

**SOUTH DAKOTA DEPARTMENT OF LABOR & REGULATION
DIVISION OF LABOR AND MANAGEMENT**

KARA RYKEN,

HF No. 34, 2020/21

Claimant,

v.

DECISION

BISTRO & MORE, INC,

Employer,

and

CONTINENTAL WESTERN/TRI-STATE BRANCH

Insurer.

This is a workers' compensation case brought before the South Dakota Department of Labor & Regulation (Department), Division of Labor and Management pursuant to SDCL 62-7-12 and ARSD 47:03:01. The case was heard remotely by Michelle M. Faw, Administrative Law Judge, on September 15, 2021. Kara Ryken (Ryken) was present and proceeded pro se. Bistro & More, Inc and Continental Western/Tri-State Branch (Employer/Insurer) were represented by Charles A. Larson of Boyce Law Firm, L.L.P. The issues raised at hearing were medical causation and medical treatment.

Background:

Ryken was hired by Employer on December 6, 2013 at its old Chicago Restaurant in Sioux Falls, South Dakota. She worked nights cleaning the restaurant and bar areas. On August 4, 2017, Ryken informed Employer that she was having pain in her left arm and elbow which she believed was due to repetitive use. She was seen by her primary care provider and was placed on reduced work activity. On August 23, 2017, an X-ray of Ryken's arm showed what appeared to be an old fracture from a previous injury. On

January 9, 2018, Dr. Kathlyn Drexler opined with a reasonable degree of medical certainty that Ryken's work activities were a major contributing cause of the injury and surgery was recommended for the left wrist and elbow. Ryken underwent surgery on her left elbow and left hand. Insurer covered both surgeries.

After the surgeries, Ryken informed Dr. Patrick O'Brien that she still had some aching, but her left elbow felt better and was slowly improving. Ryken mentioned pain in her left elbow at a follow-up appointment on August 2, 2018. Dr. O'Brien noted that Ryken had some arthritis, and the best treatment would be anti-inflammatory medication and to continue therapy sessions. On November 1, 2018, Ryken saw PA Kerry Van Overbeke who noted that she presented with continued pain in her arm which was consistent with the arthritis.

On June 23, 2020, Dr. O'Brien opined that Ryken's employment was not a major contributing cause of her current and continued need for treatment, and that it was likely a result of degeneration within the elbow joint. Dr. O'Brien further opined that once Ryken was placed at maximum medical improvement (MMI) she may require continued treatment for her underlying condition, but it was not related to employment. As a result of Dr. O'Brien's opinion, Employer and Insurer informed Ryken that her future medical expenses would not be compensated.

Ryken filed a Petition for Hearing with the Department on October 19, 2020. She claimed that her pain is related to her initial work injury and should be compensated by Employer and Insurer. Ryken continued receiving treatment for her arm. On October 31, 2020 Ryken underwent another X-ray. Her provider concluded that the X-ray showed signs of an old fracture.

To prevail in this matter, Ryken must prove that her employment is a major contributing cause of his current condition. She has the burden of proving all facts essential to sustain an award of compensation, and her evidence must be precise and well supported. *Darling v. West River Masonry Inc.*, 2010 S.D. 4, ¶ 11, 777 N.W.2d 363, 367. “The fact that an employee may have suffered a work-related injury does not automatically establish entitlement to benefits for his current claimed condition.” *McQuay v. Fischer Furniture*, 2011 S.D. 91, ¶ 11-12 808 N.W.2d 107, 111 (citations omitted).

The Department entered a Scheduling Order on February 2, 2020 which required Ryken to identify her expert(s) along with any reports by April 1, 2021. However, Ryken has not offered a medical expert’s opinion to support her claim. “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). Ryken has asserted that her pain is related to her work injury, but she has not provided support for her claim. Without a medical expert or expert report to provide testimony, she cannot prove that her employment is a major contributing cause of her current condition or need for treatment. Therefore, Ryken has not proven she is entitled to benefits.

Conclusion:

Ryken has not proven by a preponderance of the evidence that her employment is and remains a major contributing cause of her current condition or need for treatment. Therefore, her request for benefits is DENIED.

Counsel for Bistro & More, Inc and Continental Western/Tri-State Branch shall submit 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. Ryken shall have an additional twenty (20) days from the date of receipt of Bistro & More, Inc and Continental Western/Tri-State Branch's Proposed Findings and Conclusions to submit objections thereto and/or to submit his own 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, Bistro & More, Inc and Continental Western/Tri-State Branch shall submit such Stipulation along with an Order consistent with this Decision.

Dated this 27 day of October, 2021.

SOUTH DAKOTA DEPARTMENT OF LABOR & REGULATION


Michelle M. Faw
Administrative Law Judge