

In the Matter of the Compensation of  
**TIMOTHY C. McCARTHY, Claimant**

WCB Case No. 08-07277

ORDER ON REVIEW

Unrepresented Claimant

The Law Office Of Gress & Clark LLC, Defense Attorneys

Reviewing Panel: Members Biehl and Lowell.

Claimant, *pro se*, requests review of Administrative Law Judge (ALJ) Rissberger's order that upheld the self-insured employer's denial of claimant's occupational disease claim for a mental disorder. On review, the issue is compensability.

We adopt and affirm the ALJ's order with the following supplementation.<sup>1</sup>

Claimant, a veterinarian, filed a claim for a stress-related mental disorder (depression), which the employer denied. (*See* Exs. 31, 39, 62). Claimant requested a hearing.

The ALJ upheld the denial, finding that the medical evidence did not clearly and convincingly establish that cognizable working conditions were the major contributing cause of claimant's mental disorder.<sup>2</sup> *See* ORS 656.802(2)(a); ORS 656.802(3)(d).

Claimant argues that the denial was invalid, because it did not state a reason for denying the claim. However, the denial asserted: "The information we have received to date is insufficient to support a finding that you have sustained a compensable injury or occupational disease arising out of and in the course and scope of your employment with the above-named employer." (Ex. 62).

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<sup>1</sup> Inasmuch as claimant is unrepresented, he may wish to consult the Ombudsman for Injured Workers. He may contact the Ombudsman, free of charge, at 1-800-927-1271, or write to:

DEPT OF CONSUMER & BUSINESS SERVICES  
OMBUDSMAN FOR INJURED WORKERS  
PO BOX 14480  
SALEM OR 97309-0405

<sup>2</sup> In reaching this conclusion, the ALJ found that several of the claimed employment conditions (alleged legal, ethical, and regulatory violations) did not exist in a real and objective sense. *See* ORS 656.802(3)(a).

Thus, the denial specified the above basis (and included a proper notice of appeal rights). Consequently, the denial complied with the Board rule's requirements for a valid denial. *See* OAR 438-005-0055(1); ORS 656.802(3)(d).

Claimant also asks whether a psychologist can “place someone on workers’ compensation.” However, the issue before us is not claimant’s entitlement to temporary disability benefits under an accepted claim. Rather, the issue is “compensability” of the disputed mental disorder. In this context, claimant’s treating psychologist’s diagnosis and causation opinions are probative on the question of whether claimant has carried his statutory burden of proving a compensable mental disorder under ORS 656.802(3).

Nonetheless, for the reasons expressed by the ALJ, we find that Dr. Schneider (claimant’s treating psychologist) relied largely on alleged contributing causes that do not exist in a real and objective sense. Under these circumstances, we find Dr. Schneider’s opinion insufficient to carry claimant’s burden of proving -- with clear and convincing evidence -- that his mental disorder was caused in major part by cognizable employment conditions.<sup>3</sup> (*E.g.*, Ex. 42). *See* ORS 656.802(3). Accordingly, we affirm.

#### ORDER

The ALJ’s order dated June 21, 2011 is affirmed.

Entered at Salem, Oregon on December 12, 2011

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<sup>3</sup> We would reach the same result even if we disregarded the opinion of Dr. Goranson, examining psychiatrist.