
In the Matter of the Compensation of
DANIELLE N. SNIDER, Claimant
WCB Case No. 14-03225
ORDER ON REVIEW
Black Chapman et al, Claimant Attorneys
Reinisch Wilson Weier, Defense Attorneys

Reviewing Panel: Members Curey and Weddell.

Claimant requests review of Administrative Law Judge (ALJ) Naugle's order that upheld the self-insured employer's denial of claimant's injury claim for her low back condition. On review, the issue is compensability.

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

In upholding the employer's denial, the ALJ found that there was a "combined condition," and that, based on the opinions of Drs. Christensen, Kaesche, and Bergquist, the preexisting condition was the major contributing cause of the disability/need for treatment of the combined low back condition.

On review, claimant contests the ALJ's evaluation of the medical evidence. She contends that Dr. Conaughtry's opinion was more persuasive than the contrary opinions of Drs. Christensen, Kaesche, and Bergquist. For the following reasons, we disagree with that contention.

Claimant must prove that her May 28, 2014 work injury was a material contributing cause of the disability/need for treatment related to her low back condition. ORS 656.005(7)(a); ORS 656.266(1); *Tricia A. Somers*, 55 Van Natta 462, 463(2003). If claimant establishes an "otherwise compensable injury," and a "combined condition" is present, the employer must prove that the otherwise compensable injury was not the major contributing cause of claimant's disability or need for treatment of the combined low back condition. ORS 656.266(2)(a); *SAIF v. Kollias*, 233 Or App 499, 505 (2010); *Jack G. Scoggins*, 56 Van Natta 2534, 2535(2004). The "otherwise compensable injury" means the "work-related injury incident." *See Brown v. SAIF*, 262 Or App 640, 652 (2014); *see also Jean M. Janvier*, 66 Van Natta 1827, 1832-33 (2014) (applying the *Brown* definition of an "otherwise compensable injury" to initial and new/omitted medical condition claims under ORS 656.266(2)(a)).

We go straight to the “major contributing cause” test analysis.¹ Considering the disagreement between experts regarding the compensability of the low back condition, this issue presents complex medical questions that must be resolved by expert medical opinion. *Barnett v. SAIF*, 122 Or App 279, 283 (1993); *Mathew C. Aufmuth*, 62 Van Natta 1823, 1825 (2010). In evaluating the medical evidence, we rely on those opinions that are both well reasoned and based on accurate and complete information. *Somers v. SAIF*, 77 Or App 259, 263 (1986); *Linda Patton*, 60 Van Natta 579, 582 (2008).

Dr. Bergquist, neurosurgeon, performed an evaluation at the employer’s request. (Ex. 52B). Dr. Bergquist noted that claimant had prior low back treatment. (Ex. 52B-2). He explained that her preexisting degenerative changes involved inflammation that was due to metabolic and constitutional causes that resulted in the breakdown, degeneration, and structural change of the intervertebral disc and adjacent vertebral bodies. (*Id.*) He concluded, based on reasonable medical probability, that the primary or major contributing cause of her low back condition was the preexisting condition. (Ex. 52B-11). Ultimately, he determined that, assuming claimant’s work activities made some contribution, she had a combined low back condition and the work injury was not the major contributing cause of her low back condition, need for treatment, or disability. (Exs. 52B-12, 53-4).

Dr. Kaesche, orthopedic surgeon, also performed an evaluation at the employer’s request. (Ex. 50). He opined that claimant did not report a mechanism of injury significant enough to cause a disk herniation, rupture, or bulging, particularly at multiple levels, in an individual of her age without a preexisting condition. (Ex. 52A-20). He noted that claimant had previous chiropractic treatment for her low back without inciting trauma. (Ex. 57-1). He determined that claimant’s “pre-May 2014 work incident” chiropractic treatment was necessitated by degenerative disc disease. (Ex. 57-1).

When weighing the relative contribution of the May 2014 work activities, as described by claimant and a summary with response from Dr. Conaughtry, Dr. Kaesche opined that claimant’s work activities may have precipitated increased symptoms, but were never the major contributing cause of her need for treatment/

¹ The employer contends that the work injury was not a material contributing cause of the need for treatment/disability for claimant’s low back condition. However, we adopt the ALJ’s reasoning/conclusion that concludes that the work injury was a material contributing cause of the need for treatment for claimant’s low back condition.

disability. (Ex. 57-2). He concluded that the major contributing cause of claimant's nerve root irritation was the preexisting multilevel degenerative disc disease. (Exs. 52A-25, 57-1).

Dr. Christensen, claimant's primary care provider, treated her before and within one week after the May 2014 work injury.² (Exs. 20, 54-6). He concurred with the opinions of Drs. Bergquist and Kaesche. (Exs. 51, 52, 52C). Moreover, he considered it more likely than not that claimant's preexisting disease, as manifested by her MRI, was the primary causal factor of her symptoms. (Ex. 54-7).

Dr. Conaughtry, claimant's attending physician and surgeon, treated her on three occasions. (Exs. 44, 52D, 53A). His initial evaluation was approximately six weeks after the May 2014 work incident. (Ex. 44). He opined that the work injury was probably the "primary cause of the need for treatment" for claimant's low back condition. (Ex. 56-1). He determined that claimant had "mild" multilevel degenerative lumbar changes on MRI and at surgery. (Ex. 56-5). In response to a characterization that the "IME reports" did not support "any contribution" made to claimant's need for treatment, Dr. Conaughtry disagreed, stating that the work activities caused her L3-4 disc to "displace/distort, and eventually protrude and ultimately fragment." (Ex. 56-6).

Ultimately, Dr. Conaughtry did not attempt to compare claimant's pre-incident and post-incident records. As a result, we do not consider his opinion to be well-reasoned or based on sufficient or complete information. *See Jackson County v. Wehren*, 186 Or App 555, 560-61 (2003) (a history is complete if it includes sufficient information on which to base the opinion and does not exclude information that would make the opinion less credible); *Miller v. Granite Construction Co.*, 28 Or App 473, 476 (1977) (opinion based on incomplete information found unpersuasive). Additionally, he did not respond to Dr. Kaesche's and Dr. Bergquist's weighing of claimant's prior chiropractic treatment with the May 2014 work injury, which causes us to further discount his opinion. *See Louise Richards*, 57 Van Natta 80, 81 (2005) (physician's opinion unpersuasive when it did not rebut or respond to contrary opinion).

After considering the aforementioned physicians' opinions, we find the well-reasoned opinions of Drs. Kaesche, Bergquist, and Christensen to be persuasive. *Somers*, 77 Or App at 263. Moreover, Dr. Christensen is in an advantageous

² Dr. Christensen has treated claimant since 2002. (Ex. 54-6).

position to render a causation opinion as claimant's long-time treating physician. *See Kevin G. Gagnon*, 64 Van Natta 1498, 1500 (2012) (physician's longitudinal history with the claimant rendered his opinion persuasive); *see also Weiland v. SAIF*, 64 Or App 810 (1983) (in some situations, a treating physician's opinion is entitled to greater weight because of a better opportunity to observe and evaluate a claimant's condition over an extended period of time); *Chiyoko S. Chapman*, 62 Van Natta 836 (2010) (same). As a result, Dr. Christensen's observations are given additional probative weight.

In sum, for the aforementioned reasons, and those expressed in the ALJ's order, we find the opinions of Drs. Kaesche, Bergquist, and Christensen to be persuasive. Accordingly, we conclude that the employer satisfied its burden of proof under ORS 656.266(2)(a). Thus, we affirm.

ORDER

The ALJ's order dated June 10, 2015 is affirmed.

Entered at Salem, Oregon on February 9, 2016