
In the Matter of the Compensation of
BARBARA J. HOLIDAY, Claimant
WCB Case No. 14-04944
ORDER ON REVIEW
Edward J Hill, Claimant Attorneys
Sather Byerly & Holloway, Defense Attorneys

Reviewing Panel: Members Johnson and Weddell.

The self-insured employer requests review of Administrative Law Judge (ALJ) Sencer's order that: (1) set aside its denial of claimant's occupational disease claim for a right wrist/hand condition; and (2) awarded a \$10,000 employer-paid attorney fee. On review, the issues are compensability and attorney fees. We reverse.

FINDINGS OF FACT

We adopt the ALJ's "Findings of Fact," which we summarize below.

On February 28, 2014, claimant, who was 38 years old at the time of the hearing, began working as a retail deli-worker for the employer. (Ex. 2). She cooked chickens on a rotisserie, maintained the "hot" case, and cleaned dishes, frying equipment, and display cases. She scrubbed a lot with her right hand. According to claimant, her hardest work was using a hose to clean the floors, lifting the chickens and the fryer baskets, and picking up the chicken boxes and putting them on the cart. (Tr. 22).

On July 22, 2014, after working for the employer for less than six months, claimant sought medical treatment for right wrist numbness and pain. (Ex. 5). She was diagnosed with carpal tunnel syndrome (CTS). (*Id.*)

At the employer's request, on August 27, 2014, Dr. Nolan examined claimant, obtaining a history of her work activities. (Ex. 19-1, -2). At that time, although she had been on light duty as a "door greeter" for about six weeks, claimant reported that her right hand symptoms were getting worse. (Ex. 19-2). From his review of claimant's electro-diagnostic studies, Dr. Nolan diagnosed mild right CTS. (Ex. 19-4). He did not attribute the CTS to claimant's work activities, concluding that they were not sufficiently repetitive or forceful enough to cause CTS. (Ex. 19-4-5).

On December 4, 2014, Dr. Solomon, a hand surgeon, examined claimant. (Ex. 27C). He reported a history of right hand numbness and pain, with symptoms worsening with “repetitive motions and at night.” (Ex. 27C-1). He diagnosed right CTS and right flexor carpi radialis (FCR) tunnel syndrome. (Ex. 27C-2).

On January 27, 2015, Dr. Solomon performed a right carpal tunnel release and right FCR tunnel release. (Ex. 30-1). His post-operative diagnoses were the same. (*Id.*) Following his review of claimant’s regular work activities, he opined that they were not the type of activities that would cause CTS. (Ex. 30-2).

On March 27, 2015, at claimant’s request, and after her January 2015 surgery, Dr. Puziss performed an examination. (Ex. 29B). Dr. Puziss opined that claimant’s work activities were the major contributing cause of her right CTS. (Ex. 29B-9). Dr. Puziss reported that her work activities involved “significant bending of the wrists, twisting and grasping.” (Ex. 29B-7). He explained that the “repetitive hand positions required to perform all of the multiple activities were repetitive enough to cause tendinitis, tenosynovitis and carpal tunnel syndrome.” (*Id.*)

After the employer denied her claim, claimant requested a hearing. (Ex. 25).

CONCLUSIONS OF LAW AND OPINION

In setting aside the employer’s denial, the ALJ determined that Dr. Puziss’s opinion persuasively established that claimant’s work activities were the major contributing cause of her right wrist/hand condition.

On review, the employer argues that the opinions of Dr. Nolan and Dr. Solomon persuasively establish that claimant’s work activities were not the major contributing cause of her right wrist/hand condition. For the following reasons, we agree.

To establish compensability of her occupational disease, claimant bears the burden of proving that her work activities were the major contributing cause of the disease. ORS 656.266(1); ORS 656.802(2)(a); *Varoie Luciano*, 68 Van Natta 803, 804 (2016). The major contributing cause means a cause that contributes more than all other causes combined. *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. *See Uris v. Comp. Dep't*, 247 Or 420, 424 (1967); *Barnett v. SAIF*, 122 Or App 279, 283 (1993). We give more weight to those opinions that are well reasoned and based on the most complete relevant information. *Jackson County v. Wehren*, 186 Or App 555, 559 (2003); *Somers v. SAIF*, 77 Or App 259 (1986). We may give more weight to the opinion of an expert if the record establishes that the opinion is supported by a greater level of specialized experience or expertise. *Abbott v. SAIF*, 45 Or App 657, 661 (1980).

Based on our review of the medical evidence, we find the opinions of Dr. Solomon, claimant's treating hand surgeon, and Dr. Nolan, a hand surgeon who examined claimant on behalf of the employer, to be the most persuasive, particularly given their expertise and specialization in hand conditions and hand surgery. *See Abbott*, 45 Or App at 661; (Exs. 27C, 34-1-3, 36-3). Moreover, both physicians provided persuasive, well-reasoned opinions based on a complete and accurate history and presented a thorough and consistent analysis of claimant's condition. *See Somers*, 77 Or App at 263.

After reviewing claimant's work activities as a retail deli worker, Dr. Nolan determined that they were not consistent with causing her CTS condition. He stated: "I do not believe there is enough forceful use of the hands required in the work at the [employer's] deli to reasonably be a significant contributing cause of [claimant's] right-sided [CTS]. She is not using any vibratory tools, and significantly repetitive or forceful gripping, twisting or squeezing is simply not required in her work." (Ex. 19-6). He also found the fact that claimant's symptoms worsened when she was working on light duty as a door greeter to weigh against a work-related connection. (Ex. 19-5). Ultimately, Dr. Nolan considered claimant's six months of working at the employer's deli "highly medically unlikely to be the major contributing cause" of her CTS condition. (*Id.*)

Dr. Solomon, claimant's treating hand surgeon, agreed with Dr. Nolan's opinion that claimant's right wrist/hand condition could not be attributed to her work activities. (Ex. 30-2). Indicating that he was familiar with the many studies on this subject, he agreed that "there is not one reliable study that would lead [Dr. Solomon] to conclude her work activities are the major contributing cause of her [CTS] or flexor carpi radialis tunnel syndrome." (*Id.*) Dr. Solomon further explained that, "there are some activities that can cause or provoke these conditions, but those are rather extreme, like jack hammer work." (*Id.*) According

to Dr. Solomon, claimant's work activities, such "as lifting fry baskets, lifting boxes of chicken, cooking chickens, lifting chickens onto a rotisserie, holding a hose to clean floors, operating a cash register, slicing meat, and cleaning and mopping floors" are not the kind of activity that would cause her right wrist/hand condition. (*Id.*)

Dr. Puziss, on the other hand, explained that claimant developed symptoms in her right hand/wrist because she did a "great deal of repetitive work," which included "significant bending of the wrists, twisting and grasping." (Ex. 29B-7). He concluded that the "repetitive hand positions" required by claimant's work activities "were repetitive enough to cause tendinitis, tenosynovitis, and [CTS]." (*Id.*) Regarding claimant's reported worsening of symptoms while on light duty, Dr. Puziss indicated that claimant was wearing a sling and a splint during that time, which likely caused increased swelling in the fingers, which increased the CTS and the tendinitis. (Ex. 29B-8). Dr. Puziss believed that such "gross inactivity" was as much a cause of the CTS, once claimant developed the tendinitis, as any activity was.¹ (*Id.*)

Dr. Nolan persuasively rebutted Dr. Puziss's opinion. In response to Dr. Puziss's description of claimant's job as involving "a great deal of repetitive work," (Ex. 29B-7), Dr. Nolan explained that repetitive work, by itself, was not a cause of CTS, because there must also be a component of force. (Ex. 36-2). He continued to find that none of the tasks identified in claimant's work involved the kind of significant repetitive force, gripping, squeezing, and work with vibratory tools that were considered to be causal contributors to the development of CTS. (Ex. 36-1-2). Dr. Nolan also specifically disagreed with Dr. Puziss's theory that claimant's CTS developed as a result of tendinitis, explaining that he did not diagnose tendinitis and did not believe that claimant's job activities were sufficiently repetitive, or forceful, to cause her right wrist/hand condition. (Ex. 36-2).

Finally, Dr. Nolan disagreed with Dr. Puziss's opinion that claimant's "gross inactivity" while wearing a sling and splint worsened the CTS and tendonitis and increased the swelling. (*Id.*) Dr. Nolan explained that soft tissue inflammation

¹ Dr. Puziss also provided short summaries from several sources of medical literature discussing CTS. (Ex. 38). However, Dr. Puziss did not sufficiently relate such medical literature to claimant's specific circumstances and, thus, we do not consider that information particularly probative. *See Sherman v. Western Employers Ins.*, 87 Or App 602, 606 (1987) (little weight given to comments that were general in nature and not addressed to the claimant's particular circumstances). Moreover, Dr. Nolan, who has extensive expertise and knowledge of hand conditions and surgery, stated that he knew of no "peer-reviewed medical literature that supports Dr. Puziss's theories."

such as tendonitis is primarily treated with rest and, in most cases, responds after about three to four weeks, which is why standard treatment protocol involves a splint and rest. He explained that the idea that resting and splinting the inflamed tendon would somehow increase (or cause) tendonitis was contrary to the medical principles involved in treating soft tissue inflammation. (Ex. 36-2-3).

Dr. Nolan pointed out that claimant reported general improvement week-to-week over the first month of wearing the splint (with the exception of pain with an x-ray). (Ex. 36-3). He further noted that claimant stopped wearing the splint by August 18, 2014, because her symptoms had improved and then reported, on August 27, that her condition had worsened, despite only working light duty as a “door greeter.” (*Id.*) Therefore, in Dr. Nolan’s opinion, it appeared that claimant’s condition improved, for the most part, with rest of the right arm and use of the splint, and then worsened after she stopped using it, despite still working only light duty. (*Id.*) He concluded that, “if [claimant’s] work activities at the time of the onset of her symptoms were so strenuous as to be the major cause of the condition, rest from those activities should have resulted in overall improvement of her symptoms.” (*Id.*) (Emphasis in original).²

In sum, after weighing the above medical opinions, we conclude that the opinions of Drs. Nolan and Solomon are the most persuasive, particularly in light of their expertise in treating and repairing hand conditions. Accordingly, based on the foregoing reasoning, the record does not persuasively establish that claimant’s work activities were the major contributing cause of her right wrist/hand condition. Consequently her occupational disease claim is not compensable. ORS 656.802(2)(a). Therefore, we reverse.³

ORDER

The ALJ’s order dated November 24, 2015 is reversed. The employer’s denial of claimant’s right wrist/hand condition is reinstated and upheld. The ALJ’s \$10,000 attorney fee and costs awards are reversed.

Entered at Salem, Oregon on August 1, 2016

² While we acknowledge that Dr. Nolan did not identify a particular cause of claimant’s right wrist/hand condition, it was not incumbent on him to do so. Moreover, Dr. Nolan provided a thorough and reasonable explanation for his opinion (supported by Dr. Solomon’s opinion) that claimant’s work activities were not the major contributing cause of her right wrist/hand condition.

³ Because we have concluded that claimant’s claim is not compensable, we need not address issues related to the ALJ’s attorney fee award, which is also reversed.