In the Matter of the Compensation of
LIDIA G. BISTRIKA, Claimant
WCB Case No. 11-01807, 11-00001
ORDER ON REVIEW
Unrepresented Claimant
Wallace Klor & Mann PC, Defense Attorneys

Reviewing Panel: Members Lowell and Weddell.

Claimant, *pro se*,[1] requests review of Administrative Law Judge (ALJ) Ogawa's order that upheld the self-insured employer's denials of claimant's new/omitted medical condition claim for left shoulder adhesive capsulitis. On review, the issue is compensability.[2]

We adopt and affirm the ALJ's order with the following exception and supplementation. We do not adopt the second sentence of the third full paragraph on page 4.

To prove the compensability of her left shoulder adhesive capsulitis that allegedly arose as a consequence of her compensable conditions, claimant must prove that either the accepted July 2003 left upper arm sprain or the accepted October 2009 left shoulder sprain, or treatment for either of those conditions, was the major contributing cause of her consequential capsulitis condition. *See* ORS 656.266(1); ORS 656.005(7)(a)(A); *Albany Gen. Hosp. v. Gasperino*, 113 Or App 411 (1992) (condition or need for treatment that is caused by a

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[1] Because claimant is unrepresented, she may wish to consult the Workers' Compensation Ombudsman. She may contact the Workers' Compensation Ombudsman, free of charge, at 1-800-927-1271, or write to:

WORKERS' COMPENSATION OMBUDSMAN
DEPT OF CONSUMER & BUSINESS SERVICES
PO BOX 14480
SALEM, OR 97309-0405

[2] Claimant also asks that this case be reviewed by a different ALJ and that the employer be required to pay for an additional medical expert witness. Yet, the record does not indicate that either request was raised before the evidentiary record closed at the hearing level. Under such circumstances, we decline to consider these belated requests on appeal. *See* ORS 656.295(5) (our review is limited to the record developed by the ALJ); *Richard E. Lake*, 58 Van Natta 2595 (2006) (request to present additional medical evidence on review denied where the evidence was obtainable at the hearing); *Tudor Delcey*, 59 Van Natta 34 (2007) (request on review for a change of ALJ denied as neither timely nor in accordance with OAR 438-006-0095); *Philip G. Michael*, 46 Van Natta 519 (1994) (request on appeal for a new ALJ denied because the request was not made at the hearing).

compensable condition is analyzed under the major contributing cause standard as a consequential condition). Moreover, the "[d]etermination of the major contributing cause is a complex medical question that must be resolved on the basis of expert medical opinion." *Jackson County v. Wehren*, 186 Or App 555, 559 (2003) (citing *Uris v. Comp. Dep't*, 247 Or 420, 424 (1967)).

Our authority is limited to reviewing the record as developed before the ALJ and deciding whether the ALJ properly resolved the issues raised at hearing and correctly determined claimant's rights to benefits. ORS 656.295(5); *Charles A. Thaxton*, 56 Van Natta 3216 n 3 (2004); *Jeffrey L. Lidgett*, 55 Van Natta 1406, 1407 (2003). Based on our review of the record, we reach the following conclusions.

We agree with the ALJ's determination that claimant has not met her burden of proving that it was more probable than not that her accepted July 2003 left upper arm sprain and/or accepted October 2009 left shoulder sprain was the major contributing cause of her left shoulder adhesive capsulitis. *See* ORS 656.266(1); ORS 656.005(7)(a)(A); *Gasperino*, 113 Or App at 415; *Gormley v. SAIF*, 52 Or App 1055, 1060-1061 (1981) (persuasive medical opinions must be based on medical probability, rather than possibility). In other words, the medical opinions do not support a conclusion that either or both of the accepted conditions were the major contributing cause of claimant's capsulitis condition. To the contrary, they attributed the major cause of her condition to her nonwork-related diabetes. (Exs. 128, 131, 134).

Consequently, on this record, claimant has not established the compensability of her left shoulder adhesive capsulitis as a consequence of her accepted conditions. Accordingly, we affirm.

ORDER

The ALJ's order dated October 6, 2011 is affirmed.

Entered at Salem, Oregon on August 1, 2012