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In the Matter of the Compensation of  
**GLENN E. SEVERNS, DCD., Claimant**  
WCB Case No. 08-06410  
ORDER ON RECONSIDERATION  
Hansen Malagon Lawyers, Claimant Attorneys  
Scheminske et al, Defense Attorneys

Reviewing Panel: Members Biehl and Langer.

On April 13, 2011 we affirmed an Administrative Law Judge's (ALJ's) order that: (1) admitted evidence over claimant's<sup>1</sup> objection; (2) determined that the decedent's occupational disease claim was timely filed under ORS 656.807(1); and (3) upheld the self-insured employer's denial of the decedent's occupational disease claim for bladder cancer. The employer requests reconsideration of our order, arguing that the occupational disease claim was untimely filed. Having received claimant's response, we proceed with our reconsideration

ORS 656.807(1) provides that an occupational disease claim is void unless filed one year from the later of the following dates: (1) the date the worker first discovered the occupational disease; (2) the date that, in the exercise of reasonable care, the worker should have discovered the occupational disease; (3) the date the worker became disabled; or (4) the date the worker was informed by a physician that he or she was suffering from an occupational disease. *Freightliner LLC v. Holman*, 195 Or App 716 (2004); *Vida Eghani*, 58 Van Natta 979, 981 (2006).

In *Wayne-Dalton Corp. v. Mulford*, 190 Or App 370, 374-75 (2003), the court determined that the word "informed" should be accorded its ordinary meaning of "importing information or making the listener aware of information." Thus, the court held that under the ordinary meaning of the word "informed," as used in ORS 656.807(1)(b), the statute of limitations does not begin to run "until a physician tells the claimant expressly or in substance that the patient is suffering from an occupational disease." *Id.* at 375.

Here, the decedent filed his occupational disease claim in July 2008. The employer contends that the claim was untimely filed because Dr. Rockove informed the decedent in 2005 that he was suffering from an occupational disease. We disagree.

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<sup>1</sup> Claimant is Jean A. Severns, the deceased worker's widow.

In October 2005, the decedent sought information from Dr. Rockove regarding the cause of his bladder cancer. The decedent testified that Dr. Rockove told him that there were two possible causes: cigarette smoking and exposure to chemicals at work. Dr. Rockove informed the decedent that it was “very possible” that his work at an aluminum plant was the cause of his cancer. (Ex. 35-22). Dr. Rockove did not have an independent recollection of what he told the decedent in October 2005, but had no reason to disagree with the decedent’s testimony. (Ex. 37).<sup>2</sup>

The employer argues that, under these circumstances, the decedent was sufficiently informed in 2005 that he was suffering from an occupational disease, citing the following cases: *Charles R. Beem*, 63 Van Natta 166 (2011); *Charles J. Baker*, 60 Van Natta 3026 (2008); *Vida Eghani*, 58 Van Natta 979 (2006); and *Leonard F. Staley*, 57 Van Natta 552 (2005) (on remand). We find those cases distinguishable.

In *Beem*, in a June 2009 concurrence letter from the employer’s attorney, a physician agreed that the claimant had a combined condition that was caused in major part by the claimant’s work activities. The physician explained that he had advised claimant in October and December 2006 and again in 2008 that he had a combined condition (recurrent lumbar strain combined with spondylosis) and that his work activities for the employer were the cause of his combined condition and ensuing disability and need for treatment. At the November 2009 hearing, the claimant testified that at least a couple of years earlier, the physician told him that he needed to get a different job because his current job was aggravating his low back condition. The claimant was asked about the doctor’s June 2009 concurrence letter and explained that he had no reason to disagree with the doctor’s description of what he told him. The claimant’s testimony was consistent with his earlier deposition, where he testified that he understood from the doctor’s statements to him that the physical nature of his job was aggravating his back and that he needed to get a different job. Based on the aforementioned evidence, we concluded that in 2006, the doctor informed claimant in substance that he had an occupational disease, and that the claimant first discovered or, in the exercise of reasonable care, should have discovered, the occupational disease in 2006. 63 Van Natta at 168.

Here, in contrast to the situation in *Beem* where the claimant’s physician plainly informed him that the major cause of his condition was his work exposure and advised him to find a different job, Dr. Rockove only stated that it was “very

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<sup>2</sup> Dr. Rockove’s October 2005 chart notes do not reveal any discussion of potential causes of the decedent’s disease.

possible” that the decedent’s work activity was a cause of his bladder cancer.<sup>3</sup> Unlike *Beem*, the evidence only establishes that work “could have been” connected to the decedent’s condition.

In *Baker*, a physician’s chart note explained that the claimant’s left shoulder was worn out from his activities as an electrician. The claimant acknowledged that he understood at that time that his claimed left shoulder condition was work related, but opted not to file a claim. We determined that the physician had informed the claimant “expressly or in substance” that he was suffering from an occupational disease. 60 Van Natta at 3029. In *Staley*, a physician implicated work activities as causing the claimant’s hearing loss and the claimant understood that work noise contributed to the hearing loss. We determined that the physician informed the claimant, at least in substance, that he was suffering from an occupational disease. 57 Van Natta at 554.

Like *Beem*, both *Baker* and *Staley* are distinguishable. Unlike those cases where physicians had unequivocally linked the workers’ conditions to their employment, the decedent here understood that his condition was only possibly related to his work and Dr. Rockove only stated that it was “very possible” that work was a cause of the decedent’s cancer.<sup>4</sup>

Finally, in *Eghani*, a physician told the claimant that her psychological symptoms were related to a work event and were probably work-related. Under those circumstances, we concluded that the physician told the claimant expressly or in substance that her symptoms were related to the work incident. Consistent with *Mulford*, we determined that the claimant was informed by her physician that she was suffering from an occupational disease. 58 Van Natta at 581.

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<sup>3</sup> Dr. Rockove also referred to another possible contributor to the decedent’s bladder cancer (his cigarette smoking), which further distinguishes this case from *Beem*. We acknowledge the decedent’s testimony that another physician, Dr. Nicholson, told him that his cancer “could have been connected” to his work activity. The employer asserts that Dr. Nicholson did not identify another possible cause of the decedent’s cancer. Even if the employer’s assertion is correct, as was true with Dr. Rockove’s opinion, Dr. Nicholson’s opinion is phrased in terms of possibility, which distinguishes it from *Beem* and the other cases cited by the employer. See also *City of Albany v. Cary*, 201 Or App 147, 150 (2005) (physician’s information that there was a reasonable medical probability that the claimant’s condition was primarily caused by his employment satisfied the *Mulford* standard).

<sup>4</sup> As previously noted, Dr. Rockove also referred to another possible contributor to the decedent’s bladder cancer (his cigarette smoking), which also distinguishes this case from *Baker* and *Staley*.

Once again, by contrast, the decedent here was not told that his condition was probably work related. Moreover, the decedent's physician also referred to a "non-work" possible contribution (cigarette smoking). Thus, *Eghani* is also inapposite.

Based on the aforementioned reasoning, we conclude that in 2005, Dr. Rockove did not inform the decedent expressly or in substance that he had an occupational disease. We therefore reject the employer's argument that the decedent first discovered or, in the exercise of reasonable care, should have discovered, the occupational disease in 2005. Under these circumstances, we agree with the ALJ that the claim was timely filed under ORS 656.807(1).

Accordingly, our April 13, 2011 order is withdrawn. On reconsideration, as supplemented herein, we adhere to and republish our April 13, 2011 order. The parties' rights of appeal shall begin to run from the date of this order.

**IT IS SO ORDERED.**

Entered at Salem, Oregon on May 6, 2011