
In the Matter of the Compensation of
DANIEL L. MCMURTREY, Claimant
WCB Case No. 00-09146
ORDER ON REVIEW
Claimant Unrepresented
James B. Northrop, SAIF Legal, Defense Attorneys

Reviewing Panel: Members Lowell, Bock, and Phillips Polich. Member Phillips Polich dissents.

Claimant, *pro se*, requests review of Administrative Law Judge (ALJ) Black's order that upheld the SAIF Corporation's denial of his occupational disease claim for right carpal tunnel syndrome. On review, the issue is compensability.

We adopt and affirm the ALJ's order with the following supplementation.¹

The ALJ found the opinion of Dr. Zirkle unpersuasive on the ground that it was inadequate because it was insufficiently explained and reasoned. The ALJ also concluded that Dr. Zirkle had an inaccurate history of claimant's work activities.

Dr. Zirkle provides the only medical opinion in the record that supports compensability. When asked whether age and wrist shape contributed to claimant's right carpal tunnel syndrome, Dr. Zirkle indicated that "all are factors but repetitive use is most culpable." (Ex. 9-1). SAIF contends that Dr. Zirkle's opinion does not establish that work activities were the major factor in claimant's carpal tunnel syndrome; *i.e.*, more than 50 percent of the cause of the disease. We agree.

Claimant must prove that his work activities are the major contributing cause of his occupational disease claim. ORS 656.802(2)(a). To satisfy the "major

¹ Inasmuch as claimant is unrepresented, he may wish to contact the Workers' Compensation Ombudsman, whose job it is to assist injured workers regarding workers' compensation matters. He may contact the Workers' Compensation Ombudsman toll-free at 1-800-927-1271 or write to:

Workers' Compensation Ombudsman
Dept. of Consumer & Business Services
350 Winter St NE
Salem, OR 97301

contributing cause” standard, claimant must establish that his work activities contributed more to the claimed condition than all other factors combined. *See, e.g., McGarrah v. SAIF*, 296 Or App 145, 146 (1983). Here, as explained above, Dr. Zirkle indicated that age and wrist shape contributed to claimant’s right carpal tunnel syndrome, but that repetitive use was the “most culpable.” This opinion is insufficient to meet claimant’s burden of proof because we are unable to determine whether Dr. Zirkle believed that claimant’s work activities contributed more to claimant’s condition than the other factors combined. Accordingly, we agree that the denial must be upheld.

Claimant argues in his brief that the opinions of Dr. Baker and Dr. Tesar are unpersuasive. Even if the opinions of these doctors are unpersuasive, in order to establish compensability of his right carpal tunnel syndrome, the law requires that claimant have persuasive medical evidence establishing compensability of his claim. For the reasons expressed above and by the ALJ, Dr. Zirkle’s opinion is insufficient to meet claimant’s burden of proof under ORS 656.802.

ORDER

The ALJ’s order dated September 21, 2001 is affirmed.

Entered at Salem, Oregon on June 11, 2002

Member Phillips Polich dissenting.

I respectfully disagree with the majority and would find that Dr. Zirkle’s opinion is sufficient to establish compensability of claimant’s right carpal tunnel syndrome. In this regard, Dr. Zirkle explained that a combination of the job injury and repetitive use caused by repeated loading of trucks is responsible for claimant’s right carpal tunnel syndrome. Dr. Zirkle noted that the carpal tunnel syndrome can have multiple causes, including even the vibrations from claimant’s truck driving activities as well as putting his wrist in extension when he drives a truck. (Ex. 7).

Dr. Zirkle indicated that while age and wrist shape were factors in claimant’s right carpal tunnel syndrome, repetitive use (at work) was the most culpable factor. I would find that the doctor’s statement that repetitive use was the “most culpable” factor, is sufficient, in combination with his earlier opinions, to establish that the doctor believed it was the major contributing cause of claimant’s condition. It is

well settled that a doctor is not required to use “magic words” in order to establish compensability. *See McClendon v. Nabisco Brands*, 77 Or App 412, 417 (1986).

In conclusion, on this record, I believe that claimant has established compensability of his right carpal tunnel syndrome. Accordingly, I would reverse the ALJ’s order and set aside the denial.