

In the Matter of the Compensation of  
**ROBERT L. COLEMAN, Claimant**  
WCB Case No. 04-03912, 04-01869, 03-09209, 03-09079, 03-09078  
ORDER ON REVIEW  
Kryger et al, Claimant Attorneys  
J Keene, Reinisch et al, Defense Attorneys  
Julie Masters, SAIF Legal, Defense Attorneys  
Cummins Goodman et al, Defense Attorneys

Reviewing Panel: Members Biehl and Lowell.

Specialty Risk Services (SRS), on behalf of Allegheny Technologies, requests review of Administrative Law Judge (ALJ) Poland's order that: (1) set aside its compensability and responsibility denial of claimant's occupational disease claim for a right cubital tunnel syndrome condition; (2) upheld CNA ClaimPlus's (CNA's) responsibility denial, on behalf of Teledyne Wah Chang, of claimant's claim for the same condition;<sup>1</sup> and (3) upheld the SAIF Corporation's

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<sup>1</sup> The ALJ's Opinion and Order purported to uphold CNA's denial of a "post-aggravation rights" new/omitted medical condition ("right cubital tunnel syndrome"). However, under the law in effect at the time of that order, issues regarding compensability of and responsibility for "post-aggravation rights" new/omitted medical condition claims were in our Own Motion jurisdiction. See ORS 656.267(3) (2001); ORS 656.278(1)(b) (2001); *James J. Kemp*, 54 Van Natta 491 (2002). Hearings related to denials of such conditions resulted in a "Proposed and Final Own Motion Order" that addressed compensability/responsibility of the "post-aggravation rights" new/omitted medical condition claim, with appeal to the Board in our Own Motion authority. See OAR 438-012-0090 (WCB Admin. Order No. 2-2003, eff. 09/01/2003); OAR 438-012-0095 (WCB Admin. Order No. 2-2003); *Stephen C. Fay*, 57 Van Natta 1534 (2005). If not appealed, the "Proposed and Final Own Motion Order" became a "Final Own Motion Order" regarding the compensability/responsibility issue. OAR 438-012-0001(4)(b)(i) (WCB Admin. Order No. 2-2003). If the compensability/responsibility issue was appealed, we would issue a "Final Own Motion Order and Own Motion Order" that resolved that issue and the Own Motion "claim reopening" issue. *Lester D. Ochoa*, 57 Van Natta 3126 (2005); *Fay*, 57 Van Natta at 1534.

However, effective January 1, 2006, the legislature amended ORS 656.267 to change our Own Motion jurisdiction under ORS 656.278. See House Bill 2294 (2005 (HB 2294)). These amendments "apply to all claims existing or arising on or after the effective date of this 2005 Act," which is January 1, 2006. HB 2294, § 4(1). However the amendments "do not apply to any matter for which an order has become final" prior to January 1, 2006. HB 2294, § 4(2).

Under amended ORS 656.267(2) and (3), whether or not the claimant's aggravation rights have expired, new or omitted medical condition claims are processed under ORS 656.262, including issuance of an acceptance or denial of such a claim. See *James W. Jordan*, 58 Van Natta 34, 36 (2006). Further, if a denial is issued, the claimant may request a hearing under ORS 656.283 and the Hearings Division determines compensability in the first instance, with appeal to the Board in its "regular" jurisdiction and to the courts. *Id.*; amended ORS 656.267(2)(b); amended ORS 656.278(4); ORS 656.295; amended ORS 656.298(1). However, new or omitted medical condition claims that "have been determined to be compensable and that were initiated after the rights under ORS 656.273 expired shall be processed

denial, on behalf of Teledyne Wah Chang, of claimant's occupational disease claim and new medical condition claim (under a previously accepted 1999 claim) for the same condition.<sup>2</sup> On review, the issues are compensability and responsibility. We affirm in part and vacate in part.

### FINDINGS OF FACT

We adopt the ALJ's findings of fact with the following changes and summary.

In the fourth full paragraph on page 5, we replace the first sentence with the following: "On May 2, 2000, Dr. Ferguson reported that claimant now had discomfort over the medial aspect of the elbow. His impression was persistent lateral epicondylitis with beginning medial epicondylitis." Also in that paragraph, we replace the last sentence with the following: "Claimant associated his symptoms with his work activities."

In the last paragraph beginning on page 5, we replace the first two sentences with the following:

"Beginning in late 1998, Dr. Ferguson treated claimant for right lateral epicondylitis. In June 1999, claimant filed an '801' form for a right elbow claim. (Ex. 53). In August 1999, SAIF accepted nondisabling right lateral epicondylitis. (Ex. 57B)."

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as requests for relief under the Workers' Compensation Board's own motion jurisdiction pursuant to ORS 656.278(1)(b)." *Amended* ORS 656.267(3). Finally, we have adopted Own Motion rules implementing these amendments. *See* WCB Admin. Order No. 3-2005, eff. 01/01/2006.

Here, the "post-aggravation rights" new/omitted medical condition claim existed on January 1, 2006; therefore, the amendments apply. Thus, under the now-controlling law, the Hearings Division and the Board in its review authority have jurisdiction over compensability/responsibility issues regarding that claim. *Amended* ORS 656.267(2)(b); *Jordan*, 58 Van Natta at 36-37. We address claimant's request for "claim reopening" regarding his 1996 claim with CNA for a "post-aggravation rights" new/omitted medical condition ("right cubital tunnel syndrome") in an Own Motion Order of Dismissal issued today's date.

Finally, the ALJ also issued a Proposed and Final Own Motion Order that purported to deny reopening of claimant's "post-aggravation rights" new medical condition claim with CNA. (WCB Case No. 04-03912). Because "claim reopening" authority rests solely with the Board under ORS 656.278(1)(b), we vacate the ALJ's proposed order.

<sup>2</sup> On review, SAIF takes no position on the issue of compensability.

We provide the following summary. In 1973, claimant began working for the employer, which is in the business of producing rare metals.<sup>3</sup> Since 1984, he has been involved in alloy preparation, which involves repetitive use of his upper extremities. Claimant spent about half his work time preparing bags of niobium metal, which involved raking, scraping and shoveling niobium powder into buckets, shoveling titanium powder into other buckets, dumping the powder in the buckets into a blender, bagging and lifting the blended product onto pallets and rolling the loaded pallets out of the area. Claimant initially prepared the niobium in 40 to 45 pound bags, but the size was later reduced to 25 to 30 pounds.

During the other half of his time, claimant processed zirconium, which involved the same steps as the niobium process, but was lighter work because the zirconium was bagged in small quantities of 16 to 24 ounces. Claimant was initially required to process niobium for an entire shift before rotating to zirconium. The employer reduced the period of niobium processing to four hours, then to two hours and back to a four-hour schedule. In 2003, the employer automated the niobium processing activity.

Claimant has experienced problems with both upper extremities, for which he has accepted claims, including bilateral carpal tunnel syndrome (CNA) and right lateral epicondylitis (SAIF). (Exs. 28, 57B).

In July 2003, nerve conduction studies showed that claimant had right ulnar neuropathy and denervation in the hand muscles. (Ex. 92A). Claimant was referred to Dr. Gordin, who diagnosed right cubital tunnel syndrome and recommended surgery. (Ex. 95). On December 4, 2003, Dr. Gordin performed a right ulnar nerve transposition. (Ex. 111).

The parties stipulated that CNA was on the risk from November 1, 1987 through October 31, 1998; SAIF was on the risk from November 1, 1998 through October 31, 2001; and SRS has been on the risk since November 1, 2001.

### CONCLUSIONS OF LAW AND OPINION

We adopt and affirm the ALJ's order and provide the following alternative analysis.

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<sup>3</sup> Claimant testified that he has worked for the employer since 1973. (Tr. 2-3).

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## Claim Preclusion

In April 1991, Dr. Martin reported that claimant had been weighing out niobium and began having numbness and tingling in his little, ring and middle fingers of the right hand and some discomfort at his elbow on the ulnar groove. (Ex. 3). Claimant's work duties were modified.

On April 24, 1991, claimant signed an "801" form, which referred to the "right arm" and "Irritated Ulnar Nerve" related to his activities raking niobium into buckets. (Ex. 2).

On May 9, 1991, Dr. Martin wrote to CNA, explaining that claimant no longer had numbness and that he would be released to full duty with no residual. (Ex. 4).

On May 28, 1991, CNA issued a denial of claimant's April 1991 "right arm" injury on the grounds that there was insufficient evidence that it was a work-related injury and that it was an aggravation of a preexisting condition related to a non-work-related injury in December 1990. (Ex. 5). Claimant did not appeal the denial and it became final as a matter of law. At hearing, claimant testified that he did not appeal the denial because he thought the condition had completely resolved. (Tr. 17).

At hearing, SRS relied on claim preclusion to argue that Dr. Gordin's opinion did not establish a work-related pathological worsening because she had considered claimant's condition and work activity prior to CNA's May 1991 denial. The ALJ rejected that argument, reasoning that SRS was not a party to the 1991 denial and, therefore, claim preclusion did not apply.

After the ALJ's order was issued, the Court of Appeals decided *Ahlberg v. SAIF*, 199 Or App 271 (2005), which reversed our order in *Albert A. Ahlberg*, 56 Van Natta 181 (2004). We had upheld an occupational disease denial of the claimant's hearing loss condition on the ground that, by operation of claim preclusion, a previous unappealed denial of a claim for the same condition caused the hearing loss as it existed at the time of denial to become a noncompensable preexisting condition for purposes of the present claim. We had determined that the claimant's pre-denial work exposure could not be considered and that his subsequent work exposure was not the major contributing cause of his current condition.

The court said that the claimant's first claim for hearing loss became final when he chose not to request a hearing after the employer denied it. Under the general rules of claim preclusion, the court noted that the claimant would be precluded from relitigating the compensability of his hearing loss in a subsequent claim. However, the court reasoned that claim preclusion is not a bar if the claimant's condition has changed and the claim is supported by new facts that could not have been presented earlier. *E.g., Kepford v. Weyerhaeuser Co.*, 77 Or App 363, *rev den*, 300 Or 722 (1986). The court concluded that the claimant was not barred from proving that his hearing loss had worsened. *Ahlberg*, 199 Or App at 275.

The *Ahlberg* court assumed that the employer was correct that the claimant's pre-1985 hearing loss must be treated as a preexisting condition. Nonetheless, the court rejected the contention that the claimant's pre-1985 exposure may not be considered in determining whether the claimant now suffered from a compensable occupational disease. The court explained:

“To establish the compensability of a worsening of his preexisting hearing loss, claimant must prove that ‘any or all working conditions’ were the major contributing cause of his current condition and worsening. It does not matter whether, as in *Henwood* [176 Or App 431 (2001)], the working conditions included those involved in a previous out-of-state workers' compensation claim or, as here, a previously denied Oregon workers' compensation claim.

“Thus, we conclude that the legislature did not intend for claim preclusion principles to bar consideration of employment exposures that predate the preexisting condition in establishing the compensability of a worsening of the preexisting condition. For that reason, as in *Henwood*, it is unnecessary here to determine whether SAIF's unappealed denial, in fact, made claimant's then-existing hearing loss a preexisting condition. In either case, the pre-1985 exposure must be included in determining the compensability of the current disease under ORS 656.802(2)(b).” *Ahlberg*, 199 Or App at 276-77.

Here, as in *Ahlberg*, claimant asserts that ORS 656.802(2)(b) applies to his right cubital tunnel syndrome and that he has a worsened condition. Under these circumstances, we apply the holding in *Ahlberg* and find that claimant's pre-1991 employment exposure may be considered in determining compensability of his current right cubital tunnel syndrome.

In reaching our conclusion, we rely on the medical evidence, discussed below, which establishes that claimant's right cubital tunnel condition has changed and worsened. *See Liberty Northwest Ins. Corp. v. Rector*, 151 Or App 693 (1997); *Liberty Northwest Ins. Corp. v. Bird*, 99 Or App 560, 564 (1989), *rev den*, 309 Or 645 (1990); *Kepford v. Weyerhaeuser Co.*, 77 Or App at 366-67.

### Compensability

ORS 656.802(2)(b) provides that if an occupational disease claim is based on the worsening of a preexisting disease or condition, the worker must prove that employment conditions were the major contributing cause of the combined condition and pathological worsening of the disease. We agree with the ALJ that claimant has established a compensability occupational disease claim under ORS 656.802(2)(b).<sup>4</sup> We write to address SRS's arguments regarding the insufficiency of the medical evidence.

Dr. Ferguson, who specializes in occupational medicine, has treated claimant for upper extremity complaints for several years, including his right cubital tunnel syndrome. In an October 7, 2003 letter to SAIF, Dr. Ferguson explained that claimant had right ulnar neuropathy at the elbow and the cause of the worsening or the new symptoms was the repetitive work for the employer. (Ex. 102).

Dr. Ferguson reviewed Dr. Nathan's report, but he did not agree with his conclusions. (Exs. 107B, 108, 109). Dr. Nathan had examined claimant at the request of CNA and concluded that claimant's upper extremity complaints were not associated with his work activities. (Ex. 103). In contrast, Dr. Ferguson believed that claimant's symptoms were work-related, based on his opportunity to work with a number of workers at the employer, as well as his review of the area claimant worked in and his recommended changes in the work area.

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<sup>4</sup> Alternatively, we could apply the last injurious exposure rule (LIER) of proof to claimant's occupational disease claim and find that ORS 656.802(2)(a) applies, rather than ORS 656.802(2)(b). *See Gosda v. J. B. Hunt Transportation*, 155 Or App 120, 126 (1998) (the LIER applies whenever the evidence supports its application). In previous cases, we have held that the evidence need not establish that the claimant's later work exposure caused a worsening of the claimant's condition, under the rule of proof. *E.g., Jeffery K. Mershon*, 56 Van Natta 3557 (2004); *James R. Lowell, Jr.*, 56 Van Natta 2491, 2493 (2004); *Roger L. Hager*, 55 Van Natta 637 (2003), *aff'd without opinion Grants Pass S.D. No. 7 v. SAIF*, 193 Or App 163 (2004). Instead, we have applied ORS 656.802(2)(a) and concluded that the claim was compensable under the "rule of proof." Based on the opinions of Drs. Ferguson and Gordin, claimant's right cubital tunnel syndrome is compensable under ORS 656.802(2)(a).

(Ex. 108). He explained that claimant's ulnar nerve problems were related to his work activities in picking up the bags of material, flexing the "FCU" and causing irritation to the ulnar nerve.<sup>5</sup> (*Id.*)

In a deposition, Dr. Ferguson explained that claimant's repetitive work activity related to preparing bags of niobium metal, which involved using heavier weights, mixing the bags, tying the bags off, and lifting and putting the bags on cars. Dr. Ferguson concluded that the repetitive activity and lifting those bags caused claimant's cubital tunnel syndrome. (Ex. 119A-11). He was not aware of any other causative factors. (Ex. 119A-10, -11). Dr. Ferguson agreed that claimant's work activities from 1991 through 2003 were the major contributing cause of a "new episode" of cubital tunnel syndrome. (Ex. 119A-13, -14).

Although Dr. Ferguson's well-reasoned opinion establishes that claimant's employment conditions were the major contributing cause of the cubital tunnel syndrome, he did not believe that claimant had sustained a pathological worsening of the disease. In reaching his conclusion, Dr. Ferguson focused on the lack of nerve conduction studies before 2003. (Exs. 117, 119A-15, -21, -22, -24, -25). Dr. Ferguson agreed, however, that claimant's symptoms had increased in the last several years and that his work exposure continued to contribute to the cubital tunnel syndrome. (Exs. 117, 119A-21, -22, -25). He said that claimant "clearly became more symptomatic." (Ex. 119A-25).

In contrast, Dr. Gordin, a board-certified orthopedic surgeon who performed claimant's right ulnar nerve surgery, concluded that claimant's right cubital tunnel syndrome had pathologically worsened. She explained that the absence of earlier nerve conduction studies did not negate that finding. (Ex. 121-10).

SRS argues that Dr. Gordin's opinion is "completely unpersuasive" because it represents an unexplained change of opinion. We disagree.

Dr. Gordin initially concurred with Dr. Nathan's report, which said that there was no evidence to indicate that claimant's underlying nerve pathology developed or worsened as a result of his work activities. (Exs. 103-10, 106). In a deposition, Dr. Gordin changed her opinion on causation. She initially agreed with Dr. Nathan because she did not believe that claimant's ulnar neuropathy had worsened since 1991. (Ex. 121-17). However, Dr. Gordin subsequently disagreed

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<sup>5</sup> In a deposition, Dr. Ferguson explained that cubital tunnel syndrome "involves the muscles on the inside of the arm, the forearm called the flex[or] carpi ulnaris." (Ex. 119A-8). We infer that Dr. Ferguson's reference to "FCU" means the flexor carpi ulnaris muscle.

with Dr. Nathan, explaining that once she saw evidence of a pathological worsening, it directed her attention to what could be the cause. (*Id.*) When she concurred with Dr. Nathan's opinion, she had not reviewed the chart notes from 1991 indicating claimant's symptoms at that time, which she later compared to his current symptoms. (Ex. 121-24). Dr. Gordin explained that claimant's work activities were "very upper extremity intensive" and she did not identify any non-work related activities that had contributed to a pathological worsening of claimant's condition. (Ex. 121-17). We find that Dr. Gordin provided a reasonable explanation for her change of opinion. See *Kelso v. City of Salem*, 87 Or App 630 (1987).

Dr. Gordin concluded that claimant's right cubital tunnel condition had worsened since 1991 and the cause of that worsening was his work activities. (Ex. 121-11). She did not identify any other causal factors that would contribute to the cubital tunnel syndrome. (*Id.*) Dr. Gordin explained that claimant's work as an alloy prep operator, including raking, lifting, weighing, and twisting required repetitive use of both wrists and elbows. (Ex. 121-22). In reaching her conclusion about the pathological worsening, Dr. Gordin also relied on the fact that claimant was no longer able to function in his job. (Ex. 121-27).

Unlike Drs. Ferguson and Gordin, Dr. Nathan opined that a large portion of claimant's upper extremity complaints were not temporally associated with his work activities. Dr. Nathan referred to a January 11, 1991 chart note and an April 19, 1994 chart note that related upper extremity symptoms to non-work-related activities. (Ex. 103-10). Dr. Nathan said that the natural course of neuropathic conditions is that they progress gradually over time. He did not believe claimant's cubital tunnel symptoms developed or worsened as a result of his work activities. (*Id.*)

We may give greater weight to the opinion of the treating physician, depending on the record in each case. *Dillon v. Whirlpool Corp.*, 172 Or App 484, 489 (2001). In some situations, a treating physician's opinion is entitled to greater weight because he or she has had a better opportunity to observe and evaluate a claimant's condition over an extended period of time. *Weiland v. SAIF*, 64 Or App 810 (1983).

Here, we are more persuaded by the opinions of Drs. Ferguson and Gordin because they treated claimant and had a better understanding of the source of his right upper extremity complaints. We are not persuaded by Dr. Nathan's opinion because it was conclusory and appeared to focus on two chart notes, rather than the record as a whole.

We conclude that the opinions of Dr. Ferguson and Gordin are more persuasive because they are well-reasoned and based on complete and relevant information. *See Jackson County v. Wehren*, 186 Or App 555, 559 (2003). In concluding that claimant has sustained a pathological worsening of his right cubital tunnel symptoms, we rely on Dr. Gordin's expertise as an orthopedic surgeon whose practice focuses on upper extremities. Based on the opinions of Dr. Ferguson and Gordin, we conclude that claimant's work activities were the major contributing cause of his right cubital tunnel syndrome and the pathological worsening of that disease.

### Responsibility

The ALJ concluded that SRS was responsible for claimant's cubital tunnel syndrome. SRS argues that the initial responsibility should be assigned to either SAIF or CNA, and further contends that there is no evidence to shift responsibility to SRS.

Under the LIER, initial or presumptive responsibility for a condition is assigned to the last period of employment where conditions could have caused claimant's disability. *Bracke v. Baza'r*, 293 Or 239, 248-49 (1982). The onset of disability is the "triggering date" for determining the last potentially causal employment. *Agricom Ins. v. Tapp*, 169 Or App 208, 211 (2000). If the claimant receives treatment before experiencing time loss due to the condition, the date of the first medical treatment is the triggering date that dictates which period of employment is assigned initial responsibility for the treatment. *Id.* at 212. In *SAIF v. Kelly*, 130 Or App 185, 188 (1994), the court explained that the triggering date is the date claimant first sought treatment for symptoms, even if not correctly diagnosed until later.

Here, the medical evidence establishes that claimant first sought treatment for his right cubital syndrome in 1991, when Dr. Martin treated claimant for numbness and tingling in his little, ring and middle fingers of the right hand and discomfort at his elbow on the ulnar groove. (Ex. 3). Although Dr. Martin did not diagnose cubital tunnel syndrome, later medical reports from Drs. Nathan, Ferguson and Gordin indicate that claimant was treated for cubital tunnel syndrome in 1991. (Exs. 103-10, 117, 119, 119A-16, -17, -18, 121-15). Thus, claimant first sought and received medical treatment for his right cubital tunnel syndrome in 1991, when CNA was on the risk. CNA is therefore presumptively responsible for claimant's cubital tunnel syndrome.<sup>6</sup>

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<sup>6</sup> Even if the triggering date is May 2, 2000, when Dr. Ferguson noted that claimant had tenderness over the medial epicondyle, and when SAIF was on the risk, responsibility would still shift to SRS because claimant's later employment actually contributed to a worsening of his condition.

A presumptively responsible carrier may shift responsibility to a subsequent carrier if claimant's employment at the later employment actually contributed to a worsening of the condition. *Reynolds Metals v. Rogers*, 157 Or App 147, 153 (1998), *rev den*, 328 Or 365 (1999). CNA argues that its liability is foreclosed by its previously unappealed denial of claimant's "irritated ulnar nerve." We need not decide that particular issue, however, because we find that, in any event, the persuasive medical evidence establishes that claimant's employment while later carriers were on the risk actually contributed to a worsening of the right cubital tunnel condition.

As discussed previously, Dr. Ferguson could not determine whether claimant had a "pathological worsening" of his cubital tunnel syndrome. (Exs. 117, 119A-25). He explained that there were no previous nerve conduction studies to compare in order to determine if there had been a pathological worsening. (Ex. 119A-15). On the other hand, Dr. Ferguson said that claimant's cubital tunnel symptoms had increased in the last several years and that his work exposure continued to contribute to the cubital tunnel syndrome. (Exs. 117, 118, 119A-21, -22). In a deposition, Dr. Ferguson believed that claimant had a "new episode" of cubital tunnel syndrome in 2003 and he agreed that claimant's work activities from 1991 through 2003 were the major contributing cause of that new episode. (Ex. 119A-13, -14).

Although Dr. Ferguson did not believe that claimant's cubital tunnel condition had "pathologically worsened," his opinion supports the conclusion that claimant's later employment actually contributed to a worsening of that condition. Likewise, Dr. Gordin's opinion establishes that claimant's later employment after CNA was on the risk actually contributed to a worsening of his cubital tunnel syndrome.

As we noted above, Dr. Gordin initially concurred with Dr. Nathan's report, which said that there was no evidence to indicate that claimant's underlying nerve pathology developed or worsened as a result of his work activities. (Exs. 103-10, 106). However, after reviewing the medical records, Dr. Gordin changed her opinion because she found evidence of a pathological worsening. (Ex. 121-17). As discussed earlier, Dr. Gordin adequately explained her change of opinion. Dr. Gordin explained that between 1991 and 2003, claimant's symptoms of numbness and tingling progressed from intermittent and transient to constant. (Exs. 121-9, -10). Dr. Gordin concluded that claimant's condition had worsened during that period because of his work activities. (Ex. 121-10, -11, -17). The absence of earlier nerve conduction studies did not negate the finding of a worsening. (Ex. 121-10).

Dr. Gordin did not believe there was evidence between November 1998 and October 2001 (when SAIF was on the risk) to indicate a worsening. (Ex. 121-12). She explained that there was not much discussion in the chart notes regarding numbness and tingling between those dates. (Ex. 121-13, -14).

Dr. Nathan concluded that claimant's nerve pathology was not worsened as a result of his work activities for the employer. (Ex. 103-10). We are not persuaded by Dr. Nathan's opinion because it lacks adequate explanation and his conclusion is inconsistent with the medical reports documenting claimant's increased symptoms. Dr. Nathan's opinion is also inconsistent with claimant's testimony that his symptoms increased in 2003 and that his little finger and part of his hand became numb all the time. (Tr. 22).

Based on the opinion of Dr. Gordin, as supported by Dr. Ferguson, we conclude that claimant's employment after CNA was on the risk actually contributed to a worsening of his right cubital tunnel syndrome. In particular, Dr. Gordin explained that claimant's condition pathologically worsened in 2003, when SRS was on the risk. Consequently, we agree with the ALJ that SRS is responsible for claimant's right cubital 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 \$2,600, payable by SRS. In reaching this conclusion, we have particularly considered the time devoted to the case (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 February 23, 2005 is affirmed in part and vacated in part. The ALJ's order that purported to address "claim reopening" of claimant's "post-aggravation rights" new medical condition with CNA is vacated. For services on review, claimant's attorney is awarded \$2,600, payable by SRS.

Entered at Salem, Oregon on January 30, 2006