

In the Matter of the Compensation of
DOROTHY J. CARNES, Claimant

WCB Case No. 08-05863

ORDER ON REVIEW

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Reviewing Panel: Members Weddell and Langer.

Claimant requests review of Administrative Law Judge (ALJ) Crummé's order that upheld the insurer's denial of her new/omitted medical condition claim for several bilateral sensory nerve conditions. In its respondent's brief, the insurer contests the ALJ's determination that the claim was not precluded by a Disputed Claim Settlement (DCS). On review, the issues are issue preclusion and compensability.

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

Claimant has a history of certain hand symptoms dating back to the 1970s. These symptoms consisted mainly of dry, chapped and scaly hands, for which she used a cream. (Ex. 13-2). In 1993, claimant began working for the employer's restaurant in various cook positions, which involved some cleaning with soap, bleach, and water. (*Id.*) In 1997, she started a day cook position in which her hands were exposed to much more water than before. Within a few weeks, her hands became painful and swollen and began to bleed. These symptoms eventually resolved. (*Id.*)

On March 10, 2000, claimant's hands again became cracked, bleeding, and swollen after work activities that involved hand contact with a bleach and water solution, other cleansers, and latex and vinyl gloves. (Exs. 1, 2, 8, 11, 13). Dr. Herbig recorded a history that claimant had a documented allergy in the past to latex gloves, and had begun wearing vinyl gloves, after which she developed intense pruritus and dermatitis. (Ex. 4). Diagnosing contact dermatitis, Dr. Herbig prescribed medication and directed claimant to avoid both latex and vinyl gloves. (Ex. 4).

Claimant stopped wearing gloves, but had continuing contact with various chemicals and irritants. Although she used ointments, her hands remained cracked, bleeding and swollen. (Exs. 7, 8). The insurer accepted a claim for "contact dermatitis due to wearing vinyl gloves on 3-10-00." (Ex. 6). Claimant left her job with the employer in November 2000.

On February 23, 2001, claimant sought treatment from Dr. Ginocchio, complaining of an eleven-month history of intermittent numbness and tingling in her hands that occasionally went up into her arms. Dr. Ginocchio did not note a history of any hand symptoms before March 2000. (Ex. 10). Nerve conduction studies were normal. (*Id.*)

At the insurer's request, Dr. Burton examined claimant in March 2001. (Ex. 13). Her complaints included hand dermatitis, as well as vague symptoms she thought might be related to carpal tunnel syndrome. Diagnosing irritant hand dermatitis, Dr. Burton opined that claimant had a propensity to develop this condition whenever her hands were exposed to water and/or irritant substances. (Ex. 13-10). He also noted that claimant continued to have symptoms even after leaving her job. (Ex. 13-12).

The insurer denied the compensability of a bilateral carpal tunnel syndrome condition, and modified its original acceptance of the March 10, 2000 injury to "irritant contact dermatitis of the hands." (Exs. 14, 20).

The parties entered into a DCS, which included a "current condition denial of all medical treatment, disability, time loss, and other workers' compensation benefits relating to [claimant's] current conditions." (Ex. 26). The DCS provided that it was a settlement of "all issues raised or which could have been raised on or before the date [of] this agreement," which included "any and all claims for new medical conditions identified or diagnosed in the medical record to date." (*Id.*) On July 2, 2001, the DCS received ALJ approval. (Ex. 26-10).

Thereafter, claimant continued to seek medical treatment for symptoms of numbness and tingling in her hands, with difficulty grasping and feeling with fine manipulation. Dr. Casey performed a left carpal tunnel release in May 2001, and a right carpal tunnel release and bilateral deQuervain's surgery in March 2002. (Ex. 75-1). Although she experienced a decrease in pain, claimant continued to have numbness and tingling in her hands. (*Id.*)

In December 2007, Dr. Petruk performed nerve conduction studies of claimant's median and ulnar nerves that showed no real abnormalities. (Exs. 49, 51-2). Dr. Petruk, who saw claimant two additional times (the last being in July 2008), diagnosed "nerve ending/sensory nerve irritation that is secondary to dermatitis or perhaps even further damage to the nerve endings that resulted from the chemical exposure." (Ex. 54).

In early 2009, Dr. Ali stated that contact dermatitis could not cause nerve damage, but chemical exposure like claimant described as part of her work activities for the employer was capable of such damage. (Ex. 70).

Dr. Ginocchio, who had examined claimant in early 2001, reexamined her in July 2009. Diagnosing “toxic small fiber peripheral neuropathy in the hands,” Dr. Ginocchio opined that it was “related to her toxic exposure back in 2000” and her dermatitis. (Ex. 75).

The insurer denied claimant’s new/omitted medical condition claim for “small sensory nerve damage.” (Ex. 63). Claimant requested a hearing.

The ALJ upheld the insurer’s denial, concluding that the medical record did not establish the compensability of claimant’s nerve damage condition. The ALJ also reasoned that the prior DCS did not preclude claimant from pursuing her claim.

On review, relying on the DCS, the insurer contends that claimant was precluded from litigating the instant claim. Alternatively, the insurer asserts the claim is not compensable under either an injury or consequential condition theory.¹

It is unnecessary to determine whether the DCS has a preclusive effect on this claim, because the medical record does not establish that the claim is compensable. We reason as follows.

To establish compensability of her new/omitted medical condition, claimant must prove that it exists, and that the work injury was a material contributing cause of the disability/need for treatment for the condition. *See* ORS 656.266(1); *Betty J. King*, 58 Van Natta 977 (2006); *Maureen Y. Graves*, 57 Van Natta 2380, 2381 (2005).

¹ Claimant objects to portions of the ALJ’s “Findings of Fact,” which refer to information taken from Dr. Burton’s March 16, 2001 report. (Ex. 13). Citing *Zurita v. Canby Nursery*, 115 Or App 330,334 (1992), claimant argues that the material is not *prima facie* evidence under ORS 656.310(2), which applies only to medical matters. In *Zurita*, the court held that, where a claimant did not testify at a hearing, the “alleged injury” history in a physician’s report could not be used for the purpose of establishing legal causation. (*Id.*)

Here, the ALJ’s reference to the “history-based” information in Dr. Burton’s report does not conflict with the *Zurita* rationale. The ALJ’s findings used claimant’s “history” merely for procedural background purposes, not for a legal causation conclusion. Moreover, the remainder of the record does not contradict this “historical background” information.

Claimant also argues that her small sensory nerve condition is compensable as a consequential condition under ORS 656.005(7)(a)(A). Under that statute, “[n]o injury or disease is compensable as a consequence of a compensable injury unless the compensable injury is the major contributing cause of the consequential condition.” *Amelia A. Westling*, 60 Van Natta 2740, 2742 (2008).

In support of her position, claimant contends that the opinions of Drs. Ginocchio and Petruk persuasively establish the compensability of her claimed condition. In doing so, claimant acknowledges that Dr. Petruk’s opinion was conclusory, and that she was apparently unaware of any prior skin problems. She further concedes that Dr. Ginocchio did not report her prior hand symptoms. Nonetheless, arguing that no other medical opinions considered her “pre-2000” symptoms to be a cause of her nerve condition, claimant asserts that such a history was not “medically significant.” Based on the following reasoning, we disagree with claimant’s contention.

Medical opinions are only as reliable as the history on which they are based. *See Miller v. Granite Constr. Co.*, 28 Or App 473, 476 (1977); *Latonya M. Bias*, 60 Van Natta 905, 905 (2008) (persuasiveness of medical evidence depends on accuracy of history). Here, in rendering her medical opinion, Dr. Petruk expressly reported that claimant had no previous problems with her skin, numbness, or tingling. (Ex. 54-1). In light of this comment, we are unable to conclude that knowledge of claimant’s documented prior problems would not have affected Dr. Petruk’s opinion.² Consequently, we discount Dr. Petruk’s opinion. *Somers v. SAIF*, 77 Or App 259, 263 (1986); *Linda E. Patton*, 60 Van Natta 579, 582 (2008) (in evaluating medical opinions, more weight is generally given to those opinions that are well reasoned and based on accurate and complete information).

Similarly, Dr. Ginocchio’s reports did not discuss claimant’s skin problems before her March 2000 work exposure. (Exs. 10, 75). As with Dr. Petruk’s opinion, in attributing claimant’s nerve condition to her 2000 toxic exposure, Dr. Ginocchio also concluded that claimant’s dermatitis had materially contributed to her neurological symptoms. (Ex. 75-4). Thus, in the absence of a discussion of

² Drs. Ali and Melson did not support a causal relationship between claimant’s sensory nerve condition and her March 2000 work exposure or dermatitis. (Exs. 68, 69, 70, 77). Although Dr. Melson refers to the pre-March 2000 hand symptoms, neither Dr. Ali nor Dr. Melson focused on claimant’s “pre-2000” symptoms as an integral component in rendering their opinion. Nevertheless, Dr. Petruk’s opinion was specifically based on the absence of prior problems. Because claimant experienced such problems, we find Dr. Petruk’s conclusion less persuasive.

claimant's "pre-March 2000 exposure" complaints and their potential impact on her dermatitis and hand problems, we give Dr. Ginocchio's opinion less weight. *Somers*, 77 Or App at 263.

In conclusion, we do not find the medical opinions of Drs. Petruk and Ginocchio sufficiently persuasive to establish the compensability of claimant's small sensory nerve condition as either a direct injury or consequential condition. Thus, we affirm.

ORDER

The ALJ's order dated May 4, 2011 is affirmed.

Entered at Salem, Oregon on December 7, 2011