
In the Matter of the Compensation of
LUCINA MONTELONGO, Claimant
WCB Case No. 13-02659
ORDER ON REVIEW
Unrepresented Claimant
Gress & Clark LLC, Defense Attorneys

Reviewing Panel: Members Lanning and Curey.

Claimant, *pro se*,¹ requests review of Administrative Law Judge (ALJ) Riechers's order that upheld the self-insured employer's injury claim for a neck and head condition. On review, the issue is compensability.

We adopt and affirm the ALJ's order with the following supplementation.

In November 2012, claimant sustained a previous compensable injury. (Ex. 12). The employer accepted a head contusion and cervico-thoracic strain. (*Id.*)

On March 27, 2013, Drs. Haynes and Schwartz examined claimant at the employer's request. (Ex. 24). They noted that she continued to complain of various symptoms, including neck and shoulder pain and reduced range of motion (ROM). (Ex. 24-1-2, -5-6). However, they concluded that the compensable conditions had resolved without objective residual and that claimant had no work restrictions attributable to the compensable injury. (Ex. 24-7).

On April 4, 2013, Dr. Carlson, attending physician, noted claimant's continued symptoms of neck tenderness and reduced ROM, but concurred with the opinion of Drs. Haynes and Schwartz. (Ex. 26-1).

The November 2012 claim was closed by an April 10, 2013 Notice of Closure. (Ex. 31-1). Claimant was awarded temporary disability benefits for various dates through March 27, 2013.² (*Id.*)

¹ Because claimant is unrepresented, she may wish to consult the Ombudsman for Injured Workers. She may contact the Ombudsman, free of charge, at 1-800-927-1271, or write to:

DEPT OF CONSUMER & BUSINESS SERVICES
OMBUDSMAN FOR INJURED WORKERS
PO BOX 14480
SALEM OR 97309-0405

² An August 13, 2013 Order on Reconsideration affirmed the Notice of Closure. (Ex. 49).

On April 30, 2013, claimant sought medical treatment, reported a work accident, and described many symptoms similar to those she had previously reported. (Exs. 33, 34). After the employer denied her injury claim, she requested a hearing.

The ALJ concluded that the persuasive medical evidence did not establish that claimant's work incident was a material contributing cause of her disability or need for treatment. On review, we agree with the ALJ's conclusion.

Claimant must prove that her work injury was a material contributing cause of her need for treatment or disability. ORS 656.005(7)(a)(B); ORS 656.266(2)(a); *Albany Gen. Hosp. v. Gasperino*, 113 Or App 411, 415 (1992). The court has identified the following factors as relevant to determining whether expert testimony of causation is required: (1) whether the situation is complicated; (2) whether symptoms appear immediately; (3) whether the worker promptly reports the occurrence to a superior; (4) whether the worker previously was free from disability of the kind involved; and (5) whether there was expert testimony that the alleged precipitating event could not have been the cause of the injury. *Barnett v. SAIF*, 122 Or App 279, 283 (1993); *see also Uris v. Comp. Dep't.*, 247 Or 420, 427 (1967).

Here, claimant's previous work injury involved the same type of incident that she reported on April 30, 2013. (Exs. 1, 34). Despite the conclusion of Drs. Haynes and Schwartz that claimant's conditions resulting from her previous compensable injury had resolved, and Dr. Carlson's concurrence with that conclusion, the medical record reflects that she continued to note symptoms in her neck as late as April 4, 2013. (Ex. 26-1). Further, she had received temporary disability benefits as recently as March 27, 2013. (Ex. 31-1). Therefore, she was not previously free from the symptoms of the kind involved in the alleged new injury.

Additionally, when he first treated claimant on May 2, 2013, Dr. Waring noted that "based on current objective findings, it is unclear whether [work restrictions] will be associated with this injury, although it is not felt to be likely." (Ex. 44-3). When he treated claimant again on May 12, 2013, he was "not sure how to explain" some of claimant's symptoms. (Ex. 45-2). He later explained that he found no objective signs of a new injury occurring on April 30, 2013. (Ex. 50-1).

In light of these circumstances, we conclude that this claim presents a complex medical question that requires expert medical evidence of causation. For the following reasons, a preponderance of the medical evidence does not establish compensability.

Dr. Waring made no objective findings of an April 30, 2013 injury and expressed doubts regarding certain aspects of causation. Dr. Waring is the only doctor to render an opinion on causation, and his opinion does not support compensability.

Further, insofar as other medical providers associated claimant's symptoms with an April 30, 2013 work incident, they did so in a conclusory manner that did not persuasively consider her similar previous injury or indicate that they understood that claimant had complained of similar symptoms as recently as April 4, 2013. (Exs. 34, 35, 41a). We do not find their opinions sufficient to establish that the work incident was a material contributing cause of claimant's need for treatment or disability. *See Moe v. Ceiling Sys., Inc.*, 44 Or App 429, 433 (1980) (conclusory medical opinion found unpersuasive); *Miller v. Granite Constr. Co.*, 28 Or App 473, 478 (1977) (medical opinion based on inaccurate information found unpersuasive).

Therefore, there is no persuasive medical opinion that concludes that claimant's work incident was a material contributing cause of her need for treatment or disability. Accordingly, we affirm.

ORDER

The ALJ's order dated July 22, 2015 is affirmed.

Entered at Salem, Oregon on April 14, 2016