In the Matter of the Compensation of
ROBERT D. HOWARD, Claimant
WCB Case No. 10-06068
ORDER ON RECONSIDERATION
Jodie Anne Phillips Polich, Claimant Attorneys
Welch Bruun & Green, Defense Attorneys
David Runner, SAIF Legal Salem, Defense Attorneys

Reviewing Panel: Members Lanning and Langer.

On January 30, 2014, we adopted and affirmed an Administrative Law Judge's (ALJ's) order that upheld the SAIF Corporation's denials of claimant's new/omitted medical condition claims for neurological, cervical, and dental conditions.[1] Relying on the testimony of his current physician (Dr. Milam), as supported by a theory espoused by an examining physician (Dr. Zielinski), and asserting that those opinions are based on the most accurate history of his work event (as confirmed by his "uncontroverted testimony"), claimant contends that the record supports a conclusion that his denied conditions are causally related to his work injury. Consequently, he seeks reconsideration of our decision and a reversal of the ALJ's order. Based on the following reasoning, we adhere to our previous decision to adopt and affirm the ALJ's order.

To begin, claimant refers to his testimony that a "T-bar" (weighing 70 pounds) struck him on the head from a height of approximately five feet. Characterizing that testimony as "uncontroverted," he argues that Dr. Milam was the only physician to have that accurate understanding of the mechanism of his injury. Yet, there are various estimations concerning the weight of the T-bar expressed throughout the medical record, ranging from 20 and over 25 pounds to eventually 100 to 250 pounds.[2] (Exs. 5, 18-1, 22-1, 24, 26, 28, and 41-1). Moreover, the T-bar was attached to approximately three feet of chain, which was attached to the doors of a large metal drop box. (Tr. 12-13, 39-40).

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[1] On February 28, 2014, applying OAR 438-011-0035(2), we denied claimant's motion for reconsideration because no specific argument addressing the merits of our order had been provided. *Robert D. Howard*, 66 Van Natta 391 (February 28, 2014).

[2] Dr. Milam was "able to measure" a T-bar that was brought to his office. (Tr. 53). However, it was not the T-bar that struck claimant, but it was Dr. Milam's understanding "that the containers are all pretty well generic." (*Id.*) Claimant provided the T-bar to Dr. Milam, which he had secured from a friend. (Tr. 29). Claimant did not know the manufacturer of T-bar or the box to which it had been attached and acknowledged that boxes are designed differently. (*Id.*)

Considering such references (including the various estimates of the weight of the T-bar), we are unable to conclude that Dr. Milam's opinion was premised on a more accurate understanding of the mechanism of claimant's work injury.

Claimant also asserts that, as an accident reconstruction specialist, Dr. Milam was in a superior position to assess the impact to his skull and brain resulting from the impact of the T-bar to his head, as well as to the back of his head while he fell, hitting the ground. Nevertheless, other than the reference to this specialty, the record does not indicate that Dr. Milam has any particular expertise regarding the type of injury claimant sustained. To the contrary, Dr. Milam explained that the majority of his practice concerns "intervertebral disc injuries and motor vehicle accidents." (Tr. 41). Under such circumstances, we decline to provide additional probative weight to Dr. Milam's opinion as an "accident reconstruction specialist."

In addition, claimant notes that, based on his "20-plus" examinations, Dr. Milam found claimant to be "consistent" and "extraordinarily upfront" regarding his symptoms.[3] (Tr. 48, 52). Based on such repeated observations, claimant challenges the assessments from other physicians, which questioned the authenticity of his symptoms and their relationship to his work injury.

We acknowledge Dr. Milam's familiarity with claimant and his complaints. Nonetheless, Dr. Milam did not begin treating claimant until nearly one year after the work accident, which was also after other treating physicians had either released him to modified/regular work or concurred with opinions suggesting a correlation between his symptoms and his concerns over returning to work. Because Dr. Milam did not offer an express analysis countering these opposing theories (other than "that would not be my opinion," Tr. 53), we share the ALJ's characterization of Dr. Milam's opinion as "relatively terse and conclusory."

Claimant further contends that, as an expert in "movement disorders," Dr. Zielinski's opinion persuasively establishes a causal connection between the denied conditions and the work injury. Specifically, claimant refers to Dr. Zielinski's opinion that he has "no doubt that his issue has an organic origin." (Ex. 93-2). Yet, as with Dr. Milam, Dr. Zielinski does not offer a persuasive analysis in response to the aforementioned theories espoused by other physicians

[3] Claimant also refers to the ALJ's statements regarding the "credible and troubling" testimony from his friends, which recounted the changes in his conduct following the work injury. Although we do not discard these observations, considering the complexity of the causal relationship between claimant's work injury and his denied conditions, the resolution of this issue must be ultimately reached by means of persuasive medical evidence.

expressing opinions regarding claimant's disputed conditions and their relationship to the work injury. Furthermore, as reasoned by the ALJ, Dr. Zielinski's report lacked supporting test results or details, as well as corroborating medical literature regarding his "genetic predisposition with violent trauma late in life" theory. In the absence of such corroborating evidence, we do not consider Dr. Zielinski's opinion sufficiently persuasive to establish the compensability of the disputed conditions.

Finally, turning to his denied dental conditions, claimant questions whether the opinions on which the ALJ relied (from Drs. Kaip and Albert, Exs. 31, 64) had sufficient or accurate information regarding the mechanism of his work injury. Instead, claimant again relies on the assessments provided by Dr. Milam. In addition, he refers to the opinion of Dr. Parker (Ex. 92), who supported the opinion of Dr. Erickson (Ex. 16), which attributed the disputed dental conditions to claimant's work injury.

For the reasons previously discussed, we do not consider Dr. Milam's assessments to be persuasive. Furthermore, Dr. Parker characterized his examination as "cursory" and "not in the detail performed by Dr. Erickson." (Ex. 92). Nevertheless, Dr. Parker concluded that considering the "violent * * * impact" of claimant's work injury, that impact "could also cause[] his teeth to come together hard enough to fracture them as observed by Dr. Erickson." (*Id.*) Yet, neither Dr. Erickson nor Dr. Parker responded to the theories professed by Drs. Kaip and Albert that, considering the decay which was chronic in nature, the disputed dental conditions were not related to claimant's work accident. Without a persuasive response to these opinions, the conclusions reached by Dr. Erickson (as supported by Dr. Parker) are insufficient to prove the compensability of the denied dental conditions.

In conclusion, based on the aforementioned reasoning, we continue to find that the record does not persuasively establish the compensability of the disputed new/omitted medical conditions. Therefore, as supplemented above, we adhere to our previous conclusions.

Accordingly, we withdraw our January 30 order. On reconsideration, as supplemented, we republish our January 30 order. The parties' 30-day statutory rights of appeal shall begin to run from the date of this order.

IT IS SO ORDERED.

Entered at Salem, Oregon on March 3, 2014