

SOUTH DAKOTA DEPARTMENT OF LABOR
DIVISION OF LABOR AND MANAGEMENT

DEBORAH J. CLARK,

HF No. 235, 2003/04

Claimant,

DECISION

v.

GRIMMS DUST CONTROL,

Employer,

and

FARMERS INSURANCE GROUP,

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 June 27, 2006, in Rapid City, South Dakota. Deborah J. Clark (Claimant) appeared personally and through her attorney of record, Dennis W. Finch. Eric C. Blomfelt represented Employer and Insurer (Employer). The issues presented at hearing, as identified by the Prehearing Order entered on January 24, 2006, included:

1. Causation as to Claimant's cervical condition;
2. Causation as to Claimant's thoracic condition;
3. Causation as to Claimant's carpal tunnel condition; and
4. Nature and extent of disability.

During the post-hearing briefing, Claimant acknowledged her treating physician, Dr. Brett Lawlor, opined her thoracic condition was unrelated to her job with Employer. Claimant stated, "[t]herefore Claimant does not assert a claim for any thoracic condition." Based on Claimant's statement, the Department need not address the issue of causation as to Claimant's thoracic condition.

FACTS

The Department finds the following facts, as established by a preponderance of the evidence.

At the time of the hearing, Claimant was forty-five years old. Claimant completed the tenth grade, but did not finish high school. Claimant received some vocational training in culinary arts and auto mechanics for three or four months at the Plankinton State Training School. Claimant neither finished any vocational program nor obtained any certification. Claimant obtained her GED in 1978 and received no other formal education or training.

Claimant's employment history consisted of working in a variety of jobs. Claimant worked for a couple years with her ex-husband selling seafood directly to various businesses. For a few years, Claimant worked sporadically as a waitress and bartender. In the late 1980s and early 1990s, Claimant worked for United Van Lines as a secretary performing office work.

In 1992, Employer hired Claimant to work in the shop folding and ironing laundry and packaging products for delivery. Claimant worked in this position for several months until a driver position became available. Employer offered Claimant the driver position and she accepted. Claimant's duties involved driving a van to various businesses and exchanging the clean linens and rugs for the unclean laundry products. Claimant's work was comprised of driving thirty percent of the time and lifting and hauling the laundry products seventy percent of the time. Claimant often lifted laundry bags that weighed between 75 to 100 pounds.

On June 17, 1998, Claimant was working for Employer on her morning route and experienced an onset of collar bone pain. Claimant described the incident:

I was doing my route as normal that day and at some point, I went to lift a bag into the van, and I had gotten some real tight collar bone pain. It was just a tightness. And when I bent down, getting back up to stand up straight was kind of tough. So I just kind of did it kind of slow. And when I got back to the shop that day, it had happened a couple times. And to me, I didn't see it as a severe injury or anything. It was just something that was going on. And when I got back, I told my boss, "I think I hurt my neck today." And he had me fill out an accident report, and shortly after I went to the doctor.

Claimant completed a First Report of Injury and described her injury as "when coming out of squatting or sitting position collar bone pressure unable to stand straight."

Claimant sought medical treatment from Angela Karsky, PA-C. Claimant received some physical therapy, but did not experience any relief. Claimant was taken off work for a short period of time and then referred to Dr. Brett Lawlor, physiatrist.

Claimant first saw Dr. Lawlor on September 21, 1998. Dr. Lawlor noted:

Ms. Clark is a 38-year-old delivery driver who was in her usual state of good health until June 17, 1998, when she said that she was going to get out of a delivery truck and felt some significant pain in the anterior cervical musculature. She denies that there was any specific episode of lifting that initiated the pain, but she says that she tried to straighten up and had significant pain in the area of the collar bone. She said that she tried to work through her difficulties, but her symptoms continued and radiated into the shoulders and evolved into headaches as well.

....

She continues to have anterior and posterior cervical pain, numbness in both hands and headaches associated with her neck pain. She has decreased motion in her neck because of pain and tightness.

....

She has had plain x-rays of the thoracic spine which included the clavicular region and are unremarkable for any evidence of tumor or bony pathology.

Dr. Lawlor initially diagnosed Claimant with anterior and posterior cervical myofascial pain and questioned whether Claimant had a herniated disc in her neck and possible carpal tunnel syndrome. Dr. Lawlor ordered an MRI of Claimant's cervical spine.

An MRI was performed on September 21, 1998, which showed Claimant had "two distinct protrusions at C5-6 and C6-7 with no obvious nerve root compression." Dr. Lawlor recommended an EMG study because the MRI findings did not "provide a definitive explanation for the hand numbness that she is having." Dr. Lawlor also prescribed specific physical therapy maneuvers, anti-inflammatory medication and a TENS unit.

Claimant returned to work for Employer performing light duty in the laundry area. Claimant saw Dr. Lawlor on October 16, 1998, complaining that her worst symptoms included headaches and neck pain. The EMG study revealed evidence of a mild bilateral carpal tunnel syndrome, but there was no evidence of cervical radiculopathy. Dr. Lawlor diagnosed:

1. Bilateral carpal tunnel syndrome.
2. Cervical myofascial pain that likely has a discogenic component as well.
3. Occipital neuritis with occipital headaches.

Dr. Lawlor performed an occipital nerve block during the appointment.

On October 30, 1998, Dr. Lawlor noted Claimant's main complaint continued to be neck pain that radiated into the shoulder region bilaterally. Dr. Lawlor stated:

I reviewed my diagnostic impression in detail with Ms. Clark. I told her that I felt we are very near the point where we have nothing further to offer from a conservative standpoint. I outlined this with her in detail. I told her that at this point, with no reasonable further conservative treatment options, we are really left with pressing ahead with her current symptoms and trying to get her back to the highest level of work possible or having her see a neurosurgeon for further evaluation. She states that the pain is at an unacceptable level so I am going to have her at least get a neurosurgical opinion. I told her that I doubt that she has a surgical lesion though I felt at this point it would be warranted for her to be evaluated by a neurosurgeon.

After this appointment, Dr. Lawlor met with Dianne Christiansen, Claimant's case manager. Dr. Lawlor cancelled the neurosurgical evaluation and; instead, ordered a functional capacity assessment (FCA). Claimant completed the FCA and on November 13, 1998, Dr. Lawlor noted she "falls in the medium level of work based on this FCA."

On December 18, 1998, Claimant sought a second opinion from Dr. David Lang, orthopedic surgeon, because she "had a lot of numbness in [her] arms and sore elbows[.]" Dr. Lang noted Claimant had ongoing bilateral hand numbness and dysesthesias at night. Dr. Lang agreed that Claimant had mild bilateral carpal tunnel syndrome, unresponsive to conservative treatment. Claimant informed Dr. Lang that "she was not to the point that she felt she needed to have surgery" and Dr. Lang thought this was reasonable.

Claimant continued to work for Employer performing only light duty work, but she continued to experience problems. Claimant "started experiencing really bad headaches and [she] had a lot of burning and tightness in the shoulders and in between the shoulder blades in [her] back." Claimant returned to see Dr. Lawlor on January 5, 1999, because she continued to experience neck pain and hand pain. Dr. Lawlor noted that Claimant had "both anterior and posterior cervical pain as well as some scapular area pain." Dr. Lawlor agreed to proceed "with further diagnoses of [Claimant's] thoracic spine pain" and continued with conservative treatment of her bilateral carpal tunnel syndrome.

On January 12, 1999, Claimant met again with Dr. Lawlor and indicated she wanted to continue working for Employer despite her continued pain complaints. Dr. Lawlor ordered a job site evaluation "to try to develop a safe work place for her so she will not aggravate her symptoms." On January 18, 1999, Geoffrey Bonar, physical therapist, performed an on-site evaluation of Claimant's job for Employer. Bonar noted:

Essentially, at this point Deb's activities at work consist of sorting and folding various fabric items. There is never any lifting of more than 10 [pounds] (estimate) and the lifting is generally less. The biggest part of Deb's job at this time is prolonged standing at various tables and folding clothes, which requires some minimal forward bending activity but the biggest part of it is using her arms either in an outstretched position at shoulder level or some shoulder depression depending on the level of work she is at. I would categorize this activity as sedentary in nature. She continues to be aggravated at work, probably more as the result of repetitious activity and repetitive shoulder movements.

Despite Employer's efforts to accommodate Claimant's work needs, Bonar found that she could no longer perform her work duties "due to the continued aggravation in this job." Bonar recommended to Dr. Lawlor that Claimant needed an alternative position that did not require repetitious activity. Dr. Lawlor agreed with Bonar's findings and Claimant stopped working for Employer in January 1999.

Claimant returned to see Dr. Lawlor on January 29, 1999, for an impairment rating. Dr. Lawlor opined Claimant had reached maximum medical improvement (MMI) with regard to her neck injury and carpal tunnel syndrome. Dr. Lawlor opined Claimant had a five percent whole person impairment rating for her cervical spine and ten percent impairment rating for each upper extremity. Dr. Lawlor opined that Claimant's condition required her to avoid upper extremity overhead activity, repetitive upper extremity activity, avoidance of prolonged neck flexion and any lifting greater than twenty pounds. Dr. Lawlor continued to prescribe pain medication for Claimant due to her continued pain complaints.

On June 10, 1999, Claimant returned to see Dr. Lawlor for increasing problems with numbness in her hands and neck pain. Dr. Lawlor concluded that further conservative treatment would not be helpful for her carpal tunnel syndrome. Dr. Lawlor requested another nerve conduction study, which confirmed "carpal tunnel syndrome that is consistent with the symptoms in her hand." Dr. Lawlor referred Claimant to Dr. Lang for reconsideration of carpal tunnel release. Dr. Lang noted Claimant did not have progression of her symptoms and surgery was not warranted at that time.

On March 22, 2000, Claimant returned to see Dr. Lawlor for increased numbness in her hands that had progressively been getting worse. Dr. Lawlor ordered a repeat EMG. Claimant saw Dr. Lang again on April 14, 2000, and Claimant elected to proceed with surgery. On April 24, 2000, Dr. Lang performed right endoscopic carpal tunnel release and on May 1, 2000, he performed left endoscopic carpal tunnel release. On May 23, 2000, Dr. Lang noted Claimant had "excellent results" from the surgery.

On June 30, 2000, Dr. Lawlor noted the numbness in Claimant's hands was completely gone. On this date, Claimant reported a recurrence of neck pain and she pursued a course of physical therapy. On July 31, 2000, Claimant reported her symptoms were improving with conservative treatment. Dr. Lawlor did not schedule any specific follow-up appointment or any follow-up physical therapy.

Thereafter, Claimant treated periodically with Dr. Lawlor. On April 25, 2002, Dr. Lawlor noted Claimant developed neck pain about two weeks ago for no obvious reason. Claimant went to the emergency room and had an MRI, which showed a moderate disc protrusion at C6-C7, not causing any nerve root compression. Dr. Lawlor diagnosed Claimant with "[p]robable cervical discogenic pain with MRI evidence of a bulging disc at C6-C7." Dr. Lawlor stated, "[w]e discussed treatment options including oral medications, physical therapy, injections, and surgery. She is not certain how she wants to proceed. She is inclined to see a surgeon. I told her I would be happy to make this referral[.]"

On April 30, 2002, Dr. Larry Teuber saw Claimant for a neurosurgical consultation to assess her neck and shoulder pain with occasional headaches. Cervical spinal x-rays showed degenerative changes at C6-7. Dr. Teuber also noted that a previous MRI indicated Claimant had mild spondylosis at C6-7. Dr. Teuber diagnosed Claimant with "neck pain arising spontaneously as the result of osteoarthritic changes in the cervical spine." Dr. Teuber advised against surgery for Claimant and recommended a four to six week course of physical therapy. Claimant participated in some physical therapy and returned to see Dr. Teuber on June 18, 2002, for a follow-up visit regarding her neck discomfort. Dr. Teuber referred Claimant back to Dr. Lawlor for continued conservative management as surgery was not an option.

Claimant returned to see Dr. Lawlor on August 26, 2002. Dr. Lawlor and Claimant discussed long-term management of her cervical discogenic pain with oral medication. Dr. Lawlor opined Claimant was at MMI, she had no additional impairment and that all work restrictions outlined in 1999 remained in effect.

After Claimant stopped working for Employer, she remained off work for a period of time. In November 2000, Claimant then obtained a job with her former employer, United Van Lines. Claimant explained her restrictions and she was hired as a secretary on a part-time basis. Claimant worked for United Van Lines for two years working twenty to twenty-five hours per week and earned \$6.00 to \$7.00 per hour. Claimant also worked for a period of time for a church performing light janitorial work on a part-time basis. Claimant was able to perform this work because she set her own hours, worked at her own pace and the work did not exceed her restrictions. Finally, Claimant attempted to do some babysitting on a volunteer basis for a niece, but the work exceeded her restrictions. Claimant was not employed at the time of the hearing and has not looked for work since 2004.

On December 17, 2003, Dr. Wayne Anderson performed an independent medical examination (IME) of Claimant at Employer's request. Dr. Anderson is board certified in

family medicine and occupational and preventative medicine. Dr. Anderson is also certified by the American Board of Independent Medical Examiners. As part of his protocol for conducting an IME, Dr. Anderson talked with Claimant, reviewed the questionnaire she completed, reviewed her medical records, performed an examination of Claimant and then arrived at a medical assessment or diagnosis.

Claimant informed Dr. Anderson that on June 17, 1998, "she was at her job and was bent over and when she stood up, she had pain in both sides of her collarbones and somewhat in the front of her neck." Following the examination, Dr. Anderson assessed Claimant with:

1. Chronic neck pain.
2. Chronic headaches.
3. Bilateral carpal tunnel syndrome.
4. Probable piriformis pain.

Dr. Anderson noted:

However, in reviewing her chart, I find the following diagnoses listed: cervical discogenic pain, bilateral carpal tunnel syndrome, musculoskeletal pain, scoliosis, cervical myofascial pain anterior and posterior, occipital neuritis, occipital headaches, scapular/thoracic pain, disc protrusion T7-8, rib dysfunction, regional myofascial pain, hyperventilation, mechanical thoracic pain, cervical spondylosis, osteoarthritis cervical spine, disc protrusion C5-6, C6-7 and today I have added piriformis pain.

Dr. Anderson opined:

Ms. Clark could have a relatively minor strain involving her anterior neck on June 17, 1998. As one can see by going through the above list of diagnoses, there is just no possible way that simply the act of bending down and standing up again would produce all of these diagnoses. Therefore, [the work injury of June 17, 1998,] is not a major contributing cause of any of the other diagnoses.

Dr. Anderson also opined Claimant's employment was not a major contributing cause of her bilateral carpal tunnel syndrome. He stated, "I don't know how to explain it other than it just makes no sense at all."

Dr. Anderson performed a second IME of Claimant on August 5, 2005. Dr. Anderson reviewed Claimant's updated medical records and the pre-evaluation questionnaire and examined Claimant. Dr. Anderson assessed Claimant with hypothyroidism, depression and multiple musculoskeletal complaints of undetermined etiology. Once again, Dr. Anderson identified the various diagnoses found in Claimant's medical records. Dr. Anderson stated, "[t]he only medical condition that I am aware of that could cause this wide spread of symptoms would be fibromyalgia; however, she does not have this diagnosis and has not seen a rheumatologist. Dr. Anderson concluded, as he did in December 2003, that the June 17, 1998, incident was not a major contributing cause of Claimant's cervical condition or bilateral carpal tunnel syndrome.

Claimant was a credible witness. This is based on the totality of the evidence presented and on the opportunity to observe her demeanor at the hearing. Other facts will be developed as necessary.

ISSUE I

WHETHER CLAIMANT'S EMPLOYMENT OR EMPLOYMENT RELATED ACTIVITIES WERE A MAJOR CONTRIBUTING CAUSE OF HER CERVICAL CONDITION?

Claimant has the burden of proving all facts essential to sustain an award of compensation. King v. Johnson Bros. Constr. Co., 155 N.W.2d 183, 185 (S.D. 1967). Claimant must prove the essential facts by a preponderance of the evidence. Caldwell v. John Morrell & Co., 489 N.W.2d 353, 358 (S.D. 1992). Under SDCL 62-1-1(7), Claimant must establish she suffered an injury arising out of and in the course of her employment, and, by medical evidence, establish that her employment or employment related activities were a major contributing cause of her condition. "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." Wise v. Brooks Constr. Serv., 2006 SD 80, ¶ 17 (citations omitted). "The claimant also must prove by a preponderance of medical evidence, that the employment or employment related injury was a major contributing cause of the impairment or disability." Id. (citations omitted). "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). "The evidence necessary to support an award must not be speculative, but rather must 'be precise and well supported.'" Horn v. Dakota Pork, 2006 SD 5, ¶ 14 (citation omitted). Claimant "must introduce medical evidence sufficient to establish causation by a preponderance of the evidence." Enger v. FMC, 565 N.W.2d 79, 85 (S.D. 1997).

The evidence established Claimant suffered an injury arising out of and in the course of her employment with Employer on June 17, 1998. On that date, Claimant was performing her usual work activities for Employer when she experienced a sudden onset of collar bone pain as she lifted a laundry bag into the van. Claimant treated extensively with Dr. Lawlor for complaints associated with neck pain that began after the incident on June 17, 1998. During her treatment, Dr. Lawlor discovered Claimant had bilateral carpal tunnel syndrome associated with her work duties for Employer. The evidence established Claimant's employment activities contributed to causing her injury.

Even though the evidence established Claimant suffered an injury arising out of and in the course of her employment on June 17, 1998, the South Dakota Supreme Court noted there is a distinction between the use of the term "injury" and the term "condition" in SDCL 62-1-1(7). See Grauel v. South Dakota Sch. of Mines and Technology, 2000 SD 145, ¶ 9. "Injury is the act or omission which causes the loss whereas condition is the loss produced by an injury, the result." Id. Therefore, "in order to prevail, an employee seeking benefits under our workers' compensation law must show both: (1) that the injury arose out of and in the course of employment and (2) that the employment or employment related activities were a major contributing cause of the

condition of which the employee complained[.]” Id. (citations omitted). As required by SDCL 62-1-1(7), the latter must be established by medical evidence.

Claimant offered the opinions of Dr. Lawlor through his deposition taken on January 5, 2006. Dr. Lawlor opined Claimant’s work activities were a major contributing cause of her cervical pain. Dr. Lawlor provided the following testimony:

- Q: And, Doctor, can you tell us how getting out of the truck and standing up caused her to develop this cervical pain?
- A: I can’t tell you specifically because I don’t know the activity. How she got out of the vehicle, I didn’t question her on this. She simply said as she was getting out of the vehicle, she felt the onset of this pain.
- Q: Are you able to state to a reasonable degree of medical probability whether her getting out of the truck is a major contributing cause of her cervical pain?
- A: Yes.
- Q: And how are you able to reach that conclusion?
- A: Based on the history that she provided to me and absent any specific medical records to the contrary.
- Q: So are you saying because you don’t have any other explanation, that this must be a work-related event?
- A: Because she told me that this is when the symptoms occurred, and I don’t have any reason to believe otherwise.
- Q: Anatomically how does it work, Doctor, that you stand up and develop pain in your neck?
- A: Again, I didn’t take a specific biomechanical history as to what she was doing, how she stood up and got out of the vehicle. I’m familiar with delivery vehicles. I don’t know what type she had. It’s not uncommon for someone to grab on to a hand hold and pull themselves up, which would certainly be a reasonable way to injure your neck if you had to duck your head to get under the door, to get out of the vehicle. These are all reasonable ways that you could suffer [an] injury.

Dr. Lawlor specifically opined Claimant’s work activity of getting out of the delivery vehicle was a major contributing cause of her neck pain and cervical condition.

Dr. Lawlor relied solely on Claimant’s history of the incident on June 17, 1998, as the basis for the opinions he provided during his deposition. Claimant reported to Dr. Lawlor during her initial visit that she experienced an onset of neck pain as she was getting out of the delivery van and denied there was any specific episode of lifting that initiated the pain. Yet, Claimant explicitly testified the collar bone pain or tightness began when she went to lift a bag into the van and it was difficult for her to stand up straight after she bent over. Claimant never discussed these specific activities with Dr. Lawlor and Dr. Lawlor did not explore another cause for Claimant’s neck pain.

The factual basis for Dr. Lawlor’s testimony concerning Claimant’s cervical condition is inconsistent with Claimant’s testimony. Dr. Lawlor’s opinions were founded on the understanding that Claimant was injured as she exited the van. This event did not happen as described to Dr. Lawlor or as he understood it. Claimant was injured as she lifted a laundry bag into the van. Dr. Lawlor’s opinions concerning Claimant’s

cervical condition are flawed because the history from Claimant he exclusively relied upon did not happen and he could provide no other basis for his opinions. The only reason Dr. Lawlor concluded Claimant's cervical condition was caused by her work activities was due to the timing of the onset of her neck pain and tightness. Even if the injury occurred as per Dr. Lawlor's understanding, "[t]he mere occurrence of an injury at work does not mean it is ipso facto work-related." Grauel, 2000 SD 145, ¶ 19. Claimant must prove more than just the fact that her injury occurred at work and she cannot do so with Dr. Lawlor's opinions.

Dr. Lawlor's opinions regarding the causation of Claimant's cervical condition are not persuasive. 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). Dr. Lawlor did not adequately explain his opinions and offered merely a temporal connection between Claimant's work and her injury. Dr. Lawlor used a limited source of facts and did not fully explore what happened to Claimant on the date of her injury. Dr. Lawlor's opinions regarding the causation of Claimant's cervical condition must be rejected as lacking foundation.

Employer offered Dr. Anderson's opinions through his live testimony at the hearing and contained within his two IME Reports from December 2003 and August 2005. In his IME Report from December 17, 2003, Dr. Anderson concluded Claimant "experienced a minor strain on June 17, 1998[.]" However, at hearing, Dr. Anderson opined "[t]here was no injury [on June 17, 1998]." These opinions are rejected as inconsistent with each other, the medical records, specifically Dr. Lawlor's treatment records, and Claimant's testimony.

In the December 17, 2003, IME Report, Dr. Anderson concluded "the injury is not a major contributing cause [of her condition and need for treatment]. She experienced a minor strain on June 17, 1998 and now has problems ranging from her buttock to her head involving most body parts and there is no way to explain that based on what occurred on that day." Yet, at hearing, Dr. Anderson testified:

First of all, there are two logical explanations for what happened on [June 17, 1998]. One is she stood up, developed anterior neck pain, felt the pain; very possible that's the time when the thyroid was beginning. It can cause pain in the thyroid, which if you look at the initial medical records, the initial pain was anterior. If you look at the note from PA Karsky, she says it's in the area of the clavicles. There's a mention of costochondritis, which is an inflammation between cartilage and bone. And it's in the anterior cervical musculature. So that's one potential explanation.

The second very similar event occurred again in 2002. And I'm going to steal Dr. Teuber's words because he words it well and he's a little smarter than most of us. I'll read Dr. Teuber's assessment. From a similar even in 2002, standing up, spontaneous neck pain. He diagnosed mild spondylosis at C6-7. Spondylosis at C6-7 means a degenerative condition at that disk space. His diagnosis is neck pain arising spontaneously as the result of osteoarthritic changes in the cervical spine, which is another very likely explanation for what happened on that day. Possibly both happened.

Dr. Anderson agreed that Claimant could have suffered a neck muscle strain by standing up, but it was “very unlikely that you’re going to do any sustained damage to yourself.”

Dr. Anderson identified a number of diagnoses in Claimant’s medical records and opined none of the various diagnoses were a result of her work activities on June 17, 1998, yet all of them could contribute to her continued pain complaints. Dr. Anderson agreed Claimant suffers from chronic pain. Dr. Anderson also agreed a traumatic event or injury can aggravate or exacerbate asymptomatic degenerative changes.

Dr. Anderson’s opinions concerning Claimant’s cervical condition are rejected as speculative, inconsistent and lacking foundation. As with Dr. Lawlor, Dr. Anderson did not explore Claimant’s activities sufficiently to support his opinions. Dr. Anderson’s opinions are not persuasive and are rejected.

Claimant failed to establish by a preponderance of the medical evidence that her employment was a major contributing cause of her cervical condition. Dr. Lawlor’s opinions were insufficient to establish causation by a preponderance of the evidence.

ISSUE II

WHETHER CLAIMANT’S EMPLOYMENT OR EMPLOYMENT RELATED ACTIVITIES WERE A MAJOR CONTRIBUTING CAUSE OF HER BILATERAL CARPAL TUNNEL SYNDROME?

Dr. Lawlor opined Claimant’s employment with Employer was a major contributing cause of her bilateral carpal tunnel syndrome. Dr. Lawlor testified:

Q: Can you tell me how she developed carpal tunnel syndrome?

A: I’m not certain how anyone develops carpal tunnel syndrome for certain. It is felt to be related to compression of the median nerve in the carpal tunnel from a variety of factors, including repetitive-type activity.

Q: Have you ever reached a conclusion, Doctor, as to whether or not her carpal tunnel syndrome is related to her job at Grimms Dust Control?

A: I think her work activity at Grimms Dust Control may be a contributing factor to her carpal tunnel syndrome.

Q: What did she do at Grimms Dust Control that was a contributing factor to her development of carpal tunnel syndrome?

A: My understanding is that she was a delivery driver, so she would have had her hands on the steering wheel for an extended period of time during the day gripping the steering wheel. People with carpal tunnel syndrome will often report this is a - - this specific activity of driving a vehicle will cause their hands to go numb. So I think that this activity may have been a contributing cause.

....

A: I would modify that slightly and say that her work activities at Grimms Dust Control were a major contributing cause of her carpal tunnel syndrome, yes.

Q: What work activities are you specifically referring to besides holding onto a steering wheel?

A: It's my understanding that she did delivery work. In my original evaluation, she describes doing delivery work, so in addition to . . . the driving, it's my understanding that she did delivery and pick up of laundry, rugs, and mops, and she classified her lifting as heavy lifting. So it was a combination of these activities, the forceful gripping and the repetitive lifting.

Dr. Lawlor had a general understanding of Claimant's work activities. Dr. Lawlor testified:

Q: Then how are you able to reach a conclusion that her work was a major contributing cause if no one can know for certain what causes carpal tunnel syndrome?

A: No one can know for certain in any specific setting. We know the different activities that are contributors to it, and she would fall into the category of someone who was doing forceful gripping, repetitive lifting. It's my understanding she worked eight hours a day. And if she's doing delivery, then I can surmise that she's getting in and out of the vehicle, lifting things on a regular basis and gripping a steering wheel on a regular basis if that's part of her work activity.

Q: But you're just guessing at how often she did this throughout the day?

A: I am, yes.

Dr. Lawlor did not ask Claimant about specific activities she performed while working for Employer. For example, Dr. Lawlor did not inquire how often Claimant placed her hands on the steering wheel when she drove the van, how often she drove the van during the day, the number of rugs she gripped during the day, or the number of laundry bags she gripped during the day.

Dr. Lawlor's opinions addressing Claimant's bilateral carpal tunnel condition were not supported by the record. Dr. Lawlor could only surmise as to the frequency of Claimant's work activities. With respect to the specific activities of driving the van and gripping the steering wheel, Dr. Lawlor could only state that these activities may have been a contributing factor to her bilateral carpal tunnel syndrome, which is insufficient under the standard set forth in SDCL 62-1-1(7)(a). Dr. Lawlor's opinions were not thorough. Dr. Lawlor did not possess an understanding of Claimant's work activities to adequately explain what may have caused her bilateral carpal tunnel syndrome. Dr. Lawlor's opinions regarding the causation of Claimant's bilateral carpal tunnel syndrome are rejected.

Dr. Anderson testified to the contrary of Dr. Lawlor and opined Claimant's work for Employer was not a major contributing cause of her bilateral carpal tunnel syndrome. Dr. Anderson explained:

Carpal tunnel syndrome is caused by two primary factors. One is repetitive forceful gripping. The second factor known to cause carpal tunnel syndrome is vibration. . . . Her job when she worked for Grimms Dust Control, or I apologize

for not knowing the name, involved working in the laundry, I believe, for the first six months or so and then working as a route driver for approximately 8 years. A route driver gets in and out of the truck; she loaded items into the delivery van; took those items to the various businesses and delivered those. That's not the type of work which, in my opinion, is causative of carpal tunnel syndrome.

As with Dr. Lawlor, Dr. Anderson's opinions concerning causation of Claimant's bilateral carpal tunnel syndrome must be rejected. Dr. Anderson had no better understanding of Claimant's work duties than Dr. Lawlor. Dr. Anderson did not thoroughly explore the frequency, duration or repetitive nature of Claimant's work activities. Dr. Anderson's opinions regarding Claimant's bilateral carpal tunnel syndrome also must be rejected as lacking foundation.

Claimant failed to establish by a preponderance of the medical evidence that her employment or employment related activities were a major contributing cause of her bilateral carpal tunnel syndrome. Given the rulings on Issue I and Issue II, there is no need to address the issue of the extent and degree of Claimant's disability. Claimant's Petition for Hearing must be dismissed.

Employer shall submit Findings of Fact and Conclusions of Law, and an Order consistent with this Decision, and if necessary, proposed Findings and Conclusions within ten days from the date of receipt of this Decision. Claimant shall have ten days from the date of receipt of Employer's proposed Findings and Conclusions to submit objections or to submit proposed Findings and Conclusions. The parties may stipulate to a waiver of Findings of Fact and Conclusions of Law and if they do so, Employer shall submit such Stipulation along with an Order in accordance with this Decision.

Dated this 25th day of May, 2007.

SOUTH DAKOTA DEPARTMENT OF LABOR

Elizabeth J. Fullenkamp
Administrative Law Judge