

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

VALERIE MORRIS,

HF No. 46, 2022/23

Claimant,

v.

DECISION

EDGEWOOD MANAGEMENT GROUP, LLC,

Employer,

and

PMA INSURANCE COMPANY,

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 February 15, 2024. Claimant, Valerie Morris, was present and represented by Michael J. Simpson of Simpsons Law firm, Prof. LLC. The Employer, Edgewood Management Group LLC, and Insurer, PMA Insurance Company were represented by Kerri Cook Huber of Gunderson, Palmer, Nelson, & Ashmore, LLP.

Background:

Valerie Morris (Morris) has worked as a housekeeper for Edgewood Assisted Living (Employer) for seven years. Employer has been insured by PMA Insurance Company (Insurer) at all times pertinent to this matter. On September 6, 2019, Morris sustained an injury while she was cleaning a bathroom in the course of her employment. Morris was on her hands and knees when her right leg slipped on a wet rug causing that leg to splay out and her knee to come down hitting a four-inch-tall lip of

the shower. Morris experienced pain and tingling in her knee but she continued her workday by performing light duty with the assistance of her coworker. Morris completed a first report of incident. Her knee was sore over the weekend, and she treated it with rest and ice. On the following Monday, Morris reported to work. A nurse employed by Employer examined Morris's knee and recommended she go to urgent care as the knee appeared swollen and sore.

The notes from Morris's visit to urgent care state she presented with right knee pain which started on Friday after bumping her knee in the shower while working. Tenderness was noted and an x-ray was performed which showed no acute fracture, subluxation, dislocation, or degenerative changes. Morris was advised to rest, elevate, use ice, heat, and over the counter pain relievers. She was restricted to light duty for the next 48 hours.

Morris was seen for knee pain on October 28, 2019, when she presented with persistent pain in her right knee with a severity of 7/10 on the pain scale. The doctor's notes indicate Morris reported the pain in her right knee had been worsening since onset and the injury mechanism was a direct blow. Her symptoms were aggravated by movement, weight bearing, and palpation. NSAIDS had not provided relief. The examination was positive for medial joint line and lateral joint line tenderness and noted a diagnosis of periosteal bruise or a mild meniscal injury. Morris attended five physical therapy (PT) sessions. The physical therapist noted Morris injured her knee at work when she knelt down, hitting her knee on the ridge of a shower as she was cleaning it. Morris reported she had noticed immediate intense pain and since had trouble with stairs, sleep, and prolonged walking. In PT, Morris showed deficits including strength, range of motion, pain, and impaired activity tolerance. The notes further state Morris's

deficits were negatively impacting her work ability and social life. Testing revealed a possible lateral meniscus or tissue irritation. During therapy, Morris described improvements in her condition but increases in her pain when working. The PT notes reflect Morris's work activities negatively impacted her condition. Morris also noticed swelling in her knee and grinding when using stairs. The last PT session notes state the swelling had improved but was still visibly noticeable.

On January 9, 2020, Morris was seen by Dr. Joseph Humpherys, an orthopedic surgeon. Morris reported she was injured while cleaning in a bath and experienced a twisting motion in her right knee. He further noted she was experiencing significant pain on the inside of the knee which was dull and achy with occasional sharpness. Dr. Humpherys' exam showed she was mildly tender to palpation over the medial joint line, had pain on the medial side, no mechanical catching with full motion, but she did display pain at terminal flexion. Dr. Humpherys reviewed the imaging of Morris's knee, and he diagnosed her with right knee pain, suspected medial meniscus tear, and patellofemoral osteoarthritis. He performed a corticosteroid injection and recommended physical therapy exercises. He noted if the injection did not provide relief, he would proceed with a knee arthroscopy and partial meniscectomy.

On February 25, 2020, Dr. Humpherys saw Morris who reported roughly four to five weeks of good pain relief. However, Morris reported her pain had returned in the two to three weeks before the appointment. The knee was dull, achy, and throbbing all the time. The doctor noted Morris had an acute knee injury from a work-related incident and performed a Synvisc injection for pain relief.

On June 1, 2020, Dr. Humpherys noted Morris had received three to four weeks of almost completely pain relief from the Synvisc injection, but then the pain had

returned and worsened. The pain was restricting Morris's work, daily activities, and ability to sleep. Dr. Humpherys' exam showed Morris was tender over the medial joint line and had some crepitus behind the patella. He noted Morris had a right knee medial meniscus tear with some associated osteoarthritis, and he decided to proceed with the right knee arthroscopy with partial meniscectomy with possible chondroplasty. He explained the risks and benefits to Morris, advised her to speak with her employer about the appropriate timing of the surgery, and told her to get back to him about going forward.

On December 28, 2020, Dr. Humpherys performed another Synvisc injection into Morris's right knee. He saw her again on May 11, 2021, where Morris reported she received about three months of about 70% relief of pain from the injection. The doctor noted in the prior three weeks the pain started to come back, and Morris had mechanical catching going up and down stairs. His exam showed some mild discomfort with her range of motion and medial joint line tenderness. They discussed the potential arthroscopy, but Morris stated due to her financial situation she was unable to be off work for surgery. She was prescribed another Synvisc injection and was advised it would help with the pain but not the mechanical catching. Morris received the injection on May 26, 2021.

On April 25, 2022, Dr. Humpherys again saw Morris who reported the injections continued to provide some relief, but she was at the point she wished to consider surgical intervention. The doctor's exam showed her knee was significantly tender to palpation of the medial joint with positive results to a McMurray's test which is used to determine whether someone has a torn meniscus. He recommended an MRI which she received on May 6, 2022.

On June 15, 2022, Dr. Paul Cederberg saw Morris for an independent medical evaluation (IME). He then prepared a report dated June 28, 2022. On September 27, 2022, Dr. Humpherys saw Morris who noted she had right knee pain due to a work-related injury. In his notes, he recounted the course of her treatment including the efforts at conservative treatment and various imaging that had been taken, her condition, and his surgical recommendation. He discussed the risk and benefits of surgery with Morris who wished to proceed. Dr. Humpherys performed the arthroscopic surgery that day. His preoperative diagnosis was right knee medial meniscus tear, and the postoperative diagnosis was the same with cartilage defect at the patella and medial femoral condyle. He also diagnosed a horizontal cleavage tear posterior toward the root that was 90% complete and grade III changes to the central and lateral facet of the patella. Morris was off work for four weeks after her surgery, from September 27, 2022, to October 31, 2022.

On October 5, 2022, Dr. Humpherys responded to a letter from Morris's attorney asking whether the work injury is and remains a major contributing cause of her current medical condition and need for treatment including surgery. He opined it was and explained Morris had a twisting knee injury at work with resultant symptoms. Morris underwent conservative non-operative treatment for the suspected meniscal tear. Having failed treatment, the resultant surgery confirmed a meniscal tear.

On October 10, 2022, Morris had her two-week post-surgical follow-up visit. She had been walking with a cane due to continued knee pain, but she did report improvement. On October 31, 2022, Morris had a second follow-up visit with a physician assistant at Dr. Humpherys' office. She believed her knee pain and range of motion were improving with physical therapy. She was no longer using the cane and was

pleased with her progress. Morris had not returned to work and wished to return with light duty for two weeks. The exam notes indicate Morris's right knee range of motion was full and painless without swelling. She was released to light duty work.

From October 3, 2022, through December 29, 2022, Morris attended 13 physical therapy appointments. The treatment notes show her condition improved with some continued symptoms of soreness and difficulty sleeping, and increased swelling of the knee associated with overdoing it at work. On November 28, 2022, Morris was seen at Dr. Humpherys' office. The notes indicate her pain and swelling increased after returning to work. Morris's Petition for Hearing was received by the Department of Labor & Regulation (Department) on December 21, 2022.

Issues:

The issues presented at hearing were:

1. Whether Morris's work injury is a major contributing cause of her condition and need for treatment;
2. Whether the medical care outlined in Exhibit 2 is reasonable and necessary; and
3. Whether Morris is entitled to temporary total disability (TTD) for a period of five weeks post-surgery.

Causation and Reasonable and Necessary:

To prevail in this matter, Morris must first prove her work-related injury is a major contributing cause of her 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;

Morris is “not required to prove [her] 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. She must prove “that employment or employment-related activities [are] a major contributing cause of the condition of which she 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 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 fact that an employee may have suffered a work-related injury does not automatically establish entitlement to benefits for [her] current claimed condition.” *McQuay v. Fischer Furniture*, 2011 S.D. 91, ¶ 11 808 N.W.2d 107, 111 (citations omitted). 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.

Causation is a medical question, and both parties have offered expert medical opinions. Morris has offered the testimony of Dr. Humpherys. Employer and Insurer have offered the testimony of Dr. Cederberg. “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).

Dr. Humpherys was deposed on September 20, 2023, during which he recounted the course of Morris's treatment. He explained Morris's work injury involved a twisting mechanism which is consistent with most meniscal tears. He opined the time between her injury and his examination was long enough that had it been a bone bruise, bone injury, or sprain it would have resolved. He testified he initially thought since she did not have a mechanical symptom perhaps her pain was arthritic in nature. Once she developed mechanical issues, first noted on June 1, 2020, he concluded it was her meniscus. He further explained his examination, the course of her symptoms, and the imaging were all consistent with a torn meniscus.

Dr. Humpherys did not agree with Dr. Cederberg's conclusion that Morris only had a four-week contusion of the knee. He did agree with Dr. Cederberg that a contusion typically lasts four weeks, but he referred to the continuation of her pain and symptoms from September 2019 into January 2020 to support his disagreement. He also addressed Dr. Cederberg's reference to mucinous degeneration of the medial meniscus as being degenerative and not an acute injury. He explained radiologists use that term to describe meniscal injury, and they are aimed at describing an abnormality on an MRI. Radiologists do not have the history of the injury or the patient's medical history. He testified it is his job as a physician to take those abnormal findings and correlate them to the patient and their injury. He affirmed his opinion that her meniscal tear correlates with her work injury.

Dr. Humpherys opined patients sometimes develop catching of the medial meniscus over time, first due to inactivity and second due to progression of the tear. He concluded the work incident caused a disruption of the integrity of Morris's meniscus

which is the degeneration the radiologist observed. As Morris continued to work, he explained, it eventually became a full tear.

He also stated the X-rays of Morris's knee taken after the injury showed normal findings for someone in their 50's, minimal narrowing of the joint space in her knee and no osteophytes, and these would not necessarily correlate to symptoms in the knee. Dr. Humpherys noted she did have arthritic symptoms from cartilage wear in her right knee but the symptoms on the inside of her knee were related to the torn meniscus.

Dr. Humpherys concluded the work injury is a major contributing cause of Morris' knee condition and need for surgery for the following reasons: she did not have symptoms prior to the injury, the symptoms occurred after the injury, her symptoms remained with conservative treatment, and the surgery confirmed the meniscus tear which was consistent with the work incident.

In his June 28, 2022, report, Dr. Cederberg noted Morris had reported she was getting down to clean the shower floor when she hit her right knee on the ledge of the shower. His examination showed some medial joint line tenderness of the right knee but not the left. Dr. Cederberg concluded that as the imaging taken around the time of work incident did not show any acute injury that he believed would be associated with the mechanism of injury, then the work injury is not a major contributing cause of her current diagnosis. He further concluded Morris had sustained a contusion to the right knee. He opined such contusions to the knee typically last for four weeks and the treatment she received after October 6, 2019, was due to pre-existing degeneration. He diagnosed Morris with degeneration of her right meniscus and right knee of a mild nature. Dr. Cederberg added Morris did not need any additional medical treatment related to the work incident as the contusion to her knee had resolved within four

weeks. In his report, he also noted inconsistencies in the history of the injury. She did not mention a twisting of the knee during the work incident until January 9, 2020.

At her deposition, Morris was asked why some of the record only states she struck her knee on the edge of the shower, and she explained she did not know she had to go into detail about the incident. Morris testified at hearing that she both twisted and struck her knee. She said her foot slipped on a wet rug, and her leg splayed out to the side causing her knee to twist and come down on the shower ledge which caused the injury to the inside of her knee. The Department found Morris to be a credible witness and her testimony is consistent with the description of the injury she gave to Dr. Humpherys. He testified at deposition that he asks specific questions regarding the mechanism of injury as it is important to his treatment. That specificity is why he was able to get a more detailed description of the injury from Morris than was noted in previous medical records. The previous medical notes may not have been as specific regarding the mechanism of injury, but the Department finds these records consistent with the injury as described by Morris.

On November 28, 2023, Dr. Cederberg was deposed. He opined Morris had a contusion to the right knee without localized swelling or bruising where her knee was struck. He concluded the MRI showed only degenerative changes. He further concluded the mechanism of injury did not correlate with her objective findings or subjective complaints, and he did not believe the work injury was a major contributing cause of Morris's current diagnosis. He stated she suffered a contusion of the knee and typically treatment for such an injury would be reasonable for four weeks.

Dr. Cederberg agreed the medial joint line tenderness found by Dr. Humpherys starting at his first visit with Morris in January 2020, and the positive McMurray's test are

findings consistent with a torn medial meniscus. He acknowledged that Dr. Humpherys suspected a torn medial meniscus at the first visit based upon his examination and imaging. He also agreed upon examination people with a torn meniscus may or may not have catching or clicking of the knee as well as pain on the inside of the knee. He also opined that catching in the knee would be consistent with a medial meniscus tear. Dr. Cederberg was asked about the arthritic findings in the X-rays, and he agreed the findings were not necessarily consistent with any sort of symptoms in the knee.

Prior to deposition, Dr. Cederberg had not reviewed the records from Morris's knee surgery or post-operative physical therapy. He agreed the arthroscopy provides the most helpful diagnostic tool to discern whether she had a torn meniscus. Dr. Cederberg reviewed Dr. Humpherys' post-operative report from the arthroscopy in September of 2022. After reading the report, Dr. Cederberg opined Morris had several explanations for knee pain including the loss of cartilage of her femoral condyle, which is in the same area as medial meniscus. He stated most people who have debridement of the knee by scope for a degenerative condition do not do very well. He pointed to her still having persistent pain to support his conclusion that the meniscus is not the major cause of the pain. Dr. Cederberg was asked if Dr. Humpherys' suspicion of a torn meniscus was correct. He answered, "not particularly" and stated it was Morris's entire knee that was worn out. He further opined Morris's torn meniscus had been going on for years, and she had an arthritic knee which developed symptoms about a month or so after the September 9, 2019, injury. He believed the surgery was a reasonable and necessary medical treatment.

Having reviewed the expert opinions provided by the parties, the Department concludes Dr. Humpherys' opinion that Morris's September 6, 2019, work injury is a

major contributing cause of her condition is the most persuasive. While Dr. Humpherys acknowledged that imaging revealed signs of degeneration in Morris's knee, he supported his causation conclusion by listing his reasons for his opinion. First, she did not have symptoms prior to the injury. Second, the symptoms occurred after the injury. Morris experienced pain immediately after the incident, and she has required treatment since the injury. Third, her symptoms remained with conservative treatment. Her treating physicians tried various methods, injections, physical therapy etc., to treat her symptoms which did not offer the necessary relief. Finally, the surgery confirmed the meniscus tear which was consistent with the work incident. Dr. Humphreys opined the mechanism of injury, the course of her symptoms, and the imaging were all consistent with a torn meniscus. Therefore, the Department finds Dr. Humpherys causation opinion is not merely possible, it is medically probable. "[P]roof of causation 'must be established to a reasonable degree of medical probability, not just possibility.'"

Armstrong v. Longview Farms, LLP., 938 N.W.2d 425, 431.

In contrast, Dr. Cederberg's opinion that Morris merely suffered a contusion of the knee and her degenerative knee condition happened to become symptomatic mere weeks after her work injury is not well supported. He stated the usual course of treatment for a contusion would last around four weeks, a fact with which Dr. Humpherys agrees. However, his conclusion that the contusion injury must have resolved appears to ignore the persistence of Morris's symptoms over the months and years following the work incident. He appears to be relying on the usual course of treatment and ignoring the realities of Morris's individual situation. For these reasons, the Department does not find his opinion as persuasive as that of Dr. Humpherys.

The Department concludes Morris has shown by a preponderance of the evidence her September 9, 2019, work injury is and remains a major contributing cause of her condition and need for treatment. Both Dr. Humpherys and Dr. Cederberg agreed Morris's treatment has been reasonable and necessary for her condition. Therefore, the Department finds Morris has proven her treatment has been reasonable and necessary.

Entitlement to TTD Benefits:

As the Department has concluded Morris's work-related injury is a major contributing cause of her condition and need for treatment, she is also entitled to TTD for the five weeks of work she missed due to her knee surgery.

Conclusion:

Morris has proven by a preponderance of the evidence her September 9, 2019, work-related injury is and remains a major contributing cause of her current condition and need for treatment.

Employer and Insurer are responsible for the medical expenses listed in Hearing exhibit 2, plus interest.

Employer and Insurer are responsible for payment of TTD benefits for the period Morris was off work for her surgery in September and October of 2022, plus interest.

Employer and Insurer remain responsible for ongoing medical treatment as well as any other workers' compensation benefit Morris may be entitled to in the future as a result of her September 9, 2019, work-related injury.

Morris 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 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, Morris shall submit such Stipulation along with an Order consistent with this Decision.

Dated this day 29 of August 2024.

SOUTH DAKOTA DEPARTMENT OF LABOR & REGULATION



Michelle M. Faw
Administrative Law Judge