In the Matter of the Compensation of
ROXANNE F. BALCOM, Claimant
WCB Case No. 09-01465
ORDER ON RECONSIDERATION
Martin L Alvey, Claimant Attorneys
Reinisch MacKenzie PC, Defense Attorneys

Reviewing Panel: Members Weddell, Lowell, and Herman. Member Weddell dissents.

On February 18, 2011, we abated our January 19, 2011 order that reversed that portion of an Administrative Law Judge's (ALJ's) order that set aside the self-insured employer's denial of claimant's new/omitted medical condition claim for an L5-S1 foraminal stenosis condition. We took this action to address claimant's motion for reconsideration. Having received the employer's response, we proceed with our reconsideration.

Claimant disagrees with our analysis of the medical conditions regarding her L5-S1 condition. Specifically, she contends that the medical opinion of Dr. Carr is not persuasive because he did not personally review a June 2008 bone scan, and because his opinion is based on general statistics. To further clarify our reasoning, we offer the following additional comments.

In finding that the employer established that the "otherwise compensable injury" was not the major contributing cause of the disability or need for treatment of the combined L5-S1 foraminal stenosis condition, we relied on Dr. Carr's medical opinion. Yet, our decision was not based solely on the opinion of Dr. Carr.

Although there is no indication that Dr. Carr personally reviewed the June 2008 bone scan, his report describes the radiologist's report of the bone scan. (Ex. 55-4). Moreover, Dr. Carr personally reviewed other imaging studies and explained why those findings were degenerative in nature. (Ex. 55-11-13). He further noted that the imaging studies (including MRIs, x-rays, and CT scans) did not reveal any acute discogenic pathology. (Ex. 62).

We also found Dr. Carr's opinion to be supported by Dr. Strum, who personally reviewed claimant's imaging studies (including the bone scan, MRIs, x-rays, and CT scans), and explained why the underlying lumbar pathology was degenerative in nature. (Ex. 53-12-15). Dr. Strum's opinion was consistent with

the various radiologists' interpretations of the imaging studies. (*See* Exs. 14, 21, 31, 35). The radiologists interpreted the bone scan findings as "probably related to degenerative disease." (Ex. 21-1).

We also explained why we found the opinions of Dr. Lorish and Dr. Sandquist to be unpersuasive. In particular, Dr. Lorish's opinion was inconsistent regarding the contribution from claimant's April 2008 work injury to the bone scan findings. (*See* Exs. 26, 40B, 43, 56). We found no reasonable explanation for these inconsistencies.

Finally, we disagree with claimant's contention that Dr. Carr's opinion was based on general statistics. Although Dr. Carr referred to medical studies and statistics in rendering his causation opinion, he also addressed claimant's medical history, imaging studies, examination findings, and mechanism of injury. (Exs. 55-12-17, 62). *See Roger Packett*, 62 Van Natta 821, 823 (2010) (finding a physician's opinion persuasive because, although it was based on general statistics, the physician also addressed the claimant's medical history, imaging studies, examination findings, and mechanism of injury).

For the foregoing reasons, we continue to find Dr. Carr's opinion, as supported by Dr. Strum, to be the most persuasive. Thus, after further reviewing the record and our order, in light of claimant's contentions, we adhere to our finding that the employer established its burden of proof under ORS 656.266(2)(a).

Accordingly, on reconsideration, as supplemented herein, we republish our January 19, 2011 order in its entirety. The parties' rights of appeal shall begin to run from the date of this order.

IT IS SO ORDERED.

Entered at Salem, Oregon on March 1, 2011

Member Weddell dissenting.

For the reasons expressed in my previous dissenting opinion, I continue to disagree with the majority's conclusion.