

In the Matter of the Compensation of
ROBERT D. HANINGTON, Claimant

WCB Case No. 15-02134

ORDER ON REVIEW

James W Moller, Claimant Attorneys
Law Offices Of Kathryn R Morton, Defense Attorneys

Reviewing Panel: Members Weddell and Johnson.

The insurer requests review of Administrative Law Judge (ALJ) Wren's order that set aside its denial of claimant's new/omitted medical condition claim for a left shoulder rotator cuff tendinitis with impingement. On review, the issue is compensability.

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

The insurer accepted bilateral epicondylitis, bilateral medial epicondylitis, right partial interstitial tear, bilateral cubital tunnel syndrome, injury to right medial antebrachial cutaneous nerve, neuroma of the right elbow, left C7 radial nerve injury, and left carpal tunnel syndrome as a result of claimant's 2006 work injury. (Exs. 47, 79, 128).

After developing pain and numbness in his bilateral elbows, claimant received extensive medical treatment including physical therapy, injections, and seven surgical procedures (four on the right upper extremity, and three on the left), including placement of an electronic stimulator implant. (Tr. 9).

In May 2010, Dr. Puziss, claimant's attending physician, noted that claimant was experiencing persistent pain in the left scapula, as well as headache pain radiating from the trapezius area. (Ex. 65). Dr. Puziss noted that claimant's left shoulder was elevated and his left shoulder extension was reduced as compared to the right shoulder. (Ex. 65-2).

In September 2011, claimant was evaluated by Dr. Nolan at the insurer's request. (Ex. 76). Claimant reported aching in his left shoulder, among other left upper extremity symptoms. (Ex. 76-2). A pain diagram completed by claimant indicated symptoms on the left side, in his neck, shoulder, elbow, arm, and hand. (Ex. 76-10)

The following day, Dr. Williams evaluated claimant at the insurer's request. (Ex. 77). Dr. Williams noted claimant's complaints of pain about the left distal clavicle. (Ex. 77-7). Claimant completed another pain diagram depicting the same symptoms he recorded at Dr. Nolan's examination. (Ex. 77-14). Dr. Williams commented that the medical records indicated that claimant had an injury to the left brachial plexus during a November 2009 surgery. (Ex. 77-10).

In January 2015, claimant filed a new/omitted medical condition claim for "left rotator cuff tendinitis with impingement." (Ex. 124).

In March 2015, claimant was evaluated by Dr. Chadderdon at the insurer's request. Dr. Chadderdon reviewed claimant's medical records, but noted multiple missing records stating that there were "deficient medical records for my review." (Ex. 126-13). Dr. Chadderdon made differential diagnoses of impingement and rotator cuff tendinopathy of the left shoulder. (Ex. 126-16). He noted no evidence of "abnormal biomechanics" in his physical examination and stated that there was insufficient evidence to conclude that the left shoulder condition was related to claimant's work activities, sequelae, surgeries, or altered use of the left upper extremity. (Ex. 126-17). Dr. Chadderdon concluded that regardless of the diagnosis, work exposure was not the major contributing cause of claimant's condition. (Ex. 126-16).

On March 26, 2015, the insurer denied claimant's new/omitted condition claim for "left rotator cuff tendinitis with impingement." (Ex. 128).

In April 2015, Dr. Puziss disagreed with Dr. Chadderdon's opinion, explaining that he considered it highly unlikely that claimant's left shoulder condition was due to an idiopathic condition, or was coincidental to claimant's work-related left upper extremity condition. (Ex. 129-2).

In July 2015, Dr. Puziss opined that claimant began having shoulder problems as early as May 2014. (Ex. 134). He explained that claimant's physical examination findings were consistent with left rotator cuff tendinitis and impingement. He reasoned that claimant's left elbow condition caused him to "protect" the injured arm in such a way that increased stress on the left shoulder. (Ex. 134-2). Dr. Puziss further opined that claimant's C7 radial nerve injury likely contributed to the development of his left shoulder impingement. (*Id.*) Given those contributors, Dr. Puziss considered the April 2006 work injury to be the major contributing cause of the left shoulder condition, and did not consider claimant's left shoulder condition to be coincidental or idiopathic. (*Id.*)

Claimant testified that his left elbow condition altered his left arm use in many daily activities. (Tr. 15-16). He stated that, following an October 2014 injection from Dr. Puziss, his shoulder pain resolved and his overhead range of motion improved. (Ex. 119-2; Tr. 27-20, 36).

The ALJ found claimant's testimony regarding his altered use of his upper extremity to be credible based on demeanor. However, the ALJ concluded that the medical record established that claimant had complained of left shoulder symptoms earlier than he described in his testimony. Nevertheless, turning to the medical evidence, the ALJ considered the opinion of Dr. Puziss to persuasively establish the compensability of claimant's consequential left shoulder condition.

The insurer contends that Dr. Puziss's opinion does not establish the existence or major contributing cause of the claimed left shoulder rotator cuff tendinitis and impingement. Based on the following reasoning, we disagree with that contention.

It is uncontested that the claimed left shoulder conditions must be analyzed as consequential conditions. As such, claimant must show that the compensable injury (*i.e.*, the work-related injury incident) was the major contributing cause of the claimed conditions. ORS 656.005(7)(a)(A); ORS 656.266(1); *English v. Liberty Northwest Ins. Co.*, 271 Or App 211, 215 (2015); *Albany Gen. Hosp. v. Gasperino*, 113 Or App 411, 415 (1992). In a new/omitted medical condition claim, claimant must also prove that the claimed conditions exist. *Maureen Y. Graves*, 57 Van Natta 2380, 2381 (2005).

Whether claimant's work injury is the major contributing cause of his claimed left shoulder conditions is a complex medical question that must be established by expert medical opinion. *See Uris v. Comp. Dep't*, 247 Or 420 (1967). When there is a dispute between medical experts, more weight is given to those medical opinions that are well reasoned and based on complete information. *See Somers v. SAIF*, 77 Or App 259, 263 (1986).

Here, the insurer disputes the existence of the claimed left shoulder conditions. Specifically, it asserts that Dr. Puziss's opinion is not persuasive because he relied on a 2015 exam finding to support a diagnosis that he had made a year earlier.¹

¹ Dr. Puziss found "3+ trapezius substitution" in May 2015, not May 2014. (Ex. 132-2). Accordingly, we do not adopt footnote 1 of the ALJ's order.

The insurer cites no medical evidence to support its contention that a 2015 examination finding cannot substantiate a 2014 diagnosis. Furthermore, Dr. Puziss acknowledged that the finding was from 2015 and explained that claimant's left shoulder symptoms were causing him to compensate through substitution of the trapezius musculature. (Ex. 134-2). He also explained that his left shoulder diagnosis relied on impingement findings and orthopedic testing from 2014. (Exs. 112-1, -2; 134-1).

Moreover, while the insurer disputes Dr. Puziss's diagnosis, it also relies on the medical opinion of Dr. Chadderdon, who offered a differential diagnosis of left shoulder impingement (but disagreed with Dr. Puziss's causation analysis). (Ex. 126-16). Under such circumstances, we conclude that claimant has established the existence of the claimed left shoulder conditions.

Next, the insurer disputes the cause of claimant's left shoulder conditions. Specifically, the insurer contends that Dr. Puziss's reasoning regarding a gradual development of left shoulder impingement due to altered biomechanics should be discounted because claimant testified that his left shoulder symptoms came on suddenly over a one-or two-week period in the spring of 2014. (Tr. 30). Claimant also testified that his shoulder symptoms resolved after an October 2014 injection. (Tr. 27-20, 36).

The insurer argues that claimant's testimony about a "sudden onset" of symptoms undermines Dr. Puziss's theory regarding a gradual development of the left shoulder condition due to altered use. However, we consider the medical record to more reliably describe the onset of claimant's symptoms. *See Roberto Lopez-Carrillo*, 67 Van Natta 372, 374 (2015) (contemporaneous medical records can be more reliable than later testimony). As early as 2011, claimant completed multiple pain diagrams where he illustrated left shoulder symptoms. (Exs. 76, 77). Dr. Puziss also noted left scapula pain as early as May 2010, and in December 2012 noted that he continued to treat claimant's left shoulder pain. (Exs. 65, 98). Accordingly, we are persuaded that Dr. Puziss had a sufficiently accurate understanding of the medical history.²

² The insurer's contention that claimant's testimony contradicted Dr. Puziss's understanding of the medical history also fails to account for the distinction between claimant's symptoms and the development of his left shoulder condition. *See Jan Privratsky*, 67 Van Natta 147, 150 (2015) (medical opinions that discussed causation of the claimant's condition, rather than causation of symptoms, were found more persuasive regarding the compensability of the claimed condition).

To the extent that the insurer challenges claimant's credibility regarding his altered use of his left upper extremity, we note that the ALJ found claimant's testimony regarding altered use of the left arm to be credible based on his demeanor. While claimant's recollection of the onset of his left shoulder symptoms was inaccurate, we find no inconsistencies in this record contradicting his testimony regarding his altered use of the left arm that would cause us to disturb the ALJ's credibility finding. See *Erck v. Brown Oldsmobile*, 311 Or 519, 526 (1991) (deference generally given to an ALJ's demeanor based credibility findings). Moreover, even if a claimant lacks credibility or reliability in certain respects, he can still prove compensability if the remainder of the record supports the claim. See *Westmoreland v. Iowa Beef Processors*, 70 Or App 642 (1984), *rev den*, 298 Or 597 (1985); *Marta Munoz-Vignau*, 67 Van Natta 362 (2015).

In addition to relying on an accurate history and a complete medical record, we note that Dr. Puziss has served as claimant's attending physician since 2007. In the absence of persuasive reasons to do otherwise, we consider it appropriate to give Dr. Puziss's opinion greater weight. See *Dillon v. Whirlpool Corp.*, 172 Or App 484, 489 (2001); *Kevin G. Gagnon*, 64 Van Natta 1498, 1500 (2012) (physician's longitudinal history with the claimant rendered his opinion more persuasive); *Darwin B. Lederer*, 53 Van Natta 974, 974 n 2 (2001).

Finally, we discount Dr. Chadderdon's opinion that claimant's left shoulder impingement was not explained by his altered left upper extremity use. Dr. Chadderdon made numerous references to missing documents throughout his medical record review, to the extent that he concluded that there were "deficient medical records for my review." (Ex. 126-3, -5, -6, -7, -8, -10, -12). The record does not indicate that such deficiencies were remedied to allow Dr. Chadderdon's full review of the medical record. Accordingly, we conclude that Dr. Chadderdon's opinion was not based on complete information. See *Somers*, 77 Or App at 263; *Brynn Larson*, 67 Van Natta 512, 514 (2015).

Accordingly, based on the aforementioned reasoning as well as the reasons expressed in the ALJ's order, we conclude that claimant has established that his compensable injury was the major contributing cause of his claimed left shoulder conditions. Consequently, 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 attorney fee award is \$4,500, to be paid by the insurer. In reaching this conclusion, we have particularly

considered the time devoted to the case (as represented by claimant's respondent's brief and his counsel's uncontested fee submission), the complexity of the issue, the value of the interest involved, and the risk that claimant's counsel might 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 the insurer. *See* ORS 656.386(2); OAR 438-015-0019; *Gary Gettman*, 60 Van Natta 2862 (2008). The procedure for recovering this award, if any, is described in OAR 438-015-0019(3).

ORDER

The ALJ's order dated August 20, 2015 is affirmed. For services on review, claimant's attorney is awarded an assessed fee of \$4,500, payable by the insurer. Claimant is awarded reasonable expenses for records, expert opinions, and witness fees, if any, incurred in finally prevailing over the denial, to be paid by the insurer.

Entered at Salem, Oregon on April 7, 2016