

SOUTH DAKOTA DEPARTMENT OF LABOR
DIVISION OF LABOR AND MANAGEMENT

DEAN POPPENGA,
Claimant,

HF No. 202, 2009/10

v.

DECISION

CAMPBELL SUPPLY,
Employer,

and

DAKOTA TRUCK UNDERWRITERS,
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, via Dakota Digital Network (DDN). Claimant, Dean Poppenga appeared personally at a DDN site in Rapid City, South Dakota. Michael S. McKnight appeared on behalf of Employer, Campbell Supply and Insurer Dakota Truck Underwriters at a DDN site in Sioux Falls, South Dakota.

Issues

1. Causation and Compensability
2. Reasonable and Necessary Medical Expenses

Facts

Based upon the evidence presented and live testimony at hearing, the following facts have been established by a preponderance of the evidence:

In July of 2005, Dean Poppenga (Claimant) was employed at Campbell Supply in Sturgis, SD as an Automotive Clerk and Tire Technician. On July 23, 2005, Claimant was pulling tires for a customer when he fell off a ladder onto the ground and sustained injuries.

Claimant testified that he notified his employer of the incident and sought medical treatment for his injuries. Employer/Insurer initially accepted compensability for Claimant's injuries and paid medical expenses related to his treatment including surgery

to his wrist. Employer/Insurer also paid workers' compensation benefits while Claimant was off work following that surgery.

On November June 4, 2007, Dr. Wayne Anderson performed an evaluation of Claimant for the purposes of assigning an impairment rating. Dr. Anderson assigned an impairment rating of 2% permanent partial impairment of the upper extremity, which Employer/Insurer has paid.

On July 18, 2008, Claimant was seen by Dr. Richard Farnham at the request of Employer/Insurer for an independent medical evaluation (IME). Dr. Farnham concluded Claimant had reached maximum medical improvement with regard to the July 2005 injury and that he required no addition treatment a result of that injury. Based upon the opinions of Dr. Farnham, Employer/Insurer denied further coverage.

Claimant has filed a petition for hearing on workers' compensation benefits requesting Employer/Insurer pay for costs associated with an MRI done in September 2008 and for his chiropractic visits with Dr. Clay Runyan in the amount of \$225.

Analysis

The general rule is that a claimant has the burden of proving all facts essential to sustain an award of compensation. *Horn v. Dakota Pork*, 2006 SD 5, ¶14, 709 NW2d 38, 42 (citations omitted). To recover under workers' compensation law, a claimant must prove by a preponderance of the evidence that he sustained an injury "arising out of and in the course of the employment." SDCL §62-1-1(7); *Norton v. Deuel School District #19-4*, 2004 SD 6, ¶7, 674 NW2d 518, 520. The phrase "arising out of and in the course of employment" is construed liberally by the South Dakota Supreme Court. *Id.* at, ¶10, 674 NW2d at 521.

SDCL §62-1-1(7) provides that "[n]o injury is compensable unless the employment or employment related activities are a major contributing cause of the condition complained of[.]" Because an injury is a subjective condition, an expert opinion is required to establish a causal connection between the incident or injury and disability. *Truck Ins. Exchange*, 2001 SD 46, ¶20, 624 NW2d 705, 709; *Day v. John Morrell & Co.*, 490 NW2d 720, 724 (SD 1992). The South Dakota Supreme Court has stated,

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. Unless its nature and effect are plainly apparent, an injury is a subjective condition requiring an expert opinion to establish a causal relationship between the incident and the injury or disability.

Orth v. Stoebner & Permann Construction, Inc., 2006 SD 99, 724 NW2d 586 (citations omitted).

In applying the statute, [The South Dakota Supreme Court] has held a worker's compensation award cannot be based on possibilities or probabilities, but must be based on sufficient evidence that the claimant incurred a disability arising out of and in the course of [his] employment. [The Supreme Court] further said South Dakota law requires [Claimant] to establish by medical evidence that the employment or employment conditions are a major contributing cause of the condition complained of. A possibility is insufficient and a probability is necessary.

Gerlach v. State, 2008 SD 25, ¶7, 747 NW2d 662, 664 (citations omitted). The South Dakota Supreme Court went on to say,

We have consistently required expert medical testimony in establishing causation for workers' compensation purposes, and we have held that when the medical evidence is not conclusive, the claimant has not met the burden of showing causation by a preponderance of the evidence. Causation must be established to a reasonable medical probability, not just a possibility.

Enger v. FMC, 1997 SD 70, ¶18, 565 NW2d 79 (citations omitted).

In support of his burden the Claimant represent the partial medical records of Dr. Dale Anderson, his treating physical and a letter written by Dr. Clay Runyan.

Dr. Dale Anderson noted on June 27, 2008, that Claimant was ready to be released to regular work with no restrictions. He indicated that Claimant has reached MMI and required no further treatment. Dr. Anderson recommended a 20% permanent partial impairment of the upper extremity. On September 12, 2008, Dr. Anderson's record indicated that Claimant had an MRI of the cervical spine and thoracic spine. The MRI revealed some bulging of the cervical spine. Dr. Anderson recommended home cervical traction. Dr. Anderson did not make any referenced to Claimant's work related injury of July 2005. Dr. Anderson makes no opinion as to the causation of Claimant's neck or back pain.

Dr. Runyan indicated that Claimant presented for treatment on October 11, 2010. Dr. Runyan states in his letter, "I believe that Mr. Poppenga's issues from the fall have not been fully dealt with and the residuary effects are affecting his function dramatically." Dr. Runyan's letter is insufficient to establish to a reasonable degree of medical probability that Claimant's work related injury in July of 2005 was a major contributing cause of his neck and back issues for which he had an MRI and sought Chiropractic treatment.

The evidence presented fails to meet the burden of proof necessary to sustain a claimant for workers' compensation benefits. Claimant's petition for hearing is hereby denied.

Conclusion

Employer/Insurer shall submit proposed Findings of Fact and Conclusions of Law, and an Order consistent with this Decision within twenty (20) 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 of Law to submit objections thereto or to submit proposed Findings of Fact and Conclusions of Law. The parties may stipulate to a 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 21st day of January, 2011.

SOUTH DAKOTA DEPARTMENT OF LABOR

Taya M. Runyan
Administrative Law Judge