In the Matter of the Compensation of
JUAN JACOBO-RODRIGUEZ, Claimant
WCB Case No. 13-03883
ORDER ON REVIEW
Dunn & Roy PC, Claimant Attorneys
Reinisch Wilson Weier, Defense Attorneys

Reviewing Panel: Members Lanning and Langer.

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

FINDINGS OF FACT

We adopt the ALJ's "Findings of Fact," with the following change and supplementation. We do not adopt the ALJ's "stipulation." We provide the following summary of the pertinent facts.

In October 2012, claimant began working for the employer's temporary labor service. In April 2013, he was assigned to work at a meat processing plant.

On June 13, 2013, claimant reported a right shoulder injury that had occurred on or about April 15, 2013. (*See* Ex. 12). On June 18, 2013, he signed an "827" form and sought treatment from Dr. Thrall for right shoulder pain. (Exs. 8, 9). Claimant's right shoulder MRI showed a full-thickness tear of the anterior supraspinatus tendon. (Exs. 13, 14).

On October 21, 2013, Dr. Teed, orthopedic surgeon, examined claimant on behalf of the employer. (Ex. 17A).

After the employer denied the claim (Ex. 16), claimant requested a hearing.

CONCLUSIONS OF LAW AND OPINION

The ALJ assumed, for the sake of argument, that the record would establish legal causation. Nevertheless, the ALJ determined that the medical evidence was not sufficient to establish medical causation.

On review, claimant relies on the opinions of Drs. Teed and Thrall to prove that his work injury was a material contributing cause of his disability/need for treatment for a right shoulder condition. The employer responds that claimant did not establish medical causation and that, in any event, he did not establish legal causation.

For purposes of our analysis, even assuming that claimant has established legal causation, we agree with the ALJ's conclusion that medical causation has not been established. We reason as follows.

To establish compensability, claimant must prove by a preponderance of evidence that the April 2013 work incident was a material contributing cause of the disability or need for treatment of the right shoulder condition. ORS 656.005(7)(a); ORS 656.266(1). In light of the delay in claimant's medical treatment and the possible alternative causes for his right shoulder condition, resolution of this matter is a complex medical question that must be resolved by expert medical opinion. *See Uris v. State Comp. Dep't*, 247 Or 420, 426 (1967); *Barnett v. SAIF*, 122 Or App 279, 283 (1993). Because the employer is not asserting the existence of a "combined condition," the "material contributing cause" standard applies to determine compensability. *See Jose C. Agosto*, 57 Van Natta 849, 850 (2005), *aff'd without opinion*, 205 Or App 182 (2006).

Dr. Thrall reported that claimant was injured at work on about April 15, 2013, when he slipped and fell forward, striking his anterior right shoulder on a box. He noted that claimant had no prior right shoulder problems. Dr. Thrall diagnosed a right shoulder contusion, "by history, with persistent symptoms after two months." (Ex. 9). In an October 2013 concurrence letter from the employer's attorney, Dr. Thrall explained that his opinion hinged on the "accuracy and veracity" of the history provided by claimant. (Ex. 17).

We acknowledge that "magic words" are not required to satisfy medical causation. *Liberty Northwest Ins. Corp. v. Cross*, 109 Or App 109 (1991), *rev den*, 312 Or 676 (1992). Here, however, Dr. Thrall did not explain whether or not the work incident was a material contributing cause of claimant's disability/need for treatment for the right shoulder condition. Instead, Dr. Thrall commented that claimant had a right shoulder contusion, "by history," with persistent symptoms after two months. (Ex. 9). Although Dr. Thrall was apparently relying on claimant's reported history, he did not explain what caused the right shoulder contusion. Because Dr. Thrall's reports lack adequate explanation, they are not sufficient to establish that the April 2013 work incident was a material contributing

cause of the disability or need for treatment of the right shoulder condition. *See Moe v. Ceiling Sys., Inc.*, 44 Or App 429, 433 (1980) (rejecting unexplained or conclusory opinion).

Claimant also relies on the opinion of Dr. Teed to establish medical causation. In responding to a question from the employer as to whether the April 2013 work incident was a material cause of any disability/need for treatment (Ex. 17A-5), Dr. Teed explained that the "alleged April 15, 2013 work injury is not the material cause for disability and need for medical treatment" and that the "history this claimant provides is relatively vague." (Ex. 17A-6). Later in the report, however, Dr. Teed opined that claimant had a preexisting shoulder condition that combined with the "acute injury of a shoulder strain[.]" (*Id.*) He concluded that the "shoulder strain was the major contributing cause (greater than 51 percent) that caused this claimant's need for treatment and disability the first three months after the accident[.]" (*Id.*)

Thus, Dr. Teed explained that the alleged work incident was not a material contributing cause for claimant's disability/need for treatment, but he also opined that the "acute" shoulder strain was the major contributing cause of the disability/need for treatment the first three months after the accident. Absent further explanation, we consider Dr. Teed's opinion to be internally inconsistent and unpersuasive. *See Howard L. Allen*, 60 Van Natta 1423, 1424-25 (2008) (internally inconsistent medical opinion, without explanation for the inconsistencies, was unpersuasive).

Furthermore, we are not persuaded that Dr. Teed had an accurate history. He reported that claimant "has not returned to work since the fall because of right shoulder pain." (Ex. 17A-2). In contrast, claimant testified that he continued to work the day he fell and worked another day at the Woodburn facility. (Tr. 19). In addition, he worked for the employer's Silverton facility from May 15 to May 25, 2013, performing similar work. (Tr. 20-25, 33, 37, 65). Moreover, claimant testified that he stopped work because he was laid off, not because of shoulder pain. (Tr. 20, 25, 33).

Based on this record, even if we accept claimant's testimony about the work-related incident, Dr. Teed's opinion is not persuasive because he had an inaccurate history. *See Miller v. Granite Constr. Co.*, 28 Or App 473, 478 (1977) (medical opinion unpersuasive where it was based on inaccurate information). Accordingly, Dr. Teed's opinion is insufficient to establish medical causation.

In summary, we agree with the ALJ's conclusion that, even assuming that claimant established legal causation, the medical evidence is not sufficient to establish that the April 2013 work incident was a material contributing cause of the disability or need for treatment of the right shoulder condition. Therefore, we affirm.

ORDER

The ALJ's order dated November 29, 2013 is affirmed.

Entered at Salem, Oregon on April 10, 2014