

In the Matter of the Compensation of
ROBERT GUTIERREZ-DIAZ, Claimant

WCB Case No. 09-00042

ORDER ON REVIEW

Welch Bruun & Green, Claimant Attorneys
MacColl Busch Sato PC, Defense Attorneys

Reviewing Panel: Members Biehl and Langer.

Claimant requests review of Administrative Law Judge (ALJ) Otto's order that upheld the self-insured employer's denial of his occupational disease claim for asthma and chronic obstructive pulmonary disease (COPD). On review, the issue is compensability.

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

Claimant worked for the employer, a steel mill, from 2000 to 2003, and then again from August through November 2008. (Tr. 8, 12). He wore a dust mask at work to protect himself from any industrial fumes. (Tr. 10). In June 2002, claimant sought medical treatment for a cough and congestion, with a diagnosis of bronchitis. (Exs. 6, 6A). In June 2003, he was treated for esophageal reflux. (Ex. 10).

Between 2003 and 2008, claimant attended auto repair school, and then worked in approximately eight different body shops. (Tr. 19). He testified that he experienced no lung or breathing difficulties during this period. (Tr. 12). Within a few weeks after returning to his steel mill job (as a metal grinder/pipe cutter) in August 2008, claimant noticed symptoms of a non-productive cough. (Ex. 26-2). His family physician diagnosed a mild airway obstruction of undetermined etiology. (Ex. 13-2).

Although claimant was terminated from his steel mill job in November 2008, he continued to have breathing difficulties, and that same month, he came under the care of Dr. Rettman, a pulmonologist. (Ex. 21). Diagnosing asthma with COPD, Dr. Rettman initially opined that these conditions were likely caused by work-related exposure to welding fumes and smoke. (*Id.*)

Dr. Montanaro, a pulmonologist, performed an employer-arranged medical examination, with a diagnosis of interstitial lung disease of undetermined etiology, infectious paranasal sinusitis, probable allergic rhinitis, a history of esophageal

reflux, and depression. (Ex. 26-6). Dr. Montanaro did not identify asthma or COPD, and did not believe that claimant's work exposure was the major contributing cause of his diagnosed conditions.¹ (Ex. 26-7).

The employer denied claimant's claim for asthma and COPD, and claimant requested a hearing.

In upholding the employer's denial, the ALJ found that Dr. Rettman's opinion had changed several times without sufficient explanation, and was therefore insufficient to meet claimant's burden of proof. Instead, the ALJ relied on Dr. Montanaro's opinion, concluding that it was well reasoned and based on an accurate history.

On review, claimant argues that because Dr. Rettman used an interpreter during one of his examinations, he had a more accurate history than did Dr. Montanaro.² Claimant also contends that the ALJ improperly found that claimant did not have either asthma or COPD. Based on the following reasoning, we affirm the ALJ's decision.

To establish a compensable occupational disease, claimant's employment conditions must be the major contributing cause of the disease. ORS 656.802(2)(a). To persuasively establish the major contributing cause of a condition, an opinion must consider the relative contribution of each cause and determine which cause, or combination of causes, contributed more than all other causes combined. *Dietz v. Ramuda*, 130 Or App 397, 401-02 (1994), *rev dismissed*, 321 Or 416 (1995). 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).

Here, claimant asserts that Dr. Montanaro's opinion should be afforded less weight because he examined claimant without an interpreter present. Specifically, claimant argues that Dr. Montanaro did not have a complete and accurate history,

¹ Ambient air tests obtained from the employer's steel mill between 2006 and 2008 were all within permissible limits and OSHA tests confirmed these findings. (Ex. 10A). Subsequent to the testing, the employer added additional fume evacuation systems. (Tr. 26). Air hoods and respirators were also readily available to all employees. (*Id.*)

² Claimant's first language is Spanish, although he also speaks and understands English.

and so could not fully understand his symptoms. Yet, Dr. Montanaro reviewed claimant's medical records, took a detailed history, and noted no difficulties in communicating with claimant. (Ex. 26). Nor does claimant cite any specific inaccuracies in Dr. Montanaro's report. As such, we decline to discount his opinion. See *Claire L. Saeger*, 60 Van Natta 829, 831-832 (2008), citing *Wehren*, 186 Or App at 559 (a history is complete if it includes sufficient information on which to base the physician's opinion and does not exclude information that would make the opinion less credible).

We also do not agree with claimant's contention that the ALJ's finding that claimant did not have the alleged conditions of asthma and COPD ignores the medical record and the diagnoses of Dr. Rettman and other physicians. After conducting our review, we concur with the ALJ's reasoning that Dr. Montanaro's opinion, which did *not* include an asthma or COPD diagnosis, was the most persuasive. Accordingly, based on this opinion, we are not persuaded that claimant's work exposure at the employer's steel mill was the major contributing cause of his claimed conditions. Thus, we affirm.

ORDER

The ALJ's order dated May 4, 2010 is affirmed.

Entered at Salem, Oregon on November 19, 2010