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

Reviewing Panel: Members Biehl, Lowell, and Herman.

Claimant requests review of those portions of Administrative Law Judge (ALJ) Fulsher's order that: (1) upheld the insurer's denial of his new/omitted medical condition claim for L4-5 and L5-S1 disc conditions; (2) upheld the insurer's denial of his new/omitted medical condition claim for a right foot ganglion cyst, longitudinal split tear of the peroneus brevis tendon, and right ankle tendonitis; (3) upheld the insurer's denial of his aggravation claim for his lumbar strain, right foot and toe conditions; and (4) declined to award penalties and attorney fees for allegedly unreasonable claim processing. On review, the issues are compensability, aggravation, penalties, and attorney fees.

We adopt and affirm the ALJ's order with the following supplementation regarding the new/omitted medical condition claim for low back disc herniations.

In upholding the insurer's denial of the claimed L4-5 and L5-S1 disc herniations, the ALJ determined that the medical opinion of claimant's attending physician, Dr. Heitsch, the only physician to relate the claimed conditions to the compensable September 2009 injury, was not persuasive. On review, claimant contends that Dr. Heitsch's opinion is persuasive because he was the only physician to personally review both the October 2009 and November 2011 MRI scans. For the following reasons, we disagree with that contention.

We generally rely on medical opinions that are well reasoned and based on complete and accurate information. *Somers v. SAIF*, 77 Or App 259, 263 (1986). Here, Dr. Heitsch opined that, while the November 2011 MRI did not show disc herniations at L4-5 and L5-S1 as prominently as the earlier October 2009 MRI "report," the claimed disc herniations existed. Dr. Heitsch further concluded that the September 2009 injury was the major contributing cause of the claimed disc herniations. (Ex. 115-4).

Although claimant contends that Dr. Heitsch personally reviewed the actual MRI studies, our review of his opinion does not confirm that assertion. As previously noted, Dr. Heitsch referred to the October 2009 MRI "report."

Moreover, in the preceding paragraph of his opinion, Dr. Heitsch also referred to MRI “reports.” (*Id.*) Therefore, we cannot conclude that Dr. Heitsch’s opinion was based on a review of the actual MRI films.

In addition, Dr. Heitsch’s opinion inaccurately described the MRI “reports” as confirming the claimed disc herniations. (*Id.*) While the October 2009 MRI report described a “minimal” disc “bulge” at L4-5 and a “mild broad-based disc bulge and small focal central disc protrusion with annular tear at L5-S1,” the November 2011 MRI report concluded that there was no evidence of a disc herniation at any lumbar level. (Exs. 6, 113B). Therefore, contrary to Dr. Heitsch’s opinion, the MRI “reports” do not confirm the presence of the claimed disc conditions.

Accordingly, we conclude that Dr. Heitsch’s medical opinion is not persuasive. Consequently, we affirm.

#### ORDER

The ALJ’s order dated January 12, 2012, as corrected on January 13, 2012, is affirmed.

Entered at Salem, Oregon on August 10, 2012