
In the Matter of the Compensation of
ROSALINDA M. CAMACHO, Claimant
WCB Case No. 01-04157
ORDER ON REVIEW
Bernt A Hansen, Claimant Attorneys
Meyers Radler et al, Defense Attorneys

Reviewing Panel: Members Lowell and Phillips Polich.

The self-insured employer requests review of Administrative Law Judge (ALJ) Spangler's order that set aside its denial of claimant's aggravation claim for a right carpal tunnel syndrome condition. On review, the issue is aggravation.

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

Claimant began work with the employer in December 1996. In April 1998, she filed an occupational disease claim. In July 1998, the employer accepted a non disabling "carpal tunnel right hand."

In December 2000, claimant's attending physician, Dr. Scoltock, a family practitioner, filed an aggravation claim on claimant's behalf. The employer denied the aggravation claim, asserting that claimant's current condition was unrelated to the occupational disease she suffered in 1998. Claimant requested a hearing.

Relying on Dr. Scoltock's opinion, the ALJ found that claimant's condition had worsened, and that her employment was a material cause of the worsened condition. Accordingly, the ALJ concluded that claimant had established a compensable aggravation. We agree.

ORS 656.273(1) provides that a worsened condition resulting from the original injury is established by medical evidence of an actual worsening of the compensable condition. *See SAIF v. Walker*, 145 Or App 294 (1996). ORS 656.273(1) requires proof of two specific elements in order to establish a worsened condition: (1) "actual worsening" and (2) a compensable condition. *See Gloria T. Olson*, 47 Van Natta 2348, 2350 (1995). Claimant bears the burden of proving both that her condition has worsened and that the worsened condition is causally related to her compensable occupational disease. ORS 656.266; *see Carl E. Volner*, 52 Van Natta 114 (2000); *Linda J. Miller*, 48 Van Natta 2284 (1996).

The employer does not dispute that claimant currently suffers from right carpal tunnel syndrome, or that her carpal tunnel condition is worse than that accepted in 1998. (Appellant's Reply Brief at 1). Rather, the employer contends that claimant's current right carpal tunnel condition is unrelated to the accepted condition.

The employer's contention notwithstanding, we find that Dr. Scoltock's opinion established a causal connection between claimant's current condition and the compensable occupational disease. Dr. Scoltock opined that, although other factors, including obesity, contributed to claimant's current condition, her previous work activities for the employer were "more than 50 percent" of its cause. (Ex. 51-18, 19).

Dr. Scoltock's opinion is persuasive. It is well reasoned because it reflects his consideration of contributing causes, is premised on an accurate history, and is based on a professional relationship with claimant that preceded the occupational disease claim. *See Somers v. SAIF*, 77 Or App 259, 263 (1986). In addition, Dr. Scoltock was able to observe and evaluate claimant over a protracted time period. Moreover, we find that Dr. Scoltock's explanation that he "checked the wrong box" and inadvertently concurred with Dr. Nolan's opinion is sufficient to overcome the employer's argument that his subsequent opinion should be discounted because it reflected a "change of opinion." *See Kelso v. City of Salem*, 87 Or App 630, 633 (1987) (when reasonable explanation provided for change in medical opinion, medical opinion not discounted).

The employer relies on the opinion of Dr. Nolan, an insurer-arranged medical examiner specializing in hand surgery. Based on his examination and review of related medical records, Dr. Nolan opined that the major contributing cause of claimant's present right carpal tunnel syndrome is obesity. For the following reasons, however, we find Dr. Nolan's opinion unpersuasive.

Dr. Nolan's opinion is based in part on a conclusion that claimant's work activities for the employer could not have caused carpal tunnel syndrome. Such a conclusion is inconsistent with the law of the case, as the employer accepted claimant's occupational disease claim for a nondisabling right carpal tunnel condition in July 1998. *See Kuhn v. SAIF*, 73 Or App 768 (1985); *Steven P. Grossaint*, 46 Van Natta 1737 (1994) (medical opinion inconsistent with law of the case is unpersuasive).

In addition, we find that Dr. Nolan relied on an inaccurate interpretation of the history of claimant's symptoms. Specifically, Dr. Nolan understood that claimant's symptoms continued and gradually increased after she left her job with the employer. However, based on claimant's testimony and Dr. Scoltock's chart notes, claimant's symptoms diminished after she began her medical leave in January 1999. The symptoms reappeared and were most severe in the late stages of her pregnancy, but decreased after the birth of claimant's child in May 1999. They reappeared to some degree during the week she worked for employer in June 1999, but thereafter improved, abated, and remained in remission until she began a typing course requiring repetitive hand movements in September 2000. Dr. Nolan's misunderstanding is underscored by his statement that he would expect claimant's symptoms to abate after leaving employment, if her condition was work-related. (Ex. 44-5). In light of Dr. Nolan's reliance on an inaccurate history, we find his opinion unpersuasive. *See Miller v. Granite Construction Co.*, 28 Or App 473, 478 (1977) (medical opinion based on inaccurate history unpersuasive); *Deena Gonzalez-Fawcett*, 53 Van Natta 696 (2001).

We further find Dr. Nolan's opinion that claimant's worsened condition was caused by obesity to be questionable. The unrebutted medical evidence establishes that claimant weighed 180 pounds on July 23, 1998 (one week after her occupational disease claim for right carpal tunnel syndrome was accepted). (Ex. 12-4). When examined by Dr. Nolan in February 2001, claimant weighed 190 pounds. (Ex. 44-3). Although fluctuating during her pregnancy, claimant's weight was only 10 pounds greater at the time of the acknowledged worsening than it had been close in time to the original carpal tunnel diagnosis.

To the extent that Dr. Nolan attributes claimant's current right carpal tunnel condition to a "longstanding problem," based on her report of symptoms experienced in high school or a predisposition for carpal tunnel syndrome, any such "problem" was necessarily included within the unqualified acceptance of claimant's 1998 right hand carpal tunnel condition. *See SAIF v. Custer*, 181 Or App 199 (2002).

Finally, the employer argues that claimant's pregnancy, typing class and employment as a fast-food server were independently contributing causative factors. However, claimant was not pregnant when her worsened condition arose or was diagnosed. Further, no medical expert attributed claimant's worsened condition to her participation in a typing course or employment at a fast-food restaurant. Under such circumstances, we find the employer's argument with respect to the suggested independently contributing causative factors unpersuasive.

On this record, we find that Dr. Scoltock's opinion was sufficient to establish the compensability of claimant's aggravation claim for her right carpal tunnel condition. Consequently, we affirm.

Claimant is entitled to an assessed attorney fee for successfully defending against the insurer's request for review. After considering the factors set forth in OAR 438-015-0010(4) and applying them to this case, we find that a reasonable assessed fee for claimant's counsel's services on review is \$1,200, to be paid by the employer. In reaching this conclusion, we have particularly considered the complexity of the issue, the time devoted to the case (as represented by claimant's respondent's brief), and the value of the interest involved.

ORDER

The ALJ's order dated December 6, 2001 is affirmed. For services on review, claimant's counsel is entitled to an assessed attorney fee of \$1,200, to be paid by the employer.

Entered at Salem, Oregon on September 10, 2002