

SOUTH DAKOTA DEPARTMENT OF LABOR
DIVISION OF LABOR AND MANAGEMENT

NANCY B. SLEEPER,
Claimant,

HF No. 225, 2004/05

v.

DECISION

JOHN MAIROSE, d/b/a
MARIROSE LAW OFFICE,
Employer,

and

ACUITY 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 telephonic hearing was held before the Division of Labor and Management. Claimant, Nancy B. Sleeper appeared personally and through her attorney of record, Stanton A. Anker. Michael S. McKnight represented Employer, John Mairose d/b/a Mairose Law Office and Insurer Acuity Insurance.

Issues

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

Facts

At the time of the hearing, Nancy Sleeper (Claimant) was 43 years old and lived in Rapid City, South Dakota. Claimant held various jobs in the legal field doing data entry, paperwork, billings and client interviews. In 2000, Claimant began working for Mairose Law Office (Employer). Employer's practice is primarily in the area of bankruptcy and debtor/creditor law. Claimant's job duties as a legal secretary while working for Employer included data entry, client interviews, finalizing bankruptcy petitions drafts, scheduling and billing.

Claimant had a past history of recurrent erosion in the right eye starting from September 26, 2000. On June 10, 2003, Claimant experienced a yellow spot in her right eye and had difficulty reading. Claimant indicated that during this time, she was experiencing a great deal of job related stress. Claimant initially sought treatment from Dr. Dwayne Ice, O.D., Claimant's regular eye doctor. Dr. Ice referred Claimant to Dr. Prema Abraham at

Black Hills Regional Eye Institute in Rapid City, SD. Dr. Abraham diagnosed Central Serous Chorioretinopathy (CSCR) of the right eye. Dr. Abraham recommended continued observation and scheduled a follow-up retinal evaluation in six weeks. Claimant returned to Dr. Abraham on July 23, 2003 at which time there was an increase in the amount of serious fluid and Claimant was prescribed Diamox to resolve the fluid. Claimant returned to Dr. Abraham on September 3, 2003, at which time Claimant's visual acuity was 20/25 in the right eye and 20/20 in the left eye. As of June 1, 2004 Dr. Abraham's records indicate that Claimant's CSCR had resolved and no further treatment was necessary. Dr. Abraham addressed the causation of Claimant's CSCR, stating that she felt Claimant's work, while perhaps not the only cause of her central serous chorioretinopathy, was a significant contributing cause.

On April 11, 2006, Claimant was examined by Dr. Monte S. Dirks. Dr. Dirks indicated that Claimant had some residual distortion due to metamorphopsia. He went on to say that from the appearance of her macular hyperpigmentation, it was unlikely that this will resolve and Claimant would continue to have some limitations in reading fine print binocularly.

On August 23, 2007, Dr. Alan Weingarden performed a medical records review at the request of Employer/Insurer. Dr. Weingarden's report indicated Claimant had CSCR, which had resolved, no treatment was necessary as Claimant's vision was 20/20 and her visual field was normal and that Claimant had subjective complaints of metamorphopsia, but objective testing was normal. Dr. Weingarden concluded that Claimant did not have any impairment. As to the causation of Claimant's CSCR, Dr. Weingarden's report stated, "it is my opinion that Ms. Sleeper's work activities are not a major contributing cause of her condition."

Claimant was never ordered off work at any time. Claimant was not given an impairment rating and suffers no temporary or permanent disability. Other facts will be developed as necessary.

Analysis

Causation and Compensability

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 she 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. 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[.]"

The testimony of medical professionals is crucial in establishing this causal relationship because the field is one in which laymen ordinarily are unqualified to express an opinion. *Orth v. Stoebner & Permann Construction, Inc.*, 2006 SD 99, ¶34, 724 NW2d 586.

In applying the statute, we have 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 [her] employment. We have 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).

Claimant argues that the stress from her employment as a legal assistant at Mairose Law Office caused her CSCR. In support of her burden, Claimant relies on the opinions and deposition testimony of Dr. Prema Abraham, Claimant's treating physician. Dr. Abraham in a letter dated July 19, 2004, opined, "At the time of [Claimant's] initial evaluation, Nancy reported that she was under a tremendous amount of stress, working as a legal secretary. During this period of time, she was diagnosed with central serous chorioretinopathy, which although not proven, is thought to be seen in young adults during periods of increased stress. Therefore I do feel that Nancy's work, while perhaps not the only cause of her central serous chorioretinopathy, was a significant contributing cause." Dr. Abraham admitted during her deposition testimony that it has not been medically proven that CSCR is a result of a major life stress, and that from a medical standpoint, the cause of CSCR is not known.

Dr. Abraham was unable to state to a reasonable degree of medical probability that Claimant's CSCR was related to her employment. A possibility is insufficient and a probability is necessary. *Id.*

Dr. Weingarden provided testimony through his deposition. Dr. Weingarden reviewed Claimant's medical records as well as the deposition of Dr. Dirks. Dr. Weingarden testified that in his 20 plus years as an ophthalmologist, he treated maybe 2 or 3 cases of CSCR per year. Dr. Weingarden testified to a reasonable degree of medical probability that Claimant's CSCR was not related to her work situation. Dr. Weingarden based his opinions on his clinical experience and medical literature. Dr. Weingarden testified,

The incidence of central serous retinopathy, which I don't know, but from my clinical experience of seeing two or three a year, would be extremely high if work stress was an underlying cause of this disease. Since I see only two or three in a

private practice, I would assume that work is not an underlying, or stress at work is not an underlying cause of the disease.

Dr. Weingarden's opinions are consistent with the medical literature and Dr. Abraham's own admission that the cause of CSCR is not known and not proven to be caused by stress. The Department finds the opinions of Dr. Weingarden more persuasive. Based upon the medical evidence presented, Claimant has not met her burden to demonstrate that she sustained a compensable injury arising out and in the course of her employment and that Claimant's employment was a major contributing cause of Claimant's injury.

Medical Expenses

Claimant Further requests reimbursement for medical expenses for doctor appointments, contact lenses, glasses and prescriptions related to her CSR and changes in her vision. Causation and compensability is a threshold issue that must be met before Claimant is entitled to benefits. Because Claimant failed to meet her burden of persuasion that her employment was a major contributing cause of her condition and need for treatment, there is no need to discuss the issue of medical expenses.

Penalty

Claimant argues in her post hearing brief that she is entitled to the automatic penalty provided by SDCL 62-4-10.1. Claimant's argument is rejected. The penalty provision of SDCL 62-4-10.1 applies only to temporary and permanent disability payments as provided for in §§62-4-3 to 62-4-7, for which Claimant is not entitled.

Conclusion

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 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 16th day of April, 2010.

SOUTH DAKOTA DEPARTMENT OF LABOR

Taya M. Dockter
Administrative Law Judge