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In the Matter of the Compensation of  
**PATRICIA M. WRIGHT, Claimant**  
WCB Case No. 07-08113  
ORDER ON REVIEW  
Merkel & Associates, Claimant Attorneys  
VavRosky MacColl PC, Defense Attorneys

Reviewing Panel: Members Weddell and Langer.

Claimant requests review of Administrative Law Judge (ALJ) Mills's order that upheld the self-insured employer's denial of her occupational disease claim for a mental disorder. On review, the issue is compensability.

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

The ALJ found that claimant did not establish that nonexcluded employment conditions were the major contributing cause of her mental disorder. ORS 656.266(1); ORS 656.802(2)(a); ORS 656.802(3). In doing so, the ALJ determined that the circumstances surrounding claimant's cessation of employment were generally inherent in every working situation and, as such, were an excluded employment condition. Concluding that the statutory requirements for a compensable mental disorder had not been satisfied, the ALJ upheld the employer's denial.

On review, claimant argues the employer "terminated" her husband from employment as co-manager without a two-thirds majority vote of the general membership, as required by the employer's by-laws, and did not renegotiate her management contract, as contractually required. Therefore, according to claimant, the employer's actions were unreasonable and a nonexcluded employment condition under ORS 656.802(3)(b). Relying on *SAIF v. Weathers*, 151 Or App 510 (1997), claimant contends that it was *necessary* for the ALJ to determine the contractual relationship between the parties, and whether the employer violated the contract, in determining the reasonableness of the employer's actions. We disagree with claimant's contentions.

To establish the compensability of an occupational disease, claimant must prove that employment conditions were the major contributing cause of the disease. ORS 656.266(1); 656.802(2)(a). Assigning major causation of a condition requires weighing the various causes and determining which cause, or combination of causes, contributed more than all other causes combined. *Smothers v. Gresham Transfer, Inc.*, 332 Or 83, 133 (2001); *Dietz v. Ramuda*, 130 Or App 397, 401-02 (1994), *rev dismissed*, 321 Or 416 (1995).

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Furthermore, ORS 656.802(3) provides:

“Notwithstanding any other provision of this chapter, a mental disorder is not compensable under this chapter unless the worker establishes all of the following:

“(a) The employment conditions producing the mental disorder exist in a real and objective sense.

“(b) The employment conditions producing the mental disorder are conditions other than conditions generally inherent in every working situation or reasonable disciplinary, corrective or job performance evaluation actions by the employer, or cessation of employment or employment decisions attendant upon ordinary business or financial cycles.

“(c) There is a diagnosis of a mental or emotional disorder which is generally recognized in the medical or psychological community.

“(d) There is clear and convincing evidence that the mental disorder arose out of and in the course of employment.”

In *Weathers*, the claimant filed a mental disorder claim on the basis that the employer unreasonably transferred him to a different institution, contrary to a union contract. 151 Or App at 512-13. The court found that, although a transfer is a condition generally inherent in every working situation, “the manner and circumstances surrounding the decision to transfer, and how it is carried out, may result in a compensable mental disorder.” *Id.* at 517. However, the court held that whether the employer violated the contract was not determinative. *Id.* The court explained:

“The test is whether the manner and circumstances of the transfer caused the mental illness and whether those circumstances are generally inherent in every transfer. The reasonableness of the employer’s conduct may be a factor when considering whether the circumstances of the transfer are generally inherent in every transfer and whether they affected claimant’s perception of employer’s actions, but reasonableness is not the test.” *Id.* at 518.

Therefore, we determine whether the manner and circumstances of claimant's cessation of employment, including the renegotiation of, as well as the elimination of her husband from, the 2007 management contract was generally inherent in every working situation. ORS 656.802(3)(b); *Weathers*, 151 Or App at 518. For the following reasons, we find that finding that the employer's actions were both reasonable, and generally inherent in every working situation.

Article II of the employer's by-laws governed its management. Section 1 provided that the government and management of the employer were entrusted to the Executive Committee. Pursuant to section 5, the Executive Committee, by majority vote of the quorum present, could hire a manager or co-managers. Under section 7, the manager/co-managers could be terminated for cause only by two-thirds vote of the general membership at a general membership meeting. (Ex. 20-5).

The 2006 management contract between claimant, her husband, and the employer referenced Article II, section 7, of the by-laws. (Ex. 23-1). That contract also provided that the Executive Committee "has the authority to negotiate new work agreements (contract) with the manager/co-manager during the month of October of each year." (Ex. 23-3).

On September 28, 2007, claimant and her husband requested renegotiation of their management contract and submitted their proposal to Mr. Peterson and Mr. Gudeman, members of the Executive Committee. (Exs. 41, 50). Their proposal made changes to the "General Statement," "Minimum Requirements," "Monetary Compensation and Benefits," "Management Authority," and "Executive Committee Authority" sections of the 2006 contract. (Exs. 23, 50).

In response to claimant's proposal, Mr. Gudeman and Mr. Pedersbeck, members of the house committee (a subcommittee of the Executive Committee charged with preparing and meeting with claimant to discuss a new management contract) prepared a new proposed contract for approval by the Executive Committee. (Tr. Vol. III 99-101, 108-09). That proposed contract eliminated all references to any "co-manager," allowing for only a "manager." (Exs. 62, 63, 65, 77). The proposed contract also changed the manager's employment status to an "at-will employee," increased wages and mileage reimbursement rates, and did not provide for yearly negotiation of the management contract. *Id.*

At the October 9, 2007 Executive Committee meeting, the house committee's proposal was presented to the Executive Committee members and read aloud. One member expressed concern that the club manager position had always been a married team. Nonetheless, the Executive Committee approved the proposed contract by a 10-to-2 vote. (Ex. 57-3).

The next day, Mr. Gudeman notified claimant that the Executive Committee approved a new management contract and requested a meeting with her. (Ex. 60). Mr. Gudeman also told claimant that the Executive Committee's proposal had some changes from her proposal. (Ex. 59). In doing so, he noted that he had previously discussed with claimant's husband that the Executive Committee was "doing away with the so called contract and going to an employee manager period." (*Id.*)

On October 15, 2007, claimant e-mailed the Executive Committee her responses to the changes in their proposed contract and rejected that proposal. (Ex. 65). She also sent another proposed contract, in which she made further changes to the same sections as her September 28 proposal, as well as to the "Manager/Co-manager Definition." (Exs. 50-4, 64-3).

In response to claimant's second proposal, Mr. Watts, Commander of the Executive Committee, indicated that it was "not in the best interest of the club to retain a co-manager position." (Ex. 67). He requested claimant's response to the Executive Committee's proposed contract by November 1, 2007. (*Id.*) Claimant refused to sign. (Tr. Vol. II 38-41, 135).

After reviewing the record, we agree with the ALJ that, although the negotiation process may not have been the type that claimant had envisioned or desired, it was still a negotiation. That is, claimant and her husband requested renegotiation of their management contract and submitted a proposal. In response, the house committee prepared a new proposed contract, approved by the Executive Committee, which eliminated "co-managers," allowing for only a "manager." Claimant rejected the Executive Committee's proposed contract and submitted a second proposal, with additional changes. The Executive Committee rejected claimant's second proposed contract and requested that she sign its proposed contract. Claimant refused to sign, resulting in the cessation of her employment.

Furthermore, the employer's by-laws did not require the Executive Committee to hire a manager/co-manager. Instead, the by-laws provided, "The Executive Committee, by majority vote of the quorum present *can* hire a manager *or* co-managers for the Club and Post." (Ex. 20-5) (emphases added).

Although the Executive Committee's proposed contract (which referenced only a "manager," rather than "co-managers") could be interpreted as a "termination" of claimant's husband's employment, the record indicates that the employer was neither interested in renewing the management contract, nor retaining a co-manager position. For example, in July 2007, claimant's husband e-mailed an Executive Committee member that he was aware that they might let the 2006 contract expire and not renew it. (Ex. 38-2). In September 2007, Mr. Gudeman e-mailed claimant's husband that members of the Executive Committee were "intending to not renew the contract but there has been no mention of replacing any employee including management." (Ex. 46). Mr. Gudeman's October 10 e-mail indicated that he previously spoke with claimant's husband about "doing away with the so called contract and going to a[n] employee manager period." (Ex. 59). On October 29, claimant was informed that the employer "determined that it is not in the best interest of the club to retain a co-manager position." (Ex. 67).

Finally, inasmuch as this type of situation might not be covered by the by-laws or the management contract agreement, Article X, section 2, of the by-laws provides: "Matters not covered within the by-laws and Constitution \* \* \* will be handled by majority vote of the Executive Committee present at the meeting as long as a quorum has been established." (Ex. 20-9). A majority of the Executive Committee approved the new management contract proposal. (Ex. 57-3).

Under these circumstances, we find that the manner and circumstances of claimant's cessation of employment (*i.e.*, the renegotiation of the management contract, the decision to not hire co-managers, and claimant's rejection of the employer's proposed contract) was reasonable and generally inherent in every working situation. Therefore, we find claimant's cessation of employment to be an excluded employment condition under ORS 656.802(3)(b).

Next, we determine whether claimant's employment conditions were the major contributing cause of her mental disorder. ORS 656.802(2)(a). Determination of the major contributing cause is a complex medical question that must be resolved on the basis of expert medical opinion. *Jackson County v. Wehren*, 186 Or App 555, 559 (2003) *citing* *Uris v. Comp. Dep't*, 247 Or 420, 426 (1967).

A mental disorder is only compensable if nonexcluded employment conditions contributed more than nonemployment conditions and excluded employment conditions combined. *Liberty Northwest Ins. Corp. v. Shothafer*,

169 Or App 556, 565-66 (2000); *John P. Flanery*, 61 Van Natta 1084, 1087 (2009). A medical opinion that does not properly weigh contributory but statutorily excluded factors is insufficient to establish a compensable mental disorder. *Flanery*, 61 Van Natta at 1087; *Judith E. Lucke*, 60 Van Natta 2125, 2127 (2008).

Claimant argues that the medical evidence establishes that the sexual harassment, alone, was the major contributing cause of her mental disorder. For the following reasons, we disagree.

Dr. Eriksen, claimant's treating physician, opined that claimant's mental disorder was caused by "the stress of her current work situation." (Ex. 88-2). She further stated that "the events leading to [claimant's] termination" were unreasonable and resulted in her mental disorder. (Ex. 132).

Dr. Peterson, claimant's treating psychiatrist, reported her stressors to be sexual harassment, "back and forth escalation of mistrust" between claimant and the Executive Committee, the Executive Committee's desire to "force her out," and claimant's "termination" and being "fired without notice" through harassment by the Executive Committee. (Exs. 111-1, 124-1). Dr. Peterson also noted that claimant's drinking had increased since July 2007. (Exs. 111-2, 124-2). In doing so, she stated that it was "difficult to separate the affective [symptoms] from substance caused [symptoms] at this time as the 2 problems certainly compound one another." (Ex. 111-4). Dr. Peterson concluded that employment conditions, which included "the events leading up to her termination" and sexual harassment, were the major contributing cause of the mental disorder. (Ex. 124).

Dr. Wicher, performing a psychological evaluation at the employer's request, opined that claimant's mental condition was due to her husband's cessation of employment and interpersonal conflict, which included the sexual harassment. (Exs. 117-8-10, 129). Dr. Wicher also noted that claimant's excessive use of alcohol contributed to her mental condition. (Ex. 129-3).

We find these medical opinions insufficient to establish a compensable mental disorder. Dr. Erikson did not address the contribution of the sexual harassment against the excluded employment conditions and nonemployment conditions, such as claimant's alcohol use. *Flanery*, 61 Van Natta at 1087-88; *Lucke*, 60 Van Natta at 2127. Dr. Peterson's causation opinion included the contribution from excluded employment conditions and did not address claimant's alcohol use. *Id.* Finally, Dr. Wicher attributed claimant's mental condition to excluded employment conditions and nonemployment conditions. *Shothafer*, 169 Or App at 565-66; *Flanery*, 61 Van Natta at 1087-88.

We conclude that, because the medical evidence attributing causation to claimant's employment conditions did not distinguish between excluded and nonexcluded employment conditions under ORS 656.802(3)(b), claimant has not proven the compensability of her occupational disease claim for a mental disorder. Accordingly, we affirm.

ORDER

The ALJ's order dated October 28, 2008, as corrected on November 7, 2008, is affirmed.

Entered at Salem, Oregon on September 25, 2009