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

TIMOTHY NUGTEREN, **HF No. 45, 2022/23**

Claimant,

v. **DECISION**

CITY OF SIOUX FALLS,

Employer and Self-Insurer.

This is a workers' compensation case brought before the South Dakota Department of Labor and Regulation, Division of Labor and Management pursuant to SDCL § 62-7-12 and ARSD ch. 47:03:01. The case was heard by Michelle M. Faw, Administrative Law Judge, on February 4, 2026. Claimant, Timothy Nugteren, was present and represented by Thomas K. Wilka of Hage, Wilka, & Archer. Employer and Self-Insurer was represented by Shane E. Eden of Davenport Evans.

Background:

Timothy Nugteren (Nugteren) was hired by the City of Sioux Falls (City) in 2002 as a firefighter with the Sioux Falls Fire and Rescue (SFFR). Prior to his hiring, he was required to undergo a pre-employment medical examination. The examination took place around August 18, 2002. Nugteren's blood pressure readings were elevated, with results of 138/98 and 142/96. His blood work showed an elevated cholesterol level of 232. Nugteren had two prior records from 2001 which showed elevated blood pressures of 138/98 and 142/96. On December 13, 2002, approximately three months after he was hired, his blood pressure was recorded as elevated. On October 19, 2017, Nugteren underwent a health screening, the results of which noted an elevated coronary calcium score. He was referred to a cardiologist for further evaluation.

On August 20, 2021, Nugteren was on vacation in Nemo, South Dakota when he experienced a myocardial infarction. He received treatment, recovered, and returned to work for SFFR until his voluntary retirement on October 26, 2022. He filed a Petition for Hearing on Workers' Compensation Benefits which was received by the Department of Labor and Regulation (Department) on December 19, 2022.

Issues:

The issues before the Department are:

1. Whether Nugteren has met the presumption of SDCL § 9-16-45;
2. If so, has the City rebutted that presumption with competent evidence; and
3. The causation and major contributing cause of Nugteren's condition and need for treatment.

Analysis:

The first issue before the Department is whether Nugteren has met the presumption of SDCL § 9-16-45 or the City has rebutted that presumption with competent evidence. SDCL § 9-16-45 states,

> Notwithstanding the provisions of any general or special law to the contrary, any condition of impairment of health caused by hypertension, heart disease, or respiratory disease resulting in total or partial disability to an officer or member of a fire department who successfully passed physical examination on entering into such service, which examination failed to reveal any evidence of such condition, shall be presumed to have been suffered in line of duty, unless the contrary be shown by competent evidence.

Nugteren must meet the four elements of SDCL § 9-16-45 for his heart condition to be presumed occupational.

1. He must be an officer or a member of the fire department;

2. He must have successfully passed a physical examination on entering into his service with the fire department;
3. The physical examination failed to reveal any evidence of such condition; and
4. He must suffer from any condition of impairment of health caused by hypertension, heart disease, or respiratory disease resulting in total or partial disability.

Nugteren served as a member of SFFR for twenty years. He passed a physical examination when he entered into service with the fire department. He was put on medication for both hypertension and hyperlipidemia, and he suffered a heart attack on August 20, 2021. Therefore, Nugteren meets elements 1, 2, and 4 of the SDCL § 9-16-45 presumption.

However, the question of whether the third element of the presumption has been shown requires further analysis. At his pre-employment examination on August 18, 2002, Nugteren's blood pressure readings and cholesterol levels were elevated. Both parties have offered expert medical opinion in this matter. "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). "The value of the opinion of an expert witness is no better than the facts upon which they are based. It cannot rise above its foundation and proves nothing if its factual basis is not true." *Schneider v. S. Dakota Dep't of Transp.*, 2001 S.D. 70, ¶ 16, 628 N.W.2d 725, 730 (citations omitted). The South Dakota Supreme Court has held that causation must be proven to "a reasonable degree of medical probability, not just possibility." *Jewett v. Real Tuff, Inc.*, 2011 S.D. 33, ¶ 23, 800 N.W. 2d 345, 350.

Nugteren argues that his pre-employment physical did not reveal any evidence of the condition of hypertension or heart disease because a single blood pressure reading is not sufficient evidence. However, the plain language of the statute requires that there not be "*any* evidence of such condition" [emphasis added] and the statute includes no further guidance about what medical evidence would prevent the presumption from applying. At the time of his examination, Nugteren did show evidence of hypertension and hyperlipidemia. Therefore, he does not meet that requirement, and his myocardial infarction is not presumed to be occupational through the presumption of SDCL § 9-16-45.

Although the evidence does not show that the presumption applies, even assuming arguendo that it does, it would be rebutted, because, as discussed below, Dr. Del Core's opinion and assessment of Nugteren's record would provide sufficient competent evidence to rebut the presumption. The Court has stated, "the substantial, credible evidence requirement means that a presumption may be rebutted or met with such evidence as a trier of fact would find sufficient to base a decision on the issue, if no contrary evidence was submitted." *Stavig v. Stavig*, 2009 S.D. 89, ¶ 16, 774 N.W.2d 454, 460 (Citations omitted). The Department finds it sufficient to base an opinion on Dr. Del Core's opinion. Therefore, Dr. Del Core's opinion is competent evidence to rebut the presumption.

Nugteren raises an additional issue. He argues that the City should be estopped from claiming that he is not entitled to workers' compensation benefits because they hired him despite having knowledge of Nugteren's elevated blood pressure result during the pre-employment physical. The City asserts that SDCL § 9-16-45 applies to "an officer or member of a fire department," and thus only applies to individuals who

have been actually hired to perform the job as firefighters. Therefore, it defeats the purpose of the statute to apply an estoppel exception for individuals that have been hired. The Department agrees. The City is not estopped from raising the issue of whether it owes Nugteren workers' compensation benefits, because the statute specifically exists to apply to employees of fire departments.

The Department will next consider whether Nugteren has proven causation. To prevail in this matter, Nugteren must first prove 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;

Nugteren 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. He must prove "that employment or employment-related activities [are] a major contributing cause of the condition of which [he] complained, or, in cases of preexisting disease or condition, that employment or employment-related injury is and remains a major contributing cause of the disability, impairment, or need for treatment." *Norton v. Deuel School Dist. No. 19-4*, 674 N.W.2d 518, 521 (S.D. 2004). Additionally, the South Dakota Supreme Court has held 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, ¶ 21, 959 N.W.2d 903. The standard of proof for causation in a worker's compensation claim is a preponderance of the evidence. *Armstrong v. Longview Farms, LLP,* 2020 S.D. 1, ¶ 21, 938 N.W.2d 425, 430. Both parties have offered medical expert opinion. Nugteren has offered the opinion of his personal physician, Dr. Jeffrey Meyer and the City has offered the opinion of Dr. Michael Del Core.

Dr. Meyer is board-certified in family medicine. At deposition, he was asked about Nugteren's medical records which indicated elevated blood pressure. On October 22, 2001, Nugteren was seen for bronchitis. His blood pressure was elevated at 140/98. Dr. Meyer opined that bronchitis could contribute to a finding of hypertension. During his pre-employment physical, Nugteren had two elevated blood pressure readings at 138/98 and 142/96. Dr. Meyer opined that it is common for blood pressure to fluctuate on different days and even at different times within the same day. He was asked about Nugteren's weight and concluded that at a 28 on the body mass index, he was not obese. In December of 2002, Nugteren was seen at Acute Care for a sprained ankle. His blood pressure was high. Dr. Meyer confirmed that pain can cause a person's blood pressure to elevate. In November of 2003, Nugteren was seen again and a had a normal blood pressure reading at 124/82. Dr. Meyer was asked if the records from 2001 through 2006 all showing elevated blood pressure, could be a sign that Nugteren suffered from hypertension. He answered affirmatively. He was also asked if the records showing high lipid levels could be a sign that Nugteren has hyperlipidemia. He again answered affirmatively.

On October 19, 2017, Nugteren visited Dr. Meyer for a follow-up visit when he had presented with an elevated artery calcium score after a screening. Dr. Meyer also

identified a diagnosis for hyperlipidemia and hypertension Dr. Meyer referred him to cardiology for more testing and put him on cholesterol medication. Between 2018 and his heart attack in August of 2021, Nugteren's records show his blood pressure was not elevated. Dr. Meyer opined that having a previous heart attack is the greatest risk of having another heart attack. Dr. Meyer stated that consistent measurements of elevated high blood pressure would lead to a diagnosis of hypertension. He agreed when questioned by the City that the longer an individual suffers from uncontrolled hypertension or hyperlipidemia, there is an increased possibility he can develop coronary artery disease. He was unable to opine that the evidence of plaque in Nugteren's arteries was from his employment as a firefighter or his other risk factors.

Dr. Meyer opined that there is evidence that firefighters have increased risk of coronary disease, and he could not say with certainty that had Nugteren been in a different occupation that he would have had a heart attack. He was asked if he could state to a reasonable degree of medical certainty or probability that Nugteren's work activities with SFFR were a major contributing cause of his heart attack. Dr. Meyer responded that he did believe they were a contributing cause, because firefighters are at a higher risk. He was unable to specifically state why firefighters are at a greater risk, but he thought stress and the environments they work in were perhaps factors.

Dr. Del Core is a board-certified cardiologist and Associate Dean of the University of Creighton Medical School. To develop his opinion, Dr. Del Core reviewed Nugteren's cardiovascular medical records. He was asked at deposition about blood pressure readings taken before Nugteren started with the SFFR, he agreed the records indicated elevated blood pressure caused by hypertension. He was also asked to consider readings from Nugteren's pre-employment physical, and he agreed they

showed both hypertension and high cholesterol. Dr. Del Core also identified hypertension and/or high cholesterol in records from April 14, 2003, March 8, 2006, May 23, 2007, June 22, 2010, August 16, 2012, June 23, 2015, and June 29, 2016. On October 19, 2017, Nugteren had a cardiac evaluation which revealed a positive calcium score. Dr. Del Core explained that a positive calcium score suggests hardening of the arteries. He agreed that calcium build up can be caused by years of uncontrolled hypertension and hyperlipidemia, and it can increase the risk of myocardial infarction.

Dr. Del Core concluded that Nugteren's heart disease was not related to his work activities, and was instead, caused by untreated hypertension, hyperlipidemia, and the natural result of aging. Dr. Del Core opined that twenty years of hypertension and high cholesterol contributed to Nugteren's development of coronary artery disease. He also opined that Nugteren carried extra weight and had renal dysfunction which contributed to his heart disease.

The Department finds Dr. Del Core's opinion more persuasive. Both Dr. Meyer and Dr. Del Core agree that Nugteren's hypertension and hyperlipidemia contributed to his heart disease. Dr. Meyer's opinion that Nugteren's employment is a contributing cause of his heart condition is based on a general association between firefighters and elevated risk of heart disease. However, he was unable to explain the basis for that association, and he opined that it is probably not known why the association exists. He also agreed that results from Nugteren's 2017 heart screening could be consistent with long-term hyperlipidemia and hypertension. Dr. Del Core specializes in cardiology and has specific expertise in the causes of heart disease. He identified multiple instances of hypertension and hyperlipidemia in Nugteren's records, both before and after his employment with SFFR. Dr. Del Core's opinion is well supported by the record. The

Department finds that Nugteren was unable to prove by a preponderance of the evidence that his employment as a firefighter with SFFR is a major contributing cause of his heart disease, heart attack, or need for treatment.

Conclusion:

Nugteren has not met the presumption of SDCL § 9-16-45;

Nugteren has not proven that his work with SFFR is a major contributing cause of his condition and need for treatment.

The City 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. Nugteren shall have an additional twenty (20) days from the date of receipt of 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, the City shall submit such Stipulation along with an Order consistent with this Decision.

Dated this 28 day of July 2026.

SOUTH DAKOTA DEPARTMENT OF LABOR & REGULATION



Michelle M. Faw
Administrative Law Judge