
In the Matter of the Compensation of
CHRISTINA E. COHEN, Claimant
WCB Case No. 12-01280
ORDER ON REVIEW
Moore Jensen, Claimant Attorneys
Lyons Lederer LLP, Defense Attorneys

Reviewing Panel: Members Johnson and Lanning.

Claimant requests review of Administrative Law Judge (ALJ) McWilliams's order that upheld the self-insured employer's denial of her occupational disease claim for thoracic outlet syndrome (TOS). On review, the issue is compensability.

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

Claimant has an extensive medical history concerning endocrine issues, which began during infancy and required ongoing management. Before her employment, she sought treatment for headaches, fatigue, and shoulder and arm pain. (Exs. 1, 42-8, 46-9, -10)

Claimant worked for the employer as an accountant from March 10, 2010 to June 9, 2010. (Ex. 42-10). During the course of her employment, she experienced difficulties with the ergonomics of her workstation, longer hours, and shorter break periods than she had been granted by her prior employer. (Ex. 42-12, -17, -19).

In June 2010, claimant developed left and right shoulder pain, as well as increased fatigue, headaches, dizziness and other symptoms. (Exs. 3, 4, 5). On June 9, 2010, claimant stopped working for the employer. (Tr. 14).

On June 22, 2010, claimant was evaluated by Dr. Hodges. (Ex. 4-1). Claimant reported waking with moderate sharp left arm pain and stated that she might have hurt her arm while sleeping. (*Id.*) On June 28, 2010, claimant was evaluated for left and right shoulder pain by Dr. Danielson. (Ex. 5). Dr. Danielson recommended an orthopedic evaluation. (*Id.*)

In July 2010, claimant was evaluated by Dr. Lamoreaux, an orthopedic surgeon. (Ex. 6). Claimant reported "aches and pains all the time" and "frequent and common joint pains and problems," but a sudden onset of left-shoulder pain that was worse than usual. (*Id.*) Dr. Lamoreaux was unable to determine an orthopedic diagnosis, and thought her pain could be related to her preexisting endocrine issues. (Ex. 6-2).

In August 2010, claimant was evaluated for fatigue and sleep disturbance by Dr. Marcus. (Ex. 11-3). He recommended adjustments/repairs to claimant's CPAP machine to address her sleep apnea. (*Id.*)

In September 2010, claimant's primary care physician, Dr. Danielson, noted that claimant's primary problem was fatigue and inability to work. (Ex. 12).

In May 2011, claimant was evaluated by Dr. Jensen, a neurologist, for postural headaches that she had experienced since June 2010. (Ex. 15). During that evaluation, claimant reported that she had undergone neuropsychological testing and had been diagnosed with a cognitive disorder. (Ex. 15-2).

In June 2011, claimant discussed a chest x-ray with Dr. Aksamit, a neurologist. (Ex. 20). She asked whether the finding of cervical ribs was related to her headache symptoms, and Dr. Aksamit indicated that he did not think they were related. (*Id.*)

In August 2011, claimant was evaluated by Dr. Wennberg, a vascular specialist. He performed a physical examination and noted that thoracic outlet maneuvers were positive during hyperabduction on the right, and negative in all positions on the left. (Ex. 25). He commented that such findings were common and that their significance required clinical correlation. (*Id.*)

On August 12, 2011, Dr. Wennberg, noted a history of many years of bilateral upper extremity discomfort beginning in puberty that had become steadily worse. (Ex. 27-1). He noted that claimant frequently dropped things, and that "work over her hands" resulted in white, painful hands for over 10 years. (*Id.*) He diagnosed TOS and recommended physical therapy and surgery if the therapy was unsuccessful. (Ex. 27-1).

On August 15 2011, Dr. Aksamit evaluated claimant and commented that her MRI studies were consistent with TOS. (Ex. 26). However, he thought it was unclear whether TOS was the cause of her pain symptoms. (*Id.*) He indicated that he would be "nonenthusiastic" regarding surgical treatment at that time. (*Id.*)

On October 17, 2011, claimant underwent a right supraclavicular thoracic outlet decompression procedure performed by Dr. Thompson. (Ex. 28).

On January 6, 2012, claimant filed a claim for TOS. (Ex. 34). On March 9, 2012, the employer denied the claim. (Ex. 35).

The ALJ evaluated claimant's TOS claim under ORS 656.802(2)(b) and found that claimant did not establish that her work activities were the major contributing cause of a pathological worsening of her preexisting TOS condition.

On review, claimant contends that the medical evidence does not establish that her TOS was preexisting, and that Dr. Thompson's opinion persuasively established that her work activities were the major contributing cause of the condition. Based on the following reasoning, we disagree.

Claimant must establish the compensability of her occupational disease claim by showing that employment conditions, when weighed against all other causes, were the major contributing cause of the disease. *See* ORS 656.266(1); ORS 656.802(2)(a); *Hunter v. SAIF*, 246 Or App 755, 760 (2011). If an occupational disease claim is based on the worsening of a preexisting disease or condition pursuant to ORS 656.005(7), claimant's employment conditions must be the major contributing cause of the combined condition and the pathological worsening of the disease. ORS 656.802(2)(b).

The determination of the major contributing cause involves the evaluation of the relative contribution of the different causes of claimant's disease and a decision as to which is the primary cause. *Dietz v. Ramuda*, 130 Or App 397, 401 (1994), *rev dismissed*, 321 Or 416 (1995); *Linda E. Patton*, 60 Van Natta 579, 581 (2008). Because of the possible alternative causes of claimant's conditions, the determination of major causation presents a complex medical question that must be resolved by expert medical opinion. *See Barnett v. SAIF*, 122 Or App 279 (1993). Persuasive medical opinion must be based on sufficient information and must not exclude information that would make the opinion less credible. *See Jackson County v. Wehren*, 186 Or App 555, 560–61 (2003).

Because we do not consider Dr. Thompson's opinion to be persuasive, claimant is unable to meet her burden to establish that her work activities were the major contributing cause of the claimed condition under either ORS 656.802(2)(a) or ORS 656.802(2)(b). Moreover, because we do not consider Dr. Thompson's opinion to be based on an adequate medical history, it is unnecessary to resolve whether claimant's cervical rib (among other congenital conditions) was a "mere susceptibility," or a cause of the claimed TOS condition. *See* ORS 656.005(24)(b) (defining "preexisting condition" for occupational disease claims); *Corkum v. Bi-Mart Corp.*, 271 Or App 411, 422 (2015) (determining that a passive contribution to disability/need for treatment was a susceptibility, rather than a cause); *Murdoch v. SAIF*, 223 Or App 144, 146 (2008) (a preexisting condition

that “merely renders the worker more susceptible” to the disease is not considered a cause of the disease); *Multnomah County v. Obie*, 207 Or App 482, 487-89 (2006). We reason as follows.

In a deposition, Dr. Thompson was questioned about the upper extremity symptoms claimant experienced before working for the employer. (Ex. 43-23). Dr. Thompson explained that claimant had neurogenic TOS, which resulted from compression of the brachial plexus nerves that pass between the neck and the arm. (Ex. 43-7). He explained that the brachial plexus nerves pass through a space described as the “scalene triangle” made up of two muscles coming down from the neck and attaching to the first rib. (*Id.*) Dr. Thompson further explained that claimant had three anatomical features that predisposed her to brachial plexus nerve compression, including a cervical rib, scalene minimus muscle, and ligamentous band. (Ex. 43-14, -17). He explained that each of these congenital anatomical features reduced the space through which the brachial plexus nerves pass, making claimant more susceptible to nerve compression. (*Id.*)

Dr. Thompson agreed that claimant’s “long history” of “occasional mild symptoms,” including upper extremity numbness and tingling, was consistent with neurogenic TOS since at least claimant’s “teenage years.” (Ex. 43-23). Dr. Thompson then clarified that claimant’s preexisting symptoms would “at least” be characterized as “brachial plexus irritation and compression,” if not neurogenic TOS. (Ex. 43-24). Discussing whether claimant’s symptoms rose to the level of TOS, he explained that he would consider such symptoms to be a syndrome when they are “substantial and the patient seeks medical treatment for them.” (Ex. 43-25).

Dr. Thompson originally noted that claimant had what she described as “very mild” and “intermittent” numbness and tingling radiating from her shoulder region to her hands bilaterally since age 12. (Ex. 37-1). He explained that these symptoms were “very mild” and “occasional,” until they “dramatic[ally]” increased in severity and she also developed new upper extremity pain after about 3 months of working for the employer. (Ex. 37-2). Dr. Thompson believed that this history was consistent with “other histories in her record.” (Ex. 43-23). He relied on this history in determining that claimant’s work activities for the employer were the major contributing cause of the development of claimant’s disabling symptoms and neurogenic TOS. (Exs. 38-1, 49-7, -8).

Based on our review of the record, we conclude that Dr. Thompson’s understanding of claimant’s history of bilateral upper extremity symptoms is not accurate. While Dr. Thompson believed that claimant’s preexisting symptoms

were limited to “mild” and “occasional” numbness and tingling, the medical record includes a June 25, 2009 chart note (some 9 months before claimant began work for the employer), in which she described the development of “arthralgias in her shoulder/perhaps muscles or tendons” and “pain abducting her arms.”¹ (Ex. 1). Such a description of pre-work exposure symptoms is not consistent with the understanding endorsed by Dr. Thompson, and moreover, resembles the shoulder and arm symptoms that that Dr. Thompson understood to have begun after claimant started work for the employer. (Ex. 6-1).

Claimant testified that she did not recall having shoulder pain before starting work with the employer. (Tr. 11) After she was presented with the June 25, 2009 chart note describing shoulder arthralgias, she explained that she had developed shoulder pain in the context of a medication increase for her hypopituitarism/endocrine condition. (Ex. 17).

Other portions of the record reinforce our conclusion that Dr. Thompson’s understanding of claimant’s pre-work-exposure symptoms was inadequate. For example, on July 1, 2010, claimant told Dr. Lamoreaux during evaluation of shoulder pain, which Dr. Thompson ultimately attributed to claimant’s work activities, that “she has aches and pains all the time,” and has “frequent and common joint pains and problems.” (Ex. 6-1).

Dr. Thompson did not acknowledge claimant’s history of frequent “joint pains and problems,” and did not acknowledge the June 2009 chart note describing shoulder pain some 9 months before starting with the employer. Given Dr. Thompson’s lack of acknowledgment of the June 25, 2009 treatment, and claimant’s inability or reluctance to recall having prior shoulder pain when questioned at hearing, we conclude that her medical history, as related to Dr. Thompson, is unreliable. Given that Dr. Thompson’s causation opinion is largely based on that medical history, the accuracy of that history is necessary to establish compensability of claimant’s occupational disease claim. *Richard D. Wiseman*, 66 Van Natta 1699, 1701 (2014) (medical opinion was unpersuasive when it was based on unreliable medical history).

Because Dr. Thompson’s understanding of claimant’s pre-employment upper extremity symptoms is not supported by our review of the record, and because his causation analysis does not include consideration of relevant

¹ “Arthralgia” is defined as “severe pain in a joint, especially one not inflammatory in character.” *Stedman’s Medical Dictionary*, 134 (25th ed 1990).

preexisting symptoms and medical treatment, we consider his opinion attributing claimant's TOC condition to her work activities to be unpersuasive. *See Wehren*, 186 Or App at 560–61; *Miller v. Granite Constr. Co.*, 28 Or App 473, 476 (1977); *William D. Whyte*, 67 Van Natta 23, 29 (2015) (persuasiveness of medical history depends on accuracy of medical history). No other physician attributed the cause of the claimed TOS to claimant's work activities.²

Accordingly, the record does not support the compensability of claimant's occupational disease claim. Consequently, we affirm.

ORDER

The ALJ's order dated February 2, 2016 is affirmed.

Entered at Salem, Oregon on August 3, 2016

² Claimant contends that a note by Dr. Moneta's resident, Dr. Stephenson who examined claimant at the employer's request, supports the compensability of her claim. (Ex. 39-3). While Dr. Stephenson notes evidence in favor of a diagnosis of TOS, he concluded his observations by questioning whether a traumatic or repetitive use injury preceding claimant's employment would be more consistent with her increased symptoms. (*Id.*) Thus, we do not consider Dr. Stephenson's comments sufficient to establish the compensability of the claimed condition.