SOUTH DAKOTA DEPARTMENT OF LABOR & REGULATION
DIVISION OF LABOR AND MANAGEMENT
Pierre, South Dakota

GRECIA SOULES MARTINEZ, **HF No. 184, 2010/11**

Claimant,

v. **DECISION**

GRAND PRAIRIE FOODS, LLC,

Employer,

and

ACUITY,

Insurer.

This is a workers' compensation proceeding before the South Dakota Department of Labor, pursuant to SDCL 62-7-12 and ARSD 47:03:01. Steven G. Haugaard of Haugaard Law Office, P.C., represents Claimant, Grecia Soules Martinez (Claimant). Charles A. Larson, of Boyce, Greenfield, Pashby & Welk, L.L.P., represents the Employer, Grand Prairie Foods, LLC, and the Insurer, Acuity (Employer / Insurer). A Hearing in the above matter was held on October 30, 2013, in Sioux Falls, South Dakota. By stipulation and pursuant to the Prehearing Order, the sole issue to be presented is causation of injury. The parties submitted post-hearing briefs to the Department. All pleadings, affidavits, evidence, and arguments were taken into consideration by the Department.

ISSUES:

Is Claimant's employment with Employer a major contributing cause of Claimant's medical condition, for which surgery and medical care is required?

FACTS:

1. At the time of hearing, Claimant is a 42 year old female. She was born in Tampoco, Tamaulipas, Mexico. She moved to the United States 12 years ago, in February 2002.

2. Claimant graduated from high school and attended a technical school to be a secretary.

3. Claimant began working for Employer in 2004, in the production area.
4. Employer produces and packages convenience type foods. Claimant's first jobs were to make biscuits, pizza, Subway sandwich products. This type of work required Claimant's

hands to be exposed to extreme temperatures, both hot and cold. Employer gave Claimant gloves to wear to protect her hands from the temperature.

5. A video produced by Employer and Insurer show the type of jobs that Claimant would have performed on Employer's production line. The jobs were varied, but all involved handling product that was either hot or cold; repetitive processes using the hands and arms; reaching and twisting of the body while lifting products weighing from a few ounces to a few pounds; continuous standing and some walking. A few of the jobs required minor pinching and grasping of items, using bilateral fine motor skills. As all the jobs involved food production, all work required gloves, hair and head coverings, and coats.

6. About five years after starting work for Employer, Claimant started to have pain in her hands, wrists, shoulders, and neck. She felt a tingling sensation in her hands and arms that progressed to pain. The pain increased to the point that Claimant was not able to sleep at night.

7. After about a month of severe pain, Claimant sought medical assistance from Dr. Brian Kidman, who then referred Claimant to Dr. Robert Van Demark, Jr., M.D.

8. Claimant attempted conservative treatments, but when unsuccessful, underwent bilateral carpal tunnel surgery. Claimant had surgery on her right wrist and then about a month later had surgery on her left wrist.

9. Claimant participated in occupational therapy following surgery on her wrists.

10. Claimant returned to work for Employer performing light duty work in the laundry. Another light duty task Claimant could have been assigned was to pick up small items from the floor that are dropped by workers on the line. Claimant was assigned to work 3-4 hours per day.

11. Claimant returned to Dr. Van Demark who diagnosed tendonitis and Reynaud's syndrome. He recommended that Claimant restrict herself from lifting items over 20 pounds and not return to repetitive work.

12. On October 13, 2010, Dr. Van Demark released Claimant to work slowly, starting at 4 hours per day. Eventually, by November 11, 2010, Dr. Van Demark hoped Claimant could work an 8-hour day with lifting restrictions.

13. On November 15, 2010, Claimant returned to Dr. Van Demark with bilateral pain in her arms. The diagnoses by Dr. Van Demark was "left de Quervain's tenosynovitis – work related"; bilateral hand pain – tendonitis; history of Raynaud's. He suggested Claimant see a rheumatologist for pain she was experiencing in her shoulders and arms and drew labs for a rheumatology test. Dr. Van Demark injected her left de Quervain's that day. He also cut back her work hours to 6 hours per day.

14. The doctor's notes from December 15, 2010, reveal that Dr. Van Demark suggested and discussed with Claimant having her de Quervain's released. That the injection of the left de

Quervain's gave her "good relief." Also on that day, Dr. Van Demark told Claimant to increase her work hours in the laundry to 8 hours per day.

15. On January 31, 2011, Claimant returned to Dr. Van Demark following an IME with Dr. Dowdle. Dr. Van Demark notes that Claimant is laid off from Employer and will return to see him on an as needed basis. He noted, "I think once she returns to work, she is probably going to need to have her de Quervain's released. I think a lot of her symptoms are from her Raynaud's and the medication that she is taking for that."

16. Claimant continued to work for Employer in light-duty work, for three to four hours per day, until Employer and Insurer discharged Claimant. Claimant was discharged on February 7, 2011. Employer told Claimant that the hours were being reduced and that they did not have any work for Claimant. This was also about one week post IME with Dr. Dowdle. Claimant was laid off prior to seeing Dr. Dowdle.

17. Employer testified that they had started sending laundry to an outside facility to be processed.

18. After leaving work with Employer, Claimant operated a day care from her home for about a year. She then worked as a laundry aide at a nursing home. She left the laundry position and went to Pace Manufacturing.

19. Claimant continues to have pain in her wrists and arms.

20. Some of Claimant's current and past pain is associated with Reynaud's syndrome, which Dr. Van Demark has said is not work related. This was the only condition, of the four diagnosed by Dr. Van Demark, that Dr. Van Demark clearly demarcated as being non work-related.

21. Dr. Van Demark wrote a letter to Claimant's attorney on February 25, 2011, that read "it is my opinion that her condition was a result of her repetitive work activity."

22. Claimant was a credible witness.

23. Dr. John Dowdle, M.D., performed an exam of Claimant on January 14, 2011. He was asked by Employer and Insurer to review Claimant's records and perform a physical exam of Claimant to give an opinion as to whether her conditions were work-related.

24. On January 20, 2011, Dr. Dowdle sent his report to Employer and Insurer. He concluded that Claimant's bilateral carpal tunnel syndrome was not due to work, but a consequence of her age and sex. In general, because Claimant did not perform certain work activities that typically cause carpal tunnel, Dr. Dowdle is of the opinion that Claimant's carpal tunnel is idiopathic or occurring without a known cause.

25. Dr. Dowdle did review the video produced by Employer and Insurer showing the job duties Claimant could have and did perform.

26. Dr. Dowdle went on to conclude that Claimant's Reynaud's syndrome was not caused by her work conditions or any injury that occurred at work.

27. Dr. Dowdle mentions briefly that Claimant underwent an injection of the first dorsal compartment for her de Quervain's symptoms and that she no longer needed any treatment.

ANALYSIS & DECISION:

The South Dakota Supreme Court has made clear the burden of proof for Claimant to show causation in a workers compensation case. They wrote:

> To prevail on a workers compensation claim, a claimant must establish a causal connection between [her] injury and [her] employment. That is, the injury must have its origin in the hazard to which the employment exposed the employee while doing [her] work. *Rawls v. Coleman-Frizzell, Inc.*, 2002 SD 130, 20, 653 NW2d 247, 252 (citation omitted) (alteration in Rawls). Employees need not prove that their employment activity was the proximate, direct, or sole cause of their injury, only that the injury arose out of and in the course of employment. SDCL 62-1-1(7). And, an injury is not compensable unless the employment or employment related activities are a major contributing cause of the condition complained of[.] SDCL 62-1-1(7)(a); *Caldwell v. John Morrell & Co.*, 489 NW2d 353, 358 (SD 1992) (citations omitted).

Vollmer v. Wal-Mart Store, Inc., 2007 SD 25,¶13, 729 NW 2d 377, 382 (footnote omitted).

"The claimant must prove the essential facts by a preponderance of the evidence." *Caldwell v. John Morrell & Co.*, 489 NW2d 353, 358 (SD 1992). Claimant must prove that her work-related injury, reported to Employer in February 4, 2010, continues to be the major contributing cause of her bilateral carpal tunnel syndrome, Reynaud's syndrome, and de Quervain's tenosynovitis. Claimant must show by a preponderance of the evidence that her current condition arose out of and in the course of her employment with Employer.

Claimant's testimony indicated that she did not suffer from symptoms of carpal tunnel until after she was employed at her job with Employer for a few years. Dr. Van Demark's opinion indicated that her "condition" was a result of her work activities. He did not say which condition. Dr. Van Demark had diagnosed at least four conditions suffered by Claimant. There is no indication in the medical records that he noted the cause of the bilateral carpal tunnel. He was very clear in his notes that the Reynaud's syndrome was not caused by work activities. His notes also clearly indicate his opinion that Claimant's left de Quervain's tenosynovitis[1] was work-related.

[1] de Quer·vain tenosynovitis (dĕ-kār-van[h]'),
inflammation of the tendons of the first dorsal compartment of the wrist, which includes the abductor pollicis longus and extensor pollicis brevis; diagnosed by a specific provocative test (Finkelstein test).

Farlex Partner Medical Dictionary © Farlex 2012

The parties' case must be fully supported by the medical evidence and testimony. "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, 709 NW2d 38, 42. "[T]he testimony of medical professionals is crucial in establishing that a claimant's injury is causally related "to the injury complained of 'because the field is one is which [laypersons] ordinarily are unqualified to express an opinion.' Indeed, SDCL 62-1-1(7) requires 'medical evidence.'" *Vollmer* at 382 (internal citations omitted).

Claimant testified to what her job entailed. The video provided by Employer shows what some of Claimant's possible job duties would be. These job duties were repetitive and involved lifting small items off a conveyor belt and placing them onto sheet pans, cutting dough, feeding hotdogs into a cylindrical chute, or packaging three-pound bags of cooked, scrambled eggs. Some other jobs which use more fine motor skills are peeling off large labels from a roll of labels and placing them on a packaged sandwich which is moving on a conveyor belt. All these jobs are done quickly and as efficiently as possible. The conveyor belt moves at a rate which seems to allow the work to be done without waste of product.

Dr. Van Demark did not note that he was aware of Claimant's job duties. There is no indication that Dr. Van Demark knew about Claimant's job besides the fact that it was repetitive and she may be lifting items. He sent her back to work with a lifting restriction of 20 pounds. "Expert testimony is entitled to no more weight than the facts upon which it is predicated." *Darling v. West River Masonry, Inc.*, 2010 S.D. 4, ¶13, 777 N.W.2d 363, 367 (citing *Schneider v. S.D. Dep't of Transp.*, 2001 S.D. 70, ¶16, 628 N.W.2d 725, 730). Looking at the information noted by Dr. Van Demark, his opinion is not fully supported. The evidence submitted by Claimant is insufficient to prove that Dr. Van Demark was fully aware of Claimant's job duties.

Furthermore, Dr. Van Demark gave no indication whether the bilateral carpal tunnel was work related or not. He only indicates that her condition, post-carpal tunnel release, was work-related. The evidence does not show which condition Dr. Van Demark was referring to. Because the letter is ambiguous, the clinical notes were given more weight. The clinical notes specify that the deQuarvain's tenosynovitis was work-related and the Reynaud's symptoms were not work-related. There is no opinion as to whether the bilateral carpal tunnel was work-related or not. "A claimant does not need to prove that the work injury was 'the' major contributing cause, only that it was 'a' major contributing cause, pursuant to SDCL 62-1-1(7)." *Orth v. Stoeber*, 2006 S.D. 99, ¶42 (internal quotations omitted).

Claimant's work for Employer was a major contributing cause of her de Quarvain's syndrome. Claimant has met her burden of proving causation of her de Quarvain's by a preponderance of the evidence presented. As a rebuttal to the prima facie case, Dr. Dowdle gave the opinion that all treatment to Claimant's upper extremities was not due to a work-related injury. He did not specify whether or not Claimant's de Quarvain's syndrome was work-related. Dr. Dowdle did note that the treatment of the de Quarvain's, the injection in the first dorsal compartment, was likely sufficient and no further treatment was necessary. Dr. Van Demark noted that Claimant would likely need a release of the de Quarvain's tendon at some point in the future, after she returns to full-time work.

The evidence is insufficient to make a prima facie case that Claimant's work for Employer was a major contributing cause of her bilateral carpal tunnel syndrome, her tendonitis, or her Reynaud's. Because a prima facie case was not shown by Claimant, the opinion of Dr. Dowdle is not necessary to rebut.

Counsel for Employer and Insurer shall submit proposed Findings of Fact and Conclusions of Law and an Order consistent with this Decision, within 20 days of the receipt of this Decision. Counsel for Employer and Insurer may also submit a separate proposed Findings of Fact and Conclusions of Law inconsistent with this Decision. Claimant shall have an additional 20 days from the date of receipt of Claimant's proposed Findings of Fact and Conclusions of Law to submit objections. The parties may stipulate to a waiver of formal Findings of Fact and Conclusions of Law. If they do so, counsel for Claimant shall submit such stipulation together with an Order consistent with this Decision.

Dated this 4th day of April, 2014.

SOUTH DAKOTA DEPARTMENT OF LABOR AND REGULATION

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Catherine Duenwald
Administrative Law Judge