

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

DANIEL JENSEN,

HF No. 42, 2024/25

Claimant,

v.

DECISION

**NEXGEN-US LBM, LLC d/b/a
TRUSS PROS,**

Employer,

and

**TRAVELERS INDEMNITY CO.
OF AMERICA,**

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 Michelle M. Faw, Administrative Law Judge, on August 6, 2025. Claimant, Daniel Jensen, was present and represented by Michael J. Simpson of Simpson Law Firm. The Employer, Nexgen-US LBM, LLC, d/b/a Truss Pros, and Insurer, Travelers Indemnity Co. of America were represented by Charles A. Larson of Boyce Law Firm.

Facts:

1. In 2008, Daniel Jensen (Jensen) injured his right shoulder playing softball and had surgeries for a torn rotator cuff and labral tear. He also attended physical therapy.
2. In 2019, Jensen began working as a truck driver for Truss Pros (Employer) which was at all times pertinent to this matter insured for workers'

compensation purposes by Travelers Indemnity Co. of America (Insurer). His tasks for Employer required him to strap down the loads. The straps were usually four inches wide and either 30 or 40 feet long with a flat metal hook on the end. Depending on the size, 4 to 18 straps would be needed to secure the load.

3. On April 15, 2022, Jensen was injured when he went to throw a partially frozen strap over the load, and he felt a hard pull in his shoulder. He called Employer and reported he had been injured. He was told to take the load to Minneapolis. He then went home for the weekend. He treated with ice.
4. On April 18, 2022, Jensen went to throw the first strap over a load and “it sounded like a shotgun went off” in his shoulder. He continued working for the rest of the month.
5. On May 3, 2022, Jensen was seen by Dr. Brandon Fites who noted he had been injured at work on April 18, 2022, when he heard a pop in his shoulder. He further noted that Jensen had some shoulder pain in 2009, had a surgical repair, and had no pain until the date of the recent injury. Fites noted the injury was likely a rotator cuff tear and Jensen’s work-injury was the likely cause.
6. On May 31, 2022, Dr. Fites noted Jensen continued to have significant pain and weakness with elevation of his hand above his head. He reviewed Jensen’s MRI which showed a moderate grade partial thickness rotator cuff tear. He noted significant tendinosis, biceps tendinitis, and some arthritic changes. Dr. Fites informed Jensen about the findings. He told him that the

- arthritis was likely stemming from his previous shoulder issues, but the cause of his pain was the tear. He recommended surgery.
7. On June 17, 2022, Dr. Fites performed rotator cuff repair surgery. During the surgery, he identified chronic conditions in Jensen's shoulder. He noted Jensen suffered from Grade III to IV chondromalacia of the humeral head, degenerative tears of the labrum, and synovitis around the biceps.
 8. On August 18, 2022, Dr. Fites saw Jensen who reported he was doing pretty well, but he had shoulder stiffness and pain when stretching. Jensen continued with physical therapy.
 9. On September 15, 2022, Dr. Fites noted Jensen had made a dramatic improvement in his range of motion but was still stiff. Jensen received a steroid injection for pain.
 10. On November 17, 2022, Dr. Fites noted Jensen was reporting complete resolution of pain. Jensen was placed at maximum medical improvement and released to work with no restrictions.
 11. On February 7, 2023, Dr. Fites noted that Jensen returned reporting shoulder pain and stiffness over the last month. The shoulder was stiff, and he had difficulty sleeping at night. Dr. Fites believed Jensen again had adhesive capsulitis return as he had post-surgery.
 12. On April 11, 2023, Jensen was seen by orthopedic surgeon, Dr. Jason Hurd. He reviewed Jensen's medical records. He noted that Jensen's persistent right shoulder pain after surgery was related to underlying chondromalacia of his glenohumeral joint. He further noted that day's X-rays showed progression of his degeneration compared to the previous year. He also

- noted there was crepitus, or cracking and popping within a joint, with range of motion. Dr. Hurd opined a shoulder replacement would eventually be needed.
13. On May 5, 2023, Hurd gave Jensen a platelet rich plasma (PRP) injection in his shoulder.
 14. On May 25, 2023, Bryant Wieking, a PA working with Dr. Hurd, issued a letter stated that post-surgery Jensen had received a number of intra-articular corticosteroid injections and as a result, in combination with the injury, he developed degenerative changes in his right shoulder. He further wrote that Jensen had significant pain, as well as loss of strength and mobility. Also, it would be something that would be ongoing until Jensen was no longer able to tolerate it.
 15. On September 21, 2023, PA Wieking gave Jensen another PRP injection.
 16. On November 30, 2023, Dr. Hurd saw Jensen and noted he was eight weeks from his last PRP injection and had not noted significant improvement of pain. Dr. Hurd continued Jensen's medication, discussed activity modifications, and noted if his symptoms worsened or persisted, he would be a candidate for right shoulder humeral head replacement.
 17. On January 16, 2024, Dr. Hurd put in an order for a total shoulder arthroplasty surgery.
 18. On January 22, 2024, Insurer wrote to Dr. Hurd asking whether the need for the arthroplasty surgery is a result of or most likely related to the work injury. PA Wieking responded that after the work injury, Jensen never returned to normal. Due to the persistence of pain and measurable radiographic changes,

it was his opinion that the work injury is a major contributing cause of the need for shoulder replacement.

19. On June 27, 2024, Dr. Edward Kelly, an orthopedic surgeon, performed an independent medical evaluation (IME). Dr. Kelly concluded that Jensen's need for ongoing treatment and shoulder replacement was due to his preexisting arthritis of the glenohumeral joint.

20. On September 6, 2024, Dr. Kelly wrote an addendum to his IME and opined that Jensen sustained a 5% permanent partial disability to the right upper extremity. On that same day, Jensen was seen by Dr. Hurd who noted that Jensen did have underlying degenerative changes of his shoulder prior to his work injury but was able to function well and was not having a lot of pain. After the injury and subsequent surgery, Jensen had worsening pain and function in his shoulder. Dr. Hurd concluded that Jensen's work-related injury was a major contributing cause of his condition and need for treatment.

Additional facts may be developed in the issue analysis below.

To prevail in this matter, Jensen must first prove that his work-related injury is a major contributing cause of his condition. SDCL § 62-1-1(7) provides, in pertinent part:

"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; or

- (b) If the injury combines with a preexisting disease or condition to cause or prolong disability, impairment, or need for treatment, the condition complained of is compensable if the employment or employment related injury is and remains a major contributing cause of the disability, impairment, or need for treatment

He is “not required to prove his employer was the proximate, direct, or sole cause of his injury.” *Smith v. Stan Houston Equip. Co.*, 2013 S.D. 65, ¶ 16, 836 N.W.2d 647, 652. A work incident does not need to be “the” major contributing cause but need only be “a” major contributing cause. *Hughes v. Dakota Mill Grain, Inc. and Hartford Insurance*, 2021 S.D. 31, ¶ 22, 959 N.W.2d 903. The standard of proof for causation in a workers’ compensation claim is a preponderance of the evidence. *Armstrong v. Longview Farms, LLP*, 2020 S.D. 1, ¶ 21, 938 N.W.2d 425, 430. “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).

Jensen has offered the expert deposition of Dr. Hurd who has practiced as an orthopedic surgeon since 2007. He has fellowship training in shoulder and elbow surgery, taught at USD medical school, and authored a number of publications, many of which concern shoulder conditions and treatment.

Dr. Hurd was deposed on May 2, 2025. He had not fully reviewed Jensen’s medical records before appearing for deposition. Dr. Hurd noted the chondromalacia and rotator cuff tear identified in Dr. Fites’s report. He testified Jensen probably had the chondromalacia for years and after the rotator cuff repair surgery he believed the pain is from the chondromalacia. He further testified that Jensen was asymptomatic for the 13 years between the 2008 and 2022 injuries even though he had findings of

chondromalacia. Dr. Hurd opined that the work injury caused Jensen to become symptomatic either from traumatically tearing the rotator cuff or from the chondromalacia then becoming symptomatic.

Dr. Hurd was asked about the period in February 2023 when Jensen's condition worsened. He explained that it was either the return of the adhesive capsulitis or the underlying loss of cartilage Jensen suffered in his shoulder. He was also asked whether he saw any evidence that after the work injury Jensen's symptoms went away or were continuous. Dr. Hurd testified that he thought they were continuous, and Jensen had told him they had never gone away after the rotator cuff repair. His attention was directed to November 2022 where Jensen's condition was described as having improved but then worsened months later. Dr. Hurd stated that was likely due to the steroid injection masking the symptoms for a while.

It is the opinion of Dr. Hurd that the work injury is a major contributing cause of Jensen's shoulder condition and medical treatment, including the future need for shoulder replacement surgery. He opined the fact Jensen did not have symptoms prior to the work injury and had symptoms afterwards makes him conclude that the injury probably aggravated the underlying cartilage loss in his shoulder. He also did not believe Jensen was overstating or malingering his pain complaints and the X-rays showed progressive arthritis in the shoulder since the work injury. Dr. Hurd concluded that Jensen would need a shoulder replacement surgery within the next two to five years.

Dr. Hurd reviewed Dr. Kelly's IME report and was asked to respond to the opinion that Jensen just has a "temporary aggravation" of his arthritis which was caused by the work injury. He responded that Jensen's condition never really got better and

with arthritis everybody gets to a point where it is no longer tolerable. He added that the reason is not always known. However, Jensen's situation involved a specific incident and never resolved. As a result, Dr. Hurd concluded the issue is the chondromalacia which he believes was aggravated by the work injury. He had seen other situations in his practice where people had underlying arthritis in the shoulder and injury, or surgery can make it worse and create ongoing symptoms. He testified that an injury like Jensen's can result in more rapidly progressive degeneration of the joint. He also stated that partial rotator cuff repair on patients with arthritis can tighten up the joint, increase pain, and cause progression of arthritis. Jensen's prior injury and surgery could also speed up the arthritic process. Jensen had arthritic changes in his shoulder before the work injury.

Dr. Hurd was asked whether the significant changes from the 2022 to 2023 X-rays could happen without an injury. He supposed it could, but it was a lot of change for one year. He observed the 2022 X-rays and opined that it was fairly normal with subtle indications of early degeneration to the joint. He concluded it was 90% normal. He did not have access to view the 2008 X-rays but testified that it was likely normal. He also reviewed the MRI from May of 2022 and noted that Jensen's shoulder still had good space preservation although there were areas of cartilage loss. He opined that Jensen had much worse arthritis than a normal 42-year-old. He confirmed that there were more changes in the one year after Jensen's injury than in the previous 13 years, and that those changes were consistent with the symptoms. During the surgery performed by Dr. Fites, he removed a 1.5 cm piece of cartilage that Dr. Hurd believed had been knocked off during Jensen's work injury. Had the piece been in Jensen's shoulder for the 13 years before the injury, Dr. Hurd agreed it would likely have been causing symptoms.

He conceded that the MRI did not present objective findings that the injury had resulted in the displaced cartilage.

Employer and Insurer have offered the expert medical opinion of Dr. Kelly, a board-certified orthopedic surgeon. He attended the Mayo Medical School and performed his residence at the Mayo Clinic. Dr. Kelly performs around 200 shoulder, elbow, and knee surgeries a year. He sees about 100 patients a week. Dr. Kelly has performed IMEs for 15 years, and he specializes in IMEs for shoulder and elbow problems.

Dr. Kelly reviewed Jensen's medical records. He noted the May 31, 2022, MRI showed glenohumeral arthritis, previous labral and subscapularis repairs, and small bursal surface partial thickness rotator cuff tear. The arthritis and degeneration were chronic in nature. Dr. Kelly concluded that the work injury had caused Jensen to suffer a partial thickness rotator cuff tear, but that tear had healed after surgery and physical therapy. He opined that Jensen's current symptoms were related to his degenerative glenohumeral arthritis, which preexisted the work injury and was unrelated. Jensen did not report crepitus, a symptom of chondromalacia, until April of 2023. Dr. Kelly attributed this to natural progression of the preexisting chondromalacia and arthritis. He agreed with Dr. Hurd's conclusion that the 2008 softball injury had probably caused Jensen to develop chondromalacia and arthritis at a relatively young age. Regarding Jensen's current condition, Dr. Kelly opined that the ongoing pain was from the arthritis. He noted that the operative report showed significant degenerative changes were present at the time of the work injury. He explained that arthritis progresses naturally without the need for a triggering event. In some cases, it progresses slowly and in others rapidly over the course of months.

Dr. Kelly disagreed with Dr. Hurd's opinion that the work injury may have caused Jensen to lose cartilage in his shoulder and permanently aggravated his chondromalacia. Dr. Kelly opined that there was no objective injury in the MRI except for the rotator cuff tear which did not involve injury to the joint. Had the work injury aggravated Jensen's arthritis, Dr. Kelly opined that he would have expected to find evidence of significant trauma. He further opined that floating bodies in the shoulder joint were common consequence of arthritis and do not require acute injury. He explained that loose bodies do not directly or immediately cause pain. Due to the lack of objective evidence of an acute injury, Dr. Kelly could not conclude the work injury aggravated Jensen's chondromalacia. He opined that the work injury caused a rotator cuff tear that fully resolved.

Employer and Insurer have asserted that there is no objective evidence to support Dr. Hurd's opinion. The South Dakota Supreme Court has opined on the issue of objective findings in these types of matters.

Our law does not require objective findings in order to sustain a workers' compensation claim. SDCL 62-1-15 only provides that '[i]n any proceeding or hearing pursuant to this title, evidence concerning any injury shall be given greater weight if supported by objective medical findings.' This does not necessarily lead to the conclusion that a medical opinion without objective findings should be given no weight."

Vollmer v. Wal-Mart Store, Inc., 2007 S.D. 25, ¶ 25, 729 N.W.2d 377, 385

"[P]roof of causation 'must be established to a reasonable degree of medical probability, not just possibility.'" *Armstrong v. Longview Farms, LLP*, 2020 S.D. 1, ¶ 23, 938 N.W.2d 425, 431 (citations omitted). "The value of the opinion of an expert witness is no better than the facts upon which they are based." *Martz v. Hills Materials*, 2014 S.D. 83, ¶ 31, 857 N.W.2d 413, 421 (citations omitted). Dr Hurd refers to the time course of Jensen's

symptoms without offering more evidence to support his opinion. Dr. Hurd has stated that he finds it significant Jensen was asymptomatic prior to the work injury and became symptomatic after. “The axiom ‘*post hoc, ergo propter hoc*,’ refers to ‘the fallacy of ... confusing sequence with consequence,’ and presupposes a false connection between causation and temporal sequence.” *Rawls v. Coleman-Frizzell, Inc.*, 2002 S.D. 130, ¶¶ 20, 653 N.W.2d 247, 252. That one element followed another is not sufficient proof. However, when Dr. Hurd’s opinion is considered in conjunction with the record as a whole, his conclusions appear well supported and probable.

The X-rays of Jensen shoulder taken in May 2022 showed very minimal changes from the 2008 X-rays. However, between the 2023 and 2024 X-rays showed significant progression of his arthritis. Dr. Hurd noted that there were more changes in that later span of 11 months than in the previous 13 years. Dr. Kelly did not review the X-rays and testified he had no reason to disagree with Dr. Hurd’s interpretation. Dr. Hurd opined that rotator cuff repair surgery itself can cause progression of arthritis. He also opined that the loose piece of cartilage in Jensen’s shoulder was likely caused by the work injury. He testified that it would fit an acute injury as it would take much force to chip off a piece that big. He also concluded that had that large of a piece been present prior to injury it would have likely caused symptoms. Dr. Kelly agreed that damage to cartilage would likely lead to more arthritis.

Employer and Insurer assert that Dr. Hurd’s opinion is inconsistent with the medical records because he did not review all of them. He admitted he formed his opinion based on Jensen’s testimony that his pain was continuous. Jensen received injections in September and October 2022. He reported complete resolution of pain and symptoms in November 2022. Then on February 7, 2023, Jensen had had a return of

his shoulder pain and stiffness over that previous month. The only time Jensen experienced relief of pain was during the period he had two steroid injections specifically to help with pain and mobility. When Dr. Hurd read that Jensen had achieved relief of pain after the injections, he attributed that relief to the injection masking underlying symptoms.

Dr. Hurd based his opinion on his experience as well as multiple factors in the record. These factors including the time course, the fact rotator cuff repair surgery can cause arthritis to progress, imaging showing increased deterioration after the injury, and the presence of the loose piece of cartilage led Dr. Hurd to conclude it was the injury that caused Jensen's symptoms and not merely the progression of the underlying arthritis. The Department finds Dr. Hurd's opinion to be well supported by the record.

Conclusion:

Jensen has proven by a preponderance of the evidence that his work for Employer is and remains a major contributing cause of his current condition. He is entitled to medical expenses and other workers' compensation benefits related to the April 15, 2022, work-related injury.

Counsel for Claimant 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. Employer and Insurer shall have an additional twenty (20) days from the date of receipt of Claimant's Proposed Findings and Conclusions to submit objections thereto and/or to submit their 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, Claimant shall submit such Stipulation along with an Order consistent with this Decision.

Dated this day 26 of January 2026.

SOUTH DAKOTA DEPARTMENT OF LABOR & REGULATION

A handwritten signature in blue ink that reads "Michelle Faw". The signature is written in a cursive, flowing style.

Michelle M. Faw
Administrative Law Judge