DAKOTA DEPARTMENT OF LABOR & REGULATION
DIVISION OF LABOR AND MANAGEMENT

CALVIN P. ANDERSON,
Claimant,

HF No. 22, 2016/17

v.

DECISION

FINLEY ENGINEERING COMPANY, INC,
Employer,

and

THE HARTFORD,
Insurer.

This is a workers' compensation case brought before the South Dakota Department of Labor & Regulation, Division of Labor and Management pursuant to SDCL 62-7-12 and ARSD 47:03:01. The case was heard by Joseph Thronson, Administrative Law Judge, on November 12, 2019, in Pierre, South Dakota. Claimant, Calvin Anderson, appeared pro se. Employer, Finley Engineering Company, Inc., and Insurer, The Hartford, were represented by Richard Travis of May & Johnson, P.C.

ISSUE PRESENTED

I. DOES RES JUDICATA BAR CLAIMANT FROM RECEIVING WORKERS COMPENSATION BENEFITS IN SOUTH DAKOTA?

II. HAS CLAIMANT MET HIS BURDEN OF PROVING HIS INJURY REMAINS A MAJOR CONTRIBUTING CAUSE OF HIS DISABILITY?

FACTS

Claimant, Calvin P. Anderson suffered a workplace injury on January 19, 2005 while employed by Finley Engineering. Finley is a company based in North Dakota. At

the time of the injury, Claimant was also a resident of North Dakota. On the date of injury, Claimant was working near Ipswich, South Dakota as a field inspector. He slipped on an icy driveway and suffered an injury to his right shoulder and left hip. Claimant reported his injury to North Dakota Workforce Safety and Insurance (WSI), the agency responsible for handling workers' compensation cases in that state. WSI accepted Claimant's injury as compensable and began paying benefits for his right shoulder and left hip. WSI continued to pay Claimant benefits and provide treatment for his injuries until April 2010 when it sent Claimant notice that it was discontinuing the payment of benefits for his hip. WSI determined that Claimant had a preexisting arthritic condition at the time of his injury and his fall was therefore not a major contributing cause of his condition. In June 2010, a rehabilitation specialist hired by WSI noted that Claimant's primary care doctor, Dr. Steven Kraljic, released Claimant to return to his pre-injury position without restriction. In July 2010, WSI sent Claimant notice that it was discontinuing benefits for his shoulder.

Claimant appealed WSI's denial of workers compensation benefits, and a hearing was held in December 2010. WSI upheld the denial of Claimant's benefits in a final order, and Claimant appealed this decision to the district court. The Court remanded the case to the WSI with instructions to determine whether it had accepted compensability of a neck injury. On remand, WSI paid Claimant benefits for his neck while it reviewed his claim. In December 2013, WSI determined that it had considered Claimant's neck condition at the time it calculated his benefits and upheld its original denial of these benefits. The District Court affirmed WSI's determination that Claimant

was not eligible for continuing benefits and Claimant appealed to North Dakota's Supreme Court.

The Supreme Court of North Dakota also affirmed WSI's decision denying Claimant further benefits. *Anderson v. Workforce Safety & Ins.,* 2015 ND 205, 868 N.W.2d 508. After failing to obtain relief from the North Dakota Supreme Court, Claimant filed a petition for benefits before the South Dakota Department of Labor and Regulation (Department). Employer/Insurer filed a motion to dismiss on the basis of res judicata.

ANALYSIS

I. DOES RES JUDICATA BAR CLAIMANT FROM RECEIVING WORKERS COMPENSATION BENEFITS IN SOUTH DAKOTA?

Employer/Insurer first renews its earlier argument that since Claimant filed for and received benefits in North Dakota, he should not be allowed to file for the same benefits in South Dakota. The Department had previously denied Employer/Insurer's motion to dismiss Claimant's petition. It ruled that res judicata was inapplicable and South Dakota could consider Claimant's petition even though he had also received benefits in North Dakota. *Calvin P. Anderson,* No. HF No. 22, 2016/17, 2016 WL 11527047, at *1 (S.D. Dept. Lab. Nov. 13, 2016*(Citing Thomas v. Washington Gas Light Co.*, 448 U.S. 261, 100 S. Ct. 2647, 65 L. Ed. 2d 757 (1980

The South Dakota Supreme Court has previously considered a number of factors when determining if South Dakota is the proper forum to bring an interstate workers compensation claim. However, in none of its previous decisions did the Court review a case in which a claimant was injured while within South Dakota's borders. Various

other jurisdictions have ruled that injury within its borders is sufficient to give it jurisdiction to award benefits. Anderson, WL 11527047, at *2. As Employer/Insurer failed to address this fact in its post-hearing brief, the Department upholds its earlier determination that Claimant may file for workers compensation benefits when he was present within the state even though he also filed for and was granted benefits in the State of North Dakota.

II. HAS CLAIMANT MET HIS BURDEN OF PROVING HIS INJURY REMAINS A MAJOR CONTRIBUTING CAUSE OF HIS DISABILITY?

"In a worker's compensation case, the claimant has the burden of proving all the facts essential to compensation." *Westergren v. Baptist Hosp. of Winner*, 1996 S.D. 69, ¶ 10, 549 N.W.2d 390, 393 (citing *Day v. John Morrell & Co.,* 490 N.W.2d 720, 724 (S.D.1992). "The claimant must establish that his work-related injury is a major contributing cause of his current claimed condition and need for treatment. *Darling v. W. River Masonry, Inc.,* 2010 S.D. 4, ¶ 11, 777 N.W.2d 363, 367

In this case, Claimant has not met his burden of proving that his injury is a major contributing cause of his injuries. WSI treated Claimant for his shoulder, hip, and later neck injuries. It later determined that Claimant's injury was no longer a major contributing cause of his disability. The North Dakota Supreme Court noted this in Claimant's appeal:

> The greater weight of the evidence shows that at the time of the vocational rehabilitation plan, Mr. Anderson was physically capable of performing the job of inspector/tester. He was released to work with restrictions that did not prevent him from performing this light duty work. Mr. Anderson complains that he is unable to do the job because he cannot tolerate driving. Over the years, Mr. Anderson has attributed his problem driving to neck pain. But Dr. Kraljic, who treated Mr. Anderson's neck pain, was aware of Mr. Anderson's complaints about driving and released Mr. Anderson to do that job. Dr. Kraljic was provided with a Field Inspector Job Description that advised that the worker must have a valid driver's license, that most assignments are performed at a job site, and that travel was required "approximately 90% of the time."

Anderson v. Workforce Safety & Ins., 2015 ND 205, ¶ 12, 868 N.W.2d 508, 513.

Claimant has presented no new evidence which would refute this determination. Indeed, Claimant has not submitted any report from a medical professional since the North Dakota Supreme Court rejected his appeal. Neither has Claimant received an opinion from an employment expert that he was unable to work full time. Indeed, Claimant admitted at the hearing that he has worked several full-time jobs since his 2005 injury. Because of these facts, Claimant cannot meet his burden of proving that his workplace injury was a major contributing cause of his current condition.

CONCLUSION

Counsel for Employer/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. 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 Employer/Insurer shall submit such stipulation together with an Order consistent with this Decision.

Dated this 26th day of March, 2020

/s/ Joe Thronson
Joe Thronson
Administrative Law Judge