

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

RUSSELL EAGLEMAN,

HF No. 87, 2007/08

Claimant,

v.

DECISION

CHAMBERLAIN ACADEMY,

and

**YOUTH SERVICES INTERNATIONAL,
INC.,**

Employer,

and

**AMERICAN INTERNATIONAL GROUP,
INC.,**

Insurer.

This is a workers' compensation proceeding before the South Dakota Department of Labor, pursuant to SDCL 62-7-12 and ARSD 47:03:01. A hearing was held in this matter on November 22, 2011 in Pierre, South Dakota. Attorney John Dewell represents Claimant, Russell Eagleman (Claimant). Attorney Donald Porter represents Employer, Chamberlain Academy and Youth Services International, Inc. (Employer) and Insurer, American International Group Inc. (Insurer). Testifying at hearing was the Claimant, Russell Eagleman. The record contains depositions from Dr. John Jones, MD, Ms. Carol Herbst, Ms. Tonya Fischer, and Mr. Ronald Kills Warrior.

ISSUES:

The Issues before the Department are:

1. Whether Claimant gave timely notice to Employer of the September 2, 2006 heart attack?
2. Whether Claimant's injury or condition is work-related?

FACTS:

On September 2, 2006, Claimant was employed by Employer as a “group leader” and worked as a counselor and teacher. Employer is a minimum security residential treatment center for teenagers. On the morning of September 2, 2006, Claimant awoke feeling poorly. He was experiencing heaviness in his chest, shortness of breath, and heart palpitations before going to work on September 2, 2006. Later that morning, while at work, Claimant saw a resident attempting to harm herself. Claimant physically exerted himself to stop the resident’s behavior and took steps to further assist the resident.

While exerting himself, Claimant suffered a heart attack. After the resident was sent to the local emergency room, Claimant saw Ms. Tonya Fischer, the nurse who works for Employer. Ms. Fischer had just treated the resident and sent her to the hospital, although Ms. Fischer did not recall doing so. Nurse Fischer regularly sees employees as a “good Samaritan” and not as a medical professional treating the employees. Ms. Fischer had taken Claimant’s blood pressure and other vitals on a semi-regular basis prior to this incident, at Claimant’s request. Claimant has a medical history of high blood pressure. Ms. Fischer suggested that Claimant go to the hospital due to his excessive sweating, chest pressure, and irregular heartbeat.

Claimant was driven to the hospital emergency room by his supervisor, Ronald Kills Warrior, who drove into work specifically to drive Claimant to the hospital. Claimant presumed that Mr. Kills Warrior knew what precipitated the heart attack. Later that day, Claimant was air lifted to Sioux Valley Hospital. Employer did not complete any paperwork on Claimant’s heart attack and did not prepare a First Report of Injury for Insurer. The record does not indicate that a First Report of Injury or a Workers’ Compensation claim was ever reported to the SD Department of Labor and Regulation, regarding the incident on September 2, 2006.

Employer’s “Weekend Memo” (a memo Employer prepares to update staff members about the past weekend events) indicates that Claimant went to the local hospital with chest pains and was transferred to Sioux Valley Hospital in Sioux Falls. Employer denies knowing that Claimant’s heart attack came immediately after a resident injured herself and had to be restrained. This resident’s injury is also contained in the “Weekend Memo.” Nurse Fischer, in her deposition, testified that she did not recall a student being injured or having to be transferred to the local hospital for stitches.

The student punched out a window and needed twelve stitches. Claimant was the employee who had to restrain the resident and get her to the nurse's station before sending her to the hospital.

Claimant testified that he informed a hospital nurse that he was covered under Workers' Compensation insurance. The medical records and admission papers indicate that Claimant was covered under primary and secondary medical insurance, but it does not indicate that Claimant was claiming a workers' compensation injury or that his Employer's insurance was involved.

After the initial heart attack in September, Claimant had a second heart incident while at work on November 4, 2006. Claimant was still on restricted light duty when Claimant witnessed two residents fighting. He took steps to stop the altercation before other residents were injured. Claimant experienced an irregular heart rate and went to the doctor. Claimant also reported this injury immediately to Employer and completed paperwork for Employer and Insurer. Employer chose not to report this incident to Insurer and did not complete a First Report of Injury.

Further facts may be developed in the Analysis below.

ANALYSIS

1. Whether Claimant gave timely notice to Employer of the September 2, 2006 heart attack?

South Dakota law clearly delineates the procedures for reporting a workers' compensation injury. SDCL §62-7-10 reads:

An employee who claims compensation for an injury shall immediately, or as soon thereafter as practical, notify the employer of the occurrence of the injury. Written notice of the injury shall be provided to the employer no later than three business days after its occurrence. The notice need not be in any particular form but must advise the employer of when, where, and how the injury occurred. Failure to give notice as required by this section prohibits a claim for compensation under this title unless the employee or the employee's representative can show:

- (1)The employer or the employer's representative had actual knowledge of the injury; or
- (2)The employer was given written notice after the date of the injury and the employee had good cause for failing to give written notice within the three business-day period, which determination shall be liberally construed in favor of the employee.

SDCL §62-7-10. Employer had actual knowledge that Claimant had a heart attack while at work. Claimant's supervisors had actual knowledge that Claimant had a heart attack while at work. Claimant's supervisors and coworkers also knew that Claimant was helping a student with a self-inflicted wound when he had the heart attack. Employer's testimony regarding the time-line of the events is not credible.

However, just because Employer had actual knowledge that Claimant had a heart attack at work, does not necessarily mean that Employer had actual knowledge that Claimant suffered a work-related injury. South Dakota law defines a work related injury at SDCL§62-1-1(7), it reads 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.
- (c) If the injury combines with a preexisting work related compensable injury, disability, or impairment, the subsequent injury is compensable if the subsequent employment or subsequent employment related activities contributed independently to the disability, impairment, or need for treatment.

SDCL §62-1-1(7). A heart attack suffered at work is not a typical work-related injury. There is no obvious bleeding. Claimant was still able to move on his own, although he could not drive. No large piece of equipment fell on Claimant and Claimant did not fall and injure a skeletal part of his body. Claimant did not signify that he was in obvious pain. Claimant's heart attack was an internal injury that, according to even Claimant's expert witness, can have many triggering causes.

Employer is not expected to be a medical expert and determine whether an internal injury that has many causes is, on this one occasion, a work-related injury as opposed to a personal medical situation. Claimant had come to work complaining of feeling ill. Claimant needed to tell Employer that his heart attack was specifically related to and that his work was a major contributing cause of the heart attack.

Since Claimant was in the hospital for a period of time, Claimant had good cause not to immediately notify Employer of a work-related injury. Claimant may have told a nurse that this would be covered by workers' compensation, but it is not the responsibility of the nurse or the hospital to communicate that information to Employer and Insurer. Even after returning to work and after receiving the medical bills related to the heart attack, Claimant did not make a claim for benefits to Employer and Insurer. Claimant did not submit his medical bills to Employer. By law, it is Claimant's responsibility to make a claim for workers' compensation to Employer and Insurer.

Even liberally construing the statute for Claimant does not excuse his failure to submit any medical bills or request for payment or workers' compensation claim to Employer for a period of months. The Answer to the Petition for Hearing indicates that even at that time, Claimant had not submitted any bills to Employer or Insurer.

Claimant has failed to show that he gave proper and timely notice to Employer as required by SDCL §62-7-10. Claimant has also failed to show that Employer had actual knowledge of Claimant's potential work-related injury as required by SDCL §62-7-10(1) or that Claimant had good cause for failing to give timely notice to Employer as provided under SDCL §62-7-10(2). This failure to give proper and timely notice to Employer is a jurisdictional question and the lack of proper notice to Employer prohibits a claim for compensation by statute.

2. Whether Claimant's injury or condition is work-related?

The Decision in Issue I eliminates the Department's jurisdiction in this matter. However, since this is an administrative case, I will make an analysis in the second issue as well. Generally stated, the issue is whether Claimant's employment with Employer is a major contributing cause of Claimant's heart attack. The South Dakota Supreme Court, on the issue of causation, has stated:

The testimony of medical professionals is crucial in establishing the causal relationship between the work-related injury and the current claimed condition "because the field is one in which laypersons ordinarily are unqualified to express an opinion." Id. (quoting *Rawls v. Coleman-Frizzell, Inc.*, 2002 S.D. 130, ¶21, 653 N.W.2d 247, 252 (quoting *Day v. John Morrell & Co.*, 490 N.W.2d 720, 724 (S.D. 1992))). No recovery may be had where the claimant has failed to offer credible medical evidence that his work-related injury is a major contributing cause of his current claimed condition. SDCL 62-1-1(7). Expert testimony is entitled to no more

weight than the facts upon which it is predicated. *Schneider v. S.D. Dep't of Transp.*, 2001 S.D. 70, ¶16, 628 N.W.2d 725, 730 (citations omitted).

Darling v. West River Masonry, Inc., 2010 S.D. 4, ¶13, 777 N.W.2d 363, 367.

In this case, Claimant had a pre-existing hypertension or high blood pressure. He also had a number of risk factors that could have been a cause for his heart attack. Furthermore, on the day of his heart attack, Claimant awoke at 4:30 am with a rapid heartbeat, heaviness in his chest, and shortness of breath. The myocardial infarction happened around 8:30 am. Claimant's treating physician, Dr. John B. Jones, M.D., gave the opinion, in his sworn deposition, that Claimant was likely having "angina" or decreased blood flow prior to the incident at work. The triggering event for Claimant's heart attack or myocardial infarction could have been anything such as walking or smoking a cigarette.

Dr. Jones, in his deposition, could not say with a reasonable degree of medical probability, that there was some incident that occurred at work with Employer that led to Claimant's myocardial infarction. He said there could have been some relationship between the physical exertion of Claimant and his heart attack, but only if he did not have any profuse sweating or rapid heart rate prior to the exertion.

The level of proof necessary is well settled in South Dakota. The South Dakota Supreme Court has held:

The required proof of causation "must be established to a reasonable degree of medical probability, not just possibility." *Darling v. W. River Masonry, Inc.*, 2010 S.D. 4, ¶12, 777 N.W.2d 363, 367. "The evidence must not be speculative, but must be 'precise and well supported.'" Id. (citation omitted).

Jewett v. Real Tuff, Inc., 2011 S.D. 33, ¶23 (footnote omitted). In this case, Dr. Jones only said there was a possibility that the physical exertion was related to the heart attack. A possibility is not enough to prove causation.

Claimant has failed to show that his employment with Employer was a major contributing cause of his myocardial infarction suffered on September 2, 2006. Claimant has also failed to argue as well as prove that rapid heart rate reported on November 6, 2006 was caused by his employment.

Claimant's Petition for Workers' Compensation benefits is denied. Employer and Insurer shall submit proposed Findings of Fact and Conclusions of Law, and an Order consistent with this Decision within thirty (30) days from the date of receipt of this Decision. Claimant shall have twenty (20) days from the date of receipt of Employer's and Insurer's proposed Findings of Fact and Conclusions of Law to submit objections thereto or to submit 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, Employer and Insurer shall submit such stipulation along with an Order in accordance with this Decision.

DONE at Pierre, Hughes County, South Dakota, this 8th day of March, 2012.

SOUTH DAKOTA DEPARTMENT OF LABOR AND REGULATION

//s//
Catherine Duenwald
Administrative Law Judge