

SOUTH DAKOTA DEPARTMENT OF LABOR
DIVISION OF LABOR AND MANAGEMENT

CLARA CORTEZ,

HF No. 230, 2001/02

Claimant,

DECISION

vs.

JOHN MORRELL & CO.,

Employer/Self-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 February 13, 2003, in Sioux Falls, South Dakota. Claimant appeared pro se. Scott C. Folkers represented Employer/Self-Insurer. Claimant speaks very little English and an interpreter was provided for her at the hearing.

FACTS

1. At the time of the hearing, Claimant was fifty-two years old and lived in Worthington, Minnesota.
2. Claimant started working for Employer on November 27, 1998. Claimant used a whizard knife as part of her duties.
3. In January 1999, Employer entered Claimant into its medical management program due to her complaints of arm problems. Claimant was released from the program in February 1999.
4. Claimant also suffered from a back injury in February 1999. Claimant was placed on restricted duty and performed a variety of jobs, including counting hogs and making boxes.
5. While Claimant was still on restricted duty, she complained of bilateral wrist and elbow pain to Employer on March 14, 2000. Employer completed a First Report of Injury and sent Claimant for medical treatment.
6. Claimant saw Dr. Ronald Rossing on March 27, 2000. Dr. Rossing noted, "[t]his patient is here with chief complaint of bilateral wrist and hand pain and numbness and tingling, right greater than the left, for approximately the last six weeks." Dr. Rossing diagnosed Claimant with bilateral carpal tunnel syndrome and bilateral epicondylitis. Dr. Rossing prescribed Celebrex and wrist braces and referred Claimant to physical therapy. Dr. Rossing also gave Claimant work restrictions of occasional repetitive use of the hands in simple gripping, no firm gripping, no use of the whizard knife and no lifting over five pounds with either hand.
7. Claimant returned to see Dr. Rossing on April 3, 2000. In addition to her arm complaints, Claimant informed Dr. Rossing that she was also having problems with her shoulders. Dr. Rossing noted that Claimant completed three sessions of physical therapy and was taking the Celebrex as instructed. After his examination, Dr. Rossing added a diagnosis of bilateral shoulder impingement

- syndrome. Dr. Rossing gave Claimant steroid injections and indicated that Claimant could continue to work with the prior restrictions.
8. Dr. Rossing next examined Claimant on April 12, 2000. Dr. Rossing noted that Claimant's condition continued to improve and that her bilateral epicondylitis had resolved. Dr. Rossing continued Claimant on the same treatment regimen and prescribed three more sessions of physical therapy.
 9. Claimant followed-up with Dr. Rossing on April 19, 2000. Claimant's bilateral carpal tunnel continued to improve, but Claimant complained that her elbows were bothering her again. Dr. Rossing gave Claimant steroid injections to the bilateral lateral epicondyles. Claimant noted considerably less discomfort in her elbows after the injections.
 10. Claimant's last visit with Dr. Rossing was on May 1, 2000. Dr. Rossing noted:

It appears that she has become worse in the last few days and over the weekend. She last worked Friday, got off early Saturday morning. Apparently sometime during Saturday she started having more pain in the shoulders and elbows but now also complaining of more pain in the anterior chest area as well as the sides of both chests. The back continues to be somewhat bothersome. On closer questioning, I asked if she also had some discomfort in the lower extremities and she indicated that her hips and knees were also bothering her as well as the ankles.
 11. Dr. Rossing diagnosed Claimant with chronic pain and opined that the chronic pain "is non-work related, possible fibromyalgia syndrome."
 12. Dr. Rossing discontinued Claimant's use of Celebrex and returned her to work without restrictions. Dr. Rossing also recommended that Claimant follow-up with her personal physician.
 13. After the May 1st visit with Dr. Rossing, Employer sent Claimant a letter on May 5, 2000, denying further workers' compensation benefits.
 14. Thereafter, Claimant sought treatment on her own from Dr. Dean Berg, a chiropractor in Sioux Falls. Claimant treated with Dr. Berg from May 16, 2000, until September 19, 2000, for pain and discomfort in her upper back, neck and lower back. Dr. Berg treated Claimant conservatively and Claimant progressed "very well with the course of [his] treatment."
 15. Dr. Berg referred Claimant to Dr. Robert Suga, an orthopedic surgeon, due to continued difficulty and pain in her arms and hands.
 16. Dr. Berg did not provide any opinions regarding the causation of Claimant's upper extremity problems.
 17. Dr. Suga examined Claimant on August 24, 2000. Dr. Suga noted that Claimant has had diabetes for twelve years and is insulin dependent. Dr. Suga reviewed x-rays and an MRI, which showed "spondylosis at C6-C7, however, no foraminal or spinal stenosis." Dr. Suga's initial impression was that Claimant had "degenerative disc change at C6-C7. Some degree of axial neck pain. Numbness and tingling in the upper extremities which may be related to diabetic peripheral neuropathy." Dr. Suga ordered nerve conduction studies to determine if Claimant had carpal tunnel related to diabetic peripheral neuropathy.
 18. The EMG was completed by Dr. Cho on August 29, 2000.

19. Dr. Suga saw Claimant on September 5, 2000. Dr. Suga stated, “[h]er electrodiagnostic studies showed mild carpal tunnel syndrome, however it does not appear significant enough that it would require surgery at this point.” Dr. Suga recommended Claimant continue treating with Dr. Berg and prescribed further pain medication.
20. Dr. Suga did not provide any specific opinion as to the causation of Claimant’s upper extremity problems.
21. Claimant returned to see Dr. Suga in October and November 2001 for continued problems with her upper extremities. On October 30, 2001, Dr. Suga stated, “[t]he cervical MRI scan shows some cervical spondylosis at C6-7 with some mild spondylitic cord compression. There is no cord change; however, not a marked degree of neurological compression. I still think what we may be dealing with is some peripheral neuropathy.” Again, Dr. Suga provided no further opinions regarding the causation of Claimant’s upper extremity problems.
22. There were no other medical records offered into evidence concerning the treatment of Claimant’s upper extremities.
23. Claimant’s last day working for Employer was on March 14, 2002.
24. Claimant is currently unemployed.
25. Other facts will be developed as necessary.

ISSUE

WHETHER CLAIMANT’S WORK RELATED ACTIVITIES WERE A MAJOR CONTRIBUTING CAUSE OF HER CONDITION?

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). Claimant “must establish a causal connection between her injury and her employment.” Johnson v. Albertson’s, 2000 SD 47, ¶ 22. “The medical evidence must indicate more than a possibility that the incident caused the disability.” Maroney v. Aman, 565 N.W.2d 70, 74 (S.D. 1997). Claimant’s burden is not met when the probabilities are equal. Hanten v. Palace Builders, Inc., 558 N.W.2d 76 (S.D. 1997). SDCL 62-1-1 states, in part:

(7) “Injury” or “personal injury,” only injury arising out of and in the course of the employment, and does not include a disease in any form except as it results from the injury. An injury is compensable only if it is established by medical evidence, subject to the following conditions:

- (a) No injury is compensable unless the employment or employment related activities are a major contributing cause of the condition complained of [.]

(emphasis added). “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). 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 failed to bring forth specific medical evidence to support her burden of proving that her work activities were a major contributing cause of her upper extremities problems. No doctor opined that Claimant's work activities were a major contributing cause of her upper extremities problems. Dr. Rossing opined only that Claimant's problem of chronic pain was not work-related and possibly caused by fibromyalgia. Dr. Suga could only state that Claimant's problems may be related to diabetic peripheral neuropathy. When medical evidence is not conclusive, Claimant has not met the burden of showing causation by a preponderance of the evidence. Enger, 565 N.W.2d at 85. Claimant failed to establish by a preponderance of the evidence that her work activities were a major contributing cause of her condition and need for treatment. Claimant's request for benefits is denied and her Petition for Hearing must be dismissed, with prejudice.

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

Dated this 8th day of May, 2003.

SOUTH DAKOTA DEPARTMENT OF LABOR

Elizabeth J. Fullenkamp
Administrative Law Judge