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In the Matter of the Compensation of  
**DENNIS L. CORKUM, Claimant**  
WCB Case No. 11-02195  
ORDER ON REVIEW  
Dale C Johnson, Claimant Attorneys  
Thaddeus J Hettle & Assoc, Defense Attorneys

Reviewing Panel: Members Weddell and Lowell.

Claimant requests review of Administrative Law Judge (ALJ) Ogawa's order that upheld the self-insured employer's denial of his injury claim for a right groin condition. On review, the issue is compensability.

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

Claimant had a left inguinal hernia repair in 1953, when he was a child, and a right indirect hernia repair with mesh in 1995. On January 15, 2011, claimant lifted a 40- to 50-pound box while working, and felt a sharp pain in his right groin. He was diagnosed with bilateral inguinal hernias. On March 21, 2011, the employer denied claimant's claim for a right groin condition.

On March 31, 2011, claimant underwent surgery to repair his bilateral inguinal hernias. During that operation, an umbilical hernia was found and repaired.

Claimant requested a hearing regarding the employer's denial.

The employer conceded that the work incident caused an "otherwise compensable injury." However, the ALJ found that the otherwise compensable injury had combined with a preexisting condition. Further, finding most persuasive the opinion of Dr. Bernardo, an employer-arranged medical examiner, the ALJ found that the otherwise compensable injury was not the major contributing cause of claimant's need for treatment. Accordingly, the ALJ upheld the employer's denial.

On review, claimant contends that his right inguinal hernia was not a combined condition and that the weakness of his abdominal wall tissues, which Dr. Bernardo weighed against compensability, was a mere susceptibility which should not have been weighed in determining major causation. We disagree with claimant's contentions.

Claimant bears the initial burden to prove the compensability of a work injury by establishing that the work injury was a material contributing cause of his disability or need for treatment. ORS 656.005(7)(a); ORS 656.266(1); *Olson v. State Indus. Accident Comm'n*, 222 Or 407, 414-15 (1960). If an otherwise compensable injury combines with a preexisting condition to cause or prolong claimant's disability or need for treatment, the combined condition is compensable only insofar as the otherwise compensable injury is the major contributing cause of the disability or need for treatment of the combined condition. ORS 656.005(7)(a)(B). The employer bears the burden to prove that the otherwise compensable injury was not the major contributing cause of the disability or need for treatment of the combined condition. ORS 656.266(2)(a); *Jack G. Scoggins*, 56 Van Natta 2534, 2534 (2004).

For initial injury claims, a "preexisting condition" must be an injury, disease, congenital abnormality, personality disorder or similar condition that contributes to disability or need for treatment, which has been diagnosed or treated before the initial injury or is arthritis or an arthritic condition. ORS 656.005(24)(a). A condition is not deemed to contribute to disability or need for treatment if the condition merely renders the worker more susceptible to the injury. ORS 656.005(24)(c); *see also Multnomah County v. Obie*, 207 Or App 482, 488 (2006) (2001 amendments to ORS 656.005(24) were intended to eliminate predispositions from the definition of "preexisting condition" in both injury and occupational disease claims).

The causation issue presents a complex medical question to 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 among 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). To persuasively establish the major contributing cause of a condition, a medical opinion must weigh the relative contribution of all causes, including the precipitating cause, and determine which cause, or combination of causes, contributed to the condition more than all other causes combined. *Smothers v. Gresham Transfer, Inc.*, 332 Or 83, 133 (2001); *Dietz v. Ramuda*, 130 Or App 397, 401-02 (1994), *rev dismissed*, 321 Or 416 (1995).

To establish that claimant's conceded "otherwise compensable injury" combined with a preexisting condition, and that the otherwise compensable injury was not the major contributing cause of claimant's disability or need for treatment

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of the combined condition, the employer relies on Dr. Bernardo's opinion. Based on the following reasoning, we find that the employer has satisfied this burden of proof.

Dr. Bernardo opined that claimant's right inguinal hernia developed steadily over a period of years between the 1995 hernia repair and the 2011 work injury. (Exs. 11-6, 19-13). He opined that the hernia developed due to weakness of claimant's abdominal wall tissue. (Exs. 18-4, 19-11, -13, -15). He explained that claimant's history of inguinal hernias, as well as the 2011 diagnoses of an asymptomatic inguinal hernia on the left side and an asymptomatic umbilical hernia, indicated that the weakness of the abdominal wall tissues contributed to the hernias. (Exs. 18-3, 19-10, 13). He also reasoned that the lifting that claimant reported was not, by itself, significant enough to cause a herniation, but that asymptomatic hernias often become symptomatic spontaneously or with minor incidents. (Ex. 19-14).

Dr. Bernardo further opined that the work event exacerbated the hernia, causing it to become symptomatic through a mechanism such as pinching, tearing, crimping, or enlarging it. (Exs. 11-6, 18-2, 19-13, -27). He also opined that claimant's age and smoking contributed to the worsening of the hernia. (Exs. 11-7, 18-3). Weighing these factors, he concluded that the work incident was only a material contributing cause, but not the major contributing cause, of claimant's disability and need for treatment. (Ex. 19-10, -17).

Claimant contends that his abdominal wall weakness was merely a "predisposition" or "susceptibility" to injury, and therefore was not a "preexisting condition" under ORS 656.005(24)(c). In support of this contention, he notes that Dr. Bernardo described his abdominal wall weakness as "predisposing him to develop hernias." (Ex. 18-3).

Yet, Dr. Bernardo also stated that the right inguinal hernia developed "due to weakening of the tissue." (Ex. 18-4). Such an explanation indicates that claimant's abdominal wall weakness *caused* the right inguinal hernia, and was not *merely* a predisposition or susceptibility. See *Theron E. Hutchings*, 64 Van Natta 948, 952 n 1 (2012) (previous intervertebral fusion a "preexisting condition" where a medical expert explained its causal contribution to the claimant's disability and need for treatment, despite the expert's use of the word "susceptibility"). Therefore, this record does not support claimant's assertion that his abdominal wall weakness should be excluded from the definition of "preexisting condition" under ORS 656.005(24)(c).

Further, Dr. Bernardo's opinion indicates that the hernias that had been treated in 1953 and 1995 had also been caused by claimant's abdominal wall weakness. Thus, his opinion indicates that claimant's abdominal wall weakness had been treated before the 2011 work injury. Accordingly, Dr. Bernardo's opinion supports a conclusion that claimant's abdominal wall weakness was a "preexisting condition," and, thus, claimant's right inguinal hernia was a "combined condition."

Finally, for the reasons explained in the ALJ's order, we find Dr. Bernardo's opinion most persuasive. Based on that opinion, we conclude that claimant's otherwise compensable injury was not the major contributing cause of his disability or need for treatment of his combined right inguinal hernia condition. Accordingly, we affirm.

#### ORDER

The ALJ's order dated May 7, 2012 is affirmed.

Entered at Salem, Oregon on November 30, 2012