
In the Matter of the Compensation of
BRUCE C. GETCHELL, Claimant
WCB Case No. 01-09373, 01-09124
ORDER ON REVIEW
Philip H Garrow, Claimant Attorneys
Alice M Bartelt, SAIF Legal, Defense Attorneys

Reviewing Panel: Members Langer and Phillips Polich.

The SAIF Corporation requests review of those portions of Administrative Law Judge (ALJ) Stephen Brown's order that affirmed an Order on Reconsideration that awarded 13 percent (41.6 degrees) unscheduled permanent disability for low back and right shoulder conditions¹ and 4 percent (6 degrees) scheduled permanent disability for loss of use or function of the right leg (knee). Claimant cross-requests review of those portions of the ALJ's order that: (1) declined to award an attorney fee under ORS 656.382(2) regarding the unscheduled permanent disability award, and (2) declined to increase his unscheduled permanent disability award. On review, the issues are extent of unscheduled and scheduled permanent disability and attorney fees. We reverse in part and modify in part.

FINDINGS OF FACT

Claimant was compensably injured on February 3, 2000 when he slipped on steps and fell. (Ex. 1). SAIF accepted a right rhomboid muscle strain, right lumbar paraspinal muscle strain and right knee strain. (Ex. 4). SAIF subsequently denied compensability of claimant's current cervical condition. (Ex. 6).

Dr. Moore was claimant's attending physician at the time of claim closure. Dr. Moore concurred with the impairment findings of Dr. Schilperoort, who examined claimant in April 2001. (Exs. 2, 3).

A June 15, 2001 Notice of Closure awarded 1 percent (1.5 degrees) scheduled permanent disability for loss of use or function of the right leg (knee). (Ex. 5). Claimant requested reconsideration and Dr. Andrews performed a medical arbiter examination in September 2001. (Ex. 10).

¹ The Order on Reconsideration awarded 13 percent (41.6 degrees) unscheduled permanent disability for claimant's low back and right shoulder conditions. SAIF does not challenge the unscheduled permanent disability award for claimant's right shoulder condition.

An October 26, 2001 Order on Reconsideration relied on Dr. Andrews' findings and awarded 13 percent (41.6 degrees) unscheduled permanent disability for claimant's low back and shoulder conditions and 4 percent (6 degrees) scheduled disability for loss of use or function of the right leg (knee). (Ex. 13).

CONCLUSIONS OF LAW AND OPINION

Low Back Impairment

The Order on Reconsideration relied on the opinion of Dr. Andrews and awarded a 2 percent impairment value for reduced lumbar extension. The ALJ affirmed that award, reasoning that, to the extent Dr. Andrews' opinion was inconsistent with his lumbar range of motion findings, it was not persuasive.

For the purpose of rating permanent disability, only the opinions of claimant's attending physician at time of claim closure, other medical findings with which the attending physician concurred, and the findings of the medical arbiter may be considered. *See* ORS 656.245(2)(b)(B); ORS 656.268(7); *Tektronix, Inc. v. Watson*, 132 Or App 483 (1995); *Koitzsch v. Liberty Northwest Ins. Corp.*, 125 Or App 666 (1994). On reconsideration, where a medical arbiter is used, impairment is established by the medical arbiter, unless a preponderance of medical opinion establishes a different level of impairment. OAR 436-035-0007(14). We do not automatically rely on the opinion of the medical arbiter but, rather, give greatest weight to the most thorough, complete, and well-reasoned assessment of the worker's injury-related impairment. *See Kenneth W. Matlack*, 46 Van Natta 1631 (1994).

Here, claimant relies on the opinion of Dr. Andrews, medical arbiter, to establish his low back impairment. Dr. Andrews measured claimant's lumbar range of motion and found that his lumbar extension was 20 degrees and flexion was 75 degrees. (Ex. 10-6). OAR 436-035-0360(19) and (20). He noted, however, that claimant's lumbar flexion was invalidated by the straight leg raising validity check. (Ex. 10-5). In the body of the report, Dr. Andrews explained that there were no significant abnormal findings related to the lumbar spine. (Ex. 10-4). Furthermore, he did "not consider [claimant] to have any residual impairments related to his right lumbar paraspinal muscle strain[.]" (Ex. 10-5). Dr. Andrews also said that claimant's lumbar ranges of motion were "well within normal limits[.]" (Ex. 10-5).

Thus, although Dr. Andrews' measurements indicate that claimant may be entitled to a 2 percent impairment value for loss of lumbar extension, OAR 436-035-0360(20), the text of his opinion said that claimant's lumbar ranges of motion were within normal limits and he did not believe claimant had any residual impairment related to his right lumbar paraspinal muscle strain. (Ex. 10-4, -5).

Claimant argues that Dr. Andrews' otherwise unexplained statement regarding his residual impairment does not mean that he had no residual symptoms or loss of motion of the low back. According to claimant, Dr. Andrews' findings are well explained and supported by other evidence in the record.

In *Atkins v. Allied Systems*, 175 Or App 487, 495 (2001), the court explained that the Board is not bound by the attending physician's or medical arbiter's opinion and may "reject those medical reports that it did not find persuasive." See also *James v. SAIF*, 176 Or App 337 (2001) (Board was not required to accept the medical arbiter's opinion or find it persuasive). Here, Dr. Andrews' opinion does not support a permanent disability award because he did not believe claimant had "any residual impairments related to his right lumbar paraspinal muscle strain[.]" (Ex. 10-4, -5). Although Dr. Andrews' measurements indicate claimant may be entitled to a 2 percent impairment value for loss of lumbar extension, we are unable to reconcile that finding with the text of his opinion, which said claimant's lumbar range of motion was within normal limits and further, that claimant did not have any impairment related to the accepted low back condition. Under these circumstances, we find Dr. Andrews' opinion insufficient to establish that claimant has impairment related to his accepted right lumbar paraspinal muscle strain.

The only other opinion regarding claimant's low back impairment is from Dr. Schilperoort, who found that claimant's lumbar spine ranges of motion were normal and there was no permanent impairment of function related to claimant's lumbar strain injury. (Ex. 2-8, -9). Dr. Moore, the attending physician, concurred with his report. (Ex. 3). Dr. Schilperoort's report does not support a finding of impairment related to claimant's accepted lumbar strain. We conclude that claimant is not entitled to an unscheduled permanent disability award for his low back condition.

Right Knee Impairment

The June 15, 2001 Notice of Closure awarded 1 percent scheduled permanent disability for claimant's right knee, based on reduced flexion.

(Ex. 5-2). The Order on Reconsideration relied on the findings of Dr. Andrews and awarded 4 percent scheduled permanent disability for reduced knee flexion. (Ex. 13). The ALJ relied on Dr. Andrews' evaluation because it was closer in time to the reconsideration order, and he affirmed the award for claimant's right knee condition.

SAIF argues that Dr. Andrews' opinion does not support a 4 percent scheduled permanent disability award for the right knee condition. For the following reasons, we agree with SAIF.

Dr. Andrews found that claimant's right knee flexion was 135 degrees flexion, whereas the left knee flexion was 145. (Ex. 10-3). He explained that there were "no significant abnormal findings" related to the right knee. (Ex. 10-4). Later in the report, he said that claimant's symptoms had resolved well and he did not consider claimant "to have any residual impairments related to his * * * right knee sprain." (Ex. 10-5). Furthermore, Dr. Andrews concluded that claimant's ranges of motion in his knees were within normal limits. (*Id.*)

Although Dr. Andrews' knee flexion findings indicate claimant may be entitled to a 4 percent value for reduced knee flexion, OAR 436-035-0220(1) and OAR 436-035-0007(23), the text of his opinion does not support a scheduled permanent disability award. Dr. Andrews said there were no significant abnormal right knee findings, he did not consider claimant to have "any residual impairments" related to his right knee sprain, and he said that claimant's knee ranges of motion were within normal limits. (Ex. 10-4, -5). We are unable to reconcile Dr. Andrews' knee flexion measurements with his opinion that claimant's knee range of motion was normal and that he did not have any residual impairment related to his accepted knee strain. Under these circumstances, Dr. Andrews' opinion is not persuasive because he did not provide a well-reasoned assessment of claimant's injury-related right knee impairment. There are no other medical opinions that support a 4 percent value for reduced knee flexion.

SAIF agrees that it is precluded from seeking a reduction of claimant's scheduled permanent disability award below the Notice of Closure award of one percent scheduled permanent disability for loss of use or function of the right knee. *See Duncan v. Liberty Northwest Ins. Corp.*, 133 Or App 605 (1995). We agree the one percent (1.5 degrees) scheduled permanent disability award for the right knee should be reinstated.

Social/Vocational Factors

The ALJ affirmed a 5 percent unscheduled permanent disability award for a chronic right shoulder condition, and neither party challenges that award. The Order on Reconsideration found that in the prior five years, claimant had worked as a recreational vehicle repairer, Dictionary of Occupational Titles (DOT) code 869.261-022, at a medium base functional capacity (BFC). (Ex. 13-5). The Order on Reconsideration said that claimant's residual functional capacity (RFC) was "light." (Ex. 13-6). The Order on Reconsideration concluded that claimant's age and educational value was "2" and the adaptability factor was "3."

The ALJ found that claimant's work activities were consistent with those of a recreational vehicle repairer, DOT 869.261-022, because claimant had a higher level of expertise than that indicated for the description of a motor vehicle assembler, DOT 806.684-010.

Claimant agrees that his BFC is "medium" and his RFC is "light." He disagrees, however, with the analysis of the social and vocational factors. Claimant argues that the ALJ erred in finding that his job at the time of injury was a recreational vehicle repairer, DOT 869.261-022. He contends that the motor vehicle assembler position, DOT 806.684-010, is a more accurate job description. Thus, the dispute pertains to the appropriate DOT code and corresponding value for his Specific Vocational Preparation (SVP) time. Claimant's SVP value is the highest SVP of any job he has held in the prior five years. OAR 436-035-0300(3)(b).

Claimant began working for the employer in September 1995. (Ex. 1). He was injured in February 2000 when he was stepping out of a motor coach. (Ex. B). Claimant's description of the accident said, in part:

"Coach in wash bay was leaking during flood test. Went out to show PDI crew what to do to fix. When leaving coach my wet shoes slipped on top step moulding and I fell down the steps." (Ex. 1).

The employer's section of the "801" form listed his occupation as "production" for an "RV Manufacturer." (*Id.*) A SAIF claim information sheet showed claimant's occupation as "assembler." (Ex. A).

Dr. Dawson's February 8, 2000 chart note indicated that claimant had been previously injured at work when he was "breaking a frozen nut on suspension of a motor home." (Ex. B). A March 28, 2001 chart note from claimant's physical therapist said that claimant had returned to work and had a sharp pain lifting a 15 to 18 pound door. (Ex. 1E). In April 2001, Ms. Parker-Cullen, FNP, reported that claimant planned to break up his job tasks at four different stations. (Ex. 1G). Dr. Schilperoort examined claimant on behalf of SAIF and reported that claimant had been functioning as a team leader for the mechanics station at the time of his injury. (Ex. 2-2). A May 14, 2001 chart note from FNP Parker-Cullen said claimant was "now a troubleshooter," which involved climbing inside coaches and repairing wiring. (Ex. 2A). Dr. Andrews, the medical arbiter, reported that claimant was a "trouble-shooter and does not do any sort of heavy lifting or use pneumatic tools." (Ex. 10-2).

The DOT description for a recreational vehicle repairer, 869.261-022, provides:

"Repairs recreational vehicles, such as campers, travel trailers, and motor homes according to customer service request or work order: Confers with customer or reads work order to determine nature and extent of damage to vehicle. Inspects, examines, or tests parts or item to be repaired or replaced. Lists parts needed, estimates costs, and plans work procedure, using parts list, technical manuals, diagrams, and personal knowledge. Removes damaged exterior panels of vehicle, using handtools. Repairs and replaces structural frame members, seals leaks, and replaces or repairs malfunctioning items, such as heaters, stoves, refrigerators, or water pumps, using equipment and tools, such as drill press, wrenches, and saws. Repairs electrical wiring, plumbing, and gaslines (propane), using items such as caulking compounds, electrical wiring and tape, and plastic or copper pipe. Refinishes wood surfaces on cabinets, doors, moldings, walls, using woodworking tools, spray equipment, paints, and varnishes. Inspects, examines, and tests functional parts of vehicle, using pressure gauges, ohmmeter, and other test equipment, according to work order, to verify completeness of

work performed on new or repaired units before delivery to customer.”

The DOT description for a motor vehicle assembler, 806.684-010, provides, in part:

“Assembles motor vehicles, such as automobiles, trucks, buses, or limousines, at assigned work stations on moving assembly line, performing any combination of following repetitive tasks according to specifications and using handtools, power tools, welding equipment, and production fixtures: Loads stamped metal body components into automated welding equipment that welds together components to form body subassemblies. Positions and fastens together body subassemblies, such as side frames, underbodies, doors, hoods, and trunk lids, to assemble vehicle bodies and truck cabs preparatory to body welding process. Bolts, screws, clips, or otherwise fastens together parts to form subassemblies, such as doors, seats, instrument control panels, steering columns, and axle units. Installs mechanical and electrical components and systems, such as engine, transmission, and axle units; pumps; wire harnesses; instrument control panels; and exhaust, brake, and air-conditioning systems. Fits and adjusts doors, hood, and trunk lids. Seals joints and seams, using caulking gun. Fastens seats, door paneling, headliners, carpeting, molding, and other trim into positions. Fills vehicle systems with brake and transmission fluids, engine coolant, and oil. May apply precut and adhesive coated vinyl tops and pads to vehicle roofs. May verify quality of own work and write description of defects observed on documents attached to vehicle bodies. May enter and retrieve production data, using computer terminals. May work as member of assembly group (team) and be assigned different work stations as production needs require or shift from one station to another to reduce fatigue factor. May participate in group meetings to exchange job related information.”

We agree with claimant that the record indicates he worked in a manufacturing facility, rather than a repair shop. A SAIF claim information sheet

showed claimant's occupation as "assembler." (Ex. A). The chart notes referring to claimant's different work stations and the fact that claimant was a team leader for the "mechanics station," and lifting doors are consistent with the description for motor vehicle assembler. On the other hand, the evidence that claimant was showing a crew how to fix something, worked as a "team leader" involved in repairs and a "troubleshooter" who was involved in inspections indicates that his job duties are consistent with the description for a recreational vehicle repairer

After reviewing the record, we find that many of claimant's duties overlap and are included in the DOT descriptions of both a recreational vehicle repairer, 869.261-022, and motor vehicle assembler, 806.684-010. Under these circumstances, we conclude that the combination of DOT codes most accurately describes claimant's job duties. OAR 436-035-0310(3)(a) provides that when a combination of DOT codes most accurately describes a worker's duties, the highest SVP shall apply if the worker has met the SVP training time for that specific code. Here, the SVP for a recreational vehicle repairer, 869.261-022, is "6" and the SVP for a motor vehicle assembler, 806.684-010, is "2." Thus, the highest SVP is for the recreational vehicle repairer. Because the record indicates that claimant has met the training time for that position (Ex. 1), we find that his SVP has a value of "2." OAR 436-035-0300(3) and (4).

In assembling the appropriate factors relating to claimant's unscheduled permanent disability, claimant is not entitled to a value for age or education. (Ex. 13-5). As noted above, claimant's highest SVP is "6," which has a value of "2." OAR 436-035-0300(3) and (4). The age and education values are added, for a total of 2. OAR 436-035-0280(4). Claimant's adaptability is measured by comparing his BFC ("medium") and his RFC ("light"), which results in an adaptability factor of "3." OAR 436-035-0310(6). The value for adaptability (3) is multiplied by the value for age/education (2) for a total of (6). OAR 436-035-0280(6). This value (6) is added to the impairment value for claimant's chronic right shoulder condition (5) for a total of 11 percent (35.2 degrees) unscheduled permanent disability.

Attorney Fee

Claimant argues that the ALJ should have awarded an attorney fee for prevailing against SAIF's attempt to reduce the unscheduled permanent disability award at hearing. However, SAIF requested Board review of the ALJ's order and has been successful in reducing claimant's scheduled and unscheduled permanent disability awards. Because our order replaces the ALJ's order, it necessarily

follows that claimant is not entitled to an insurer-paid fee for services at the hearing. *See* ORS 656.382(2) (providing a reasonable attorney fee if the compensation awarded to a claimant was not disallowed or reduced).²

ORDER

The ALJ's order dated March 14, 2002 is reversed in part, modified in part and affirmed in part. The Notice of Closure scheduled permanent disability award of one percent (1.5 degrees) for loss of use or function of claimant's right knee is reinstated and affirmed. In lieu of claimant's unscheduled permanent disability awards for the low back and right shoulder, as granted by the ALJ's order and the Order on Reconsideration, claimant is awarded 11 percent (35.2 degrees) unscheduled permanent disability for his right shoulder condition. The ALJ's \$500 insured-paid attorney fee award is reversed. The remainder of the ALJ's order is affirmed.

Entered at Salem, Oregon on October 9 2002

² Because our order has also reduced the Order on Reconsideration's scheduled permanent disability award for claimant's right knee condition, it follows that the ALJ's insurer-paid attorney fee award under ORS 656.382(2) is reversed. ORS 656.382(2).