
In the Matter of the Compensation of
PAMELA A. BONFIGLIO, Claimant
WCB Case No. 07-03508
ORDER ON REVIEW
George J Wall, Claimant Attorneys
Maher & Tolleson LLC, Defense Attorneys

Reviewing Panel: Members Langer and Biehl.

The self-insured employer requests review of Administrative Law Judge (ALJ) Riechers' order that: (1) set aside its partial denial of claimant's new/omitted medical condition claim for right radial neuropathy; and (2) set aside its denial of claimant's new/omitted medical condition claim for a consequential left forearm compensatory overuse strain. On review, the issue is compensability.

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

The reference to *medial* tunnel syndrome in the section entitled "Issue" on page one is deleted.

The "Supplemental Findings of Fact" added by the September 3, 2008 Second Opinion and Order on Reconsideration are inserted on page two (rather than page three) of the June 3, 2008 Opinion and Order on Reconsideration.

The ALJ found Dr. Stigler's opinion relating claimant's right radial neuropathy to the January 23, 2006 compensable injury the most persuasive medical evidence regarding causation. The ALJ reasoned that, as a neurologist, Dr. Stigler had expertise in analyzing neurological problems and interpreting electrodiagnostic studies. The ALJ noted that Dr. Stigler specifically relied on the results of claimant's December 2006 electrodiagnostic studies, as well an accurate history in forming his causation opinion.

The ALJ also discounted the contrary medical opinions, because they did not address the 2006 studies. In addition, the ALJ found that Dr. Stigler's opinion was better explained than the contrary opinions.

Regarding the claim for a left forearm compensatory overuse strain, the ALJ found the opinions of Drs. Browning, Stigler, and Yoshinaga persuasive. We agree with and adopt the ALJ's reasoning regarding medical evidence, with the following supplementation.

The employer argues that we should not rely on Dr. Stigler's opinion, because it is based on an inaccurate history that claimant had no prior treatment for her forearms. In this regard, Dr. Stigler concurred with an opinion letter that included the following:

“Since there is no history of treatment to [claimant's] right forearm * * * or her left forearm, you do not think that she has any preexisting condition which has contributed to her need for treatment for either her right or her left forearm. For that reason, in your opinion her work activities were the major (more than 50%) cause of the conditions requested.” (Exs. 153-3).

Claimant did have prior treatment for her forearms. However, the medical record does not indicate that claimant had preexisting forearm conditions that contributed to her disability and need for treatment for her forearms as of or after her January 2006 compensable injury.¹ (See Exs. 92-16, 125-16-17). Indeed, no medical opinion attached significance to the fact that claimant had prior medical treatment for her forearms. Under these circumstances, we do not find the employer's argument persuasive and we do not discount Dr. Stigler's causation opinion for not evaluating that aspect of claimant's history.² See *Jackson County v. Wehren*, 186 Or App 555, 562 (2003) (court affirmed Board's decision finding treating doctor's opinion persuasive, though the Board order did not address a prior episode of symptoms -- because no other doctor attached significance to that episode); *Dorothy S. Calliham*, 59 Van Natta 137 (2007) (attending physician's opinion persuasive, despite his lack of knowledge of alleged off-work incident, where no other physician attached significance to such an incident); *Linda V. Tarvin*, 58 Van Natta 2529, 2530 (2006) (the claimant's “off-work” digging and lifting activities were immaterial, because no medical opinion attached significance to those activities); *Norma J. Riggs*, 56 Van Natta 2498, 2499 (2004) (treating doctor's opinion that did not weigh the claimant's age, gender and body mass not discounted for not doing so, because no medical opinion identified those factors as potential causes of the

¹ Many doctors who examined and treated claimant after the 2006 injury considered or listed a diagnosis of epicondylitis, noting claimant's history of having had it in the past. (See Ex. 25-4). However, that diagnosis was eventually ruled out in favor of right radial neuropathy and left forearm compensatory overuse strain.

² We decline to discount Dr. Yoshinaga's opinion for the same reason. (See Ex. 154-3).

disputed conditions). Under these circumstances, based on the opinions of claimant's treating physicians, we affirm the ALJ's decision setting aside the employer's denial of claimant's new or omitted medical condition claims.

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 the employer. 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 issue, and the value of the interest involved.

Finally, because our order issues after the effective date of *amended* ORS 656.386(2) and OAR 438-015-0019, and because we have affirmed the ALJ's compensability decision, we consider it appropriate to award reasonable expenses and costs to claimant for records, expert opinions, and witness fees. *See Gary E. Gettman*, 60 Van Natta 2862 (2008); *Nina Schmidt*, 60 Van Natta 169 (2008); *Barbara Lee*, 60 Van Natta 1, *on recons*, 60 Van Natta 139 (2008).

Consequently, in accordance with the aforementioned statute and rule, claimant is awarded reasonable expenses and costs for records, expert opinions, and witness fees, if any, incurred in finally prevailing over the denial, to be paid by the employer. The procedure for recovering this award, if any, is prescribed in OAR 438-015-0019(3).

ORDER

The ALJ's order dated June 2, 2008, as reconsidered on June 3, 2008 and September 3, 2008, is affirmed. For services on review, claimant's attorney is awarded an assessed fee of \$1,500, to be paid by the employer. Claimant is awarded reasonable expenses and costs for records, expert opinions, and witness fees, if any, incurred in finally prevailing over the denial, to be paid by the employer.

Entered at Salem, Oregon on March 24, 2009