

In the Matter of the Compensation of
HAROLD HARRIS, Claimant
WCB Case No. 10-01462
ORDER ON REVIEW
James W Moller, Claimant Attorneys
H Thomas Andersen, Defense Attorneys

Reviewing Panel: Members Biehl and Lowell.

The self-insured employer requests review of Administrative Law Judge (ALJ) Rissberger's order that set aside its denial of claimant's occupational disease claim for a left plantar fasciitis condition. On review, the issue is compensability.

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

Claimant, age 63, began working as a cook for the employer in 2007. He primarily worked on his feet, either standing or walking between different locations in the kitchen. (Tr. 13). The floor was hard tile, with some rubber mats. (*Id.*) Claimant's work shifts ranged between eight and 15 hours per day. (Tr. 10; Ex. 2).

Near the end of 2009, claimant experienced left heel pain, particularly when getting out of bed, and near the end of his work shift. (Tr. 19; Ex. 2). In January 2010, he sought treatment from Dr. Puziss, who became his attending physician. (Exs. 1, 2). Diagnosing work-related left plantar fasciitis, Dr. Puziss recommended a night splint and physical therapy. (Ex. 2-2). He concluded that claimant's long hours of standing and walking as a cook were the major contributing cause of his plantar fasciitis condition. (*Id.*)

Dr. Denard examined claimant at the employer's request. (Ex. 5). Along with planter fasciitis, Dr. Denard diagnosed preexisting left pes planus (flatfoot), and preexisting left gastrocnemius equinus contracture (tightness of the calf muscle). (Ex. 5-4). Dr. Denard attributed claimant's planter fasciitis to the two preexisting conditions. (Ex. 5-5).

The employer denied compensability of claimant's left plantar fasciitis condition. (Ex. 7). Claimant requested a hearing.

In setting aside the employer's denial, the ALJ found Dr. Puziss's opinion to be the most persuasive. On review, the employer relies on Dr. Denard's opinion

and argues that Dr. Puziss's opinion is not sufficient to establish compensability of the claimed occupational disease. For the following reasons, we agree with 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). The major contributing cause means a cause that contributes more than all other causes combined. *Smothers v. Gresham Transfer, Inc.*, 332 Or 83, 133-34 (2001); *McGarrah v. SAIF*, 296 Or 145, 166 (1983). 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). In evaluating medical opinions, more weight is generally given to those opinions that are well reasoned and based on accurate and complete information. *Somers v. SAIF*, 77 Or App 259, 263 (1986); *Linda E. Patton*, 60 Van Natta 579, 582 (2008).

Here, the employer makes several arguments relative to the persuasiveness of Dr. Puziss's opinion. We address these arguments in turn.

The employer contends that claimant's descriptions of working up to 15-hour days and 80-hour weeks are unsupported exaggerations. (Ex. A). Asserting that Dr. Puziss relied on this inaccurate history as a basis for his opinion, the employer argues that it should be given little weight. *See Somers*, 77 Or App at 263 (a medical opinion that is based on inaccurate and incomplete information is not persuasive).

Yet, Dr. Puziss stated that claimant stood at work "for eight, and *even sometimes* 15, hours per day." (Ex. 9-1) (Emphasis added). We do not interpret Dr. Puziss's statement as an indication that claimant normally worked 15-hour days. Moreover, Dr. Puziss neither mentioned an 80-hour work week nor focused his opinion on the number of claimant's work hours. Rather, Dr. Puziss's opinion was primarily based on the standing and the ambulatory nature of claimant's work activities. Under such circumstances, we do not consider Dr. Puziss's opinion to be based on an 80-hour work week.

The employer argues that Dr. Puziss's opinion is internally inconsistent regarding the development of claimant's planter fasciitis.¹ However, the medical opinions do not focus on the onset of claimant's complaints. To the contrary, as discussed above, Dr. Puziss's opinion concerned claimant's daily standing/walking on hard tile floors. Therefore, any so-called "inconsistencies" do not undermine the persuasiveness of Dr. Puziss's opinion.

Dr. Denard's second report referred to the preexisting pes planus and gastrocnemius equinus contracture as the major contributing causes of claimant's plantar fasciitis. (Ex. 10-2). The employer asserts that Dr. Puziss's response addressed only the gastrocnemius equinus contracture, and not the pes planus. (Ex. 12). However, in the response, Dr. Puziss also referenced opinions detailed in an earlier report. (*Id.*) In that earlier report, Dr. Puziss explained why claimant's preexisting pes planus and gastrocnemius equinus contracture were not the major contributing cause of the condition.² (Ex. 9).

Citing the "Riddle" article from a medical journal, the employer notes that the highest risk factor for plantar fasciitis was the presence of preexisting gastrocnemius equinus contracture. (Ex. 10-3). The employer asserts that such results support Dr. Denard's opinion. Nonetheless, Dr. Puziss persuasively explained why, in claimant's particular situation, the walking/standing was the necessary factor in the development of the plantar fasciitis (with or without a tight gastrocnemius). (Ex. 12-1). Considering that Dr. Puziss's opinion was directed to claimant's individual circumstances, we find his opinion to be more persuasive.³

¹ In January 2010, Dr. Puziss mentioned that claimant's onset of pain had begun a month or two before. (Ex. 2). This is consistent with claimant's testimony. (Tr. 19). In a March 2010 report, Dr. Puziss noted that claimant's work hours had increased in January, causing him to develop the left heel pain. (Ex. 8).

² The employer also notes that Dr. Puziss was unaware that claimant had worked at a similar job in New Jersey. If the cause of the plantar fasciitis was ambulating, the employer speculates that claimant would have developed the condition while working in New Jersey. In the absence of a medical opinion supporting the employer's theory, we do not consider Dr. Puziss's opinion deficient on this basis.

³ Observing that the "Riddle" article was not designed to examine the risk factors for plantar fasciitis specifically in athletes or competitive runners, the employer notes that Dr. Puziss nonetheless mentions athletic activities in support of his opinion that walking/standing is the major contributor to claimant's plantar fasciitis. Dr. Puziss observed that athletes commonly develop plantar fasciitis, whether or not in the presence of predisposing factors. (Ex. 9-1). As he explained, athletes' running activities cause microtrauma on the foot, resulting in plantar fasciitis.

Using athletes as an analogy to claimant's situation, Dr. Puziss reasoned that the dispositive factor was the microtrauma and resulting inflammation that he sustained from standing/walking on a hard surface floor for a minimum of eight hours a day. (*Id.*) As such, Dr. Puziss's reference to athletes merely

See Patton, 60 Van Natta at 584 (opinion that relied on general statistics rather than evaluating the claimant's situation in particular not persuasive).

Finally, the employer notes that claimant has pes planus only in the foot where he has plantar fasciitis. This fact, the employer argues, coupled with claimant's bilateral gastrocnemius equinus contracture, "tips the scales" in favor of these preexisting conditions being the primary contributors to the plantar fasciitis. Based on the following reasoning, we disagree with the employer's argument.

Dr. Denard did not cite any medical literature to support the theory advanced by the employer.⁴ In addition, Dr. Puziss opined that pes planus "may or may not" predispose a person to plantar fasciitis. (Exs. 5-5, 9-1). Moreover, pes planus was not one of the significant risk factors for plantar fasciitis discussed in the "Riddle" article. The article does, however, find an association between work-related weight-bearing and the development of plantar fasciitis. (Ex. 10-12).

In sum, we are more persuaded by Dr. Puziss's well-reasoned opinion, which concluded that claimant's prolonged standing/walking at work caused his plantar fasciitis.⁵ In reaching this opinion, Dr. Puziss acknowledged that having a tight gastrocnemius can contribute to the problem. Nevertheless, Dr. Puziss concluded that claimant's ambulatory activities were the cause of his plantar fasciitis. (Exs. 11-2, 12-1).⁶

Accordingly, based on the above reasoning, we are persuaded that claimant's work exposure was the major contributing cause of his left plantar fasciitis. Thus, we affirm.

provided an example in support of his theory regarding the causation of claimant's plantar fasciitis. We do not interpret Dr. Puziss's use of this analogy to indicate that he misunderstood the focus of the Riddle article.

⁴ Dr. Denard stated that the etiology of acquired pes planus is multifactorial. (Ex. 10-2).

⁵ Noting that Dr. Puziss "is a doctor, not a lawyer," the employer argues that he used certain terms associated with the workers' compensation law, and applied them to the standards he believed to be applicable. (Appellant's Brief, pg. 9). In conducting our review, we focus solely on a physician's medical opinion and analysis, applying the controlling legal standard, as we consider applicable. Here, for the reasons expressed, we find Dr. Puziss's medical opinion to be the most persuasive.

⁶ As an illustration, Dr. Puziss noted that people in wheelchairs do not develop plantar fasciitis, whether or not they have gastrocnemius or soleus contractures. (Ex. 12-1).

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 \$2,500, 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, and his counsel's uncontested fee submission), the complexity of the issue, and the value of the interest involved.

Finally, 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. *See* ORS 656.386(2); OAR 438-015-0019; *Gary Gettman*, 60 Van Natta 2862 (2008).

ORDER

The ALJ's order dated September 27, 2010 is affirmed. For services on review, claimant's attorney is awarded an assessed fee of \$2,500, payable 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 August 2, 2011