

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

JEFFREY A. WAGNER,

HF No. 67, 2013/14

Claimant,

v.

DECISION

**SANFORD HEALTH and DAKOTA
TRUCK UNDERWRITERS,**

Employer,

and

**THE LABORATORY OF CLINICAL
MEDICINE, INC. and QBE INSURANCE,**

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 April 26, 2016, in Sioux Falls, South Dakota. Claimant, Jeffrey A. Wagner, was present and represented by A. Russell Janklow of Johnson, Janklow, Abdallah, Reiter, & Parsons, L.L.P., Law Firm. Employer and Insurer, Sanford Health and Dakota Truck Underwriters, were represented by Rick W. Orr of Davenport, Evans, Hurwitz & Smith, L.L.P., Law Firm. Employer and Insurer, The Laboratory of Clinical Medicine, Inc. and QBE Insurance, were represented by Thomas J. Von Wald of Boyce Law firm L.L.P., Law Firm.

Legal Issue:

The legal issue presented at hearing is which insurer is responsible for Claimant's current condition.

Facts:

Based upon the testimony at the hearing and the record, the following facts are found by a preponderance of the evidence:

1. On and before April 30, 1992, Jeffrey Wagner (Wagner or Claimant) suffered a compensable injury to his lower back while working for The Laboratory of Clinical Medicine (LCM) which was at all times pertinent insured by QBE Insurance (QBE) for Worker's Comp purposes.

2. Wagner continues to receive treatment for pain in his lower back and down the left side of lower back into his leg as a result of the 1992 injury.
3. In 1994, Dr. Walter Carlson performed an impairment assessment on Wagner. He assigned Wagner a 15% impairment rating. Later that year, Dr. John Billion performed an IME on Wagner. Dr. Billion found evidence of degenerative disc disease and assigned Wagner a 15% impairment rating.
4. In 1997 Wagner was laid off from LCM and began working as a courier for Sanford Health (Sanford).
5. On February 11, 2011, Wagner suffered a compensable injury to his left hip while working for Sanford which was at all times pertinent insured by Dakota Truck Underwriters (Dakota Truck) for Worker's Comp purposes.
6. On March 15, 2011, Wagner sought treatment from Dr. Clayton Van Balen who diagnosed him with lower back strain. Wagner was prescribed physical therapy and ibuprofen.
7. In May, 2011, Wagner began treating with Dr. Christopher Janssen. Dr. Janssen diagnosed Wagner with strained left sacroiliac joint. Dr. Janssen prescribed physical therapy and SI joint injections.
8. June 12, 2012, Dr. Douglas Martin conducted an Independent Medical Evaluation (IME) on Wagner at Sanford's request. Dr. Martin concluded that the 2011 injury was no longer a major contributing cause of Wagner's need for treatment.
9. June 21, 2012, Sanford and Dakota Truck denied coverage of Wagner's 2011 injury due to Dr. Martin's IME.
10. Dr. Thomas Jetzer reviewed Wagner's medical records in September of 2014 and performed an IME on Wagner at Sanford's request in October 2014. Dr. Jetzer concluded that Wagner's condition was caused by degenerative back disease, and he could not find any evidence of SI joint dysfunction. He concluded that Wagner's 2011 injury was not currently contributing to his current issues.
11. At the time of hearing, Wagner was still seeing Dr. Janssen between three and five times a year for treatment. Dr. Janssen has concluded that Wagner's 1992 back injury is unrelated to the 2011 injury and resulting SI joint pain.

Additional facts may be developed in the issue analysis below.

Analysis:

The issue before the Department is which employer and insurer are responsible for Wagner's current condition. The Department must decide whether Wagner's work injury on February 11, 2011, is a major contributing cause of his current condition. "A cause which cannot be exceeded is a major contributing cause." *Orth v. Stoebner & Permann Const., Inc.*, 2006 SD 99, ¶ 42, 724 N.W. 2d 586, 593. The Court has stated that the opinion of experts is essential to deciding causation. "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). In the current matter, the Department will weigh the testimony of three doctors; Dr. Martin, Dr. Jetzer, and Dr. Janssen.

Dr. Martin is board certified by the American Board of Family Medicine and the American Board of Independent Medical Examiners. He is also a member of the advisory committee for the sixth edition of the AMA Impairment Guidelines. Dr. Martin estimated that about 20% of his practice is concerned with performing IMEs and record reviews, with the other 80% devoted to injury care, occupation medical services, job offer physicals, and fitness evaluations. Dr. Martin has been a practicing physician since 1994.

Dr. Martin performed an IME on Wagner on June 12, 2012 at the request of Sanford. The purpose of the IME was to determine whether the 2011 injury remains a major contributing case of SI dysfunction. He conducted a Faber's test on Wagner. Wagner did not report any pain during the examination. He concluded that the test results for joint problems were normal, and Wagner's low back pain was not resolved. Dr. Martin opined that Wagner's SI joint problems are caused by a chronic condition that cannot be treated with SI joint injections. Although, he did agree that Wagner seemed to have positive results controlling his pain with SI joint injections. Dr. Martin reviewed Wagner's medical record from 1992 to 2014. Dr. Martin considered Dr. Billion's finding of Wagner's left SI joint dysfunction to be significant as that was one of the things Wagner said he had following the 2011 injury. After examining Wagner's MRI results, Dr. Martin concluded that Wagner suffered from degenerative back disease and that the February 2011 injury did not inflict further injury on his back. He opines that the 1992 injury was the major contributing cause of Wagner's need for medical treatment. Dr. Martin reached several specific conclusions regarding Wagner's current condition. He concludes that the 2011 injury was a lumbar strain. The SI joint issues are a result of a chronic condition dating back to the early 90s and do not necessarily have anything to do with the 2011 injury. He reiterates Wagner's previously received impairment ratings and concludes no new impairment rating is warranted as a result of the 2011 injury. He stated that Wagner considers the pain to feel different from his previous injury pain, and the continued SI joint pain should be treated with physical therapy and exercise rather than injections. He concluded that Wagner has reached Maximum Medical Improvement (MMI), and no further treatment is necessary.

Dr. Jetzer is board certified and is licensed to practice in South Dakota, North Dakota, Minnesota, and Wisconsin. Most of his practice is concerned with the evaluation and treatment of work-related injuries. He also acts as medical director or consultant for a variety of national companies and governmental agencies. He performed a review of Wagner's medical records in September of 2014. He also physically examined Wagner in October of 2014. Dr. Jetzer concluded that Wagner's current condition is caused by degenerative back disease. He observed that Wagner has significant preexisting problems with his back dating back to 1992. He also concluded that Wagner has longstanding degenerative disk disease, lower back pain, and pain radiating into his left leg since his 1992 injury. Dr. Jetzer could not find any evidence of SI joint dysfunction. The bone scan he performed on Wagner did not show the presence or absence of ongoing inflammation or other SI joint pathology to justify ongoing SI joint injections. Like Dr. Martin, Dr. Jetzer believes the injury of 2011 was merely a strain. In his opinion, the 2011 injury is not contributing to Wagner's current condition.

Dr. Janssen is board certified in physical medicine and rehabilitation and is employed at the Sanford Spine Center. His practice includes helping individuals with brain, spine and other orthopedic injuries to manage their pain. He regularly treats patients with SI joint pain. He began treating Wagner on May 12, 2011. From his physical examination of Wagner, he has concluded that Wagner suffers pain in his SI joint near his left hip. Dr. Janssen has stated that anatomically the SI joint is the meeting of the hip and spine and cannot be considered hip or spine. Wagner was prescribed physical therapy, topical anti-inflammatory medication, and steroid joint injections. After every joint injection, Wagner reported a decrease in pain. On February 9, 2012, Dr. Janssen placed Wagner at maximum medical improvement. Dr. Janssen opines that the back injury in 1992 is unrelated to the 2011 injury and resulting SI joint pain. Dr. Janssen further states that the 2011 work injury is and remains the cause of Wagner's SI joint dysfunction and need for treatment.

Dr. Janssen states four reasons why he has reached this conclusion. First, Wagner sought treatment for worsened pain after the 2011 incident. Second, Wagner's mechanism of injury, a slip on ice, is a common cause of SI joint pain. Third, the physical examination on Wagner led Dr. Janssen to believe that the SI joint was the cause of pain, because the SI joint area was tender. Finally, the last reason Dr. Janssen believes SI joint pain as a result of the 2011 injury is the cause of Wagner's condition is Wagner's positive response to SI joint injections. Following each injections, Wagner reported his pain level decreased from the seven to nine range to the two to four range. Dr. Janssen uses Wagner's response to the injections as a diagnostic tool to conclude that the SI joint was the cause of the pain. Dr. Janssen states that had the 1992 injury been the cause of the pain, the injections would not have reduced the pain.

Dr. Jetzer disagrees with Dr. Janssen. He recommended a bone scan of the SI joint to aid in diagnosing Wagner's pain. He believes that the scan would reveal

inflammation in the SI joint. Dr. Janssen does not feel such a scan is necessary as he does not know of any study that shows a scan can diagnose SI joint pain. Also, he believes that the results of the SI joint injections are enough to effectively diagnose the pain.

Dr. Martin does not see the SI joint injections as a long term solution to Wagner's condition. Dr. Janssen agrees that the injections will not cure Wagner's condition, but will offer relief from pain. Dr. Martin does agree that the SI joint and L5-S1 joint, the point of the 1992 injury, are distinct areas.

Employer/Insurer argue that Dr. Janssen's conclusions lack foundational basis as he did not review the bulk of Wagner's medical records or MRI from before 2011. Dr. Janssen was not aware that Wagner's medical records include documented history of left-sided hip pain, including pain in his left SI joint and degenerative disc disease following the 1992 injury or that Dr. Billion found evidence of left SI joint dysfunction in 1994. He was also not aware of the prior impairment ratings assigned to Wagner. Dr. Martin and Dr. Jetzer, however, both conducted independent reviews of Wagner's entire prior medical and treatment records, including all of Wagner's numerous MRIs and imaging scans.

Dr. Janssen has stated that he considers the preexisting back issues as separate from the SI joint pain, and a full review of every medical record related to Wagner's back was not necessary to determine where the pain was coming from, the cause of the pain, and how to treat it. Dr. Janssen also stated that he had reviewed many pertinent records as far back as the 2000s including MRI reports from 2011 and 2012. Dr. Janssen also reviewed Dr. Jetzer's report which included a summary of Wagner's extensive medical history.

The Department considers Dr. Janssen's understanding of Wagner's pre-2011 condition to be adequate to diagnose causation. Dr. Janssen did not read the entirety of Wagner's medical record. However, he did read the records from the previous decade prior to injury as well as a summary of the records provided by Dr. Jetzer. Therefore, Dr. Janssen's conclusions have sufficient foundational basis.

While Dr. Martin and Dr. Jetzer have conducted a more thorough analysis of Wagner's medical history, Dr. Janssen's knowledge of the record, long term treatment of Wagner, and his diagnostic criteria regarding the efficacy of the SI joint injections are sufficient to persuade the Department that the 2011 injury to the SI joint is the cause of Wagner's current condition related to the SI joint area. The Department finds that the 2011 injury is the major contributing cause of Wagner's condition related to his SI joint. Therefore, Sanford Health and Dakota Truck Underwriters are responsible for any worker's compensation benefits Wagner is entitled to regarding SI joint dysfunction.

Conclusion:

The medical testimony has established that Wagner suffers from SI Joint dysfunction as a result of an injury while working for Sanford Health on February 11, 2011. Sanford Health and Dakota Truck Underwriters are responsible for any worker's compensation benefits as a result of this injury.

Counsel for LCM/QBE 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. Sanford/Dakota Truck shall have an additional twenty (20) days from the date of receipt of LCM/QBE'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, LCM/QBE shall submit such Stipulation along with an Order consistent with this Decision.

Dated this 25 day of August, 2017.

SOUTH DAKOTA DEPARTMENT OF LABOR & REGULATION

/Michelle Faw/

Michelle M. Faw

Administrative Law Judge