In the Matter of the Compensation of
DANNY R. PRATT, Claimant
WCB Case No. 13-04009
ORDER ON REVIEW
Guinn & Dalton, Claimant Attorneys
MacColl Busch Sato PC, Defense Attorneys

Reviewing Panel: Members Lanning and Johnson.

The insurer requests review of that portion of Administrative Law Judge (ALJ) Kekauoha's order that set aside its denial of claimant's injury claim for head, back, and neck conditions. On review, the issues are course and scope of employment and compensability. We reverse.

FINDINGS OF FACT

We adopt the ALJ's "Findings of Fact," and provide the following summary.

On June 29, 2013, claimant, a car salesman, was hit on the head with an empty plastic beverage container by a coworker at work. (Ex. 178A-1). A surveillance video captured the incident. (Ex. 178B).

On July 3, 2013, claimant consulted Dr. Choi, a chiropractor, who diagnosed headache and cervical, thoracic, and lumbar sprain/strain. (Ex. 179-5).

Dr. Choi had previously treated claimant for cervical, thoracic, and lumbar sprain/strain following a February 6, 2013 off-work motor vehicle accident. (Ex. 155). Dr. Choi had released him to return to work without restriction on June 6, 2013, but indicated that he should continue treatment. (Exs. 177-5, 178).

On August 18, 2013, the insurer issued a denial, asserting that there was insufficient evidence of a compensable injury resulting from the June 2013 work incident. (Ex. 191). Claimant requested a hearing.

On October 18, 2013, Dr. Duncan, a chiropractor, and Dr. Harris, an orthopedic surgeon, performed an examination at the insurer's request. After reviewing claimant's prior medical records and the surveillance video, they concluded that there had not been an injury on June 29, 2013. (Ex. 196-20). They reasoned that the video depiction of the mechanism of injury would not have caused a strain and that Dr. Choi's July 3, 2013 records showed the same type of complaints and findings as noted in prior records. (Ex. 196-18, -21).

Dr. Choi disagreed with Drs. Duncan and Harris's interpretation of his chart notes, asserting that claimant presented with "objectively verifiable increased pain symptoms" after the work incident. (Ex. 199-2). Dr. Choi also reviewed the surveillance video and opined that claimant's reaction to being struck (jerking his head and tensing up) was sufficient to cause a neck and/or back strain. (*Id.*) Acknowledging that claimant had "marked and obvious preexisting problems," Dr. Choi nevertheless opined that the work incident was the major contributing cause of claimant's "post-incident" neck and back problems and need for treatment. (Ex. 199-1).

In a deposition, Dr. Choi testified that the "objectively verifiable increased pain symptoms" consisted of surface EMG findings of "afferent tension around [claimant's] neck and spine area," range-of-motion tests, and "some orthopedic tests and palpations around the spine area." (Ex. 200-10, -12). Dr. Choi also acknowledged, however, that he did not compare claimant's pre-incident range-of-motion findings or palpated pain response to post-incident findings/response. (Ex. 200-12, -19, -20). Moreover, he did not recall if he compared pre-incident and post-incident surface EMG findings. (Ex. 200-12).

Dr. Duncan reviewed Dr. Choi's deposition. He disputed Dr. Choi's testimony of an objective documentation of a worsening of claimant's pre-incident condition, noting that Dr. Choi had not compared his pre-incident and post-incident records (revealing no difference in claimant's overall pain and symptom complaints/range-of-motion findings), documented any acute findings (*e.g.*, muscle spasms), or considered the preexisting medical record (revealing many years of spinal complaints). (Ex. 201-2). Dr. Duncan reiterated that the surveillance video did not show a mechanism that would result in an injury or need for medical treatment. (Ex. 201-3).

In reply, Dr. Choi asserted that the surface EMG findings and surveillance video were consistent with his conclusion that claimant suffered an injury on June 29, 2013. (Ex. 203-2). He also denied ignoring claimant's preexisting conditions, stating that people with bad backs and necks can still be injured and often more easily so. (*Id.*) However, he did not address Dr. Duncan's opinion that a comparison of his pre-incident and post-incident chart notes showed no significant difference in claimant's symptoms or findings.

CONCLUSIONS OF LAW AND OPINION

The ALJ set aside the insurer's denial. In doing so, among other findings, the ALJ concluded that Dr. Choi's opinion was well-reasoned and sufficient to

establish that the work incident was a material contributing cause of claimant's disability and need for treatment. On review, the insurer contends that Dr. Choi's opinion is unpersuasive.[1] For the following reasons, we agree with that contention.

To prove the compensability of an injury, claimant must establish that the work incident was a material contributing cause of his disability or need for treatment. ORS 656.005(7)(a); ORS 656.266(1); *Albany Gen. Hosp. v. Gasperino*, 113 Or App 411, 415 (1992). Where, as here, medical experts disagree about the cause of a claimant's disability/need for treatment, the compensability issue presents a complex medical question that must be resolved by expert medical opinion. *Barnett v. SAIF*, 122 Or App 279, 282 (1993). We give more weight to those opinions that are well-reasoned and based on complete information. *See Somers v. SAIF*, 77 Or App 259, 263 (1986). Although we may give greater weight to the attending physician's opinion, whether we do so will depend on the record in each case. *Dillon v. Whirlpool Corp.*, 172 Or App 484, 489 (2001).

Here, the record does not establish that Dr. Choi's opinion is persuasive. We reason as follows.

Dr. Choi reported that claimant presented with "objectively verifiable increased pain symptoms" after the work incident. (Ex. 199-2). He based his opinion on his chart notes and personal observation. (Ex. 199-1). As a general rule, prior treatment of a claimant's condition can place a physician in an advantageous position to provide a causation opinion. *See Kienow's Food Stores v. Lyster*, 79 Or App 416, 421 (1986). Here, however, Dr. Choi did not compare claimant's post-incident findings with his pre-incident findings. (Ex. 200-12, -19, -20).

In contrast, Dr. Duncan compared Dr. Choi's pre-incident and post-incident records. Dr. Duncan reports that claimant's findings after the work incident were "basically the same" as the last prior examination on May 3, 2013. (Ex. 196-18). Specifically, Dr. Duncan notes that claimant's post-incident cervical range of motion was "in line" with the prior findings and did not support an injury. (Ex. 201-2).

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[1] The insurer also argues that claimant's claim is excluded from compensability under ORS 656.005(7)(b)(A) and disputes the ALJ's credibility findings. However, we need not decide those issues because, as explained below, we find Dr. Choi's opinion insufficient to persuasively satisfy a "material cause" compensability standard.

Because Dr. Choi did not compare claimant's pre-incident and post-incident records, we do not consider his opinion to be well-reasoned or based on sufficient information. *See Jackson County v. Wehren*, 186 Or App 555, 560-61 (2003) (a history is complete if it includes sufficient information on which to base the opinion and does not exclude information that would make the opinion less credible); *Miller v. Granite Construction Co.*, 28 Or App 473, 476 (1977) (opinion based on incomplete information found unpersuasive). Additionally, he did not address Dr. Duncan's comparison of those records, which causes us to further discount his opinion. *See Janet Benedict*, 59 Van Natta 2406, 2409 (2007), *aff'd without opinion*, 227 Or App 289 (2009) (medical opinion unpersuasive when it did not address contrary opinions).

In contrast, the opinion of Drs. Duncan and Harris was well-reasoned and based on complete information. They reviewed claimant's prior records, x-rays, CT scans, MRIs, and the surveillance video. In concluding that there had not been a work-related injury, they reasoned that the mechanism of the work incident would not have caused a strain and that claimant's findings after the work incident were "basically the same as noted previously in the file, which includes the last prior examination before the [June 29, 2013] work incident[.]" (Ex. 196-18).

Therefore, based on the aforementioned reasoning, we are not persuaded that claimant's work incident was a material contributing cause of his disability/need for treatment for his claimed conditions. Consequently, we conclude that the claim is not compensable. Accordingly, the ALJ's order is reversed.

ORDER

The ALJ's order dated March 25, 2015 is reversed in part and affirmed in part. The insurer's denial is reinstated and upheld. The ALJ's $12,000 attorney fee and cost awards are also reversed. The remainder of the ALJ's order is affirmed.

Entered at Salem, Oregon on September 29, 2015