
In the Matter of the Compensation of
LUZ D. ALEJO-VAZQUEZ, Claimant
WCB Case No. 15-01792
ORDER ON REVIEW
Dunn & Roy PC, Claimant Attorneys
SAIF Legal Salem, Defense Attorneys

Reviewing Panel: Members Weddell and Johnson.

Claimant requests review of Administrative Law Judge (ALJ) Fisher's order that upheld the SAIF Corporation's denial of her new/omitted medical condition claim for a right shoulder rotator cuff tear. On review, the issue is compensability. We affirm.

FINDINGS OF FACT

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

In October 2014, claimant, a fruit sorter, was injured when she reached out quickly with her right arm to grab a spoiled piece of fruit on the conveyor belt in front of her. (Tr. 6). Dr. Pennington, the treating physician, diagnosed a right shoulder tendonitis/bursitis. (Ex. 1). Claimant filed a claim for a right shoulder injury. (Exs. 2, 4).

In follow-up, Dr. Pennington suspected a rotator cuff tear. (Ex. 6).

In November 2014, claimant began receiving chiropractic treatments from Dr. Privitera. (Exs. 8, 10 through 19).

In December 2014, at SAIF's request, Dr. Dewing, an orthopedic surgeon, examined claimant. (Ex. 25). He diagnosed a minor right shoulder strain from the work activity in October 2014. (Ex. 25-4, -5).

On referral from Dr. Privitera, Dr. Heitsch examined claimant. (Ex. 31-1). He diagnosed partial tear of the right rotator cuff. (Ex. 31-2).

SAIF accepted a right shoulder strain. (Ex. 32).

A December 2014 right shoulder MRI was interpreted as showing a “[r]otator cuff sprain/longitudinal tear with thickening and internal signal within the distal supraspinatus tendon, without evidence of retraction.” (Ex. 35).

In January 2015, Dr. Van Tilburg, an occupational medicine physician, became claimant’s attending physician. (Exs. 39 through 46). He diagnosed a right shoulder sprain. (Exs. 40-3, 41-2, 42-3, 43-3, 45-3, 46-3). Following his review of the December 2014 MRI, he described “supraspinatous thickening and AC & DJD.” (Ex. 48A-3). He also indicated that: “This appears to be degenerative changes mostly other than the mild supraspinatus tear.” (*Id.*) Dr. Van Tilburg subsequently agreed with Dr. Dewing’s opinion that claimant “has pre-existing degenerative changes in her shoulder and no rotator cuff tear from work-related injury.” (Ex. 49-1).

Claimant requested that SAIF accept a right shoulder rotator cuff tear as a new/omitted medical condition. (Ex. 44). When SAIF denied her claim, claimant requested a hearing. (Ex. 48A-3).

CONCLUSIONS OF LAW AND OPINION

In upholding SAIF’s denial, the ALJ determined that the opinions of Drs. Privitera and Heitsch were based upon less complete information than those of Drs. Dewing and Van Tilburg, who had reviewed the 2014 MRI imaging scans. Based on the persuasive opinions of Drs. Dewing and Van Tilburg, the ALJ concluded that claimant had not established the existence of the claimed right rotator cuff tear.

On review, claimant argues that the opinions of Drs. Privitera and Heitsch establish the existence of her right rotator cuff tear, and that Drs. Dewing’s and Van Tilburg’s opinions are supportive of such a tear, even though they find that it is a degenerative tear. Based on the following reasoning, we agree that the record supports the existence of the claimed tear condition. However, the record does not persuasively establish that the work injury was a material contributing cause of the disability/need for treatment of the tear condition.

To prevail on her new/omitted medical condition claim, claimant must prove that the condition exists and that the work injury was a material contributing cause of her disability/need for treatment of the condition. *See* ORS 656.005(7)(a); *Maureen Y. Graves*, 57 Van Natta 2380, 2381 (2005).

This case involves complex medical questions that must be resolved 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). In evaluating medical opinions deference is generally given to the treating physician absent persuasive reasons to the contrary. *See Weiland v. SAIF*, 63 Or App 810 (1983); *Darwin B. Lederer*, 53 Van Natta 974 n 2 (2001). However, greater weight may or may not be given to the opinion of the treating physician, depending on the record in each case. *See Dillon v. Whirlpool Corp.*, 172 Or App 484, 489 (2001).

Based on claimant's examination findings, Drs. Heitsch and Privitera diagnosed a right rotator cuff tear. (Exs. 31-2, 52-3). Following his review of claimant's 2014 MRI, Dr. Van Tilburg noted the presence of a mild supraspinatus tear, but considered it degenerative. (Ex. 48A-3). Dr. Dewing also acknowledged that claimant's 2014 MRI "showed a longitudinal tear of her rotator cuff." (Ex. 51-1). Thus, we conclude from the persuasive medical evidence that the claimed right rotator cuff tear condition exists. *See Graves*, 57 Van Natta at 2381.

Next, we must determine whether the October 2014 work injury was a material contributing cause of the need for treatment/disability of the right rotator cuff tear condition.

Dr. Privitera first examined claimant a few weeks after her work injury. (Ex. 52-1). She opined that claimant's work injury was both a material and a major contributing cause of a partial thickness rotator cuff tear. (Ex. 52-2). She concluded that claimant's positive results on the "empty can" test and her significantly reduced external rotation were signs of an injured supraspinatus tendon, and "corroborates" the significance of the longitudinal supraspinatus tear identified in the MRI findings.¹ (*Id.*) She also opined that claimant's mechanism of injury was consistent with causing a partial thickness tear of her supraspinatus tendon because "suddenly reaching forward and to the right can place force upon the supraspinatus tendon, and be injurious." (Ex. 52-3). However, she acknowledged that longitudinal partial thickness tears of the supraspinatus tendon can occur gradually over time. (*Id.*)

¹Although Dr. Privitera opined that her examination/test findings were signs of a supraspinatus tear, we note that, at the time of those findings, Dr. Privitera did not diagnose a right rotator cuff tear. Rather, she checked a box indicating that a right rotator cuff tear needed to be ruled out. (Ex. 8-4).

Dr. Dewing opined that claimant's work injury was not a material contributing cause of her disability/need for treatment of a right shoulder rotator cuff tear.² (Ex. 57-2). He explained that the mechanism of injury—reaching out to grab a piece of fruit—was not sufficient to contribute or cause a right rotator cuff tear. (Ex. 51-1). From his review of the medical records, he opined that claimant's initial presentation following the work injury was not consistent with an acute right shoulder rotator cuff tear. He explained that claimant presented with diffuse right shoulder symptoms that were more consistent with a right shoulder strain. (Ex. 51-2). Dr. Dewing further reasoned that claimant lacked consistent exam findings that would indicate she had an acute and symptomatic right rotator cuff tear. Thus, he opined that, if a rotator cuff tear was present, it was likely an asymptomatic incidental finding. (*Id.*)

Dr. Dewing also determined that the MRI findings of the longitudinal tear in the supraspinatus tendon are of unknown significance as there had never been any documented weakness during examinations, either by him or other providers. (Ex. 47-2). He also explained that his review of claimant's imaging studies was consistent with "tendinosis in the supraspinatus tendon which could be chronic and degenerative and not at all related to the claimed work activity."³ (Ex. 47-3). He did not recommend any treatment for a right rotator cuff tear. (Ex. 47-4).

Dr. Van Tilburg consistently diagnosed a right shoulder sprain. (Exs. 40-3, 41-2, 42-3, 45-3, 45A-3, 46-3). Based on his review of the 2014 MRI, Dr. Van Tilburg acknowledged the "mild supraspinatus tear." (Ex. 48A-3). Yet, he was unable to correlate claimant's symptoms with her MRI findings; he also could not correlate her MRI findings with the mechanism of injury (*i.e.*, lifting a piece of fruit with an outstretched arm). (Ex. 48A-3). He concurred with Dr. Dewing's opinion that claimant had preexisting degenerative changes in her shoulder and no work-related rotator cuff tear. (Ex. 49-1).

² Citing various portions of Dr. Dewing's deposition testimony, claimant argues that Dr. Dewing acknowledged that claimant's work injury was a material contributing cause of her shoulder symptom complex. We recognize Dr. Dewing's deposition testimony in this regard. However, we do not interpret Dr. Dewing's deposition testimony to detract from his stated opinion that claimant's work injury was not a material contributing cause of disability/need for treatment of her right rotator cuff tear. *SAIF v. Strubel*, 161 Or App 516, 521-22 (1999) (medical opinions are evaluated in context and based on the record as a whole). In reaching this conclusion, we note that Dr. Dewing did not renounce his earlier more specific opinion that claimant's work injury was not a material contributing cause of disability/treatment of a right rotator cuff tear.

³ Dr. Dewing opined that he would not normally classify claimant's longitudinal tear as a tear because it is a degenerative finding. (Ex. 51-1).

Weighing the medical opinions, we are most persuaded by the well-reasoned and explained opinions of Drs. Dewing and Van Tilburg that claimant's work injury incident was not a material contributing cause of disability/need for treatment of claimant's right rotator cuff tear. In particular, we find that Dr. Dewing persuasively explained that the mechanism of injury was of insufficient weight or intensity to have caused an acute right rotator cuff tear. (Ex. 47-2). He opined that a "traumatic rotator cuff tear typically occurs from lifting a heavy object away from the body with the arm outstretched, repetitive overhead lifting or a significant fall onto the shoulder." (Ex. 51-1). He also explained that claimant's exam findings were inconsistent with a symptomatic rotator cuff tear, but, rather were consistent with a right shoulder sprain. (Ex. 51-1-2).

Based on the aforementioned reasoning, we consider Dr. Dewing's opinion (as supported by Dr. Van Tilburg) more persuasive than the other physicians' opinions.⁴ Accordingly, we affirm.

ORDER

The ALJ's order dated February 16, 2016 is affirmed.

Entered at Salem, Oregon on August 9, 2016

⁴ We acknowledge Dr. Privitera's opinion that suddenly reaching forward and to the right can be injurious to the supraspinatus tendon. (Ex. 52-3). However, we do not find her opinion in that regard to be as well reasoned or as persuasive as Dr. Dewing's opinion. Furthermore, Dr. Heitsch did not specifically comment on whether claimant's mechanism of injury was sufficient to cause a right rotator cuff tear. (Ex. 29). In the absence of such a comment, we consider Dr. Dewing's opinion to be more persuasive.