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

ZACHARY WAGER, **HF No. 96, 2023/24**

Claimant,

v. **DECISION**

BUCK'S ELECTRIC, INC.,

Employer,

and

AUTO-OWNERS 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 August 6, 2025. Claimant, Zachary Wager, was present and represented by Michael J. Simpson of Simpson Law Firm. The Employer, Buck's Electric, Inc, and Insurer, Auto-Owners Insurance were represented by Charles A. Larson of Boyce Law Firm.

Facts:

1. On November 16, 2020, Zachary Wager (Wager) began working for Buck's Electric (Employer) as an apprentice electrician. He assisted the journeyman with tasks such as pipe bending, running conduit, pulling wire, and installing devices. The materials Wager carried weighed between approximately 30 to 80 pounds. Employer was insured at all times pertinent to this matter by Auto-Owners Insurance (Insurer).

2. On June 15, 2021, Wager was working on a hotel remodel. The elevator was out of services requiring him to carry rolls of electrical wire up the stairs. He moved an estimated amount of 10 to 12 rolls per floor, often lifting and transporting them alone. At the end of the day, he felt discomfort in his groin and approximately two days later could see a ping pong ball sized bulge popping out of the skin. He reported the incident to Employer. His claim for workers' compensation was accepted as compensable by Insurer.
3. On June 28, 2021, Wager was seen by Danielle Shafer, a PA at Black Hills Urgent care. She found a left inguinal hernia and recommended a surgical consultation. Wager was directed to monitor the hernia and avoid heavy lifting.
4. On July 22, 2021, Wager was seen by Dr. Michael Statz, a surgeon specializing in hernias. He confirmed the hernia and discussed surgery with Wager.
5. On July 30, 2021, Dr. Statz performed the hernia surgery. During the surgery he also removed a lipoma of the spermatic cord.
6. On August 12, 2021, Dr. Statz saw Wager for a post-operative check and noted he was doing very well and could go back to supervisory work under 20 pounds for the next three weeks.
7. On October 19, 2021, Wager was seen at urgent care complaining of pain in the left side with cramping and a squeezing sensation of the testicle which caused him to become nauseated. He was referred back to his surgeon.
8. On October 26, 2021, Wager saw Dr. Statz who noted he had developed persistent pain down into the testicle and occasionally caused nausea and/or vomiting. Dr. Statz reviewed Wager's CT scan and noted that there were no signs of recurrent hernia, mass, or obvious problem. He believed the issue was

nerve pain related to the surgery. He referred Wager to a pain clinic for treatment.

9. On October 28, 2021, Wager was seen by Dr. Lance Doeden at Rapid City Medical Center Pain Medicine. Dr. Doeden noted Wager had been complaining of left lower abdominal pain referring into his left testicle which has been present for six weeks. Wager rated his pain between 1 and 7 out of 10 and described the pain as burning, achy, sharp, stabbing, shooting, and stinging pain. He described the pain as feeling like the testicle was being squeezed. Dr. Doeden believed that Wager had a genitofemoral neuralgia and discussed treatment options. He recommended medication management and was hopeful the pain would slowly improve with time.
10. On November 4, 2021, Dr. Doeden noted Wager was continuing to have pain which seemed to be worsening. He performed a left genitofemoral nerve block and noted the pre-procedure pain level was a 7/10 and the post-procedure pain level was a 3/10.
11. On December 3, 2021, Dr. Doeden noted that based on the nerve block, Wager's symptoms are secondary to left genitofemoral neuralgia. The blocks could be repeated as needed and on average it lasted for three to five months. Dr. Doeden noted that Wager had 80% pain relief that was ongoing at one month with increased function.
12. On February 8, 2022, Dr. Doeden saw Wager whose pain had returned as the nerve block has lasted for a month and half to two months. Dr. Doeden started Wager on Cymbalta and noted if he is not better in three weeks he would try Lyrica.

13. On March 2, 2022, Dr. Doeden noted Wager had gotten a good result following the Cymbalta and the medication would be continued indefinitely. He noted about 90% ongoing pain relief.
14. On April 20, 2022, Dr. Doeden noted Wager had recently had an exacerbation of pain. Dr. Doeden noted Wager would like to undergo neurectomy and referred him for a surgical evaluation.
15. On April 29, 2022, Dr. Doeden performed another left genitofemoral nerve block for Wager.
16. On May 12, 2022, Wager was seen by Dr. David Fromm for a surgical evaluation of chronic left inguinal pain. Dr. Fromm reviewed Wager's operative report and concluded that his significant pain would be consistent with entrapment of the ileal nerve and possible inflammation of the genital branch of the genitofemoral nerve. Dr. Fromm recommended surgery.
17. On May 27, 2022, Dr. Fromm performed surgery on Wager.
18. Between June 8, 2022, and August 31, 2022, Wager was seen by Dr. Fromm's office four times. The notes indicate Wager was returned to light duty work. The notes further provided that Wager received some benefit from the surgery and his pain returned and was worsened by certain work activities.
19. On September 27, 2022, Dr. Doeden noted that the left genitofemoral neurectomy did not provide Wager with pain relieve. He continued to have symptoms consistent with genitofemoral neuralgia. Wager was on Gabapentin 300 mg three times a day which had a sedating effect.
20. On October 17, 2022, Dr. Doeden saw Wager who continued to have neuralgia symptoms and rated his pain relief about 50%.

21. On December 8, 2022, Dr. Bruce Elkins performed a record review at the request of Employer and Insurer. Dr. Elkins opined that Wager's work activity was not a major contributing cause of his hernia, because his hernia was congenital in nature. Insurer denied the claim based on Elkins' report.
22. On May 18, 2023, Wager was seen by Sandra Erickson, CNP at Rapid City Medical Center complaining of persistent left groin pain. He was given a nerve block of the left genitofemoral nerve.
23. On May 18, 2023, Wager was seen by Dr. Statz to discuss the continue pain following the inguinal hernia surgery. Dr. Statz reviewed Wager's records and noted he did not have any documentation of any hernia prior to July 22, 2021. He further noted that Wager's high school sports physicals had never documented any inguinal hernia. He concluded that this was a new hernia and lifting heavy objects at work would be a contributing factor. Wager had lifted heavy materials over 50 pounds at work during the time the hernia was diagnosed and then became acutely symptomatic.
24. On June 9, 2023, Wager was seen by CNP Erickson reporting 90% improvement of pain two weeks after the nerve block but has pain had slightly returned.
25. On June 15, 2023, Wager received another nerve block performed by Dr. Doeden.
26. On September 15, 2023, Wager noted 100% improvement in his pain after the recent nerve block until a week prior.
27. On September 19, 2023, Wager received another nerve block.
28. On January 30, 2024, Wager noted the nerve block lasted about four months and started wearing off two weeks prior.

29. On February 5, 2024, Wager received another nerve block.
30. On February 7, 2024, Dr. Statz responded to a letter from Wager's attorney, in which he opined, that the June 15, 2021, work injury/work activities are a major contributing cause of Wager's hernia condition and need for treatment.
31. On December 10, 2024, Dr. Doeden saw Wager who reported he was doing much better and was only getting around three episodes a year of the pain.
32. On April 3, 2025, Dr. Doeden saw Wager who was complaining of pain for which Celebrex was prescribed.
33. On April 8, 2025, Dr. Elkins completed an Independent Medical Examination (IME) of Wager.
34. On April 7, 2025, Dr. Doeden performed another nerve block.

Additional facts may be developed in the issue analysis below.

To prevail in this matter, Wager must first prove that 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

He 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. 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, ¶ 22, 959 N.W.2d 903. The standard of proof for causation in a workers' compensation claim is a preponderance of the evidence. *Armstrong v. Longview Farms, LLP,* 2020 S.D. 1, ¶ 21, 938 N.W.2d 425, 430. "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).

Wager has offered the expert medical opinion of Dr. Statz a general surgeon who has practiced in Rapid City, SD for 35 years. He graduated from Creighton University in 1984 and has served as professor of surgery at the University of South Dakota School of Medicine from 1991 to present. He has performed between 4,000 and 5,000 hernia surgeries in his career. Dr. Statz was deposed on May 6, 2025. He testified that because he had done many hernia surgeries, he had developed expertise in taking patient histories about what caused them. He further testified about the condition of Wager's hernia and the surgery to repair it. He specifically mentioned that Wager's hernia was broader based than most he would see in a younger patient. Dr. Statz was asked if the broad-based hernia could imply it was the result of a lifting incident, and he opined that it could have been what brought on the hernia.

Dr. Statz reviewed Dr. Fromm's operative notes and explained that scar tissue had pulled the nerve, and it was stuck to the back where the muscle was closed. He explained that the delayed pain Wager experienced matched up with Dr. Fromm's

operative notes as the scar tissue developed over time. Scar tissue grabbing onto a nerve as it heals is an expected risk of the type of surgery according to Dr. Statz. The doctor was aware that Wager had been diagnosed with a patent processus vaginalis (PPV) prior to the hernia in 2021. He noted that the medical records showed the diagnosis of a hydrocele. Dr. Statz testified that if a person has a hydrocele, it means there is a small tubular connection, about the size of a coffee straw, between the abdomen and the testicle. He testified that Wager's PPV was diagnosed when he was 13 years old and could have closed up after it was diagnosed as a high percentage will seal and close.

Dr. Statz was asked about a medical journal article which stated that after two years old, up to 40% of males continue to have a PPV, with around half remaining asymptomatic through life. He was questioned whether there is a greater risk of indirect inguinal hernia with lifting or straining in individuals with PPV. He explained that because of the tubular connection there is a greater risk, and with pressure that tube could enlarge. Dr. Statz stated that Wager's history of being asymptomatic until around June 2021 when he began doing heavy lifting and became symptomatic supports his opinion. He testified that the stress and strain of heavy lifting is a significant contributing factor for many hernias. Dr. Statz opined that Wager's work for Employer is and remains a major contributing cause of his hernia and need for surgery. There is a significant chance that the strain of the PPV could have converted it into the indirect inguinal hernia. He also opined that the medical treatment Wager has received was reasonable and necessary.

Employer and Insurer have offered the expert medical opinion of Dr. Elkins. Dr. Elkins graduated from the University of Wisconsin Madison in 1993. He is licensed in

SD and is board-certified in occupational medicine. He retired from the VA in April of 2023, and he is not currently practicing medicine. He performs IMEs, record reviews, and impairment ratings. Dr. Elkins has issued thousands of causation opinions. He estimated the number of hernia IMEs he has completed as probably in the low hundreds.

In his December 2022 medical record review, Dr. Elkins opined Wager's alleged work incident was not a major contributing cause of the hernia due to the type of hernia. On April 8, 2025, Dr. Elkins' completed an IME of Wager, after reviewing updated medical records, depositions, and relevant medical literature. At his deposition on June 10, 2025, Dr. Elkins opined that indirect inguinal hernias which occur in someone before middle age, are more likely to be caused by a PPV. He stated that the path the hernia takes is the same path as the PPV. He further opined that direct inguinal hernias are often suffered by middle aged men, and they are caused by an accumulation of forces, like repetitive lifting, over time. Dr. Elkins stated the direct inguinal hernias present more medial in the body and closer to the belly button. He opined in his record review that Wager's age and brief duration of employment were consistent with a congenital indirect hernia as opposed to a direct hernia caused by work activities. He opined that the records stating Wager had a hydrocele and the indirect inguinal type of hernia indicate he had a PPV.

During his deposition, Dr. Elkins stated that during surgery Dr. Statz removed two things, the hernia and the lipoma. He opined that only the lipoma was large enough to see bulging out of the external ring. Dr. Elkins concluded that what Dr. Statz observed was not a hernia but was instead the lipoma. He further opined that any person could suffer from the same symptoms and examination findings that Wager had from a

spermatic cord lipoma alone. Dr. Elkins theory regarding the lipoma is unsupported by Dr. Statz's and Dr. Fromm's surgical findings as well as the notes provided by Wager's other treating physicians.

Dr. Elkins opined that the only major contributor to Wager's hernia and need for treatment would be the congenital PPV which allowed for the hydrocele, lipoma, and eventually the smaller indirect inguinal hernia. He concluded that Wager's work for Employer was not a major contributing cause. Although, he did agree that someone with a heavy occupation such as Wager has more of a chance to develop a hernia than someone who works a sedentary job.

Both medical experts agree on multiple elements of this matter. They agree 1) the PPV likely made Wager more vulnerable to an indirect inguinal hernia; 2) heavy lifting can contribute to a hernia; and 3) many men have a PPV but remain asymptomatic throughout their lives. In the areas that the experts disagree, the Department finds Dr. Statz opinion more persuasive than that of Dr. Elkins.

Employer and Insurer assert that Dr. Statz's opinion is based merely on temporal sequence. They point to Dr. Statz specific deposition testimony where he was asked if the reason for his disagreement with the opinion that the repetitive heavy lifting was not related to the broad-based indirect hernia sac was because Wager was not having symptoms before his work with Employer. He responded that it was "the best he could do in this scenario." Statz Depo. pg. 51. "The axiom '*post hoc, ergo propter hoc,*' refers to 'the fallacy of ... confusing sequence with consequence,' and presupposes a false connection between causation and temporal sequence." *Rawls v. Coleman-Frizzell, Inc.*, 2002 S.D. 130, ¶ 20, 653 N.W.2d 247, 252. However, while Dr. Statz does consider the fact Wager was asymptomatic before his work for Employer to be a factor,

it is not the only factor he considers. Dr. Statz's opinion is also based on: 1) the mechanism of injury that is consistent with the development of a broad-based hernia such as that suffered by Wager; 2) that having a PPV predisposes a patient to having a hernia; and 3) his treatment of Wager including surgery during which he observed and repaired the hernia, which he believed was consistent with an acute work-related hernia caused by the heavy lifting/carrying described by Wager. He is not solely relying on temporal sequence.

Employer and Insurer assert that Dr. Statz's testimony does not meet the requirements of medical probability. "Causation must be established to a reasonable medical probability, not just a possibility." *Truck Ins. Exch. v. CNA*, 2001 S.D. 46, ¶ 19, 624 N.W.2d 705, 709 (Citations omitted). During his deposition, Dr. Statz was asked about pressure from lifting leading to a broader-based hernia. He testified that it was a "plausible explanation" for why it was broader than usually seen for an indirect hernia sac. Statz Depo. pg. 17. The Department considers Dr. Statz's opinion as a whole. "There are no 'magic words' needed to express an expert's degree of medical certainty, and the test is only whether the expert's words demonstrate that he or she is expressing an expert medical opinion." *Orth v. Stoebner & Permann Const. Inc*., 2006 SD 99, ¶ 44, 724 N.W.2d 586, 596 (Citation omitted). Dr. Statz years of experience specifically handling hernias, along with his multifactor opinion regarding causation persuade the Department that his opinion is not only based on more than mere temporal sequence but also meets the necessary requirements of medical probability.

Dr. Elkins has referred to Wager's heavy lifting at work as the final straw that broke the proverbial camel's back. However, a preponderance of the evidence leads the Department to conclude that Wager's heavy lifting for Employer was not merely the last

straw but was instead a major contributing cause of his condition and need for treatment. Therefore, Wager has met his burden of proof. Employer and Insurer are responsible for Wager's medical expenses and ongoing medical care related to his work-related hernia.

Counsel for Claimant 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 Claimant'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, Claimant shall submit such Stipulation along with an Order consistent with this Decision.

Dated this 14th day of January 2026.

SOUTH DAKOTA DEPARTMENT OF LABOR & REGULATION

Michelle M. Faw
Administrative Law Judge