
In the Matter of the Compensation of
SAHARA ROBLES, Claimant
WCB Case No. 01-03623
ORDER ON REVIEW
Glen J Lasken, Claimant Attorneys
Julie Masters, SAIF Legal, Defense Attorneys

Reviewing Panel: Members Biehl, Bock, and Phillips Polich.¹

The SAIF Corporation requests review of Administrative Law Judge (ALJ) Crumme's order that set aside its partial denial of claimant's occupational disease claim for a left elbow condition. On review, the issue is compensability.

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

In December 1999, claimant filed an occupational disease claim for bilateral arm and wrist pain. (Ex. 1). In March 2000, SAIF accepted the claim for "bilateral rotator cuff tendinitis, bilateral deQuervains's tenosynovitis and bilateral epicondylitis." (Ex. 6).

On September 21, 2000, Dr. Andrews (attending physician) believed that repeat nerve conduction studies revealed progressive ulnar neuropathy. (Ex. 11). Dr. Andrews referred claimant to Dr. Coe. (*Id.*) Based on his review of claimant's electrodiagnostic studies and his own findings of positive Tinel's and percussion of the ulnar nerve, Dr. Coe diagnosed left cubital tunnel syndrome. (Ex. 13).

Claimant requested that SAIF accept left ulnar neuropathy of the left elbow as a "new condition." (Ex. 24).

In December 2000, claimant was evaluated by Drs. Seres and Glass at SAIF's request. (Exs. 16; 18). Dr. Seres opined that claimant probably had some evidence of left medial epicondylitis and concluded that claimant did not have signs of ulnar neuropathy at the time of his evaluation. (Ex. 18-8; 18-9). Dr. Glass opined that claimant had a pain disorder associated with psychological factors and a general medical condition. (Ex. 16-13).

¹ After consultation with the Department of Justice, this Board has chosen to exercise its right to issue orders as a panel of three pursuant to ORS 656.718(2) and (3).

On March 6, 2001, claimant had another electrodiagnostic study that Dr. Andrew interpreted as normal. (Ex. 26-2; 26-4).

On March 16, 2001, Dr. Dickerman performed a record review at SAIF's request. (Exs. 28; 31). Dr. Dickerman opined that the December 1999 electrodiagnostic study (Exhibit 4) contained either a transcription error or an interpretation error in that it did not expressly appear from the test results that the left ulnar nerve had been tested both above and below the elbow. (Ex. 28-3). Dr. Dickerman further opined that that September 2000 electrodiagnostic study (Exhibit 12), demonstrated a drop in conduction velocity, greater on the left than the right, with the left side being below normal. (Ex. 28-5). Because claimant's neuropathy symptoms continued after she had been taken off work in July 2000, Dr. Dickerman questioned the causal relationship of claimant's work to the ulnar neuropathy condition. (Ex. 28-6). Dr. Dickerman did not comment on the March 3, 2001 electrodiagnostic study.

SAIF declined to accept left ulnar neuropathy/cubital tunnel syndrome. (Ex. 33; 35). Claimant requested a hearing.

The ALJ determined that claimant's left ulnar neuropathy condition should be analyzed as an occupational disease pursuant to ORS 656.802. Relying on the opinions of Dr. Andrews and Dr. Coe, the ALJ concluded that the major contributing cause of claimant's left ulnar neuropathy condition was her work exposure. Consequently, the ALJ set aside SAIF's denial of that condition.

On Board review, SAIF asserts that Dr. Andrews' causation opinion is based on erroneous information, and thus is not persuasive. Reasoning that Dr. Andrews' opinion is the only opinion supporting compensability, SAIF argues that claimant has failed to establish the compensability of her left elbow condition.

Claimant responds that Dr. Andrews had a complete and thorough understanding of claimant's job duties, and thus had an accurate history on which to base an opinion. Further, claimant suggests that the material contributing cause standard, rather than the major contributing cause standard applied by the ALJ governs her "new medical condition" claim. We begin by determining which standard (material contributing cause or major contributing cause) applies to this claim.

An occupational disease stems from conditions that develop gradually over time. ORS 656.802; *Mathel v. Josephine County*, 319 Or 235, 240 (1994);

Catherine F. Hardin, 53 Van Natta 642 (2001). By contrast, an injury is sudden, arises from an identifiable event, or has an onset traceable to a discrete period of time. *Mathel*, 319 Or at 240; *Active Transportation Co. v. Wylie*, 159 Or App 12, 15 (1999); *Valtinson v. SAIF*, 56 Or App 184, 188 (1982); *Hardin*, 53 Van Natta at 642.

Here, claimant does not allege that the disputed condition resulted from a sudden or identifiable event. Rather, claimant contends that her left ulnar neuropathy condition (as did the previously accepted conditions) developed from cumulative trauma at work over a period of years. (Ex. 7b). Consequently, claimant's "new medical condition" should be analyzed as an occupational disease under ORS 656.802.² Accordingly, the major contributing cause standard applies to claimant's "new medical condition" claim for left ulnar neuropathy.³

To satisfy the "major contributing cause" standard, claimant must establish that her work activities contributed more to the claimed condition than all other factors combined. *See, e.g., McGarrah v. SAIF*, 296 Or 145, 146 (1983). A determination of the major contributing cause involves the evaluation of the relative contribution of different causes of claimant's disease and deciding which is the primary cause. *See Dietz v. Ramuda*, 130 Or App 397 (1994), *rev dismissed* 320 Or 416 (1995). Because of possible alternative causes for her current condition, resolution of this matter is a complex medical question that must be resolved by expert medical opinion. *See Uris v. Compensation Department*, 247 Or 420 (1967).

When there is a dispute between medical experts, more weight is given to those medical opinions which are well reasoned and based on complete information. *See Somers v. SAIF*, 77 Or App 259, 263, (1986). In evaluating

² ORS 656.802(2)(a) provides: "A worker must prove that the employment conditions were the major contributing cause of the disease."

³ Citing *Anna Madriz*, 52 Van Natta 282 (2000), claimant argues that the material contributing cause standard is applicable to her claim for the left ulnar neuropathy condition. We disagree. In *Madriz*, the claimant's "new medical condition claim" for a lateral meniscus tear was based on an "injury" theory as opposed to an "occupational disease" theory. 52 Van Natta at 282. Consequently, we applied the material contributing cause standard. (*Id.*) Here, however, the "new medical condition" claim is based on an "occupational disease" theory (cumulative trauma) rather than an "injury" theory. Consequently, *Madriz* is distinguishable. Accordingly, we reject claimant's argument.

medical opinions, we generally defer to the treating physician absent persuasive reasons to the contrary. *See Weiland v. SAIF*, 64 Or App 810 (1983).

Dr. Andrews based his diagnosis of left ulnar neuropathy on nerve conduction studies demonstrating slowing of the nerve conduction velocity isolated across the elbow, positive Tinel's sign at the elbow, positive elbow flexion test, and decreased sensation in 4 and 5 relative to digits 1-3 of the left hand. (Ex. 21-1; 21-2). Finding that claimant had engaged in repetitive use of the left arm through April 2000 consistent with the production of ulnar neuropathy, and further finding that claimant did not engage in any other types of activities that could cause an ulnar neuropathy, Dr. Andrews opined that the major contributing cause of claimant's left ulnar neuropathy was her work activities. (Exs. 19; 34-2; 34-3). Dr. Andrews' opinion appears to be well reasoned and based on accurate information.⁴

SAIF contends that Dr. Andrews' opinion is not persuasive because it is based in part on a December 1999 electrodiagnosis test that is inconclusive. We acknowledge that the December 1999 test does not appear to have completely tested claimant's left ulnar nerve. Nonetheless, the diagnosis of left ulnar neuropathy was confirmed by the nerve conduction testing of September 2000, as interpreted by Dr. Andrews, Dr. Coe, and Dr. Dickerman. Consequently, we reject SAIF's argument.

Next, SAIF contends that Dr. Andrews' opinion is not persuasive because it is inconsistent with Dr. Dickerman's opinion; *i.e.*, if claimant's condition was work related, the condition should improve after claimant stopped working. Contrary to SAIF's assertion, claimant's ulnar neuropathy condition did improve after she quit work. Specifically, claimant's nerve conduction test was normal by March 2001. (Ex. 26-2; 26-4). Consequently, we conclude that Dr. Andrews' opinion is not inconsistent with Dr. Dickerman's opinion.

Lastly, SAIF asserts that Dr. Andrews' opinion is not persuasive because he did not take into account the opinions of Drs. Seres and Glass that claimant's ulnar neuropathy condition was psychological. First, we note that neither Dr. Seres nor Dr. Glass appear to be aware of the September 2000 electrodiagnostic test objectively establishing an abnormal condition of claimant's left ulnar nerve. Because the opinions of Drs. Seres and Glass appear to rest on

⁴ Dr. Coe did not dispute Dr. Andrews' causation opinion. (Ex. 25).

incomplete information, we do not find their opinions persuasive. *See Miller v. Granite Construction Co.*, 28 Or App 473, 476 (1977); *William R. Ferdig*, 50 Van Natta 442, 443 (1998). Moreover, there is no evidence that claimant's alleged psychological condition could affect the outcome of a nerve conduction test. Consequently, we reject SAIF's argument.

In conclusion, finding no persuasive reason to do otherwise, we defer to the opinion of Dr. Andrews. Accordingly, we conclude that claimant has established the compensability of her left ulnar neuropathy condition.

Claimant's attorney is entitled to an assessed 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 \$1,700, to be paid by SAIF. 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 September 7, 2001 is affirmed. For services on review, claimant is awarded a \$1,700, attorney fee, payable by SAIF.

Entered at Salem, Oregon on May 9, 2002