

In the Matter of the Compensation of  
**KODJO ANANOUKO, Claimant**

WCB Case No. 10-00999

ORDER ON REVIEW

Dodge & Uren LLC, Claimant Attorneys  
Law Office of Thomas A Andersen, Defense Attorneys

Reviewing Panel: Members Lowell and Biehl.

Claimant requests review of Administrative Law Judge (ALJ) Otto's order that upheld the insurer's denial of his injury claim for a low back condition. On review, the issue is compensability.

We adopt and affirm the ALJ's order with the following change and supplementation. In the fifth paragraph on page 3, we delete "the insurer-arranged medical examiner."

The ALJ determined that claimant's testimony that a resident pushed him and he fell on his low back was inconsistent with the testimony of his coworker, Mr. Miles, and his supervisor, Mr. Kouadio. The ALJ also explained that claimant's testimony was inconsistent with the history he gave to his medical providers shortly after the December 12, 2009 work incident. In light of the inconsistencies, the ALJ concluded that claimant's testimony was unreliable and must be disregarded.

On review, claimant acknowledges that there are some variations in the medical records, but he urges us to consider the linguistic difficulties because his native language is French. He contends that the ALJ erroneously disregarded his testimony in favor of the history in the medical records.

The ALJ did not make specific demeanor-based credibility findings. When the issue of credibility concerns the substance of a witness's testimony, we are equally qualified to make our own determination of credibility. *Coastal Farm Supply v. Hultberg*, 84 Or App 282 (1987). Inconsistencies in the record may raise such doubt that a witness's material testimony may be deemed unreliable. *George V. Jolley*, 56 Van Natta 2345, 2348 (2004), *aff'd without opinion*, 202 Or App 327 (2005). Where testimony taken long after an event is inconsistent with contemporaneous medical records, such records may provide a more reliable historical account than the testimony. *See Pamela R. Blake*, 62 Van Natta 216, 225 (2010) (contemporaneous records found more reliable than

testimony given long after the pertinent event); *but see William J. Cook*, 58 Van Natta 625, 626 (2006) (inconsistencies with medical records do not automatically render a witness's testimony unpersuasive).

Here, even assuming that we could reconcile the inconsistencies between claimant's testimony and the history in the medical records shortly after the work incident, we are unable to reconcile his testimony with that of Mr. Miles and Mr. Kouadio. We find that inconsistencies between claimant's testimony and the testimony of other witnesses, as detailed in the ALJ's order, raise such doubt that we are not persuaded by claimant's testimony regarding the work incident. *See Bryan K. Cognetti*, 63 Van Natta 1218, 1221 (2011) (factual inconsistencies in the record raised such doubt that Board was unable to conclude that the claimant's material testimony was credible); *Jolley*, 56 Van Natta at 2348.

Furthermore, because we find that claimant's testimony was not reliable, we agree with the ALJ's conclusion that the medical opinions that relied on claimant's version of the work incident were not persuasive. *See Miller v. Granite Construction Co.*, 28 Or App 473, 476 (1977) (medical evidence based on inaccurate information was insufficient to prove compensability). Consequently, we conclude that claimant has not carried his burden of proving compensability of his low back condition. *See* ORS 656.266(1).

#### ORDER

The ALJ's order dated January 18, 2012 is affirmed.

Entered at Salem, Oregon o July 27, 2012