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In the Matter of the Compensation of  
**DAVID M. SINCLAIR, Claimant**  
WCB Case No. 13-01726  
ORDER ON REVIEW  
Jodie Phillips Polich, Claimant Attorneys  
SAIF Legal, Defense Attorneys

Reviewing Panel: Members Johnson, Weddell, and Somers. Member Weddell dissents.

Claimant requests review of Administrative Law Judge (ALJ) Fisher's order that upheld the SAIF Corporation's denial of his occupational disease claim for a mental disorder. On review, the issue is compensability. We affirm.

FINDINGS OF FACT

We adopt the ALJ's "Findings of Fact."

CONCLUSIONS OF LAW AND OPINION

Claimant, a social service assistant for a state agency for more than 15 years, transported foster children to visits with their biological parents and monitored the visits. He had an abusive and traumatic childhood, which contributed to a preexisting dysthymic disorder and post-traumatic stress disorder (PTSD). For the last 19 years, he also took various prescribed medications for depression.

Beginning in 2012, claimant began treating with a psychiatric mental health nurse practitioner, Ms. Owen, who diagnosed major depressive disorder, dysthymic disorder, and PTSD. (Ex. 96-1). When he became unable to continue working, claimant filed a mental disorder claim, alleging vicarious trauma from his work exposure.

Dr. Heck, a psychiatrist who examined claimant at SAIF's request, opined that preexisting dysthymic disorder and PTSD were the major contributing cause of claimant's mental health condition. (Ex. 97-19). SAIF then denied the claim. (Ex. 98-1). Claimant requested a hearing.

In upholding SAIF's denial, the ALJ found Ms. Owen's opinion supporting compensability unpersuasive. On review, claimant contends that Ms. Owen's opinion was sufficient to satisfy his burden of proving a compensable mental disorder claim. For the following reasons, we disagree.

Generally, to establish the compensability of an occupational disease claim, a claimant must prove that employment conditions were the major contributing cause of the disease. ORS 656.802(2)(a). However, because claimant's occupational disease claim is based on the worsening of a preexisting condition, he must prove that his employment conditions were the major contributing cause of both the combined condition and of a pathological worsening of the disease. ORS 656.802(2)(b); *Danilo E. Delrosario*, 58 Van Natta 2902 (2006); *Sally J. Van Meter*, 57 Van Natta 2641 (2005).

For a "mental disorder" claim, the evidence that the "mental disorder" arose out of and in the course of employment must be clear and convincing. ORS 656.802(3)(d). To be "clear and convincing," the truth of the facts asserted must be highly probable. *Riley Hill Contractor Inc. v. Tandy Corp.*, 303 Or 390, 402 (1987).<sup>1</sup>

Because of claimant's preexisting conditions and the possible alternative causes of his current combined condition, resolution of this matter is a complex medical question that must be resolved by expert medical opinion. *Barnett v. SAIF*, 122 Or App 279, 282 (1993); *Delrosario*, 58 Van Natta at 2903. Where, as here, there is a dispute between medical experts, we give more weight to those opinions that are both well reasoned and based on complete information. *Somers v. SAIF*, 77 Or App 259, 263 (1986); *Linda E. Patton*, 60 Van Natta 579, 582 (2008).

Here, the determinative issue is whether claimant's employment conditions were the major contributing cause of both the combined mental disorder condition and a pathological worsening of the disease. In this regard, Ms. Owen concluded that work-related "vicarious trauma" was the major contributing cause (75 percent) of claimant's major depression. (1/7/14 Tr. 16). She also opined that the vicarious trauma caused a worsening of preexisting dysthymic disorder and PTSD. (*Id.* at 16, 17). In reaching her opinion, Ms. Owen considered other potential causes, including claimant's abusive and traumatic childhood. Ms. Owen further testified

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<sup>1</sup> There must also be a diagnosis of a mental or emotional disorder generally recognized in the medical or psychological community, and the employment conditions producing the mental disorder must exist in a real and objective sense. ORS 656.802(3). The employment conditions producing the mental disorder must also not be conditions generally inherent in every working situation, reasonable disciplinary, corrective, or job performance evaluation actions by the employer, or cessation of employment or employment decisions attendant upon ordinary business or financial cycles. ORS 656.802(3)(b). There is no dispute that these requirements have been satisfied.

that it was highly probable that the worsening of claimant's dysthymic disorder, PTSD and major depression arose out of and in the course of employment. (*Id.* at 19, 20). Finally, Ms. Owen determined that "vicarious trauma" at work was the major contributing cause of claimant's "current mental health condition." (*Id.* at 58). However, Ms. Owen never opined that employment conditions were the major contributing cause of the combined condition and of a pathological worsening of the disease, as required by ORS 656.802(2)(b).

Having reviewed Ms. Owen's opinion, we find it insufficient to establish that employment conditions were the major contributing cause of the combined condition and pathological worsening of the disease. In reaching this conclusion, we acknowledge that a medical provider is not required to use "magic words" in expressing a causation opinion. *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). 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.

Nevertheless, considering the specific requirements of ORS 656.802(2)(b), as well as the requirement that the evidence that the "mental disorder" arose out of and in the course of employment must be "clear and convincing," we are unable to conclude that Ms. Owen's opinion is sufficient to satisfy claimant's burden of proof.

We further note that an examining psychiatrist, Dr. Heck, initially opined that preexisting dysthymic disorder and PTSD were the major contributing cause of claimant's mental disorder. (Ex. 97-19). Dr. Heck later testified that, after balancing the relative contributions of work exposure and the preexisting underlying conditions, it remained his opinion that preexisting conditions were the major contributing cause of claimant's psychiatric conditions and that preexisting conditions were the major contributing cause of the combined condition. (1/17/14 Tr. 92). Finally, after extensive cross-examination, Dr. Heck attributed only 10 percent of the cause of claimant's mental disorder to work exposure. (1/17/14 Tr. 116). Dr. Heck's opinion is also supported by that of Dr. Glass, another examining psychiatrist, who opined that none of claimant's psychiatric diagnoses were caused or worsened by claimant's work exposure. (Ex. 105-16).<sup>2</sup>

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<sup>2</sup> Ms. Bogan, a licensed clinical social worker who treated claimant from October 2010 through February 2011, agreed with Dr. Heck that childhood psychological trauma was the major contributing cause of claimant's psychiatric conditions. (Ex. 104).

Accordingly, having reviewed this record *de novo*, we conclude that claimant did not satisfy his burden of proving a compensable mental disorder claim. Therefore, we affirm.

### ORDER

The ALJ's order dated March 25, 2014 is affirmed.

Entered at Salem, Oregon on January 8, 2015

Member Weddell dissenting.

I disagree with the majority's determination that the opinion of Ms. Owen, the treating mental health nurse practitioner, is insufficient to meet claimant's burden of proving that employment conditions were the major contributing cause of his combined condition and a pathological worsening of his preexisting mental conditions under ORS 656.802(2)(b). I reason as follows.

The majority acknowledges that a medical provider is not required to use "magic words" in expressing a causation opinion and that we evaluate medical opinions in context and based on the record as a whole to determine their sufficiency. *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). Nonetheless, after recounting various portions of her testimony, the majority concludes that "Ms. Owen never opined that employment conditions were the major contributing cause of the combined condition and of a pathological worsening of the disease, as required by ORS 656.802(2)(b)." In my view, when viewed in context and based on the record as a whole, Ms. Owen's opinion established employment conditions were the major contributing cause of claimant's combined condition and of a pathological worsening of the disease. Therefore, I would find that Ms. Owen's opinion is sufficient to meet the requirements of ORS 656.802(2)(b). I believe the majority in this instance relies too heavily on the absence of "magic words" and that its interpretation of Ms. Owen's opinion is not supported by the record as a whole.

Moreover, the majority has not identified, and I have not found, any reason not to defer to Ms. Owen's opinion as that of the treating mental health practitioner. *Dillon v. Whirlpool Corp.*, 172 Or App 484, 489 (2001); *Danny L. Skeleton*, 58 Van Natta 2083 (2006). Ms. Owen had an accurate history, weighed

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the relevant potential causative factors, and her opinion was well reasoned and explained. For those reasons, I find her opinion persuasive. Thus, I find that claimant proved the compensability of his mental disorder.

I acknowledge that Dr. Heck provided a contrary opinion. He opined that claimant's employment conditions were not the major contributing cause of claimant's combined condition or a pathological worsening of his disease. Nonetheless, he agreed with Ms. Owen that claimant's employment conditions significantly contributed to his combined condition, initially as much as 20 percent. (Ex. 97-19; 01/07/14 Tr. 96).

Moreover, Dr. Heck based his opinion on consideration of only three work events, as opposed to basing it on claimant's 15-year history of working for the employer, and being exposed to many work events such as those represented by the three events specifically referenced in Ms. Owen's report. (01/07/14 Tr. 97). Thus, I find his opinion less persuasive.

In summary, I would defer to the opinion of claimant's treating mental health practitioner, Ms. Owen, and find that claimant's employment conditions were the major contributing cause of a combined condition and of a pathological worsening of claimant's disease. Accordingly, I would find his claim compensable.