

SOUTH DAKOTA DEPARTMENT OF LABOR  
DIVISION OF LABOR AND MANAGEMENT

**JOEL DARLING,**

**Claimant,**

**HF No. 80, 2006/07**

**vs.**

**DECISION**

**WEST RIVER MASONRY, INC.,**

**Employer,**

**And**

**UNITED FIRE GROUP,**

**Insurer.**

This matter comes before the Department by way of a petition for workers compensation benefits. A hearing was held November 13, 2007. The Claimant, Joel Darling, was represented by Michael J. Simpson, Julius & Simpson, Rapid City; the Employer, West River Masonry, Inc., and the Insurer, United Fire Group, were represented by Eric C. Blomfelt and Jeremy D. Nauman, Blomfelt & Associates, Windsor, CO.

The Claimant has been employed by the Employer as a stone mason since 2001. On January 17, 2005, he was carrying concrete blocks into a basement when he slipped on a concrete stair; his feet came out from under him and his back hit the edge of the cement slab. He had immediate pain, but he continued to work. The pain got worse in his back, left side and left hip; he said "my left leg, I guess, was what started to kind of seize up or kind of stove up after a while."

The Claimant went to the doctor after he got off work "because I couldn't hardly walk. I kind of dragged myself along the house to get to the front door." He used his

daughter's crutches to get to the doctor, as he could not bear any weight on his left leg. He saw Dr. Vosler at the emergency room, and returned to him the following week. Vosler noted bruises to the Claimant's left femur and across his mid-lumbar spine.

After two months, the Claimant's leg problems had cleared up, but the back pain continued despite Dr. Vosler's conservative treatment. Insurer had him seen by Dr. Brett Lawlor, a rehabilitation medicine specialist, on May 27, 2005. Dr. Lawlor diagnosed discogenic low back pain and possible SI and facet dysfunction; he recommended physical therapy, along with Daypro and a Lidoderm patch. He ordered an MRI, which showed degenerative disc disease at L3-L4, L4-5 and L5-S1, facet hypertrophy and L3-L4 and L4-5, and mild foraminal stenosis.

Over the next year, Dr. Lawlor tried facet, epidural and joint injections, along with Ibuprofen, muscle relaxants and a neuromuscular electrostimulator, without success. On April 10, 2006, he assigned the Claimant a five percent whole person impairment for the lumbar spine; he restricted him to a maximum lift of 50 pounds occasionally, 30 pounds frequently, with occasional crouching and squatting. He could bend and twist frequently, but needed to change positions from sitting, standing, walking or bending every 30 minutes as necessary.

On May 12, 2006, the Claimant in his yard, teaching his young son how to swing a baseball bat. He demonstrated the swing, not taking a full swing, felt and heard a pop, and had severe pain. He said the pain felt like his original injury. He could not walk himself back to his house, and had to use the bat to support his weight. He had to pull himself into the house using a handrail. He returned to Dr. Lawlor, who prescribed some physical therapy. After a month of this, the Claimant had not improved much; he said "the pain feels slightly different than it did before." Dr. Lawlor ordered a second MRI.

Dr. Lawlor reviewed the MRI results on June 22, 2006. He noted spondylolysis at L4-5 and L5-S1 with anterolisthesis of L4 on L5, moderate canal stenosis and left lateral stenosis, mild grade I degenerative anterior spondylolysis at L5-S1 bilaterally, and disk bulges and facet arthrosis without obvious neural impingement. In comparing this MRI to the 2005 one, Dr. Lawlor noted that the disk bulges and S1 nerve encroachment were new. He felt conservative treatment options would not help, and referred him to Dr. Rand Schleusener, an orthopedic surgeon, for surgical consultation.

Dr. Schleusener offered the Claimant an L3-4 and L4-5 decompressive laminectomy, followed by three to four weeks off work or light duty. He opined that the Claimant's work was a major contributing cause to his current limitations, back pain, and radiating leg pain. He observed stress fractures at two levels in the lumbar spine, "which is unusual from a purely degenerative process." Such fractures are consistent with hyper-extension injuries such as the Claimant experienced. The bat incident had not contributed enough energy to significantly cause a stress fracture or injury to his low back; it had caused the Claimant's pain to flare up, but the primary cause of his need for treatment was his work injury.

Dr. Lawlor agreed that the Claimant's work injury is a major contributing cause for his medical conditions and need for treatment. He also agreed that the bat incident merely exacerbated his work injury, with the Claimant's pain complaints returning to their pre-incident level.

Dr. Greg Reichhardt, a physiatrist, did a records review for Employer/Insurer. He opined that the disk protrusions seen on the second MRI were a product of the bat swinging incident, and that therefore the 2005 work injury was not a major contributing cause for the Claimant's need for surgery.

As of the date of the hearing, the Claimant had not proceeded with surgery. He was working full time as a stone mason. His pain has not improved; he takes Vicodin and Lortabs, prescription medications, for his symptoms. His back pain and left leg pain worsened after the bat incident, but have since returned to the levels he had before that incident.

In order to collect worker's compensation benefits, the Claimant must establish a causal relationship between his injury and his employment. Arends v. Dakotah Cement, 2002 SD 57 ¶13, 645 NW2d 583. 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. Unless its nature and effect are plainly apparent, an injury is a subjective condition requiring an expert opinion to establish a causal relationship between the incident and the injury or disability. Orth v. Stuebner & Permann Construction, Inc., 2006 SD 99 ¶34, 724 NW2d 586.

Here, Dr. Lawlor and Dr. Schleusener have opined that the Claimant's symptoms temporarily increased after his bat swinging incident, but that his need for treatment, in particular the surgery he needs, are a product of his work injury. Dr. Schleusener believes the surgery is necessary because of a number of factors, including degenerative problems that arguably pre-existed the injury and at least two spinal stress fractures which were caused by his fall. Dr. Reichhardt agrees that the Claimant's fall on the steps could have caused those stress fractures. He also agrees that any medical treatment occurring before the bat swinging incident was caused by the Claimant's work injury. Dr. Schleusener and/or Dr. Lawlor treated the Claimant through all the relevant times involved, and would therefore be in a position to assess the changes, if any, caused by the bat swinging incident. Dr. Schleusener's and Dr. Lawlor's opinions on the connection between the Claimant's work injury and his need for

treatment are accepted, and any contrary opinions made by Dr. Reichhardt are rejected. Employer/Insurer is liable for those medical bills the Claimant has identified in the Hearing Exhibit, tab 9 (\$234.07) and for reasonable and necessary medical treatment he may require in the future.

Claimant shall submit proposed Findings of Fact and Conclusions of Law, and an Order consistent with this Decision within ten (10) days from the date of receipt of this Decision. Employer/Insurer shall have ten (10) days from the date of receipt of Claimant's proposed Findings of Fact and Conclusions to submit objections to them and/or to submit proposed Findings and Conclusions. 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 in accordance with this Decision.

Dated this 25<sup>th</sup> day of April, 2008.

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James E. Marsh  
Director