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In the Matter of the Compensation of  
**WILLIAM KARRASCH, Claimant**  
WCB Case No. 11-00729  
ORDER ON REVIEW

Glen J Lasken, Claimant Attorneys  
Wallace Klor & Mann PC, Defense Attorneys

Reviewing Panel: Members Weddell, Langer, and Herman. Member Langer dissents.

The self-insured employer requests review of that portion of Administrative Law Judge (ALJ) Otto's order that set aside its denials of claimant's occupational disease claim for reactive airway disease with resultant bronchial spasm.<sup>1</sup> On review, the issue is compensability.

We adopt and affirm the ALJ's order with the following supplementation.

On April 2005, claimant began working for the employer and after several years, he became a full-time deli closer, which involved, among other things, cleaning four ovens that were used to cook chickens. (Tr. 5-6). An extremely caustic degreasing chemical was used to clean the ovens. (Tr. 8, 23, 24). The employees were not well trained on the hazards of the degreasing chemicals used for cleaning the ovens and were not provided with the appropriate personal protective equipment for the hazards. (Ex. 62A-3). Claimant did not wear a respirator while cleaning the ovens, but he did use a face shield to protect his eyes. (Tr. 7). Claimant's normal procedure was to spray the oven down with the degreasing chemical, put his head inside the oven, and scrape out the grease and chicken drippings while reapplying the spray degreaser. (Tr. 38, 68). The vapors from the degreaser would frequently take claimant's breath away and cause him to cough. (Tr. 8).

In July 2008, claimant sought treatment for chest congestion, fever, ear congestion, cough, chest heaviness, and phlegm production. He was diagnosed with shortness of breath and pneumonia. (Ex. 2). He was eventually diagnosed with a hiatal hernia with gastroesophageal reflux disease (GERD) and possible

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<sup>1</sup> At hearing, the parties agreed that the issue was compensability of claimant's respiratory, bronchial, and esophageal problems from chemical exposure. (Tr. 3). In written closing arguments and on review, both parties refer to the disputed condition as an occupational disease claim for reactive airways disease with resultant bronchial spasm.

Barrett's epithelium. (Exs. 15, 17, 19). On February 24, 2009, claimant underwent a procedure to correct his reflux issues. (Ex. 21). After surgery, his reflux symptoms resolved. (Ex. 73-4-5).

In September and October 2010, claimant sought treatment for cough, aching, chills, congestion, chest pain, shortness of breath, and fatigue. He was diagnosed with an upper respiratory infection, asthmatic bronchitis, cough, and post-infectious bronchitis from a viral organism. (Exs. 31, 32, 37). His symptoms and treatment continued. By January 2011, he was also diagnosed with "Bronchiolitis, possible [reactive airway disease] injury from toxic exposure (potassium hydroxide) at work," (Ex. 50-1), and "bronchitis due to fumes and vapors." (Ex. 60-1).

In November 2010, claimant began to have new symptoms of significant reflux following extreme coughing and vomiting. (Exs. 40, 44). On December 7, 2010, he underwent a repeat surgery to correct his recurrent hiatal hernia with reflux. (Ex. 48).

The employer denied claimant's claim for a respiratory condition related to chemical exposure at work on February 14, 2011. (Ex. 64). Claimant requested a hearing.

Based on the opinion of Dr. Harless, claimant's attending physician, the ALJ concluded that claimant's chemical exposure at work was the major contributing cause of his combined reactive airways disease with resultant bronchial spasm condition and pathological worsening of the preexisting respiratory condition. ORS 656.802(2)(b).<sup>2</sup>

On review, the employer contends that Dr. Harless's opinion is not sufficient to establish compensability because it is internally inconsistent and not well-reasoned.<sup>3</sup> We disagree.

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<sup>2</sup> The parties do not dispute the application of ORS 656.802(2)(b).

<sup>3</sup> To the extent the employer challenges claimant's credibility as a witness, we agree with the ALJ's determination that claimant credibly testified regarding the nature of his work activities, and that such testimony represents the correct and most accurate history for causation purposes. *See Coastal Farms Supply v. Hultberg*, 85 Or App 282 (1987) (where the issue of credibility concerns the substance of the claimant's testimony, the Board is equally qualified to make its own credibility determination).

Because his occupational disease claim is based on the worsening of a preexisting disease or condition, claimant must prove that employment conditions were the major contributing cause of both the combined condition and a pathological worsening of the disease. ORS 656.266(1); ORS 656.802(2)(b); *Howard L. Allen*, 60 Van Natta 1423 (2008).

We agree, for the reasons expressed by the ALJ's order, that the contrary opinions of Drs. Bardana, Elliott-Mullens, Detwiler, and Burton were based on inaccurate information and are, therefore, unpersuasive. Thus, the determinative issue is whether the opinion of Dr. Harless is sufficient to support compensability. For the following reasons, we conclude that it is.

Claimant first sought treatment from Dr. Harless in February 2011. Dr. Harless explained that his "original event" was a viral infection, which resulted in a prolonged post-viral inflammatory response with bronchospasm (cough, bronchitis, and shortness of breath). He did not believe claimant's work caused the original cough and bronchitis, but he explained that his work exposure to chemicals (along with intermittent significant environmental temperature changes) had "exacerbated and perpetuated the *symptoms*." (Ex. 67-1; emphasis supplied). Dr. Harless later changed his opinion to the extent that he believed that claimant's exposure to chemicals at work "exacerbate[] and perpetuate[] the *condition*." (Ex. 70-1; emphasis supplied).

Dr. Harless subsequently explained that "what began as a viral infection was significantly worsened and prolonged as a result of the employment exposure." (Ex. 71-2). After weighing the "inciting viral infection contrasted with the probable worsening effect caused by the employment exposure," he opined that the major contributing cause of claimant's current condition and need for treatment was the employment exposure "rather than the initiating viral infection." (Ex. 71-3).<sup>4</sup>

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<sup>4</sup> While Exhibits 70 and 71 were authored before Dr. Harless was given the accurate specifics regarding the exact *process* claimant used when cleaning the ovens at work, he still based those opinions on the fact that claimant was *exposed* to harsh chemicals at work (which is accurate given claimant's credible testimony). Moreover, in response to claimant's attorney's description of his opinion (Ex. 80), Dr. Harless clarified that "viral respiratory infection caused the bronchial spasm and reactive airways" and that "on-the-job exposure perpetuated the bronchial spasm and reactive airways." He did not disagree, however, with claimant's attorney's assertion that he was "reverting to and reaffirming your previously expressed opinion that [claimant] has suffered a compensable occupational exposure." (Ex. 80-3). In fact, Dr. Harless continued to reach that conclusion. (Ex. 80-4). As a result, we find the causation opinions given in the earlier reports helpful in evaluating Dr. Harless's opinion as a whole.

On August 29, 2011, after being accurately informed that claimant's cleaning duties included placing his head and upper torso into the ovens at work to scrape off materials formed by the grease reacting to the chemicals, Dr. Harless concluded that the major contributing cause of claimant's bronchial spasm and reactive airways disease was his on-the-job exposure to chemicals.<sup>5</sup> (Ex. 80-1, -5). Dr. Harless was also informed that claimant frequently reapplied chemicals to the grease and that he was in the oven during the reapplication. Dr. Harless understood that claimant did not use a respirator and breathed fumes from the chemicals.<sup>6</sup> (Ex. 80-1).

In reaching his causation opinion, Dr. Harless explained that the “[v]iral respiratory infection caused the bronchial spasm and reactive airways. On-the-job exposure perpetuated the bronchial spasm and reactive airways.” (*Id.*) To clarify, he reiterated that, “[c]hemical exposure did not worsen the viral infection. Industrial exposure did not lead to his condition but worsened it and perpetuated it.” (Ex. 80-4).

It is well-settled that we do not appraise opinions based on “magic words.” *SAIF v. Strubel*, 161 Or App 516, 521-22 (1999); *Liberty Northwest Ins. Corp. v. Cross*, 109 Or App 109, 112 (1991), *rev den*, 312 Or 676 (1992); *see also SAIF v. Alton*, 171 Or App 491, 502 n 6 (2000) (“experts generally need not express themselves with particular word-choices”). Rather, we evaluate medical opinions in context and based on the record as a whole to determine their sufficiency. *Strubel*, 161 Or App at 521-22.

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<sup>5</sup> While claimant may not have initially relayed a specific history to Dr. Harless of placing his head in the ovens at work to spray the degreaser and scrape off the materials, by the time of his August 2011 causation opinion, Dr. Harless was apprised of that history. Thus, to the extent his causation analysis relied on such a history, the fact he was not initially aware of the specifics is not detrimental to our appraisal of Dr. Harless's opinion. In any event, as noted above, throughout his treatment of claimant, Dr. Harless's opinions were based (accurately, given claimant's credible testimony) on the fact that claimant was exposed to chemicals at work, which is the key factor here, regardless of the specifics of the cleaning procedure.

<sup>6</sup> The employer contends that it was “unfair” that evidence that claimant stuck his head in the ovens when cleaning came out “for the first time” at hearing, and was provided (“post-hearing”) to Dr. Harless for a rebuttal report. However, when the ALJ granted claimant's motion to continue the hearing to obtain Dr. Harless's rebuttal report, the employer *did not object*, and sought cross-examination of Dr. Harless (which it subsequently did not undertake). (Tr. 1, 70-71). To the extent the employer now has concerns with this process, it neither objected to the ALJ's ruling nor sought the opportunity to share claimant's testimony with examining physicians for possible rebuttal reports.

Applying these standards, we conclude that Dr. Harless's opinion establishes that claimant's employment was the major contributing cause of both his combined respiratory condition and a pathological worsening of his underlying preexisting respiratory disease. *See Clyde I. Perkins*, 56 Van Natta 1268, 1272 (2004) (although a physician never used "magic words," his opinion was sufficient to establish a pathological worsening under ORS 656.802(2)(b)); *William H. Wright*, 55 Van Natta 2209 (2003), *recons*, 55 Van Natta 2824, 2828 (2003), *aff'd without opinion*, 194 Or App 602 (2004) (medical opinion, when read as a whole, established that the claimant's work activities were the major contributing cause of combined neck condition and the pathological worsening of the degenerative cervical condition). While Dr. Harless's opinions were not a model of clarity, we find they were adequately explained and internally consistent.

In reaching this conclusion, we interpret Dr. Harless as ultimately drawing a distinction between claimant's viral infection, which was the initial cause or "original event" that led to his reactive airways disease with bronchial spasm, and a worsening of that latter condition. He explained that claimant developed a viral respiratory infection that led to the initial development of the bronchial spasm and reactive airways disease. He indicated that the recovery from this latter condition was considerably lengthened due to the industrial chemical exposure. Whereas Dr. Harless did not believe that the industrial chemical exposure worsened claimant's *initial* viral infection, he did opine that the chemical exposure worsened the bronchial spasm and reactive airways condition (which was initially caused by the viral infection). (Exs. 70, 80-4).

In reaching this opinion, Dr. Harless considered claimant's test results and his preexisting respiratory conditions and predispositions, and relied on an accurate understanding of claimant's chemical exposure at work. Thus, taken as a whole, we find that his opinion persuasively establishes that claimant's work exposure was the major contributing cause of his overall combined respiratory condition and pathological worsening of his preexisting respiratory disease. (Exs. 70, 80-4, -5). Consequently, we affirm.

Claimant's attorney is entitled to an assessed fee for services on review. ORS 656.382(2). After considering the factors set forth in OAR 438-015-0010(4) and applying them to this case, we find that a reasonable fee for claimant's attorney's services on review is \$4,000, payable by the employer. In reaching this conclusion, we have particularly considered the time devoted to the case (as represented by claimant's respondent's brief), the complexity of the issue, the value of the interest involved, and the risk of claimant's counsel going uncompensated.

Finally, claimant is awarded reasonable expenses and costs for records, expert opinions, and witness fees, if any, incurred in finally prevailing over the denials, to be paid by the employer. *See* ORS 656.386(2); OAR 438-015-0019; *Gary Gettman*, 60 Van Natta 2862 (2008). The procedure for recovering this award, if any, is prescribed in OAR 438-015-0019(3).

### ORDER

The ALJ's order dated January 30, 2012 is affirmed. For services on review, claimant's attorney is awarded an assessed fee of \$4,000, to be paid by the employer. Claimant is awarded reasonable expenses and costs for records, expert opinions, and witness fees, if any, incurred in finally prevailing over the denials, to be paid by the employer.

Entered at Salem, Oregon on November 14, 2012

Member Langer dissenting.

The majority concludes that Dr. Harless's opinion establishes that claimant's work exposure was the major contributing cause of his combined respiratory condition and pathological worsening of his preexisting respiratory disease. Because I disagree with the majority's analysis of the medical evidence, I respectfully dissent.

Dr. Harless's opinions must be evaluated in context and based on the record as a whole to determine sufficiency. *SAIF v. Strubel*, 161 Or App 516, 521 (1999). Here, Dr. Harless's opinion is not sufficient to establish that claimant's work activities were the major contributing cause of both the reactive airway disease with bronchial spasm *and* a pathological worsening of the disease, pursuant to ORS 656.802(2)(b). A worsening of symptoms alone is insufficient to prove an occupational disease. *Judith A. Vallembois*, 56 Van Natta 1828, 1833 (2004), *aff'd without opinion*, 197 Or App 685 (2005).

Dr. Harless signed a concurrence letter from claimant's attorney, after being accurately informed about the nature of claimant's cleaning duties at work. But Dr. Harless did not agree with several portions of the concurrence letter. He was asked if he agreed with the following:

“Assuming [claimant] was in fact exposed to these fumes given the nature of the cleaning processed he described, you are now comfortable reaffirming your previously expressed opinion that

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the major contributing cause of his bronchial spasm and reactive airway disease, at least at this time, would be the on-the-job exposure.” (Ex. 80-3).

Dr. Harless checked the “no” box and wrote:

“Viral respiratory infection caused the bronchial spasm and reactive airways. On-the-job exposure perpetuated the bronchial spasm and reactive airways.” (*Id.*)

Dr. Harless also wrote “no” by claimant’s attorney’s statement that the chemical exposure “substantially worsened the viral infection[.]” However, he indicated agreement that the chemical exposure “considerably lengthened his recovery from the [viral] infection.” (Ex. 80-3). Later in the concurrence letter, Dr. Harless wrote “no” by claimant’s attorney’s statement that claimant’s “condition was then worsened by his industrial exposure leading to the development of the bronchial spasm and reactive airway disease.” (*Id.*) Thereafter, Dr. Harless included the following comments:

“Chemical exposure did not worsen the viral infection. Industrial exposure did not lead to his condition but worsened it and perpetuated it.” (Ex. 80-4).

Thus, based on Dr. Harless’s handwritten notes on claimant’s attorney’s concurrence letter, his opinion appears to be that claimant’s bronchial spasm and reactive airway were caused by the preexisting viral respiratory infection.<sup>7</sup> He did not agree that the chemical exposure worsened the viral infection. However, Dr. Harless did believe that claimant’s work exposure “perpetuated” the bronchial spasm and reactive airways and also lengthened his recovery from the viral infection. Dr. Harless specifically stated that claimant’s “[i]ndustrial exposure did not lead to his condition but worsened it and perpetuated it.” (*Id.*)

Later in the concurrence letter, however, Dr. Harless agreed that claimant’s viral infection was “significantly worsened by the chemical exposure at work.” (*Id.*) I am unable to reconcile Dr. Harless’s handwritten statement that “[c]hemical exposure did not worsen the viral infection” with his agreement that the viral infection was “significantly worsened by the chemical exposure at work.” (*Id.*)

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<sup>7</sup> In his initial chart note, Dr. Harless explained that claimant’s “original event” was a viral infection, which resulted in a prolonged post-viral inflammatory response with bronchospasm (cough, bronchitis, and shortness of breath). (Ex. 67).

Dr. Harless concurred with the statement that claimant's chemical exposure at work was the major contributing cause of his bronchial spasms and reactive airway disease, at least during the past several months. (*Id.*) But his handwritten statement explained that the *viral infection* caused the bronchial spasm and reactive airways. (Ex. 80-3). As noted above, Dr. Harless specifically stated that claimant's "[i]ndustrial exposure did not lead to his condition but worsened it and perpetuated it." (Ex. 80-4).

At the end of the concurrence letter, Dr. Harless agreed with the statement that claimant's industrial exposure was the major contributing cause of his "overall combined condition diagnosed as bronchial spasm due to reactive disease[.]" (Ex. 80-5). Once again, Dr. Harless's concurrence with that statement is inconsistent with his handwritten comments as discussed above.

After evaluating Dr. Harless's opinion in context and based on the record as a whole, I am unable to reconcile the inconsistencies in his final concurrence report. Because the record provides no adequate explanation for the inconsistencies, Dr. Harless's opinion is unpersuasive and insufficient to establish compensability of the claimed occupational disease. See *Howard L. Allen*, 60 Van Natta 1423, 1424-25 (2008) (internally inconsistent medical opinion, without explanation for the inconsistencies, was unpersuasive); *Bettye C. Havener*, 56 Van Natta 1091 (2004), *aff'd without opinion*, 200 Or App 141 (2005) (finding opinion unpersuasive when physician never explained prior inconsistent concurrences, and opinions could not be reconciled).

At most, Dr. Harless's opinion supports the conclusion that claimant's work exposure worsened his preexisting respiratory condition so that his symptoms lasted longer, which is not sufficient to sustain claimant's burden of proof. See ORS 656.802(2)(b); *Tammy L. Foster*, 52 Van Natta 178 (2000) (a claimant must prove that work activities were the major contributing cause of the disease itself, not just the disability or treatment associated with it). Because the medical evidence is not sufficient to establish compensability of the occupational disease claim under ORS 656.802(2)(b), I would reverse and uphold the employer's denials.