
In the Matter of the Compensation of
ROXANNE F. BALCOM, Claimant
WCB Case No. 09-01465
ORDER ON REVIEW
Martin L Alvey, Claimant Attorneys
Reinisch Mackenzie PC, Defense Attorneys

Reviewing Panel: Members Weddell, Lowell, and Herman. Member Weddell dissents.

The self-insured employer requests review of that portion of Administrative Law Judge (ALJ) Mills's order that set aside its denial of claimant's new/omitted medical condition claim for an L5-S1 foraminal stenosis condition. On review, the issue is compensability. We reverse.

FINDINGS OF FACT

We adopt the ALJ's "Findings of Fact," except for the last two sentences of the last paragraph.

CONCLUSIONS OF LAW AND OPINION

In setting aside the employer's denial, the ALJ determined that the claimed L5-S1 foraminal stenosis condition encompassed a facet condition.¹ The ALJ found that claimant established that her April 2008 compensable injury was a material contributing cause of the disability or need for treatment of the claimed condition, and that the employer did not prove that the "otherwise compensable injury" was not the major contributing cause of the disability or need for treatment of a combined L5-S1 foraminal stenosis condition. ORS 656.005(7)(a)(B); ORS 656.266(2)(a). The ALJ reasoned that the medical opinions of Dr. Strum and Dr. Carr, who examined claimant at the employer's request, were insufficient to carry the employer's burden of proof.

On review, the employer contests the ALJ's evaluation of the medical evidence. For the following reasons, we reverse.

¹ The parties do not challenge those portions of the ALJ's order that upheld the employer's "ceases" denial of the previously accepted combined lumbosacral strain condition, as well as its denial of claimant's new/omitted medical condition claim for mechanical low back pain.

We agree with the ALJ's determination that claimant has established an "otherwise compensable injury" involving the claimed L5-S1 foraminal stenosis condition. We also agree with the ALJ's determination that the foraminal stenosis condition encompassed the facet syndrome. Thus, the employer must establish that the "otherwise compensable injury" was not the major contributing cause of the disability or need for treatment of the combined L5-S1 foraminal stenosis condition. ORS 656.266(2)(a); *Jack G. Scoggins*, 56 Van Natta 2534, 2535 (2004).² We look to the medical evidence supporting the employer's position that the "otherwise compensable injury" was *not* the major contributing cause of the disability or need for treatment of the combined condition. *Jason V. Skirving*, 58 Van Natta 323, 324 (2006), *aff'd without opinion*, 210 Or App 467 (2007).

The determination of major contributing cause involves the evaluation of the relative contribution of the different causes of claimant's condition and a decision as to which is the primary cause. *Dietz v. Ramuda*, 130 Or App 397, 401 (1994), *rev dismissed*, 321 Or 416 (1995). Because of the possible alternative causes for claimant's condition, resolution of this matter presents a complex medical question that must be resolved by expert medical opinion. *See Uris v. Comp. Dep't*, 247 Or 420, 424-36 (1967); *Barnett v. SAIF*, 122 Or App 279 (1993). In evaluating the medical evidence, we rely on those opinions that are both well reasoned and based on accurate and complete information. *See Somers v. SAIF*, 77 Or App 259, 263 (1986); *Linda Patton*, 60 Van Natta 579, 582 (2008).

Based on our review of the record, we find Dr. Carr's opinion, as supported by Dr. Strum, to be the most persuasive. Dr. Carr agreed that the April 2008 work injury was a precipitating cause of the onset of claimant's symptoms. (Exs. 55-15-16, 62-2). However, he distinguished the precipitating cause of claimant's symptoms from the major contributing cause of her disability or need for treatment. (Exs. 55-16, 62-2). In doing so, Dr. Carr acknowledged that the work injury triggered symptoms associated with the underlying and preexisting L5-S1 degenerative condition, creating a combined condition. (Ex. 62-2). Nevertheless, he stated that the cause of claimant's disability/need for treatment was the underlying preexisting L5-S1 pathology. (Exs. 55-13-16, 62).

Dr. Carr explained that the work injury was not the major contributing cause of the disability or need for treatment of the combined L5-S1 foraminal stenosis condition because the mechanism of injury was not significant enough to affect the underlying pathology. (Exs. 55-14-16, 62-1-2). Dr. Carr noted that the

² The parties agree that, if claimant establishes an "otherwise compensable injury" involving the L5-S1 foraminal stenosis condition, a "combined condition" analysis applies.

imaging studies did not reveal any acute pathology in claimant's lumbar spine. (Exs. 55-11-13, 62-2). He concluded that the preexisting condition was the major contributing cause of the disability/need for treatment of the combined condition. (Exs. 55-15-16, 62-2). In doing so, Dr. Carr considered the mechanism of claimant's injury, her report of symptoms, and the severity of her preexisting L5-S1 degenerative condition. (*Id.*)

Dr. Carr's opinion is supported by Dr. Strum, who agreed that the mechanism of claimant's April 2008 work injury was a precipitating cause of her low back symptoms, but that the pathology of disc degeneration at L5-S1 (with a mild degree of disc degeneration at L4-5) was responsible for claimant's low back complaints. (Ex. 53-15, -18). He explained that any contribution from claimant's work injury to the L5-S1 condition was minor, and would have no impact on the underlying pathology that resulted in her need for treatment. (Ex. 53-17-18). Instead, comparing claimant's imaging studies (including the bone scan, MRIs, x-rays, and CT scans), Dr. Strum opined that the L5-S1 foraminal stenosis was degenerative in nature and due to a combination of loss of disc height, bony osteophytic spurs and bone hypertrophy, or increased bone formation of the facet joints. (Ex. 53-12-15). Dr. Strum concluded that claimant's preexisting degenerative conditions, and not her work injury, was the major contributing cause of the need for treatment of the combined L5-S1 foraminal stenosis condition. (Ex. 53-17-18).

The ALJ discounted Dr. Strum's opinion, reasoning that Dr. Strum's report that the bone scan findings showed increased uptake bilaterally at L5-S1 was inconsistent with the radiologist's interpretation, which had reported that the bone scan revealed "very mild increased activity at the left L5-S1 facet[.]"³ (Ex. 21-1). However, Dr. Strum expressly reported that there was "a very slight increase in the uptake in the region of the *left* L5-S1 facet joint." (Ex. 53-12) (emphasis added). Under such circumstances, we disagree with the ALJ's determination that Dr. Strum incorrectly interpreted the bone scan findings. *See SAIF v. Calder*, 157 Or App 224, 227-28 (1998) (the Board is not an agency with specialized medical expertise and must base its findings on medical evidence in the record).

In contrast to Dr. Carr's well-reasoned opinion, we are not persuaded by the contrary medical opinions of Drs. Lorish and Sandquist, claimant's treating physicians. Drs. Lorish and Sandquist opined that claimant's work injury was the

³ The radiologist concluded that such finding was "probably related to degenerative disease." (Ex. 21-1).

major contributing cause of her disability/need for treatment because it caused her previously asymptomatic preexisting L5-S1 condition to become symptomatic. (Exs. 43, 56-2, 59, 61). In doing so, they explained that:

“[W]hen a work injury combines with a previously asymptomatic pre-existing condition to cause or prolong a disability or need for medical treatment, the work injury is the major cause of the disability or need for medical treatment so long as the disability or need for medical treatment exists[.]” (Exs. 59, 61).

The fact that claimant’s work injury precipitated her symptoms does not necessarily mean that her work injury was the major contributing cause of the disability or need for treatment of the combined condition. See *Robinson v. SAIF*, 147 Or App 157, 163 (1997). Moreover, although the temporal relationship may be the most important factor in determining the major contributing cause of a claimant’s condition, Dr. Lorish’s and Dr. Sandquist’s reliance on a temporal relationship is not persuasive, considering the well-reasoned, contrary opinion of Dr. Carr. See *Allied Waste Indus., Inc., v. Crawford*, 203 Or App 512, 518 (2005), *rev den*, 341 Or 80 (2006); see also *Sherrie Love*, 62 Van Natta 2444, 2445 (2010).

Furthermore, Dr. Lorish opined that the bone scan findings showed that claimant’s work injury caused the increased uptake at the left L5-S1 facet joint, making the preexisting degenerative condition symptomatic. (Exs. 26, 40B, 59). Yet, he also agreed with Dr. Sandquist’s opinion that the bone scan findings were a product of preexisting degeneration, and that there was no evidence that the work injury contributed to those findings. (Exs. 43, 56). Absent further explanation for these apparent inconsistencies, we do not find Dr. Lorish’s opinion persuasive. See *Howard L. Allen*, 60 Van Natta 1423, 1424-25 (2008) (unexplained, internally inconsistent medical opinion unpersuasive).

In conclusion, Dr. Carr evaluated the relative contribution of the different causes of claimant’s condition, and persuasively explained why the preexisting L5-S1 condition was the major contributing cause of her combined condition. *Dietz*, 130 Or App at 401. Based on Dr. Carr’s persuasive opinion, we find that the employer has established that the “otherwise compensable injury” was not the major contributing cause of the disability or need for treatment of the combined L5-S1 foraminal stenosis condition. ORS 656.266(2)(a). Consequently, we reverse.

ORDER

The ALJ's order dated May 11, 2010 is reversed in part and affirmed in part. That portion of the ALJ's order that set aside the employer's denial of the L5-S1 foraminal stenosis condition is reversed. The employer's denial of that claim is reinstated and upheld. The ALJ's \$5,500 attorney fee and associated costs awards are also reversed. The remainder of the ALJ's order is affirmed.

Entered at Salem, Oregon on January 19, 2011

Member Weddell dissenting.

I agree with the ALJ's and the majority's determination that claimant's L5-S1 foraminal stenosis condition encompassed the facet syndrome, and that claimant established an "otherwise compensable injury" involving that condition. Nevertheless, because I disagree with the majority's conclusion that Dr. Carr's opinion is sufficient to carry the employer's burden of proof under ORS 656.266(2)(a), I respectfully dissent.

Dr. Carr did not believe that claimant's work injury was a material contributing cause of her L5-S1 pathology, and need for treatment thereof. (Exs. 55-14-16, 62). When rendering his opinion regarding the major contributing cause of claimant's disability/need for treatment of a "combined condition," Dr. Carr was asked to "assume" that the work injury was a material contributing cause. (*Id.*) Because Dr. Carr did not believe that the work injury was a material contributing cause of claimant's disability/need for treatment, I am not persuaded that he adequately weighed the relative contribution of the work injury when discussing the major contributing cause of her combined condition. *See Ronald E. Prebe*, 62 Van Natta 2763, 2766 (2010) (where a physician did not believe that the work injury was a material contributing cause of a claimant's disability/need for treatment, the physician did not adequately weigh the relative contribution of the claimant's work injury when discussing an assumed combined condition); *see also Robert Prabucki*, 61 Van Natta 1877, 1881-82 (2009) (where the claimant established an "otherwise compensable injury," physicians' opinions that the claimant's symptoms were not due to the work injury, when discussing a hypothetical "combined condition," did not weigh the contribution of the work injury).

Under these circumstances, I would find that Dr. Carr’s opinion does not persuasively establish that the “otherwise compensable injury” was *not* the major contributing cause of the disability or need for treatment of the combined L5-S1 foraminal stenosis condition. ORS 656.266(2)(a); *Jason V. Skirving*, 58 Van Natta 323, 324 (2006), *aff’d without opinion*, 210 Or App 467 (2007). Because the majority concludes otherwise, I respectfully dissent.