a ruling on the compensability of any medical expenses incurred by Claimant for treatment after the injury until mid-August 2003 if necessary.

Temporary Total Disability Benefits:

In light of the finding that the fall of 2003 is not and does not remain a major contributing cause of her disability, impairment, or need for treatment, Claimant's claim for temporary total disability benefits is denied. SDCL 62-1-1(8) provides that "temporary disability, total or partial" is "the time beginning on the date of the injury subject to the limitations set forth in § 62-4-2, and continuing until the employee attains complete recovery or until a specific loss becomes ascertainable, whichever comes first." SDCL 62-4-2 provides that temporary total disability benefits are not owed until an employee is

incapacitated for seven consecutive days. Claimant failed to demonstrate that the fall of February 18, 2003, caused her to be incapacitated from working for more than seven days.

Furthermore, Claimant did not demonstrate that the fall of February of 2003 caused her to be terminated in July of 2003. As the record reflects, Claimant suffered from many other medical conditions and family situations that contributed to her inability to meet her production numbers during her performance plan, which in turn led to her termination.

Permanent Partial Disability Benefits:

Claimant asserted a claim for a 2.5% permanent partial disability benefits pursuant to SDCL 62-4-6. Claimant relies upon the opinion of Dr. Cho. Dr. Cho opined that Claimant's low back condition leaves her with a 5% impairment, with one-half of that attributable to the fall of 2003. Dr. Blow opined that Claimant's fall was "a minor incident in the progression of her condition". He opined that any aggravation caused by the fall had resolved by the time of his consultation in August of 2003 and did not assign a permanent impairment to Claimant. Dr. Blow's opinion that Claimant did not suffer any permanent partial disability related to the work-related fall is accepted over Dr. Cho's opinion. Dr. Blow's opinions are more persuasive than Dr. Cho's opinion. Claimant is not entitled to permanent partial disability benefits.

Permanent total disability benefits

Claimant's claim for permanent total disability benefits under the odd-lot doctrine cannot succeed in light of the above findings on the compensability of her disability, impairment and need for treatment. Claimant "must establish a causal connection between her injury and her employment." Johnson v. Albertson's, 2000 SD 47, ¶ 22.

Claimant's disability could be improved if she receives the therapy he recommended in his report.³ The Department reserves jurisdiction to determine Claimant's entitlement to permanent total disability benefits under the odd-lot doctrine if it is later determined that Claimant's disability, impairment and need for medical treatment are compensable pursuant to SDCL 62-1-1(7).

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 to submit objections thereto or to submit proposed Findings and Conclusions. The parties may stipulate to a

³ Dr. Blow specifically opined that Claimant would benefit from pool therapy, regular aerobic exercise, and cessation of smoking. He also recommended that Claimant be weaned off narcotics by switching her medication to Depakote or Neurotin. He recommended that Claimant change positions frequently, should avoid climbing stairs, avoid squatting, and use a "Tush Cush."

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 10th day of March, 2006.

SOUTH DAKOTA DEPARTMENT OF LABOR

Heather E. Covey
Administrative Law Judge