
In the Matter of the Compensation of
MARIA ROMERO-ARAMBULA, Claimant
WCB Case No. 14-05136
ORDER ON REVIEW
Douglas J Rock PC, Claimant Attorneys
SAIF Legal Salem, Defense Attorneys

Reviewing Panel: Members Curey and Lanning.

Claimant requests review of Administrative Law Judge (ALJ) Pardington's order that upheld the SAIF Corporation's denial of her occupational disease claim for a right elbow condition. On review, the issue is compensability.

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

In upholding SAIF's denial, the ALJ found the opinions of Drs. Han and Foote, claimant's treating physicians, insufficient to establish compensability. Specifically, the ALJ reasoned that Dr. Foote ultimately concluded that claimant's right elbow condition was unrelated to work and that Dr. Han did not express an opinion concerning the "major contributing cause" of claimant's right elbow condition. Moreover, the ALJ determined that Dr. Weeks's opinion, attributing claimant's right elbow condition to nonwork causes, was the most persuasive.

On review, claimant contends that the opinions of Drs. Han and Foote persuasively establish the compensability of her right elbow condition as an occupational disease. For the following reasons, we disagree with claimant's contention.

To establish the compensability of her occupational disease claim, claimant must show that employment conditions were the major contributing cause of the disease. ORS 656.266(1); ORS 656.802(2)(a). The major contributing cause is the cause, or combination of causes, that contributed more than all other causes combined. *Bowen v. Fred Meyer Stores*, 202 Or App 588, 563-64 (2005), *rev den*, 341 Or 140 (2006).

Because the causation inquiry presents a complex medical question, it must be resolved by expert medical evidence. *Uris v. State Comp. Dep't*, 247 Or 420, 426 (1967); *Barnett v. SAIF*, 122 Or App 279, 283 (1993). When presented with disagreement among experts, we give more weight to those opinions that are well reasoned and based on complete information. *Somers v. SAIF*, 77 Or App 259, 263 (1986).

Dr. Han stated that the “initial inciting cause is not clear, but her repetitive use with her wrists in an extended position at work contributes to the maintenance or may exacerbate her condition.” (Ex. 13-6). When asked whether 51 percent of the “exacerbation” of claimant’s condition was due to work activities, Dr. Han could not put a percentage on it, but responded that work “seem[ed] to be a significant contributor.” (*Id.*) Dr. Han also noted that her off work activities of doing yard work and pulling weeds were activities that can also exacerbate her symptoms. (*Id.*)

We do not find Dr. Han’s opinion persuasive. Prior to his deposition, Dr. Han opined that claimant’s work exposure was a “material” contributor, rather than the “major contributing cause,” of her elbow condition. (Ex. 11-1). Furthermore, at his deposition, Dr. Han testified that claimant’s work activities were a “significant” contributor, but in doing so did not identify claimant’s work as the “primary” cause of her condition. (Ex. 13-6).

When reviewed in context, these comments support a proposition that Dr. Han’s opinion with respect to a “significant” contributor was more reflective of a “material” contributing cause. In any event, he ultimately agreed that he was “not qualified to test about the cause of the conditions.” (Ex. 13-12). Consistent with that statement, when asked what the major contributing cause of the underlying condition was, Dr. Han replied, “I don’t know.” (*Id.*) Under such circumstances, we do not consider Dr. Han’s opinion sufficient to satisfy claimant’s statutory burden of proof. *Dietz v. Ramuda*, 130 Or App 397, 401 (1994), *rev dismissed*, 321 Or 416 (1995) (the medical evidence supporting the disputed claim must consider the relative contribution of the different causes to determine the primary cause); *Linda E. Patton*, 60 Van Natta 579, 581 (2008).

Alternatively, claimant contends that Dr. Foote’s opinion persuasively establishes the compensability of her condition. For the following reasons, we disagree with that contention.

Dr. Foote initially opined that claimant’s work activities caused her right elbow condition in major part. (Ex. 10A-1). However, Dr. Foote subsequently changed his opinion after reviewing Dr. Weeks’s report (which considered that claimant’s non-occupational comorbidity factors were likely the major cause of claimant’s right elbow condition). (Ex. 12-2). At his deposition, Dr. Foote explained that his change of opinion was based after receiving more information about claimant and the condition. (Ex. 14-5, -7).

Based on Dr. Foote's explanation, we do not consider his ultimate opinion, which was rendered after receiving additional information, to be an unexplained change of opinion. *See Kelso v. City of Salem*, 87 Or App 630, 634 (1987) (where there was a reasonable explanation in the record for a physician's change of opinion, that opinion was persuasive); *Donna C. Miller*, 61 Van Natta 836, 839 (2009) (physician's changed opinion was reasonably explained where the subsequent opinions were based on new information obtained after the physician's initial examination). Therefore, Dr. Foote's opinion does not support the compensability of claimant's right elbow condition.

Accordingly, based on the aforementioned reasons, in addition to the those expressed in ALJ's order, we are not persuaded that claimant's work activities were the major contributing cause of her claimed right elbow condition. Consequently, we affirm.

ORDER

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

Entered at Salem, Oregon on January 5, 2016