

---

In the Matter of the Compensation of  
**YESENIA MORFIN, Claimant**  
WCB Case No. 14-05064  
ORDER ON REVIEW  
Dunn & Roy PC, Claimant Attorneys  
SAIF Legal Salem, Defense Attorneys

Reviewing Panel: Members Curey and Lanning.

The SAIF Corporation requests review of Administrative Law Judge (ALJ) Spangler's order that set aside its denial of claimant's occupational disease claim for right wrist tendonitis and overuse syndrome. On review, the issue is compensability.

We adopt and affirm the ALJ's order with the following supplementation and correction.<sup>1</sup>

In setting aside SAIF's denial, the ALJ concluded that claimant's work activities as a "cutter" in a plant nursery were the major contributing cause of her right wrist tendonitis and overuse syndrome. The ALJ reasoned that the opinion of Ms. Lobdell, a family nurse practitioner, was persuasive, because she had treated claimant for the condition from August 22, 2014 through October 3, 2014, her diagnosis was supported by objective findings, and she had an accurate work history. In contrast, the ALJ noted that, by the time Dr. Button (a SAIF-arranged medical examiner) had evaluated claimant, her right wrist condition had improved with rest and was no longer symptomatic.

On review, SAIF contends that Ms. Lobdell lacks the expertise necessary to evaluate the cause of claimant's right wrist condition. In doing so, SAIF asserts that she is a family nurse practitioner, with less than ten percent of her practice devoted to work injuries, and that she lacks special training in determining the causes of work injuries. SAIF also argues that Ms. Lobdell had an inaccurate work history because she did not know "all the particulars about numbers of plants" claimant processed each day and initially believed that she used a cutting device similar to pruning shears. (Ex. 8-2). Noting that claimant actually used a knife, (rather than pruning shears), SAIF contends that Ms. Lobdell's opinion was insufficient to establish that claimant's work activities were the major contributing cause of her claimed right wrist condition. Based on the following reasoning, we affirm the ALJ's compensability decision.

---

<sup>1</sup> In the sixth paragraph on page 2, we change the October 15, 2008 date to October 15, 2014.

To establish a compensable occupational disease, claimant's employment conditions must be the major contributing cause of the disease. ORS 656.802(2)(a). The major contributing cause means a cause that contributes more than all other causes combined. See *Smothers v. Gresham Transfer, Inc.*, 332 Or 83, 133-34 (2001); *McGarrah v. SAIF*, 296 Or 145, 166 (1983). To persuasively establish the major contributing cause of a condition, an opinion must consider the relative contribution of each cause and determine which cause, or combination of causes, contributed more than all other causes combined. *Dietz v. Ramuda*, 130 Or App 397, 401-02 (1994), *rev dismissed*, 321 Or 416 (1995).

Determination of the major contributing cause is a complex medical question that must be resolved on the basis of expert medical opinion. *Jackson County v. Wehren*, 186 Or App 555, 559 (2003), citing *Uris v. Comp. Dep't*, 247 Or 420, 424 (1967). In evaluating the medical evidence, we rely on those opinions that are both well reasoned and based on accurate and complete information. *Somers v. SAIF*, 77 Or App 259, 263 (1986). We properly may or may not give greater weight to the opinion of the treating physician, depending on the record in each case. *Dillon v. Whirlpool Corp.*, 172 Or App 484, 489 (2001). If a physician's opinion is premised on an incomplete description of claimant's work activities, the opinion is generally unpersuasive. See, e.g., *Miller v. Granite Constr. Co.*, 28 Or App 473, 476 (1977) (medical opinion that is based on an incomplete or inaccurate history is not persuasive).

We agree with the ALJ's conclusion that the opinion of Ms. Lobdell is more persuasive than the opinion of Dr. Button. We reason as follows.

In her August 22, 2014 examination, Ms. Lobdell reported observable swelling, tenderness, and abnormal motion in claimant's right wrist. (Ex. 2-2). She made the same observations on September 8, 2014. (Ex. 4-2). By October 3, 2014, Ms. Lobdell reported no swelling and normal motion in claimant's right wrist. (Ex. 5-2). These chart notes reflect objective findings of a wrist condition. See ORS 656.005(19); *Francisco Salinas-Flores*, 66 Van Natta 2004, 2005 (2014) (medical chart notes documenting swelling and tenderness established "objective findings" of an ankle injury).

Based on the above findings and observations, claimant's work activities, and her medical history, Ms. Lobdell concluded that claimant's work activities were the major contributing cause of her right wrist condition. (Ex. 8-2-3).

Following his examination of claimant on October 8, 2014, Dr. Button diagnosed non-specific bilateral upper extremity pain and functional overlay/symptom magnification. (Ex. 6-5). Dr. Button found “no objective findings corresponding with [claimant’s] diffuse and non-anatomic symptomology.” (Ex. 6-6). Dr. Button indicated that claimant’s symptoms developed by the “power of suggestion, as at least three other workers have now expressed similar complaints.” (Ex. 6-5). Dr. Button did not consider claimant’s “lifelong work activities” to be of “the type, frequency, and duration to cause or significantly contribute to [claimant’s] right wrist” issues. (Ex. 6-6). He opined that “there is [no] association in regard to [claimant’s] now bilateral symptomology and her job duties.” (Ex. 6-7).

As noted above, however, Dr. Button did not examine claimant until October 8, 2014. By that time, claimant had “exhibited significant improvement in her right wrist symptoms[]” and “the swelling and abnormal motion in her wrist had resolved.” (Ex. 8-4). Furthermore, in concluding that claimant’s presentation involved functional overlay and symptom magnification, Dr. Button did not address Ms. Lobdell’s objective findings of swelling and abnormal motion in claimant’s right wrist on August 22, 2014, culminating in no swelling and normal wrist motion by October 3, 2014. In fact, Dr. Button believed that no objective findings were made regarding claimant’s right wrist condition.<sup>2</sup> (Ex. 6-6).

Moreover, Dr. Button reported that claimant described “ongoing symptoms during the time she was off work from late August up to the present time.” (Ex. 6-5). Yet, this understanding conflicts with claimant’s testimony (Tr. 11-12), and Ms. Lobdell’s reported observations in her chart notes. (Exs. 4, 5). Because of these deficiencies in Dr. Button’s history, we discount his opinion. *See, e.g., Miller*, 28 Or App at 476.

Ms. Lobdell treated claimant for about 11 years before her right wrist condition developed. (Ex. 9-5). Ms. Lobdell also treated her right wrist condition over a period of time without any observations of functional overlay or symptom magnification. (Exs. 2, 4, 5). On this record, we conclude that Ms. Lobdell was in an advantageous position, because she had the opportunity to examine and treat

---

<sup>2</sup> Dr. Button referred to Ms. Lobdell’s August 22, 2014 chart notes, but noted no follow-up notes. (Ex. 6-5). As such, the record does not establish that Dr. Button reviewed Ms. Lobdell’s September 8, 2014 or October 3, 2014 chart notes. In the absence of a reference to such chart notes, we are not persuaded that Dr. Button had a complete and accurate medical history of claimant’s complaints, treatments, and evaluations.

claimant over an extended period, as well as closer in time to the alleged onset of the claimed right wrist condition. *See Andrea Gartenbaum*, 67 Van Natta 1851, 1853-54 (2015) (because the treating physician had examined the claimant before her condition improved with therapy, giving her an advantage to observe the claimant's condition over time, greater probative weight was given to her opinion). Thus, we find Ms. Lobdell's opinion more probative than Dr. Button's opinion.

SAIF also contends that Ms. Lobdell conceded that she had not "heard all the particulars about numbers of plants, etc." that claimant "cut" on a typical work day. But, claimant's counsel's concurrence letter advised Ms. Lobdell of the amount of plant cuttings that claimant typically completed in a work day, and she continued to opine that claimant's work activities were the major contributing cause of her right wrist condition.<sup>3</sup> (Ex. 8-2). Moreover, Dr. Button did not place any particular emphasis on the number of plants claimant cut and placed in containers during a work day, or the repetitiveness of her job. Rather, he explained that "it is not so much the frequency as what I view as the potential weight or force that would be required to perform the task." (Ex. 6-7). Under such circumstances, we find Ms. Lobdell's opinion more thorough and focused on an occupational disease analysis (*i.e.*, the repetitiveness of her work activities). *See Wehren*, 186 Or App at 561 (a history is complete if it includes sufficient information on which to base the physician's opinion and does not exclude information that would make the opinion less credible).

We further find that Ms. Lobdell's opinion was based on an accurate history. Although Ms. Lobdell initially believed that claimant used a device similar to pruning shears to cut the plants (Ex. 8-2), at her deposition, she confirmed that claimant's use of "more of a knife-like thing to cut plants" would not change her opinion. (Ex. 9-10). *See Karen K. Hayward*, 52 Van Natta 266, 267 n 1 (2000) (physician's opinion found persuasive despite a correction in the claimant's history where the physician affirmatively indicated that his opinion was unaffected by the corrected history).

Finally, SAIF contends that Ms. Lobdell, as a nurse practitioner with less than 10 percent of her practice involving work injuries and without special training on the etiology of work injuries, lacked sufficient expertise to render an opinion on the cause of claimant's right wrist condition. We disagree.

---

<sup>3</sup> This description of claimant's plant cutting activities is not otherwise contested.

We evaluate the persuasiveness of medical opinions on a case-by-case basis. *Clarence H. Baker*, 65 Van Natta 769 (2013). In doing so, we consider the opinions of other professionals who are not medical doctors where the causation issue is within their area of expertise. *Id.*; see *Scott V. Morelli*, 66 Van Natta 375, 379 (2014) (opinion of nurse practitioner considered in determining compensability of disputed claim); *Katharine V. Erlenbush*, 65 Van Natta 2363, 2366 n 3 (2013) (rejecting an argument that the physician's assistant's opinion should be given no persuasive weight because the physician's assistant had more than 27 years of experience in family/general medicine and there was no indication that he was not qualified to give an expert opinion regarding the cause of the claimant's left hand/wrist condition).

Our review of this record establishes that Ms. Lobdell has more than 15 years of experience as a family nurse practitioner. (Ex. 9-4). Furthermore, there is no persuasive indication that she is not qualified to give an expert opinion regarding the cause of claimant's right wrist condition. Finally, as explained above, our conclusion that Ms. Lobdell's opinion is more persuasive than Dr. Button's opinion is based on an analysis of the opinions, not a comparison of their respective qualifications. See *Andrew Bell*, 65 Van Natta 566, 569 (2013) (although medical expertise can be an advantage in diagnosing a condition, it is not a substitute for a well-reasoned opinion).

In conclusion, based on the foregoing reasoning, we are persuaded that claimant's work activities were the major contributing cause of her claimed condition. Consequently, we conclude that her claimed occupational disease is compensable. Therefore, we affirm.

Claimant's attorney is entitled to an assessed fee for services on review. ORS 656.382(2). After considering the factors set forth in OAR 438-015-0010(4) and applying them to this case, we find that a reasonable fee for claimant's attorney's services on review is \$4,000, payable by SAIF. In reaching this conclusion, we have particularly considered the time devoted to the case (as represented by the record and claimant's respondent's brief), the complexity of the issue, the value of the interest involved, and the risk that counsel may go uncompensated.

Finally, claimant is awarded reasonable expenses and costs for records, expert opinions, and witness fees, if any, incurred in finally prevailing over the denial, to be paid by SAIF. See ORS 656.386(2); OAR 438-015-0019; *Gary Gettman*, 60 Van Natta 2862 (2008).

ORDER

The ALJ's order dated September 23, 2015 is affirmed. For services on review, claimant's attorney is awarded \$4,000, payable by SAIF. Claimant is awarded reasonable expenses and costs for records, expert opinions, and witness fees, if any, incurred in finally prevailing over the denial, to be paid by SAIF.

Entered at Salem, Oregon on April 12, 2016