

SOUTH DAKOTA DEPARTMENT OF LABOR
DIVISION OF LABOR AND MANAGEMENT

KIM GRUBA,

HF No. 95, 2004/05

Claimant,

DECISION

vs.

RAPID CITY REGIONAL HOSPITAL,

Employer,

and

FARM BUREAU INSURANCE,

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 October 26, 2005, in Rapid City, South Dakota. Kim Gruba (Claimant) appeared personally and through her attorney of record, Michael J. Simpson. Comet H. Haraldson represented Employer and Insurer (Employer). The sole issue presented was the causation of Claimant's neck condition.

FACTS

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

1. At the time of the hearing, Claimant was forty years old.
2. Claimant has worked for Employer as a registered nurse in the psychiatric unit since 1990.
3. Prior to August 2003, Claimant never filed a workers' compensation claim related to her neck.
4. When Claimant was nineteen years old, she was involved in an incident when she was a passenger in an automobile. The driver slammed on the brakes and even though Claimant was wearing a seat belt, she was thrown forward in the vehicle. Two weeks after the incident, Claimant experienced an episode where all four of her extremities went numb. Claimant received two months of chiropractic treatments and her symptoms resolved.
5. Other than the automobile incident, Claimant did not experience any symptoms or receive treatment for her back and neck prior to August 2003.
6. On August 2, 2003, Claimant was working and was involved in an incident with an adolescent male patient. When the patient attempted to throw a telephone at a co-worker or a group of patients, Claimant walked behind him and circled her

- arms around the patient. As Claimant held the patient's arms, he leaned his head forward and then slammed his head back into Claimant's face.
7. Claimant felt immediate pain in her face. The pain then progressed into her head, left temporal lobe, left side of her neck, left shoulder and into her left arm.
 8. Claimant could not complete her work shift and went to the emergency room.
 9. Dr. Stephen Dick treated Claimant in the emergency room for a facial contusion and cervical strain.
 10. On August 4, 2003, Claimant saw Dr. Douglas Bright for pain in her shoulder and neck. Dr. Bright provided Claimant with a work release and prescribed Flexeril to help her sleep.
 11. On September 15, 2003, Claimant saw Dr. Michael Elston for increased symptoms including considerable neck pain, left arm pain and headaches. C-spine films showed "what appears to be a mild spondylolisthesis of C4 on C5." Based upon these findings, Dr. Elston referred Claimant for an MRI to further evaluate her cervical spine.
 12. The MRI revealed that Claimant had degenerative disc disease at C5-6.
 13. Claimant participated in a course of physical therapy beginning in October 2003.
 14. On October 17, 2003, Claimant began treating with Dr. Brett Lawlor, a physiatrist, for her neck pain. Dr. Lawlor noted that Claimant "has no recent history of similar symptoms. She did have some neck pain at age 19 but this was treated successfully with chiropractic treatment."
 15. Dr. Lawlor performed a neurological examination and based upon his findings, diagnosed Claimant with cervical musculoligamentous injury, degenerative disc disease at C5-6 and cervical myofascial pain. Dr. Lawlor prescribed a Lidoderm patch, Bextra and continuing physical therapy.
 16. On November 11, 2003, a bone scan of Claimant's cervical spine showed "[i]ncreased uptake [or inflammation] in the anterior column of the cervical spine somewhere in the C4 to C6 range. This may also involve the area of the facet joints on both sides at this same level."
 17. Claimant saw Dr. Lawlor again on November 17, 2003, and he noted that Claimant's condition had improved, but she still experienced some flare-ups.
 18. Dr. Lawlor concluded that Claimant's best course of treatment was to continue with physical therapy. Dr. Lawlor stated, "[s]he is making progress, albeit slow, she continues to make progress. I discussed with her the relative merits of injection and I think we should hold off for now. I told her that with increased uptake in the disc space that it is unlikely a facet joint injection would eliminate all of her pain."
 19. Claimant continued to progress in her recovery until December 3, 2003. Claimant reported to Marianne Droby, her physical therapist, that she was getting into a vehicle and misjudged the height and hit her head. Claimant had significant pain into the left side of her neck and increased radiation of arm pain.
 20. Droby noted that Claimant "is working very hard in therapy and is frustrated with [the] continual flare-ups with the use of her upper extremities."
 21. On December 4, 2003, Dr. Lawlor recommended cervical facet injections. Dr. Lawlor explained, "[t]he surface of those joints can become injured and cause pain or the capsule around the joint can become stretched or [torn] and that can cause pain with movement, and so we performed an injection into that joint

- where she had the most tenderness. Actually into the two joints [at C4-5 and C5-6].”
22. On December 9, 2003, Dr. Mark Simonson performed left C4-5 and C5-6 facet joint injections.
 23. On December 17, 2003, Claimant informed Dr. Lawlor the injections have “taken away the deepest, most intense pain.” Claimant still had “referred pain,” but was pleased with the result of the injections.
 24. Dr. Lawlor continued Claimant with physical therapy, but decreased the number of sessions each week.
 25. In early January 2004, Claimant went roller skating with her children and fell. Claimant experienced a mild flare-up of symptoms for a few days.
 26. In early April 2004, Claimant experienced another flare-up of her symptoms while using her snow blower. The flare-up of increased pain lasted for only a few days.
 27. On April 7, 2004, Dr. Lawlor noted that Claimant “is doing well now. She has only a minor ache in the morning.”
 28. Dr. Lawlor concluded that no further treatment was necessary and placed Claimant at maximum medical improvement (MMI). Dr. Lawlor opined that Claimant had a zero percent impairment. Dr. Lawlor stated, “I did instruct her that should she have worsening of her pain that lasts for more than a week to ten days she needs to contact the therapist and treat for three weeks. If her symptoms continue, then she should come and see me.”
 29. Claimant’s symptoms returned in July 2004. Claimant stated, “[t]here was a progressive pattern of symptoms starting with the stabbing-type pain in the area of my neck, which would eventually progress to just pain in that area generally; headaches typically on the left side again, but not always; left shoulder pain; left arm pain shooting down the arm; weakness, fatigue of the arm.”
 30. On July 15, 2004, Claimant returned to see Dr. Lawlor for a recurrence of neck pain. Dr. Lawlor noted, “[s]he said it feels the same as she had before. She denies any new injury. She just developed gradual aching pain.”
 31. Claimant’s symptoms and the progression of her symptoms were identical to what she experienced after the injury in August 2003.
 32. Dr. Lawlor concluded that Claimant’s pain was “quite consistent with facetogenic pain.” Dr. Lawlor recommended cervical facet injections and “if this was not helpful on a long-term basis, we could consider facet rhizotomy.”
 33. Dr. Simonson performed left C4-5 and C5-6 facet joint injections on July 20, 2004. This time, Claimant experienced minimal relief from the injections.
 34. Dr. Lawlor discussed treatment options with Claimant and she opted for repeat facet joint injections. On August 3, 2004, Dr. Simonson again performed left C4-5 and C5-6 facet joint injections.
 35. Claimant experienced excellent relief after these injections. Claimant’s arm quit hurting and most of her symptoms resolved, with the exception of occasional pain in her neck when she moved.
 36. On August 4, 2004, Linda Wolden, the nurse case manager, wrote Dr. Lawlor and asked “Are we treating the underlying cervical neck arthritis with the facet injections?” Dr. Lawlor responded, “No.”

37. Wolden also asked Dr. Lawlor, "Does the work injury remain a major contributing cause of these current symptoms and need for treatment?" Dr. Lawlor responded, "Yes."
38. On August 18, 2004, Dr. Lawlor noted that Claimant received "excellent relief" from the last facet joint injections. Dr. Lawlor determined that no further treatment was necessary. However, Dr. Lawlor stated, "[w]e did discuss that if these injections are helpful, but short lived, we would consider facet rhizotomy in the future."
39. Dr. Wayne Anderson, who is a board certified specialist in occupational medicine, performed an independent medical examination on October 12, 2004. Dr. Anderson reviewed Claimant's medical records, took Claimant's history, performed a physical examination and then generated a report.
40. Dr. Anderson diagnosed Claimant with a cervical strain and cervical and degenerative disc disease at C5-6. Based upon his findings, Dr. Anderson stated in his report "[i]t is my opinion that she experienced a cervical strain as the result of being head butted and that required treatment up until April 7, 2004 when Dr. Lawlor stated she needed no more treatment, was MMI, and had 0% impairment. Treatment since that date has been for her degenerative disk disease as a result of the whiplash injury."
41. Dr. Anderson further concluded that the cervical facet injections were "being performed for degenerative disk disease, which is due to her old whiplash injury."
42. On October 25, 2004, Insurer notified Claimant that it was denying compensability of her current condition.
43. Claimant's symptoms began to return in December 2004 and Claimant returned to see Dr. Lawlor on December 21, 2004.
44. Dr. Lawlor stated, "[s]he continues to have neck pain. She is frustrated with the pain she is having and is wondering what she can do for this. Her pain she is having is the typical pain she has had ever since she was injured on the job. This will respond periodically to facet injections but then return. She has pain in the neck that radiates down the arm. This arm pain has been relieved in the past with cervical facet injections."
45. Dr. Lawlor again diagnosed cervical facetogenic pain and informed Claimant that "given the chronicity and recalcitrant nature of her pain, it would be reasonable to proceed with a diagnostic medial branch block at the C4-5 and C5-6 facet joints and see if this relieves her pain. If it does, then she would be a candidate for cervical facet rhizotomy."
46. On January 11, 2005, Dr. Lawlor performed a diagnostic medial branch block in the left C4, C5 and C6. Dr. Lawlor explained, "[t]hat's a test where we put a couple drops of numbing medicine on top of that nerve to see if the pain is relieved temporarily. If it is, then that tells us that nerve is the transmitter of the pain and it predicts that if we do a radiofrequency ablation of that nerve, that she'll get good relief."
47. Prior to the medial branch block, Claimant reported her pain as a 6 to 7 out of 10. After the procedure, Claimant reported her pain as a 2 to 3 out of 10 and she had no pain in her arm.
48. Based on the results of the medial branch block, Dr. Lawlor performed a rhizotomy on February 8, 2005.

49. Claimant experienced excellent relief after the rhizotomy. Dr. Lawlor opined he was “confident” that Claimant’s pain was coming from her facet joints.
50. On March 1, 2005, Claimant saw Dr. Lawlor for a follow-up visit. Dr. Lawlor noted, “[s]he had 99% relief of her pain and was thrilled with the result. She felt so good she went skiing. She said she skied all day without any difficulty. Unfortunately, then she fell, snapped her head back and felt a lightening bolt of pain in her neck. She then developed pain down her left arm which has been present ever since, though she said, over the last day or so, it seems to be lessening some.”
51. Dr. Lawlor discussed the possible causes of her pain, including degenerative disc disease, facet joint pain and chemical radiculitis. Dr. Lawlor concluded “her pain is lessening, and I told her I felt it is certainly reasonable to give this time. The excellent initial response she had to rhizotomy tells me she should expect good result with regard to the facet joint pain, and this may be some pain from a different structure being irritated.”
52. After March 1, 2005, Claimant’s neck pain resolved. Claimant stated, “I went back to a phase with, you know, virtually no pain, pain free, symptom free. There was one other episode in July. But between March and that episode in July, I was able to perform all my daily duties and virtually pain free.”
53. On April 27, 2005, Dr. Lawlor wrote to Claimant’s attorney and opined “the work injury remains the major contributing cause of her neck pain and need for treatment. While Ms. Gruba certainly had underlying degenerative changes that were not caused by her work injury, it is my understanding she did not have significant ongoing recalcitrant neck pain prior to this injury. Since the work injury, she has had continuous pain, though this pain has responded quite favorably to treatment. She continues to have flare-ups of this pain, flare-ups of which are identical to the pain that was brought on as a result of her work injury.”
54. Claimant’s symptoms began returning in September 2005. As of the date of the hearing, Claimant did not have a plan to return to see Dr. Lawlor.
55. Claimant was a credible witness. This is based on the opportunity to review her testimony and the medical records and observe her demeanor at the hearing.
56. Other facts will be developed as necessary.

ISSUE

WHETHER CLAIMANT’S AUGUST 2, 2003, WORK INJURY IS AND REMAINS A MAJOR CONTRIBUTING CAUSE OF HER CURRENT CONDITION AND NEED FOR TREATMENT?

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).

The cervical x-rays and MRI revealed that Claimant had preexisting degenerative disc disease at C5-6. Therefore, Claimant must establish by medical evidence that “the employment or employment related injury is and remains a major contributing cause of the disability, impairment, or need for treatment.” SDCL 62-1-1(7)(b). “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, 2006 SD 5, ¶ 14 (citation omitted). 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).

Claimant presented Dr. Lawlor’s testimony through his deposition taken on August 11, 2005. Dr. Brett Lawlor is board certified in physical medicine and rehabilitation. Dr. Lawlor treated Claimant twelve times from October 17, 2003, through March 1, 2005. Dr. Lawlor had an excellent understanding of the progression of Claimant’s condition and her treatment.

Based upon his understanding of the mechanism of Claimant’s injury and his treatment, Dr. Lawlor opined that Claimant’s August 2, 2003, work injury is and remains a major contributing cause of her current condition. Dr. Lawlor explained, “she had no problems with her neck prior to this episode and since this episode has had continued neck pain that has responded favorably to treatment but has been of a recurrent nature.” Claimant’s periodic flare-ups of pain were consistent with her facet joint problem. Dr. Lawlor testified, “[a]s I talked about earlier, one of the ways that a facet joint can cause pain is that you can have stretching or disruption of the ligamentous capsule that stabilizes the joint and I would presume that that was part of her injury. And so you have a segment there that is - - that has lost some of its structural integrity and it’s going to be less able to withstand forces that are applied to it with sometimes normal activity and with sometimes abnormal turning or twisting of the head.” Dr. Lawlor expected that Claimant would continue to experience periodic flare-ups of neck pain related to the August 2003 work injury.

Dr. Lawlor recognized that Claimant experienced several incidents that increased her pain. Dr. Lawlor also acknowledged that Dr. Anderson thought that all of these incidents were new injuries that contributed independently to Claimant’s permanent condition. Dr. Lawlor disagreed with Dr. Anderson and opined that Claimant’s periodic flare-ups of pain did not constitute new injuries. Dr. Lawlor explained:

The opinion that I hold is based on the fact that each one of these, she had pain in the same distribution, the same pattern of pain that she had since her original work injury, and in my opinion the same segment was being irritated. It’s my opinion that this segment - - the structural integrity of this segment was disrupted from the original injury. That would make it more prone to recurrent injury because of that problem. In fact, when she presented with these flare-ups, it was always the same spot, the same distribution, the same radiation of her pain, which tells me it was the same segment that was injured and similarly she had the same positive response to the facet injections again which tells me that this is the pain generating segment.

Dr. Lawlor recognized that Claimant had a preexisting condition of degenerative disc disease, but continued to opine that the August 2003 injury is and remains a major contributing cause of her current condition. Dr. Lawlor testified “the fact that she got profound relief during the diagnostic medial branch block and then subsequent

rhizotomy indicates that her pain generated from the facet joints and not the degenerative discs.”

Dr. Lawlor opined that Claimant’s facet joint condition is consistent with the type of trauma she sustained in August 2003. Dr. Lawlor explained:

She took a blow to the head from apparently a head-butt and that’s going to put force into the neck and the thing that gets injured or damaged with that type of force is very commonly a facet joint. And the significance of any - - getting back to your previous question of a degenerative disc, a degenerative disc at that segment is going to leave that segment more likely to be injured.

Claimant experienced a significant flare-up of pain after a skiing incident. Despite this incident, Dr. Lawlor continued to opine that Claimant’s pain stemmed from the August 2003 work injury. Dr. Lawlor testified:

Q: In the same note she’s telling you she unfortunately fell skiing, snapped her head back, felt a lightening bolt of pain in her neck, and then she developed pain down her left arm which has been present ever since. If her pain now is coming from the disc, as you say, that’s the different structure you’re talking about. Yes?

A: One of many potentially, yes.

Q: Well, it looks to me like that resulted from this skiing accident. Am I correct? Is that a fair assumption?

A: That what resulted from the skiing accident?

Q: Well, the new structure being irritated, the possible pain from the disc.

A: The pain that she had from snapping her neck back was the same type of pain that she had had for which I had been treating her. It was the same distribution, the left side of the neck, down the left arm. The left arm pain was lessening on the day she had seen me. It’s possible that was a facet joint pain. It’s possible it was disc joint. I had not done any blocks at that point to establish where the pain was coming from.

Q: So the pain she’s complaining of 3-1-05 you really can’t say with any degree of certainty what the genesis of that pain was?

A: By genesis, do you mean what it was coming from?

Q: Yes.

A: I can’t say for certain except that - - the reason I can’t say for certain is because I didn’t do a block after that to see if her pain all went away. If we blocked the facet joint and her pain all went away, I could say for certain it was coming from there. I could say that for certain in the previous episodes because we’d done those blocks. Is it likely it was coming from there? Because it was the same pattern of pain or very similar, that’s the greatest likelihood. Could it be other structures? Without me doing that block, I can’t say for sure, and that’s my explanation in this note, I can’t say for sure.

(emphasis added). Throughout his testimony, Dr. Lawlor consistently opined that Claimant's work injury in August 2003 is and remains a major contributing cause of her current condition.

Employer offered Dr. Anderson's opinions through his deposition testimony taken on July 11, 2005. Dr. Anderson was familiar with Claimant's work injury and subsequent treatment. Dr. Anderson was also aware that Claimant experienced episodes of increased pain complaints after Dr. Lawlor declared she was at MMI.

Dr. Anderson explained that in August 2003, Claimant suffered a soft tissue injury at work. Claimant received the necessary medical treatment and then Dr. Lawlor placed her at MMI. Dr. Anderson believed that Claimant's condition resolved medically as of April 7, 2004.

Dr. Anderson opined that Claimant's August 2003 injury was not a major contributing cause of her current subjective complaints and medical problems. Dr. Anderson explained that Claimant's soft tissue injury resolved but the degenerative disc disease did not. Dr. Anderson then opined that the four incidents caused or independently contributed to the symptoms Claimant complained of after she was found to be at MMI. Dr. Anderson concluded that Claimant's medical treatment after April 7, 2004, was due to her preexisting degenerative disc disease. Dr. Anderson opined that the rhizotomy procedure was not directly related to the August 2003 work-related injury.

There is no dispute that Claimant's work injury did not cause the degenerative disc disease at C5-6. There is also no dispute that Claimant suffered a soft tissue injury when she was "head-butted by a patient" in August 2003. Both Dr. Lawlor and Dr. Anderson agreed that this incident was a major contributing cause of Claimant's need for medical treatment until April 7, 2004, when she was declared to be at MMI. At this point, the medical experts' opinions diverge. Dr. Lawlor concluded that Claimant's facet joints were injured solely as a result of the August 2, 2003, work injury. Dr. Lawlor also opined that Claimant's treatment after April 7, 2004, was related to this injury and that the work injury is and remains a major contributing cause of her current condition. Dr. Anderson disagreed and concluded that Claimant's need for treatment after April 7, 2004, was related solely to the degenerative disc disease.

Dr. Lawlor provided Claimant with facet joint injections and actually diagnosed Claimant with cervical facetogenic pain. Dr. Anderson agreed that the fact that Claimant had good responses to the facet joint injections and rhizotomy supported the diagnosis of cervical facetogenic pain. Dr. Anderson agreed that the most likely cause of Claimant's neck, shoulder and arm pain was the facet joints. Dr. Anderson also agreed that the rhizotomy is designed specifically to treat facetogenic pain and Claimant's excellent results demonstrated that her pain was coming from the facet joints. But, Dr. Anderson opined that "the facet joint degenerative disease is what's causing the pain, that's secondary to the degenerative disk disease." In other words, Dr. Anderson thought that Claimant's facet joints were injured as a result of the degenerative disc disease and the injury in August 2003 merely made the facet joints temporarily symptomatic.

Dr. Anderson opined that the treatment Claimant received after April 7, 2004, was due to the preexisting damage to the facet joints. Dr. Anderson explained the reason for his opinion "really has to do with the resolution of symptoms and then the recurrence of symptoms, which is typical for a degenerative problem." Dr. Anderson acknowledged that "[i]f her pain had improved and went back to roughly the level it was

prior to the skiing incident, that would point toward just a simple recurrence of her symptoms[.]” Claimant’s pain significantly improved after the skiing incident, but began to return in September 2005.

Both medical experts were well aware of Claimant’s condition and need for treatment. However, Dr. Lawlor’s opinions are more persuasive and are entitled to more weight than those opinions expressed by Dr. Anderson. 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’s opinions are well thought out, well-founded, logical and are accepted.

Claimant did not suffer a new injury or injuries after the August 2003 work injury. In fact, since the August 2003 injury, Claimant has continued to suffer from left sided headaches, left neck pain, left shoulder pain and left arm pain. These symptoms have waxed and waned in severity. Dr. Lawlor opined that these flare-ups of pain were all related to the original work injury because these flare-ups of pain were in the same distribution and same pattern of pain that she had since the original work injury. Dr. Lawlor opined that it was the same segment being irritated and that the structural integrity of the segment injured in the work injury was disrupted and it was more prone to recurrent injury. Dr. Lawlor further reasoned that Claimant’s positive responses to the facet injections and rhizotomy indicated to him that the pain generating segment that was injured in the work injury was being continually irritated and caused the flare-ups of pain. Based upon these well-founded opinions, Claimant established by a preponderance of the evidence that her August 2003 work injury is and remains a major contributing cause of her need for medical treatment. Claimant is entitled to payment for medical expenses as set forth in Claimant’s Exhibit 1.

Claimant 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. Employer shall have ten days from the date of receipt of Claimant’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, Claimant shall submit such Stipulation along with an Order in accordance with this Decision.

Dated this 5th day of April, 2006.

SOUTH DAKOTA DEPARTMENT OF LABOR

Elizabeth J. Fullenkamp
Administrative Law Judge