In the Matter of the Compensation of
PENELOPE A. STEVENS, Claimant
WCB Case No. 01-00686
ORDER ON REVIEW
Allison Tyler, Claimant Attorneys
Reinisch Et Al, Defense Attorneys

Reviewing Panel: Members Phillips Polich and Lowell.

The insurer requests review of that portion of Administrative Judge (ALJ) Davis' order that set aside its denial of claimant's occupational disease claim insofar as it pertained to a bilateral medial epicondylitis condition. On review, the issue is compensability. We affirm.

FINDINGS OF FACT

We adopt the ALJ's "Findings of Fact" with the following supplementation. Dr. Sparling indicated that because she did not focus on the "attribution to work" issue, she had no opinion as to the major contributing cause of claimant's condition. (Ex. 56-10).

CONCLUSIONS OF LAW AND OPINION

Claimant worked as an electron/ion gun assembler for her employer for more than four years. In fall 2000 she experienced pain and swelling in her elbows, forearms and hands. Claimant was diagnosed with bilateral medial epicondylitis and submitted an occupational disease claim for that condition. The insurer denied the claim. Claimant requested a hearing.

The ALJ concluded that compensability was demonstrated through claimant's testimony and by the persuasive opinions of Dr. Hagen, claimant's family physician, and Dr. Sparling, a consulting physician. The insurer contends that Dr. Hagen's opinion is unpersuasive because: (1) his diagnosis of claimant's condition was not supported by objective evidence; (2) the language used in his final opinion casts doubt as to his conclusion with respect to causation; (3) he failed to weigh the relative contributions of claimant's off-work activity; and (4) he did not explain why claimant's condition did not improve when her work activities were reduced. Because we agree with the ALJ's assessment of Dr. Hagen's opinion, we adopt the ALJ's reasoning and conclusion regarding compensability with the following supplementation.

Claimant is required to establish that her work activities were the major contributing cause of her bilateral medial epicondylitis condition. *See* ORS 656.266; ORS 656.802(2)(a); *Jessica R. Porter*, 53 Van Natta 672 (2001). Because of the possible alternative causes for claimant's condition, this matter involves a complex medical question that must be resolved by expert medical opinion. *See Uris v. Compensation Department*, 247 Or 420 (1967). When, as here, there is a dispute between medical experts, more weight is given to those medical opinions that are well reasoned, and based on complete and accurate information. *See Somers v. SAIF*, 77 Or App 259, 263 (1986).

Dr. Hagen, claimant's family physician, diagnosed bilateral medial epicondylitis on October 5, 2000. Claimant was subsequently referred to insurer-arranged medical examiners Dietrich and Yarusso, whose report describing the findings of other physicians and detailing claimant's work activities was reviewed by Dr. Hagen. Based on his physical examinations and review of Dr. Yarusso's report, Dr. Hagen concluded that claimant's work activities were the major contributing cause of her bilateral epicondylitis condition.

Dr. Hagen's opinion was expressed in an April 19, 2001 concurrence, in which he offered the following clarifying statements:

> "[I]nflammation of the extensor & flexor tendons as [illegible] from the medial & lateral epicondyles of the elbow is the definition of epicondylitis. Tenderness at the epicondyle is indicative of epicondylitis. Ms. Stevens has epicondylitis to exam. Again, I certainly do not believe this is caused by a rheumatological disorder but is secondary to repetitive microtrauma to the tendons secondary to her use of hand tools." (Ex. 51-2).

The insurer argues that these remarks indicate only that claimant's work may have precipitated the need for treatment and are therefore insufficient to establish that claimant's work activities were the major contributing cause of the disease. *See Tammy L. Foster*, 52 Van Natta 178 (2000) (claimant must prove work activities are major contributing cause of occupational disease itself, not just major contributing cause of disability or treatment associated with it). The insurer cites *Shannon Dahlquist*, 51 Van Natta 1406 (1999) in support of its position on this point. In *Dahlquist*, we interpreted a physician's statement that cephalgia, occipital neuralgia and thoracic outlet syndrome were *secondary* to a compensable strain/sprain as indicating that those conditions arose after the injury and, thus,

were "consequential conditions." Within that context, we were not convinced that the physician's use of the term *secondary* necessarily meant "major contributing cause."

Here, considered within the context of his previous chart notes and the additional material included within the same concurrence, we interpret Dr. Hagen's language to mean that claimant's work activities involving use of hand tools caused repetitive microtrauma to her tendons resulting in inflammation of the extensor and flexor tendons at the medial epicondyle, *i.e.*, epicondylitis, and find that it is sufficient to establish that claimant's work activities were the major contributing cause of the disease itself. Dr. Hagen's explanation describes the disease process that produced claimant's bilateral epicondylitis. Dr. Hagen's contemporaneous opinion that claimant's "work assembling electron guns has been the major contributing cause of her development of bilateral medial and lateral epicondylitis" supports our construction of his clarifying language. (Ex. 51-1, 2).

Dr. Hagen's opinion is supported by objective evidence. During examinations on October 5, 2000, October 20, 2000 and February 20, 2001, Dr. Hagen identified tenderness to palpation over both right and left epicondyles. (Exs. 34, 27, 49). In addition, Drs. Yarusso, Farris and Sparling independently identified tenderness on palpation of one or both medial epicondyles. (Exs. 47-8, 49a-6, 53-2). Such reproducible tenderness verified on separate occasions satisfies the "objective findings" requirement set forth in ORS 656.802(2)(d). *See* ORS 656.005(19); *Timmy L. Flowers*, 52 Van Natta 2084 (2000) (reproducible tenderness verified on separate occasions by different examiners constitutes "objective findings").

The insurer asserts that Dr. Hagen's opinion is unpersuasive as it fails to weigh the contribution of claimant's off-work activities as required by *Dietz v. Ramuda*, 130 Or App 397 (1994) *rev dismissed* 320 Or 416 (1995). Claimant testified that during the period that she worked for her employer, she crocheted or sewed five hours per week, at most. (Tr. 17). When her symptoms developed, she gardened an hour or two each week, but was then working 10-12 hours per day, six days per week and had no time to sew or crochet. (Tr. 8, 9, 16, 21). The ALJ found claimant's testimony to be credible based on her demeanor at hearing. We find no reason not to defer to the ALJ's credibility determination. *See Erck v. Brown Oldsmobile*, 311 Or 510, 528 (1991); *James E. Board*, 52 Van Natta 442, 443 (2000). No other physician concluded that claimant's off-work activities contributed to her condition. Under such circumstances, we are not persuaded that

the described off-work activities were particularly significant. Accordingly, we do not discount Dr. Hagen's opinion for its failure to discuss them.

Finally, in light of claimant's testimony that her symptoms slowly and incrementally improved after she was placed on light duty in October 2000, we are not persuaded by the insurer's argument that Dr. Hagen's opinion is flawed in its failure to explain why claimant's symptoms did not abate during periods when her work activities were reduced.

The insurer urges us to rely on the opinions of Drs. Yarusso, Thomas Dietrich, Farris and Schilperoort who suspected that an underlying rheumatological condition was responsible for her condition. For the reasons expressed by the ALJ, we find consulting rheumatologist Dr. Sparling's opinion that claimant's symptoms are not of rheumatological origin more persuasive those medical opinions to the contrary. *See Abbott v. SAIF*, 45 Or App 657, 661 (1980); *Michael R. Dowell*, 49 Van Natta 1289, 1290 (1997).

Alternatively, the insurer relies on the opinion of Dr. Topper, an orthopedic surgeon specializing in the treatment of hands, attributing claimant's condition to age-related wear and tear. We find Dr. Topper's opinion unpersuasive as it is conclusory. Dr. Topper does not explain how age-related wear and tear produced claimant's condition or the method by which a medical expert may distinguish between wear and tear attributable to age, and wear and tear attributable to work activities. Rather, Dr. Topper's opinion is based on his acceptance of recent and admittedly controversial evidence questioning the role of repetitive activity as an etiological factor in causation of upper extremity pain problems. (Ex. 54-9,10, 20, 22, 23).

Under these circumstances, we find the opinion of Dr. Hagen the most persuasive as it is well reasoned, consistent with claimant's testimony and based on an accurate understanding of claimant's work activities. Consequently, we conclude that claimant's occupational disease condition is compensable.

Claimant's counsel is entitled to an assessed attorney fee for services on review. ORS 656.382(2). After considering the factors set forth in OAR 438-015-0010(4) and applying them to this case, we find that a reasonable fee for claimant's attorney's services on review is $1,400, to be paid by the insurer. In reaching this conclusion, we have particularly considered the time devoted to the case (as represented by claimant's respondent's brief), the complexity of the issue, and the value of the interest involved.

ORDER

The ALJ's order dated December 31, 2001 is affirmed. For services on review, claimant's counsel is awarded an assessed attorney fee of $1,400, to be paid by the insurer.

Entered at Salem, Oregon on August 21, 2002