
In the Matter of the Compensation of
IVONNE J. YOUNG, Claimant
WCB Case No. 01-03187
ORDER ON REVIEW
Roger Wallingford, Claimant Attorneys
James B Northrop, SAIF Legal, Defense Attorneys

Reviewing Panel: Members Biehl and Lowell.

The SAIF Corporation requests review of Administrative Law Judge (ALJ) Herman's order that set aside its denial of claimant's occupational disease claim for bilateral carpal tunnel syndrome. On review, the issue is compensability.

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

Since 1991, claimant has worked as a long haul truck driver for several employers. She first sought medical treatment for complaints of bilateral numbness and tingling of the fingers on October 18, 2000, while employed as a long haul truck driver by SAIF's insured. Her family physician, Dr. Robinson, referred claimant to a neurologist for nerve conduction studies as he suspected bilateral carpal tunnel syndrome. November 2000 nerve conduction studies confirmed the diagnosis of bilateral median neuropathy at the wrists consistent with carpal tunnel syndrome, worse on the left. In January 2001, claimant was referred to Dr. Palmatier, who diagnosed bilateral carpal tunnel syndrome and recommended surgery.

Claimant filed a claim for bilateral carpal tunnel syndrome. Following an insurer-arranged medical examination (IME) by Dr. Scheinberg, SAIF denied the claim. Claimant requested a hearing.

The ALJ set aside SAIF's denial of claimant's bilateral carpal tunnel syndrome claim based on the opinion of claimant's treating physician, Dr. Palmatier. On review, SAIF contends that Dr. Palmatier's opinion is unpersuasive for several reasons. We disagree with SAIF's contentions.

To establish the compensability of an occupational disease claim, claimant must prove that her work activities were the major contributing cause of the disease. ORS 656.802(2)(a). To satisfy the "major contributing cause" standard, claimant must prove 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). The causation issue presents a complex medical question that must be resolved on the basis of expert medical evidence. *See Uris v. Compensation Dept.*, 247 Or 420 (1967); *Barnett v. SAIF*, 122 Or App 281 (1993).

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 addition, absent persuasive reasons to the contrary, generally we give greater weight to the opinion of claimant's attending physician. *Weiland v. SAIF*, 63 Or App 810 (1983); *Darwin B. Lederer*, 53 Van Natta 974 n2 (2001).

Claimant relies on the medical opinion of Dr. Palmatier, the only physician who identified claimant's work activities as the major contributing cause of her bilateral carpal tunnel syndrome.¹ SAIF asserts that the opinions of the insurer-arranged medical examiners, Drs. Scheinberg and Baker, are the most persuasive.

Based on the following reasoning, we agree with the ALJ's reliance on the opinion expressed by Dr. Palmatier.

Dr. Scheinberg and Dr. Baker both opined that the major contributing cause of claimant's bilateral carpal tunnel syndrome was her preexisting/predisposing factors including her age (54 years), sex (female), hypothyroidism and rheumatoid arthritis. We agree with the ALJ that their opinions were not persuasive.

Dr. Scheinberg and Dr. Baker gave no analysis of the association between the predisposing factors of hypothyroidism and rheumatoid arthritis and the development of carpal tunnel syndrome. Dr. Baker referred in a nonspecific manner to "innumerable articles in the medical literature about the etiology

¹ Dr. Eider, claimant's treating rheumatologist, stated, "[d]epending on what is seen at the time of carpal tunnel surgery, one could consider the carpal tunnel syndrome to be work-related, especially if no active synovitis is seen around the median nerve at surgery." (Ex. 13). Dr. Eider's causation opinion is insufficient to carry claimant's burden of proof because it is stated in terms of possibilities rather than medical probabilities. *See Gormley v. SAIF*, 52 Or App 1055 (1981) (a causal connection based on mere possibility is not sufficient to carry the claimant's burden of proof). Furthermore, Dr. Eider's opinion did not state that the work activities were the major contributing cause of the carpal tunnel syndrome nor did the opinion compare the relative contribution of the work activities and the preexisting rheumatoid arthritis and hypothyroidism. *See Dietz v. Ramuda*, 130 Or App 397, 401 (1994), *rev dismissed* 320 Or 416 (1995) (a medical opinion must consider and evaluate the relative contributions of compensable and noncompensable causes in order to be persuasive). Although claimant was also examined by Drs. Robinson and Sloop, they did not render opinions identifying the major contributing cause of claimant's condition.

of carpal tunnel syndrome,” and stated; “[t]hese articles all agree that both hypothyroidism and rheumatoid arthritis are known and recognized causes of carpal tunnel syndrome, whereas truck driving is not.” Furthermore, Drs. Scheinberg and Baker did not discuss how the preexisting/predisposing intrinsic factors of age and gender led to the development of carpal tunnel syndrome in this claimant’s particular circumstances. We have previously held that medical evidence grounded in statistical analysis is not persuasive because it is not sufficiently directed to a claimant’s particular circumstances. See *Yolanda Enriquez*, 50 Van Natta 1507 (1998) (citing *Steven H. Newman*, 47 Van Natta 244, 246 (1995)); *Catherine M. Grimes*, 46 Van Natta 1861, 1862 (1994); *Mark Ostermiller*, 46 Van Natta 1556, 1558, *on recon* 46 Van Natta 1785 (1994)).

SAIF argues that there is no persuasive medical opinion that claimant’s work activities were the major contributing cause of the bilateral carpal tunnel condition because Dr. Palmatier found a symptomatic worsening but not a pathological worsening, and also failed to address the major cause standard. Additionally, SAIF argues that Dr. Palmatier also failed to establish that the work activities were the cause of a *disease* as opposed to symptoms, as required by ORS 656.802(2)(a). We disagree.

Dr. Palmatier diagnosed claimant’s condition as bilateral carpal tunnel syndrome and reported that “I believe on a more probable than not basis that this woman’s bilateral hand condition is an occupational disease resulting from her long-haul trucking and continuous grasping of the steering wheel over several hours each day while she is on the road.” (Ex. 4-1).

SAIF also argues that Dr. Palmatier’s statement that the employer was “100% liable for the carpal tunnel syndrome that has developed” is not the same as stating that the work activities were the major contributing cause. It is unclear whether Dr. Palmatier used the term “100% liable” in a medical/legal context. It is well settled that a physician is not authorized to make legal conclusions. See *Rocky L. Coble*, 43 Van Natta 1907 (1991); *Melba P. Dougherty*, 45 Van Natta 1018 (1993). In any event, the “100% liable” reference did not form the basis of the ALJ’s conclusion in the order, nor do we base our conclusion on this reference.

While it is true that Dr. Palmatier did not use the actual words “major contributing cause,” an expert’s opinion need not be ignored merely because it fails to include “magic words.” See *Freightliner Corp. v. Arnold*, 142 Or App 98, 105, (1996); *Sadie Riley*, 54 Van Natta 754, 758 (2002). In this case, given

Dr. Palmatier's causation opinion cited above, as well as the additional statements by Dr. Palmatier relied on by the ALJ, we find that Dr. Palmatier's language, in its overall context, supports a conclusion that claimant's work activities were the major contributing cause of claimant's carpal tunnel condition. (See Exs. 4, 9, 11).

Likewise, because Dr. Palmatier also considered the relative contribution of claimant's predisposing conditions of hypothyroidism and rheumatoid arthritis in rendering his causation opinion, we disagree with SAIF's contention that Dr. Palmatier's opinion was insufficient because it was based on a "but for" analysis. *Dietz v. Ramuda*, 130 Or App 397, 401 (1994), *rev dismissed* 320 Or 416 (1995); *Rex T. Sims*, 54 Van Natta 944 (2002). Therefore, we conclude that Dr. Palmatier understood and applied the necessary analysis in reaching his persuasive opinion that the work activities were the major contributing cause of claimant's bilateral carpal tunnel syndrome.

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 \$1,500, payable by SAIF. In reaching this conclusion, we have particularly considered the time devoted to the case, the complexity of the issue, and the value of the interest involved.

ORDER

The ALJ's order dated January 29, 2002 is affirmed. For services on review, claimant's attorney is awarded an assessed fee of \$1,500, to be paid by the SAIF Corporation.

Entered at Salem, Oregon on September 20, 2002