
In the Matter of the Compensation of
ANTONIO BALTAZAR PAULINO, Claimant
WCB Case No. 11-04733
ORDER ON REVIEW
Dunn & Roy PC, Claimant Attorneys
James B Northrop, SAIF Legal, Defense Attorneys

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

Claimant requests review of Administrative Law Judge (ALJ) Fulsher's order that upheld the SAIF Corporation's denial of claimant's new/omitted medical condition claim for bilateral temporomandibular joint (TMJ) disorder. On review, the issue is compensability.

We adopt and affirm the ALJ's order.

ORDER

The ALJ's order dated March 22, 2012 is affirmed.

Entered at Salem, Oregon on September 7, 2012

Member Weddell dissenting.

Claimant sustained a compensable injury on May 14, 2011, while preparing to open the employer's restaurant. He was attacked and beaten by a burglar and sustained cervical, lumbar and left wrist injuries. The burglar also struck the right side of claimant's jaw with a piece of plastic pipe.

Beginning on May 28, 2011, several chiropractors, including Drs. Vance and Privitera treated claimant for the work injury. These doctors diagnosed TMJ (among other things), noting reduced jaw motion, pain, crepitus (or popping), and hypertonicity of the masseter, temporalis sternocleomastoid and ptergoid muscles. (*See* Exs. 4-3, 19). They also opined that claimant's May 11, 2011 work injury was the major contributing cause of his TMJ condition. (Ex. 19-3).

Treatment provided for claimant's TMJ included massage and a mouth brace to be worn at night. (Exs. 4-6, 14-1, 15-3). Claimant's conditions improved.

Dr. Albert, an oral and maxillofacial surgeon, examined claimant on August 29, 2011, and reviewed his history at SAIF's request. Dr. Albert acknowledged that Dr. Vance had recorded claimant's jaw popping bilaterally soon after the assault, along with some deviation to the left with opening, crepitus with opening and closing, and tenderness with palpation over the mastication muscles. (Ex. 15-3). Dr. Albert reported that claimant was "getting better overall," noting that he still had some tenderness to palpation and intermittent crepitus over the jaw joints.¹ (Ex. 15-3-5).

Dr. Albert opined that claimant's findings seemed consistent with the mechanism of injury and his need for "management of [jaw] symptoms." (Ex. 15-5-6). Nonetheless, Dr. Albert opined that claimant did not have TMJ, absent evidence of "objective damage to the jaw joints themselves." (*Id.* at 6). He agreed with statements that examination findings included nothing to "operate on for TMJ," there was no structural change allowing a TMJ diagnosis, and claimant's pain complaints were not sufficient to diagnose TMJ. (Ex. 18-1). Dr. Albert also reasoned that, if claimant had TMJ, it would have healed with "10-12 therapy session," that is, long before he examined claimant.

Claimant asked SAIF to accept bilateral TMJ syndrome and SAIF denied he request, based on Dr. Albert's examination report. (Exs. 12, 17). Claimant requested a hearing.

The ALJ upheld SAIF's denial, relying on Dr. Albert's opinion that claimant's findings were insufficient to diagnose TMJ. The majority agrees with the ALJ's reasoning, adopting her opinion that Dr. Albert's greater expertise makes his opinion more persuasive than the treating chiropractors' TMJ diagnosis. I disagree, reasoning as follows.

I acknowledge that specialized expertise may be an advantage in diagnosing a condition. However, expertise is not a substitute for a well-reasoned opinion that is based on an accurate history. *See Shirley J. Roney*, 59 Van Natta 2271, 2274 (2007) (physician's greater expertise did not necessarily cure other deficiencies in the expert's diagnostic opinion).

¹ Dr. Albert stated that claimant had

"mild-to-moderate tenderness to palpation along the temporalis insertion on the right and very minimal on the left. He does have tenderness along the medial pterygoid insertion, right greater than left, upper third of the sternocleidomastoid, right greater than left, and points to the occipital region as an area that bothers him." (Ex. 15-4).

Here, despite acknowledging that claimant's symptom history was consistent with the work injury, Dr. Albert rejected a TMJ diagnosis, in part because claimant did not have restricted jaw motion at the August 29, 2011 examination. (Ex. 15-5-6). This examination occurred over three months after the work injury and the doctor neglected to note that claimant's condition(s) had improved during that time with treatment. (See Ex. 19-2-3). Thus, insofar as Dr. Albert relied on claimant's presentation *after* his jaw condition improved, his opinion rejecting the TMJ diagnosis does not thoroughly or persuasively address the condition previously treated.

Indeed, Dr. Albert acknowledged that appropriate treatment for TMJ could include a mouth guard. (Ex. 18-2). In claimant's case, Dr. Vance explained that claimant's TMJ treatment included a mouth guard to wear at night "which allowed [the] TMJ *joints* to relax and heal." (Ex. 19-2) (Emphasis added). Under these circumstances, I would find that the medical evidence persuasively supports a conclusion that claimant sustained an injury-related TMJ *condition*.

The treating doctors' TMJ diagnosis was also supported by contemporaneous limited range of motion, including a reduced ability to protrude and latcotrude. (*Id.* at 3). Thus, even applying Dr. Albert's diagnostic standards (objective findings of reduced motion), claimant had TMJ after his work injury. In other words, even if claimant's condition in late August 2011 did not support a TMJ diagnosis, that does not rebut the treating doctors' opinion that claimant *had* TMJ at least until it was treated successfully.

Under these circumstances, I would rely on the treating physicians' TMJ diagnosis and conclude that claimant has carried his burden of proving a compensable TMJ condition. Because the majority concludes otherwise, I respectfully dissent.