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In the Matter of the Compensation of  
**LANNY E. BRENNER, Claimant**  
WCB Case No. 01-00398  
ORDER ON REVIEW  
Claimant Unrepresented  
Mark P Bronstein, Defense Attorneys

Reviewing Panel: Members Phillips Polich and Lowell.

Claimant, *pro se*, requests review of Administrative Law Judge (ALJ) Otto's order that: (1) declined to continue the hearing for the submission of evidence regarding claimant's co-worker's personnel file; (2) declined to consider evidence regarding the co-worker's treatment of other employees preceding his altercations with claimant; (3) allowed the self-insured employer to examine witnesses and cross-examine claimant regarding claimant's activities regarding an employee's strike and personnel matters concerning claimant; and (4) upheld the employer's denial of claimant's occupational disease claim for a mental disorder. The employer moves to strike portions of claimant's reply brief that refer to matters not presented as evidence at the hearing. Claimant objects to the employer's motion as untimely filed. On review, the issues are the parties' procedural motions, the ALJ's evidentiary rulings, and compensability.

We adopt and affirm the ALJ's order with the following supplementation.

The employer moves to strike portions of claimant's reply brief.<sup>1</sup> The employer contends that we should not consider evidence referenced in the brief that was not offered at hearing. We agree, and have therefore not considered any such evidence and/or arguments. *See* ORS 656.295(5) (review by the Board should be based on the record submitted to it).

The ALJ upheld the employer's denial of claimant's mental disorder claim based on the opinion of Dr. Glass, who examined claimant at the request of the employer. On review, claimant contends that the ALJ erred in making several evidentiary rulings: (1) holding that portions of claimant's co-worker's personnel file were not discoverable;<sup>2</sup> (2) declining to consider evidence regarding the

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<sup>1</sup> The employer's motion to strike is not an appellate brief, and is not subject to the time limits of OAR 438-011-0020. We therefore deny claimant's motion to strike the employer's motion.

<sup>2</sup> *See* the ALJ's March 14, 2002 Interim Order.

co-worker's treatment of other employees prior to his altercations with claimant; and (3) allowing the employer to cross-examine him regarding a union strike and personal matters pertaining to the death of his father and to a prior conviction for Driving Under the Influence of Intoxicants (DUII).

ORS 656.283(7) provides that an ALJ is "not bound by common law or statutory rules of evidence \*\*\* and may conduct a hearing in any manner that will achieve substantial justice." The statute has been interpreted to give ALJ's broad discretion in admitting evidence. *See, e.g., Brown v. SAIF*, 51 Or App 389, 394 (1981). We review the ALJ's evidentiary ruling for abuse of discretion. *Rose M. LeMasters*, 46 Van Natta 1533 (1994), *aff'd mem LeMasters v. Tri-Met, Inc.*, 133 Or App 258 (1995). For the following reasons, we find no abuse of discretion in the ALJ's rulings.

With regard to the co-worker's personnel file, the ALJ denied claimant's Motion to Compel production for any period of time outside June 2000 through January 8, 2001, and his request for any documents pertaining to the alleged harassment of other workers by the co-worker. Similarly, the ALJ declined to consider testimony about the alleged harassment of other workers. We find that the ALJ did not abuse his discretion in so limiting the evidence. Evidence of the co-worker's treatment of other workers is not relevant to claimant's claims of being harassed or mistreated by that co-worker. Furthermore, documents from the co-worker's personnel file outside the time period relevant to the mental disorder are not material to claimant's claim.

We also find no abuse of discretion with respect to the scope of cross-examination regarding the union strike and the personal matters. Initially, we note that the ALJ *sustained* claimant's objection to a question about his prior DUII conviction. (Tr. I, 203). With regard to the death of claimant's father, that event was noted by claimant's treating physician Dr. Lisook as stressful and causing "situational depression," and was therefore relevant to claimant's mental disorder claim. (Ex. I). Finally, the line of questioning regarding claimant's and other workers' participation in a prior labor union strike was properly allowed. It was relevant to the alleged bias of several of claimant's coworker's against the "harassing" co-worker.

In any event, even if we resolved all evidentiary issues in claimant's favor, we would still find that claimant failed to satisfy his burden of proving, by clear and convincing evidence, that his mental disorder was caused in major part by

employment conditions not generally inherent in every working situation. ORS 656.802(3)(b), (d).

Where the medical evidence is divided, we rely on those medical opinions that are well-reasoned and based on complete and accurate information. *Somers v. SAIF*, 77 Or App 259 (1986). Dr. Lisook concluded that claimant's work stress was the major contributing cause of his mental disorder. (Ex. 14). We agree with the ALJ that the medical opinions of Drs. Lisook and Steinberg<sup>3</sup> were conclusory in comparison to the opinion of psychiatrist Dr. Glass, and are therefore unpersuasive. *See Moe v. Ceiling Systems*, 44 Or App 429, 433 (1980) (rejecting conclusory medical opinion).

In addition, Drs. Lisook and Steinberg failed to distinguish between claimant's workplace stressors that are "generally inherent" in every working situation as opposed to those that were not generally inherent. ORS 656.802(3)(b); *Patti Z. Stinnett*, 54 Van Natta 1300 (2002). In other words, even assuming some workplace stressors cited by claimant were not generally inherent (such as the co-worker's harassment), other stressors were generally inherent (the employer's reasonable response and disciplinary action with regard to the co-worker). *See Reginald Cuffee*, 53 Van Natta 747 (2001) ("Because we find that the employer's disciplinary action was reasonable, it must be considered as an 'excluded' work-related factor.")

Instead, we rely on the well-reasoned opinion of Dr. Glass that claimant does not have "a diagnosis of a mental or emotional disorder which is generally recognized in the medical or psychological community" as required by ORS 656.802(3)(c). (Ex. 12-11). For these reasons, we affirm the ALJ's order upholding the employer's denial.

### ORDER

The ALJ's order dated May 13, 2002 is affirmed.

Entered at Salem, Oregon on December 18, 2002

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<sup>3</sup> Dr. Steinberg, a consulting psychologist, concurred with Dr. Lisook. (Ex. 15).