In the Matter of the Compensation of
SEAN P. BENNETT, Claimant
WCB Case No. 09-01267
ORDER ON REVIEW
Jodie Phillips Polich, Claimant Attorneys
James B Northrop, SAIF Legal, Defense Attorneys

Reviewing Panel: Members Biehl and Lowell.

Claimant requests review of Administrative Law Judge (ALJ) Mills's order that upheld the SAIF Corporation's denial of his injury claim for a left shoulder condition. On review, the issue is compensability.

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

Claimant testified that, on January 6, 2009, a cabinet fell on him at work, leaving an abrasion on his left shoulder. (Tr. 20). His mother, who viewed his shoulder that same day, described the abrasion as "two superficial scrapes, no bleeding, about two inches long." (Tr. 6). Claimant agreed that the abrasion did not bleed. (Tr. 21).

Complaining of increasing left shoulder pain, claimant sought treatment from Dr. Rabie on January 8, 2009. (Ex. 2). Dr. Rabie reported a decrease in claimant's range of motion, secondary to pain, and further noted that "the left shoulder appears normal, without evidence of swelling or discoloration of the skin." (*Id*.) Claimant's left shoulder condition worsened, and he returned to Dr. Rabie on January 14, 2009. (Ex. 4-2). Suspecting a possible infection, Dr. Rabie immediately referred claimant to the emergency room for treatment. In his chart note, Dr. Rabie mentioned claimant's January 8 visit, reiterating that there had not been "* * * any evidence of discoloration, swelling, or abrasion. * * * He was deemed to have a shoulder contusion in the absence of any other source of injury." (*Id*.)

Claimant was diagnosed with a severe necrotizing soft tissue infection, which required several surgeries for debridement of infected tissue in the pectoral and deltoid areas, and an additional surgery for skin grafting. (Exs. 6, 7, 9, 12, 20-6).

On February 24, 2009, Dr. Girod, an infectious disease specialist, examined claimant at SAIF's request. (Exs. 16, 17). Dr. Girod opined that claimant's infection was unrelated to his January 6, 2009 work incident, because the trauma inflicted by the falling cabinet was minor, and did not bleed. (Ex. 16-2).

SAIF denied the injury claim, and claimant requested a hearing. (Ex. 18).

In upholding SAIF's denial, the ALJ found that the medical evidence did not support a causal relationship between the "falling cabinet" incident and the development of the infection, even if the evidence was viewed most favorably toward claimant. On review, claimant asserts that his January 6, 2009 shoulder injury caused a "portal" sufficient to be a cause of his infection. Relying on Dr. Girod's statements, claimant contends that he has established compensability. Based on the following reasoning, we agree with the ALJ's decision.

To establish a compensable injury, claimant must show that the work injury sustained when the cabinet fell was at least a material contributing cause of his disability/need for treatment for the necrotizing infection. ORS 656.266(1); ORS 656.005(7)(a); *Steven L. Blanchard*, 60 Van Natta 453, 453 (2008).

Claimant argues that the abrasion on his shoulder, which both he and his mother allegedly saw, is sufficient to be the portal of entry for the infectious bacteria. He asserts that this analysis is supported by Dr. Girod's comment that: "If there is blood, then I think that is adequate. If there is no blood, and there is no evidence of *it* on the exam to the naked eye, then I would assume that there is no portal of entry." (Ex. 20-9) (Emphasis added). By claimant's interpretation, this statement means that a scrape or abrasion would be an insufficient portal of entry if two things are true: (1) there was no blood; and (2) there was no evidence, to the naked eye, of an abrasion. Although conceding that blood was not likely present, claimant contends that he and his mother corroborated the existence of the abrasion.

We interpret Dr. Girod's statement differently. Instead, we read the word "it," as highlighted above, to refer to "blood," and not "abrasion." Construing the comment in that light, Dr. Girod is stating that unless blood was present, claimant's scrape/abrasion was too minor to constitute an entryway for a bacterial infection. Dr. Girod also noted that if the break in the skin at the injury site was insufficient to produce blood, one would then look to see if the surgeons found interior trauma, *i.e.*, bleeding into the tissues, or a blood clot that had become infected. Considering claimant's concession that blood was not likely present, and without evidence of interior trauma, Dr. Girod maintained that claimant did not have a trauma sufficient to be a portal for infection. (Ex. 20-37-38).

Therefore, we conclude that, based on the medical evidence, primarily composed of Dr. Girod's well-reasoned opinion, claimant's work-related incident did not serve as an entryway for claimant's infection. Accordingly, claimant has not established the compensability of his injury claim. Thus, we affirm.

ORDER

The ALJ's order dated August 17, 2010 is affirmed.

Entered at Salem, Oregon on March 10, 2011