

SUPREME COURT OF SOUTH DAKOTA

Orth v. Stoebner & Permann Construction, Inc.

724 N.W.2d 586 (S.D. 2006) · No. No. 23731 · Decided November 15, 2006

SUMMARY

The Supreme Court of South Dakota reviewed a workers' compensation claim involving a construction employee whose degenerative back condition allegedly worsened through physically demanding work. The court held that the claimant's work-related activities could constitute a major contributing cause of his disability despite a preexisting condition, reversed the denial of benefits, and remanded the case.

CASE DETAILS

COURT	Supreme Court of South Dakota
WRITING FOR THE COURT	Gors, Circuit Judge; Gilbertson, Chief Justice; Meierhenry, Justice; Zinter, Justice; Bastian, Circuit Judge; Gors, Circuit Judge, sitting for Sabers, Justice; Bastian, Circuit Judge, sitting for Konenkamp, Justice
JURISDICTION	South Dakota
DECIDED	November 15, 2006
DOCKET	No. 23731
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Claimant appealed from a circuit court decision affirming the South Dakota Department of Labor's denial of workers' compensation benefits.
STANDARD OF REVIEW	The court reviews agency factual findings based on live testimony for clear error, documentary factual determinations de novo, questions of law de novo, and mixed questions of law and fact de novo. An appeal from a trial court's appellate review of an administrative decision is reviewed de novo without a presumption that the trial court was correct.
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	Dwain Orth v. Stoebner & Permann Construction, Inc., American Family Mutual Insurance Co.

TOPICS

workers compensation

administrative law

judicial review of agency action

standard of review

appellate procedure

PRACTICE AREAS

workers' compensation

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appellate procedure

QUESTIONS PRESENTED

1. Whether Orth's work-related activities were a major contributing cause of his disability despite his preexisting degenerative spinal condition.
2. Whether the employer had actual knowledge of Orth's injury and its potential work-relatedness sufficient to satisfy the workers' compensation notice requirement.

HOLDINGS

1. A claimant with a preexisting condition satisfies the major-contributing-cause requirement when competent medical evidence establishes that work-related activities were at least equally responsible for the disability; a cause that cannot be exceeded by another cause is a major contributing cause. Orth proved that his work-related activities were a major contributing cause of his disability.
2. An employer has actual knowledge sufficient to excuse written notice when it has sufficient knowledge of a possible compensable injury and sufficient knowledge that the injury may be related to the employee's work for that employer. Orth established that his employers had such actual knowledge.

KEY QUOTATIONS

"A cause which cannot be exceeded is a major contributing cause." (724 N.W.2d at 596)

"In other words, to satisfy the actual knowledge notice requirement, the employer: 1) must have sufficient knowledge of the possibility of a compensable injury, and 2) must have sufficient knowledge that the possible injury was related to employment with the employer." (724 N.W.2d at 598)

"If an employer is put on notice that an injury may be work related, the employer has actual knowledge sufficient to satisfy SDCL 62-7-10(1)." (724 N.W.2d at 600)

FACTUAL BACKGROUND

Orth worked for Stoebner & Permann Construction performing physically demanding construction work involving bending, stooping, and heavy lifting. After several years, his degenerative back condition worsened; he required light duty and a shortened workweek and eventually left employment because he could no longer perform the work. His treating orthopedic physician apportioned responsibility for the disability equally between preexisting degenerative changes and work-related activities, while the employer's expert attributed the condition to aging and other non-work-related causes. Orth's employers knew of his worsening back problems, his requests for reduced work, and that his back condition contributed to his departure.

PROCEDURAL HISTORY

The Department of Labor hearing examiner denied Orth's claim after finding that he failed to prove causation of his disability. The First Circuit Court affirmed on causation and separately ruled that the employer lacked actual knowledge of the work-related nature of Orth's condition. The Supreme Court of South Dakota reversed the causation and notice determinations and remanded to the Department for determination of permanent and total disability under the odd-lot doctrine.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

Remand to the South Dakota Department of Labor for a determination whether Orth was permanently and totally disabled under the odd-lot doctrine.

CASES CITED

- Tischler v. United Parcel Service, 1996 SD 98, 552 N.W.2d 597
- Capital Motors v. Schied, 2003 SD 33, 660 N.W.2d 242
- Brown v. Douglas School District, 2002 SD 92, 650 N.W.2d 264
- Horn v. Dakota Pork, 2006 SD 5, 709 N.W.2d 38
- Arends v. Dacotah Cement, 2002 SD 57, 645 N.W.2d 583
- Westergren v. Baptist Hospital of Winner, 1996 SD 69, 549 N.W.2d 390
- Day v. John Morrell & Co., 490 N.W.2d 720 (S.D. 1992)
- Deuschle v. Bak Construction Co., 443 N.W.2d 5 (S.D. 1989)
- Rawls v. Coleman-Frizzell, Inc., 2002 SD 130, 653 N.W.2d 247
- Truck Insurance Exchange v. CNA, 2001 SD 46, 624 N.W.2d 705
- King v. Johnson Bros. Construction Co., 83 S.D. 69, 155 N.W.2d 183 (1967)
- Caldwell v. John Morrell & Co., 489 N.W.2d 353 (S.D. 1992)
- Stormo v. Strong, 469 N.W.2d 816 (S.D. 1991)
- Vaughn v. John Morrell & Co., 2000 SD 31, 606 N.W.2d 919
- Welch v. Automotive Co., 528 N.W.2d 406 (S.D. 1995)
- St. Luke's Midland Regional v. Kennedy, 2002 SD 137, 653 N.W.2d 880
- Schuck v. John Morrell & Co., 529 N.W.2d 894 (S.D. 1995)
- Elmstrand v. G & G Rug & Furniture Co., 77 S.D. 152, 87 N.W.2d 606 (1958)
- Mudlin v. Hills Materials Co., 2005 SD 64, 698 N.W.2d 67
- Shykes v. Rapid City Hilton Inn, 2000 SD 123, 616 N.W.2d 493
- Streyle v. Steiner Corp., 345 N.W.2d 865 (S.D. 1984)
- Clausen v. Northern Plains Recycling, 2003 SD 63, 663 N.W.2d 685
- Loewen v. Hyman Freightways, Inc., 1997 SD 2, 557 N.W.2d 764

- *Therkildsen v. Fisher Beverage*, 1996 SD 39, 545 N.W.2d 834
- *Lawler v. Windmill Restaurant*, 435 N.W.2d 708 (S.D. 1989)

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