

In the Matter of the Compensation of
LEAH D. HAMILTON, Claimant

WCB Case No. 10-05845

ORDER ON REVIEW

Hansen Malagon Lawyers, Claimant Attorneys
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Reviewing Panel: Members Langer and Biehl.

Claimant requests review of Administrative Law Judge (ALJ) Jacobson's order that dismissed her hearing request from the SAIF Corporation's denial of claimant's injury claim regarding her left wrist condition as untimely. On review, the issues are timeliness and compensability. We modify and uphold SAIF's denial.

FINDINGS OF FACT

We adopt the ALJ's "Findings of Fact," with the following supplementation.¹

Claimant's job as a part time cook required using knives and spatulas, sauteing, flipping items, lifting fryer baskets, lifting objects weighing up to 50 pounds, and sometimes lifting in awkward positions. (1Tr-14-15, 27). On April 21, 2010, Dr. Braddock, claimant's attending physician, diagnosed a work-related left wrist tendonitis. (Ex. 2-2). That day, claimant filed a claim for a left wrist condition. (Ex. 1).

On May 27, 2010, Dr. Woodward, a SAIF-arranged medical examiner, noted nonspecific left wrist pain and did not diagnose an occupational disease of the left wrist. (Ex. 14-6).

On June 10, 2010, SAIF issued a denial of claimant's left wrist condition. (Ex. 16-1). On October 26, 2010, claimant requested a hearing. (1Tr. 20).

On January 13, 2011, Dr. Woodward opined that his findings and a May 4, 2010 MRI did not support a tendonitis diagnosis, although other chart notes included findings that would fit with tendonitis. (Ex. 21-1). He also opined that,

¹ We do not adopt the ALJ's "Ultimate Findings of Fact."

considering that claimant was working part time, claimant's work activities did not include the repetition or the hard, sustained grip that would cause a wrist condition. (Ex. 21-2).

On January 19, 2011, Ms. Zwickert, a nurse practitioner, concluded that claimant had left wrist tendonitis, caused in major part by her work activities. (Ex. 22-2). She recounted claimant's work activities and the history of her symptoms and treatment. (Ex. 22-1-2). She opined that her diagnosis was supported by claimant's symptoms and improvement with treatment. (Ex. 22-3). She also opined that improvement in claimant's symptoms after quitting her job indicated that the tendonitis was work related. (Ex. 22-3).

On January 21, 2011, Dr. Braddock concurred with Ms. Zwickert's opinion, except for the portion that stated that the improvement in claimant's symptoms after she quit her job indicated that the tendonitis was work related. (Ex. 23-3).

CONCLUSIONS OF LAW AND OPINION

The ALJ dismissed claimant's hearing request on the ground that it had been filed more than 60 days after the denial was mailed to claimant and claimant had not shown good cause for failing to timely request a hearing. The ALJ did not make findings or conclusions regarding the merits of the compensability issue.

On review, claimant contends that the denial was not mailed to her as required by ORS 656.319(1) or, alternatively, that she had good cause for her failure to timely request a hearing. Claimant further asserts that her left wrist condition is a compensable occupational disease.

As explained below, we uphold SAIF's denial on the merits of the claim. Therefore, we need not address the timeliness issue.

To establish that her left wrist condition is a compensable occupational disease, claimant must prove that it was caused, in major part, by employment conditions. ORS 656.266(1); ORS 656.802(2)(a). The major contributing cause of a condition is the cause, or combination of causes, that contributed more than all other causes combined. *Smothers v. Gresham Transfer, Inc.*, 332 Or 83, 133 (2001).

The compensability issue presents a complex medical question that must be resolved by expert medical evidence. *Uris v. State Comp. Dep't*, 247 Or 420, 426 (1967); *Barnett v. SAIF*, 122 Or App 279, 283 (1993). When presented with

disagreement between experts, we give more weight to those opinions that are well reasoned and based on complete information. *Somers v. SAIF*, 77 Or App 259, 263 (1986). Although we may give more weight to the opinion of a claimant's treating physician under certain circumstances, we may properly give more or less weight to the treating physician's opinion, depending on the record. *Dillon v. Whirlpool Corp.*, 172 Or App 484, 489 (2001); *Weiland v. SAIF*, 64 Or App 810, 814 (1983).

Claimant relies on the opinions of Ms. Zwickert and Dr. Braddock. In light of Dr. Woodward's contrary opinion, we do not find their opinions persuasive.

Ms. Zwickert described claimant's work activities and recounted the history of claimant's symptoms and treatment. (Ex. 22-1-2). She opined that claimant's work activities were the major contributing cause of tendonitis. (Ex. 22-2). She stated that she was unaware of off work factors or preexisting conditions that could have contributed to the condition. (*Id.*) She also opined that improvement in claimant's symptoms after her resignation indicated that the tendonitis was work related. (Ex. 22-3).

Dr. Braddock generally concurred with Ms. Zwickert's opinion. (Ex. 23-3). However, he did not concur with Ms. Zwickert's opinion that the post-resignation improvement in claimant's symptoms indicated that the tendonitis was work related. (*Id.*)

Dr. Woodward, by contrast, opined that claimant's work activities did not involve sufficient repetition, grip force, vibration, wrist flexion/extension, and awkward positions to cause a left wrist condition. (Ex. 21-1). He reasoned that claimant's work activities varied from task to task, and did not require a hard sustained grip. (Ex. 21-2). He also considered the part time nature of claimant's job. (*Id.*) He opined that work activities could cause symptoms, but not the underlying condition. (*Id.*)

Dr. Braddock did not concur with Ms. Zwickert's opinion that improvement in claimant's symptoms after her resignation indicated that her left wrist tendonitis was work related. (Ex. 23-3). Further, Ms. Zwickert and Dr. Braddock did not explain how claimant's work activities could have caused claimant's tendonitis, nor did they address Dr. Woodward's reasoning that claimant's work activities were insufficient to cause a wrist condition. *See Janet Benedict*, 59 Van Natta 2406, 2409 (2007), *aff'd without opinion*, 227 Or App 289 (2009) (medical opinion unpersuasive when it did not address contrary opinions). Under such circumstances, we find their opinions unpersuasive.

Because we find the opinions of Ms. Zwickert and Dr. Braddock unpersuasive, claimant has not proven the compensability of her left wrist condition. Accordingly, we uphold SAIF's denial.

ORDER

The ALJ's order dated July 22, 2011 is modified. SAIF's denial is upheld.

Entered at Salem, Oregon on February 7, 2012