

In the Matter of the Compensation of
ANTHONY D. CHAVEZ, Claimant

WCB Case No. 10-02584

ORDER ON REVIEW

Guinn & Dalton, Claimant Attorneys
Cummins Goodman et al, Defense Attorneys

Reviewing Panel: Members Biehl and Lowell.

Claimant requests review of Administrative Law Judge (ALJ) Ogawa's order that: (1) admitted a surveillance DVD and a transcript of a physician's recorded statement as impeachment evidence; and (2) upheld the self-insured employer's denial of claimant's current combined low back condition. The employer cross-requests review of that portion of the ALJ's order that declined to admit the aforementioned transcript as substantive evidence. On review, the issues are evidence and compensability.

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

Evidence

ORS 656.283(6) provides that an ALJ is not bound by common law or statutory rules of evidence and may conduct a hearing in any manner that will achieve substantial justice. Moreover, the ALJ has broad discretion with regard to the admissibility of evidence at hearing. *Brown v. SAIF*, 51 Or App 389, 394 (1981); *William Shelton*, 62 Van Natta 1051, 1053 (2010); *Debra A. Gillman*, 58 Van Natta 2041 (2006). We review the ALJ's evidentiary ruling for abuse of discretion. *SAIF v. Kurcin*, 334 Or 399 (2002); *Shelton*, 62 Van Natta at 1053; *Charlotte A. Landers*, 60 Van Natta 1432, 1434 (2008).

Here, the ALJ admitted a surveillance DVD for impeachment purposes. In *Herbert L. Lockett*, 50 Van Natta 154 (1998), we held that when interpreting a carrier's discovery responsibilities, the issue is whether the carrier reasonably believed that the documents in question were relevant and material for impeachment purposes (*i.e.*, that the evidence tended to impair or destroy the claimant's credibility). Furthermore, we noted that the determination of whether evidence has impeachment value comes not at the hearing, but rather at the time of the duty to provide discovery. We reasoned that a carrier could not withhold evidence properly discoverable on the suspicion that a claimant or another witness might testify in a certain manner at hearing or on speculation that evidence might eventually become impeachment evidence. *Id.* at 156 n2.

Having reviewed this record, we conclude that claimant's actions recorded on the DVD arguably conflicted with his reports to Dr. Puziss regarding his physical capabilities. Thus, we are persuaded that the employer reasonably believed that the DVD impeached claimant at the time of the duty to provide discovery arose. Accordingly, we find no abuse of discretion in the ALJ's admission of the DVD as impeachment evidence.¹

Compensability

In upholding the employer's denial of claimant's combined low back condition, the ALJ determined that the most persuasive medical opinion was that of Dr. Williams, who examined claimant at the employer's request. The ALJ determined that Dr. Williams' opinion established that a preexisting degenerative condition was the major contributing cause of the current combined condition.

On review, claimant argues that the employer did not satisfy its burden of proving that the otherwise compensable injury was no longer the major contributing cause of the disability or need for medical treatment of the combined condition. We disagree.

Pursuant to ORS 656.262(6)(c), a carrier may deny an accepted combined condition if the "otherwise compensable injury" ceases to be the major contributing cause of the combined condition. *Oregon Drywall Sys. v. Bacon*, 208 Or App 205, 210 (2006). The word "ceases" presumes a change in the worker's condition or circumstances such that the otherwise compensable injury is no longer the major contributing cause of the combined condition. *See Wal-Mart Stores, Inc. v. Young*, 219 Or App 410 (2008); *State Farm Ins. Co. v. Lyda*, 150 Or App 554, 559 (1997), *rev den*, 327 Or 82 (1998); *Gwendolyn Perkins*, 60 Van Natta 1187, 1190 (2008).

The employer has the burden to prove that the "otherwise compensable injury" ceased to be the major contributing cause of the disability or need for treatment of the combined condition. ORS 656.266(2)(a); *Jon C. Meiling*, 56 Van Natta 3474, 3475 (2004).

¹ We need not resolve the ALJ's ruling concerning Dr. Green's recorded statement because we would affirm the ALJ's order even if the statement was not admitted.

Here, we agree with the ALJ's reasoning that Dr. Williams' opinion is persuasive.² Consequently, we conclude that the employer satisfied its burden of proving that the combined condition is not compensable. Accordingly, we affirm.

ORDER

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

Entered at Salem, Oregon on December 2, 2011

² We reach this conclusion without considering Dr. Green's recorded statement.