

In the Matter of the Compensation of
RODNEY D. MCKENZIE, Claimant

WCB Case No. 04-04994, 04-01583

ORDER ON REVIEW

Dale C Johnson, Claimant Attorneys
Johnson Nyburg & Andersen, Defense Attorneys
Bruce A Bornholdt, SAIF Legal, Defense Attorneys

Reviewing Panel: Members Kasubhai and Lowell.

Liberty Northwest Insurance Corporation requests review of Administrative Law Judge (ALJ) Brazeau's order that: (1) set aside its denials of claimant's occupational disease claim for his right carpal tunnel syndrome; and (2) upheld the SAIF Corporation's denial of the same condition. On review, the issue is responsibility.¹

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

Dr. Eckman, a SAIF-arranged medical examiner, found that claimant's work activities combined with a previously accepted right carpal tunnel syndrome. He determined that the work activities were the major contributing cause of the combined condition and the pathological worsening of the condition. Dr. Courogen, a Liberty-arranged medical examiner, found that while the work activities caused claimant's symptoms, his genetic predisposition, aging and family history were the major contributing cause of the current condition.

Finding the opinion of Dr. Eckman persuasive, the ALJ concluded that, as a result of work activities during Liberty's coverage, claimant sustained a new occupational disease involving the same condition as that previously accepted by SAIF. Applying ORS 656.308(1), the ALJ found Liberty responsible for claimant's right carpal tunnel condition.

We agree that Dr. Eckman's opinion is the most persuasive. We base this conclusion on the following reasoning.

¹ Although the "Issues" section of the ALJ's order refers to bilateral carpal tunnel syndrome, the parties describe the issues as right carpal tunnel syndrome.

SAIF accepted claimant's right carpal tunnel condition in 1996. As claimant's accepted condition and current condition are the same condition, ORS 656.308 applies to determine responsibility. *See Daniel W. Foster*, 55 Van Natta 1737, 1738 (2003) (if a condition is compensably related to an accepted claim, ORS 656.308(1) applies). Responsibility remains with SAIF unless claimant has sustained a new occupational disease involving the same condition. *See* ORS 656.308(1); *Cheryl A. Briggs*, 55 Van Natta 2937, 2938-39 (2003). To establish a new occupational disease, claimant's work activities while Liberty provided coverage must be the major contributing cause of his combined condition and the pathological worsening of his disease. *See* ORS 656.802(2)(b); *see also*, *Douglas L. Wilson*, 51 Van Natta 1473 (1999); *Pamela T. Smith*, 50 Van Natta 2162 (1998).

Because of the various contributing causes of claimant's right carpal tunnel syndrome, and the disagreement between the medical experts regarding the relative contribution of each cause, we approach this claim as a complex medical question to be resolved by expert medical opinion. *Barnett v. SAIF*, 122 Or App 279, 283 (1993). When presented with disagreement between experts, we give more weight to those opinions that are well-reasoned and based on complete information. *Somers v. SAIF*, 77 Or App 259, 263 (1986); *Vernon F. Israel*, 56 Van Natta 3314, 3315 (2004).

On review, Liberty argues that Dr. Eckman's opinion was not persuasive because it relied on the increased symptoms of claimant's condition to prove a pathological worsening of the accepted condition. We disagree with Liberty's assessment of Dr. Eckman's opinion.

Noting that claimant's preexisting carpal tunnel was quiescent and not symptomatic from 1997 to 2003, Dr. Eckman determined that claimant's condition was due to his work activities in 2003 under Liberty's coverage. (Ex. 32-7). Dr. Eckman also explained that the April 2004 nerve conduction study showed a significantly abnormal condition, as compared with the minimally abnormal condition from a 1997 nerve conduction study. (Ex. 32-3).

Liberty also argues that Dr. Eckman did not have a complete history because he did not view the videotape of claimant's specific work activities. Dr. Eckman's opinion contains a lengthy discussion of the work duties as described by claimant. (Ex. 32, pp. 2-3). The description closely resembles that given in Dr. Courogen's

and claimant's testimony.² (Ex. 24-3; Tr. 19-23). Therefore, we do not discount Dr. Eckman's opinion on this basis.

Finally, Liberty argues that Dr. Eckman did not address other potential contributing causes raised by Dr. Courogen, especially claimant's off-work farm activities. Granted, Dr. Eckman did not discuss those activities within his original report. Nevertheless, after reviewing Dr. Courogen's report, which discussed farming duties in some detail, Dr. Eckman reiterated his opinion that the work activities were the major cause of the combined right carpal tunnel condition. (Ex. 34-1). Additionally, in deposition testimony, Dr. Eckman considered several contributing factors, including claimant's family history and aging. (Ex. 38-14). After considering these potential contributors, Dr. Eckman also concluded that claimant's work activities caused an aggravation of the preexisting condition to the extent of a pathological worsening. (Ex. 38-15).

Based on the aforementioned reasoning, we agree with the ALJ's conclusion that claimant's work activities while Liberty was providing coverage were the major contributing cause of the right carpal tunnel syndrome condition and the pathological worsening of that condition. Consequently, Liberty is responsible for claimant's occupational disease claim.

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 \$1,200, payable by Liberty. 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 issues, and the value of the interest involved.

ORDER

The ALJ's order dated February 15, 2005 is affirmed. For services on Board review, claimant's attorney is awarded \$1,200, to be paid by Liberty.

Entered at Salem, Oregon on June 14, 2005

² Claimant also testified that the videotape did not accurately reflect all of the work activities because some activities were not included and the individual on the tape performed some of the activities with the left hand while claimant used his right hand. (Tr. 19-23).