
In the Matter of the Compensation of
GREGORY S. JORDE, Claimant
WCB Case Nos. 14-06179, 14-05592, 14-05591, 14-05590
ORDER ON REVIEW
Unrepresented Claimant
Holmes Weddle & Barcott PC, Defense Attorneys

Reviewing Panel: Members Weddell and Johnson

Claimant, *pro se*,¹ requests, and Sedgwick Claim Management cross-requests, review of Administrative Law Judge (ALJ) Poland's order that: (1) found that claimant's diagnostic medical service claim for chest pain with "The Doctor's Clinic" (Dr. Fletemier) was materially related to his compensable injury; (2) found that claimant's diagnostic medical service claim for chest pain/chronic obstructive pulmonary disease with Salem Pulmonary Associates (Dr. Mehta) was materially related to his compensable injury; (3) found that claimant's medical service claim for a follow-up consultation with Dr. Mehta was causally related to his compensable injury; (4) found that claimant's medical service claim for a pulmonary functional analysis was not causally related to his compensable injury; (5) found that claimant's diagnostic medical service claim for cardiac stress testing at Salem Hospital was not causally related to his compensable injury; (6) found that claimant's diagnostic medical service claim for cardiac stress and myocardial perfusion imaging testing from Salem Cardiovascular Associates (Dr. Krishnamurthy) was not causally related to his compensable injury; (7) found that claimant's medical service claim for chest pain with Salem Cardiovascular Associates (Dr. Thompson) was causally related to his compensable injury; and (8) found that claimant's medical service claim for recurrent costochondral pain with Santiam Hospital was causally related to his compensable injury. On review, the issue is medical services.²

¹ Because claimant is unrepresented, he may wish to consult the Ombudsman for Injured Workers. He 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 We acknowledge the employer's argument that the ALJ's decision to reconsider and modify her original order following claimant's submission of additional documentary evidence was an abuse of discretion. While it appears that claimant did not comply with the applicable administrative rules regarding a request for reconsideration, we do not require strict compliance with those rules by unrepresented parties. *See* OAR 438-005-0035(3); OAR 438-007-0025. Moreover, even in the

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

As a result of claimant's March 13, 2013 work injury, the employer accepted a sternal contusion and fracture. (Ex. 32).

On November 18, 2014, the Workers' Compensation Division (WCD) issued three orders transferring medical services "causation" disputes to the Hearings Division. WCB Case No. 14-05590 concerned an evaluation provided on August 1, 2014 by Dr. Thompson and a treadmill stress test administered by Dr. Krishnamurthy on August 4, 2014 at Salem Cardiovascular Associates. (Exs. 99, 100). WCD's transfer order also concerned a pulmonary evaluation performed on September 16, 2014 by Dr. Mehta at Salem Pulmonary Associates. (Ex. 108).

WCB Case No. 14-05591 concerned cardiac stress testing performed on June 11, 2014 at Salem Hospital. (Ex. 96). WCD's transfer order also concerned a September 1, 2015 evaluation for recurrent costochondral pain provided by Dr. Moon at Santiam Hospital. (Ex. 105).

WCB Case No. 14-05592 concerned an April 23, 2014 evaluation for complaints of chest pain by Dr. Fletemier at The Doctor's Clinic. (Ex. 85).³

On December 19, 2014, WCD transferred another medical services "causation" dispute to the Hearings Division. This dispute (WCB Case No. 14-06179) concerned a October 13, 2014 pulmonary functional analysis and a follow-up evaluation with Dr. Mehta at Salem Pulmonary Associates. (Exs. 110, 111).

The ALJ eventually determined that each of the aforementioned disputed medical services was causally related to claimant's accepted work injury, except the August 4, 2014 treadmill stress test administered by Dr. Krishnamurthy, and the June 11, 2014 cardiac stress testing at Salem Hospital.

absence of claimant's submission of documentary evidence or a request for reconsideration, an ALJ is, nonetheless, entitled to reconsider and modify their order on the ALJ's own motion. *See* OAR 438-007-0025(1). Therefore, we find no abuse of discretion in the ALJ's decision to reconsider.

³ WCD's order also concerned chiropractic services from the Spine Clinic from January 3, 2014 through February 12, 2014. However, in a separate order we have upheld the employer's denial of claimant's new/omitted medical condition claims and occupational disease claim for low back conditions, finding that neither the March 13, 2013 work injury, nor claimant's work activities, were causative of any low back condition or related disability or need for treatment. Accordingly, a causal relationship between claimant's work injury and the disputed chiropractic services has not been established.

In his request for Board review, claimant contends that his breathing problems and cardiac issues were caused by his compensable injury or work activities. In its cross-request, the employer contends that none of the disputed medical services were related to the March 2013 work-related injury incident. Based on the following reasoning, we affirm.

ORS 656.245(1)(a) provides: “For every compensable injury, the insurer or the self-insured employer shall cause to be provided medical services for conditions caused in material part by the injury for such period as the nature of the injury or the process of the recovery requires * * *.”

There is a sufficient causal relationship if the disputed medical services are for a condition caused in material part by the compensable injury. The phrase, “in material part,” refers to a “fact of consequence.” *Mize v. Comcast Corp.-AT & T Broadband*, 208 Or App 563, 569-71 (2006). The “compensable injury” is not limited to the accepted condition, but is defined by the work-related injury incident. *SAIF v. Carlos-Macias*, 262 Or App 629, 637 (2014); *see also Brown v. SAIF*, 262 Or App 640, 652 (2014) (the “compensable injury” is the “work-related injury incident”); *Roberta S. Curley-Richmond*, 66 Van Natta 1670, 1670 (2014) (medical services under ORS 656.245(1) must be related to the work-related injury incident, rather than to an accepted condition).

Furthermore, if diagnostic services are necessary to determine the cause or extent of a compensable injury, those services are compensable whether or not the condition that is discovered as a result of them is compensable. *Counts v. Int’l Paper Co.*, 146 Or App 768, 771 (1997). Therefore, diagnostic services undertaken as a result of a work-related injury incident, to discover a work-related injury or disease, are sufficiently causally related to the compensable injury. *Carlos-Macias*, 262 Or App at 636. As a result, diagnostic services related to the discovery of the cause of pain complaints may be borne by a carrier even if the results of the testing reveal that the worker’s condition was unrelated to the compensable injury. *Id.*

However, if a diagnostic service is related to noncompensable conditions, and is not performed because of the compensable injury, it is not compensable. *Counts*, 146 Or App at 770; *Louis Rodriguez*, 59 Van Natta 104, 105 (2007). Thus, the standard for determining the compensability of a diagnostic medical procedure is whether it is necessary to determine the cause or extent of the compensable injury. *Wesley E. Mock*, 66 Van Natta 1537, 1539 (2014).

Here, considering the multiple potential compensable and non-compensable conditions to which the claimed medical services could potentially relate, this case presents complex medical questions to be resolved by expert medical evidence. *Uris v. State Comp. Dep't*, 247 Or 420, 426 (1967).

We first address claimant's contention that the June 11, 2014 and August 4, 2014 cardiac evaluations and October 13, 2014 pulmonary function testing are related to his work-related injury incident.

Based on our review, the medical record does not persuasively establish that these particular medical services, which claimant received for cardiac and pulmonary conditions, were directed to, or related to, his March 2013 work-related injury incident. (Exs. 96, 100, 110, 132). Accordingly, we affirm the ALJ's determination that these disputed medical services are not compensable.

We turn to Sedgwick's contentions regarding the disputed medical services. For the following reasons, we affirm the ALJ's decision.

On April 23, 2014, claimant was evaluated by Dr. Fletemier for complaints of chest pain. (Ex. 85). Based on claimant's symptoms and other risk factors, Dr. Fletemier recommended cardiac stress testing. In doing so, she also referred claimant to a cardiothoracic surgeon for further evaluation of whether his chest complaints were related to musculoskeletal pain from the work injury. (Ex. 85-2).

The employer contends that Dr. Fletemier's evaluation was directed toward a cardiac condition, and is not compensable. Furthermore, the employer asserts that Dr. Fletemier was not aware of claimant's preexisting complaints of chest pain, and her opinion, therefore, is unpersuasive. We disagree.

Dr. Fletemier noted both a possible cardiac condition and claimant's work injury as potential sources of his chest pain complaints. (Ex. 85). Referring to the April 2014 examination, Dr. Fletemier specifically explained that she was unsure if claimant's symptoms were due to the work injury or coronary artery disease. (Ex. 132).

As discussed above, if a medical service is necessary to determine the extent of a work-related injury, it is compensable as a diagnostic service regardless of whether the result of such diagnostic services shows a work-related condition. *See Counts*, 146 Or App at 771. In support of its position, the employer asserts that claimant began having a "different sort of chest pain." However, that

contention does not conflict with the proposition that Dr. Fletemier was trying to determine the cause of claimant's chest pain, and that one of the potential causes was the work-related injury.

The employer additionally asserts that Dr. Fletemier's opinion did not take into account claimant's "pre-work injury" complaints of chest pain. However, no medical expert questioned Dr. Fletemier's opinion on that basis. In the absence of such an opinion, we decline to discount Dr. Fletemier's assessment on that basis. *See, e.g., Dorothy S. Calliham*, 59 Van Natta 137, 138 (2007) (where other medical opinions attached no significance to certain facts, a physician's failure to evaluate those facts did not undermine the persuasiveness of the physician's medical opinion).

Accordingly, based on the aforementioned reasoning, as well as that expressed in the ALJ's order, we are persuaded that claimant's April 23, 2014 evaluation by Dr. Fletemier was causally related to the work injury.

We turn to the employer's challenge to the compensability of an August 1, 2014 evaluation by Dr. Thompson, a cardiovascular specialist. (Ex. 99). After Dr. Thompson reviewed claimant's cardiovascular stress testing results, he concluded that claimant's ongoing chest pain was likely due to the work injury. (Ex. 99-3).

On review, the employer contends that the aforementioned evaluation was not causally related to the work injury because claimant "self-referred" to Dr. Thompson. In addition, the employer asserts that the evaluation was directed at a cardiac condition.

Yet, as explained above, claimant's physicians were attempting to discern the source of his chest pain and they identified the work injury and a possible cardiac condition as the most likely sources of the chest pain symptoms. The fact that a portion of that assessment necessarily involved an investigation of nonwork-related causes does not lead to a conclusion that the medical service was not materially related to the work-related injury. *See, e.g., James G. Gilliland*, 64 Van Natta 1062, 1069 (2012) (medical services directed other conditions determined to be compensable when accepted condition was also a material cause of the need for medical services).

Finally, while the employer's contentions regarding the appropriate procedure for referral to Dr. Thompson may be relevant to whether the medical service was "appropriate and necessary," our review is limited to whether the

medical service was causally related to the work injury. ORS 656.704(3)(b)(B); *AIG Claim Servs., Inc. v. Cole*, 205 Or App 170, 174 (2006). Therefore, the employer's "propriety" contentions are not relevant to our "causation" determination. Accordingly, for the reasons expressed above we are persuaded that the August 1, 2014 evaluation by Dr. Thompson was causally related to claimant's work-related injury incident.

We next address the disputed medical service claim concerning a September 1, 2014 emergency room evaluation by Dr. Moon regarding "left-sided costal pain." (Ex. 105). The employer relies on the opinion of Dr. Fletemier, who concluded that the emergency room evaluation was "not for a condition caused by the compensable injury nor was it a diagnostic service necessary to determine the cause or extent of the compensable injury." (Ex. 132-2). In doing so, the employer acknowledges claimant's testimony that he went to the emergency room to obtain a second opinion on the cause of his chest pain. Nevertheless, the employer contends that claimant's testimony was not credible or reliable. Furthermore, the employer argues that Dr. Moon's assessment of a recurrence of "chostochondral pain" is not consistent with medical services directed to the compensable injury. Based on the following reasoning, we are persuaded that Dr. Moon's chart note establishes that the medical service was directed to the compensable work-related injury incident.⁴

First, Dr. Moon noted claimant's history of a work-related injury, and subsequently explained that claimant likely had a "recurrence" of costochondral pain. (Ex. 105-1). Based on its context, we interpret Dr. Moon's discussion of a "recurrence" of costochondral pain to indicate a recurrence of claimant's work injury-related chest pain. Moreover, the medical record does not persuasively distinguish costochondral pain from the chest pain attributable to claimant's compensable injury. In the absence of a physician's opinion supporting the employer's distinction, we are not persuaded that "costochondral pain" necessarily designates symptoms that are unrelated to the work injury and the accepted sternum fracture.

Finally, we acknowledge that Dr. Fletemier opined that the September 1, 2014 emergency room assessment was "not for a condition caused by the compensable injury." Yet, Dr. Fletemier offered no persuasive reasoning for that assessment. Furthermore, this conclusory and unexplained opinion was outweighed by Dr. Moon's opinion, which attributed the evaluation to claimant's

⁴ In reaching this conclusion, we need not consider claimant's testimony.

“recurrence” of “costochondral pain.” *See Moe v. Ceiling Sys., Inc.*, 44 Or App 429, 433 (1980) (rejecting unexplained or conclusory opinion). Accordingly, the record persuasively establishes that the September 1, 2014 evaluation by Dr. Moon was causally related to the compensable injury.

We turn to the disputed medical service claim regarding Dr. Mehta’s September 16, 2014 evaluation for claimant’s chronic chest wall pain and emphysema. (Ex. 108). Dr. Mehta concluded that claimant’s chest wall pain was “definitely musculoskeletal in nature,” and was related to the sternal fracture. (Ex. 108-3). In addition, Dr. Fletemier noted that a referral had been initiated for further evaluation of claimant’s sternal fracture. (Ex. 132-2).

The employer contends that the opinions of Dr. Mehta and Dr. Fletemier are not persuasive because they did not consider claimant’s preexisting complaints of chest pain. Notwithstanding this contention, the record lacks a physician’s assessment asserting such a basis for discounting the opinions of Dr. Mehta and Dr. Fletemier. In the absence of such a contrary opinion, we find Drs. Mehta’s and Fletemier’s opinions persuasive in determining that the September 16, 2014 evaluation was causally related to the compensable injury. *See Calliham*, 59 Van Natta at 138.

Finally, we address the October 20, 2014 evaluation by Dr. Mehta regarding claimant’s chronic obstructive pulmonary disease (COPD). Dr. Mehta recommended treatment of the COPD and stated that such treatment could help with claimant’s chest pain symptoms which were due to the accepted sternal fracture. (Ex. 111-3).

The employer notes that the examination was for purposes of evaluation and treatment of preexisting COPD, which was unrelated to the work injury incident. Yet, as previously explained, the determinative analysis is whether the disputed medical service was materially related to the compensable work-related injury incident. *See Carlos-Macias*, 262 Or App at 637; *Vincent O. Robison*, 68 Van Natta 255, 257 (2016).

Here, considering the history, diagnosis, and treatment recommendations noted by Dr. Mehta, we conclude that Dr. Mehta’s evaluation was related, in material part, to claimant’s work injury incident. While Dr. Fletemier opined that the October 20, 2014 evaluation was not related to the work injury (diagnostically or otherwise), her opinion is unexplained and unpersuasive in light of Dr. Mehta’s

chart notes documenting an evaluation of claimant's chest pain. Accordingly, we are persuaded that the necessary causal relationship concerning the disputed medical service has been established. Therefore, we affirm.

ORDER

The ALJ's order dated September 28, 2015, as reconsidered on December 23, 2015, is affirmed.

Entered at Salem, Oregon on August 29, 2016