
In the Matter of the Compensation of
NORBERTO M. LARA-MARTINEZ, Claimant
WCB Case Nos. 11-02104, 11-00585
ORDER ON RECONSIDERATION
Welch Bruun & Green, Claimant Attorneys
Holmes Weddle & Barcott PC, Defense Attorneys

Reviewing Panel: Members Biehl, Lowell, and Herman.

Claimant requests reconsideration of that portion of our August 10, 2012 order that affirmed the Administrative Law Judge's (ALJ's) decision to uphold the insurer's denial of his aggravation claim for his lumbar strain, right foot and toe conditions. He contends that the medical opinion of Dr. Heitsch established the compensability of his aggravation claim for his right foot condition. For the following reasons, we disagree.

In our previous order, we found Dr. Heitsch's medical opinion unpersuasive with regard to the compensability of low back disc conditions. Claimant contends, however, that his December 2011 medical opinion establishes a compensable aggravation of his right foot injury. Specifically, claimant cites Dr. Heitsch's conclusion that his right foot condition had pathologically worsened based on reduced right ankle range of motion and reproducible tenderness with palpation along his right foot and ankle. (Ex. 115-2).

Yet, in September 2011, claimant's counsel's encouraged claimant to seek an evaluation by Dr. Di Paola, who noted that claimant gave "very poor effort" at any range of motion involving the right foot and ankle. Dr. Di Paola further described claimant's complaints as "bizarre" and his physical examination as "not credible." (Ex. 111-1).

Although Dr. Heitsch opined that claimant's right foot condition has pathologically worsened, he did not discuss Dr. Di Paola's examination. (Ex. 115-2). Having reviewed this record, we find that Dr. Heitsch's medical opinion is also not persuasive with regard to the aggravation claim.

Accordingly, on reconsideration, as supplemented herein, we republish our August 10, 2012 order. The parties' rights of appeal shall begin to run from the date of this order.

IT IS SO ORDERED.

Entered at Salem, Oregon on August 30, 2012