In the Matter of the Compensation of
PATTI A. CURRAN, Claimant
WCB Case No. 14-04584
ORDER ON REVIEW
Black Chapman et al, Claimant Attorneys
SAIF Legal Salem, Defense Attorneys

Reviewing Panel: Members Weddell and Johnson.

The SAIF Corporation requests review of Administrative Law Judge (ALJ) Poland's order that set aside its denial of claimant's occupational disease claim for a left wrist triangular fibrocartilage complex (TFCC) tear. On review, the issue is compensability.

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

In setting aside SAIF's denial, the ALJ found that claimant's work activities were the major contributing cause of a combined and pathologically worsened left wrist condition. *See* ORS 656.802(2)(b). In doing so, the ALJ reasoned that the opinion of Dr. Maurer was more persuasive than the contrary opinions of Drs. Radecki and Vangelisti.

On review, SAIF contends that Dr. Mauer's opinion is insufficient to establish compensability of claimant's left wrist condition. For the following reasons, we disagree with SAIF's arguments.

Claimant bears the burden to establish the compensability of her occupational disease claim by showing that employment conditions, including work-related injuries, were the major contributing cause of the disease. *See* ORS 656.266(1); ORS 656.802(2)(a); *Kepford v. Weyerhaeuser Co*., 77 Or App 363, 365-66 (1986). However, if the occupational disease claim is based on the worsening of a preexisting condition, claimant must prove that employment conditions were the major contributing cause of the combined condition and pathological worsening of the disease. ORS 656.802(2)(b).

Considering the conflicting medical opinions regarding causation, we conclude that the causation issue presents a complex medical question that must be resolved by expert medical opinion. *Uris v. State Comp. Dep't*, 247 Or 420, 426 (1967); *Barnett v. SAIF*, 122 Or App 279, 283 (1993). We give more weight to those medical opinions that are well reasoned and based on complete information. *Somers v. SAIF*, 77 Or App 259, 263 (1986).

SAIF contends that Dr. Maurer's medical opinion is insufficient to satisfy claimant's burden of proof. Specifically, SAIF asserts that Dr. Mauer merely opined that claimant's work activities were the major contributing cause of a worsening of a "disease" and not necessarily the major contributing cause of the "disease" itself. *See Bernard Lecangdam*, 53 Van Natta 1069 (2001), *aff'd Lecangdam v. SAIF*, 185 Or App 276 (2002) (the claimant must show that the major contributing cause of his *overall* hearing loss was his work exposure); *Betty J. Read*, 64 Van Natta 360, 361-62 (2012) (evidence addressing major contributing cause of worsening, but not major contributing cause of combined condition, was insufficient to establish compensability of an occupational disease claim under ORS 656.802(2)(b)).

Contrary to SAIF's assertions, Dr. Mauer opined that claimant's TFCC tear preexisted her employment, and that her work activities were the major contributing cause of a combined condition and pathological worsening. (Ex. 10-3). Moreover, he explained that the "combining" and "pathological worsening" of claimant's left wrist condition were consistent with the physical activities causing the tear to progress to a point where it became symptomatic. (*Id*.)

Additionally, SAIF asserts that claimant's testimony (which described her complaints as increased symptoms) was inconsistent with a worsening of her TFCC tear. However, Dr. Mauer opined that claimant's increase in symptoms (not necessarily a permanent increase in symptoms) was consistent with a pathological worsening of her TFCC condition. (*Id*.) Considering that this issue presents a complex medical question, we give more weight to Dr. Mauer's interpretation of claimant's symptoms and to his opinion that claimant's work activities were the major contributing cause of her combined condition and pathological worsening.

Accordingly, based on the aforementioned reasoning and that expressed in the ALJ's order, we conclude that Dr. Maurer's opinion persuasively establishes the compensability of claimant's TFCC tear under ORS 656.802(2)(b). Consequently, we affirm.

Claimant's attorney is entitled to an assessed fee for services on review. ORS 656.382(2). After considering the factors set forth in OAR 438-015-0010(4) and applying them to this case, we find that a reasonable fee for claimant's attorney's services on review is $4,000, payable by SAIF. In reaching this conclusion, we have particularly considered the time devoted to the case (as represented by claimant's respondent's brief), the complexity of the issue, the value of the interest involved, and the risk that counsel may go uncompensated.

Finally, claimant is awarded reasonable expenses and costs for records, expert opinions, and witness fees, if any, incurred in finally prevailing over the denial, to be paid by SAIF. *See* ORS 656.386(2); OAR 438-015-0019; *Gary E. Gettman*, 60 Van Natta 2862 (2008).

ORDER

The ALJ's order dated July 6, 2015 is affirmed. For services on review, claimant's counsel is awarded an assessed attorney fee of $4,000, payable by SAIF. Claimant is awarded reasonable expenses and costs for records, expert opinions, and witness fees, if any, incurred in finally prevailing over the denial, to be paid by SAIF.

Entered at Salem, Oregon on February 9, 2016