

In the Matter of the Compensation of  
**RONALD J. REYNOLDS, Claimant**

WCB Case No. 02-02656, 01-08671

ORDER ON REVIEW

Mustafa T Kasubhai PC, Claimant Attorneys  
James B Northrop, SAIF Legal, Defense Attorneys  
Hoffman Hart & Wagner, Defense Attorneys

Reviewing Panel: Members Biehl and Langer.

AIG Claims Services Inc. (AIG), requests review of Administrative Law Judge (ALJ) Peterson's order that: (1) admitted Exhibit 21 into evidence; (2) set aside its denial of compensability of and responsibility for claimant's occupational disease claim for bilateral carpal tunnel syndrome; (3) upheld the SAIF Corporation's denial of responsibility for the same condition; and (4) awarded a \$5,000 attorney fee. On review, the issues are evidence, compensability, responsibility and attorney fees.

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

AIG contends for the first time that Exhibit 21, a rebuttal report from Dr. Schmitz, was not secured in a timely fashion. On this basis, it argues that the exhibit is not admissible. For the following reasons, we affirm the ALJ's evidentiary ruling.

ORS 656.283(7) provides that the ALJ is not bound by common law or statutory rules of evidence and may conduct a hearing in any manner that will achieve substantial justice. That statute gives an ALJ broad discretion on determinations concerning the admissibility of evidence. *See, e.g., Brown v. SAIF*, 51 Or App 389, 394 (1981). We, therefore, review the ALJ's evidentiary ruling for abuse of discretion. *Rose M. LeMasters*, 46 Van Natta 1533 (1994), *aff'd mem* 133 Or App 258 (1995).

Here, the ALJ did not set any time limitation within which the rebuttal report had to be submitted. In addition, AIG did not object to the ALJ's admission of Exhibit 21 in its written closing arguments to the ALJ. Under such circumstances, we do not find that the ALJ abused his discretion in admitting Exhibit 21.

With regard to compensability, AIG contends that claimant had preexisting problems with numbness and tingling as early as 1991. On this basis, AIG

contends that ORS 656.802(2)(b) applies and that claimant has the burden to prove that employment conditions at its insured were the major contributing cause of a combined condition and pathological worsening of the disease. We disagree.

In *The New Portland Meadows v. Dieringer*, 153 Or App 383 (1998), the claimant relied on employment with two employers to establish compensability of her occupational disease claim. Because the claimant's occupational disease claim was an initial claim, the court agreed that there was no "preexisting" condition under ORS 656.005(24) and that consequently ORS 656.802(2)(b) and ORS 656.005(7)(a)(B) did not apply.

Similarly, this is an initial claim for bilateral carpal tunnel syndrome based on both of claimant's employment exposures and there is no indication that claimant's condition preexisted his employment with SAIF's insured. Thus, there is no "preexisting condition" and claimant is entitled to argue that his employment conditions (at both employers) are the major contributing cause of his bilateral carpal tunnel syndrome. Because there is no preexisting condition in this case, ORS 656.802(2)(b) does not apply.

The ALJ relied on Dr. Belza's opinion to conclude that claimant had established compensability of his occupational disease claim. AIG argues that Dr. Belza's opinion is unpersuasive because he provided inconsistent opinions. We disagree.

Dr. Belza explained that he agreed with the portion of the report by Dr. Fuller and Dr. Radecki that claimant's few weeks of work for AIG's insured alone were not the major contributing cause of claimant's bilateral carpal tunnel syndrome. However, Dr. Belza agreed that the Fuller/Radecki report did not address whether the weeks of work at AIG's insured materially worsened the condition or whether claimant's prior work activities for SAIF's insured were the major contributing cause of the condition. Based on his explanation, we do not find Dr. Belza's opinions to be inconsistent. Moreover, for the reasons expressed by the ALJ, we find that Dr. Belza's opinion, as supported by that of Dr. Schmitz, persuasively meets claimant's burden of proof.

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 \$3,000, payable by AIG. In reaching this conclusion, we have particularly considered the time devoted to the issues (as

represented by claimant's respondent's brief and his counsel's uncontested fee request), the complexity of the issues, and the value of the interest involved.

ORDER

The ALJ's order dated December 18, 2002 is affirmed. For services on review, claimant's attorney is awarded \$3,000, payable by AIG.

Entered at Salem, Oregon on July 31, 2003