
In the Matter of the Compensation of
ERICA FORTNER, Claimant
WCB Case No. 14-06227
ORDER ON REVIEW
Alvey Law Group, Claimant Attorneys
SAIF Legal Salem, Defense Attorneys

Reviewing Panel: Members Curey and Weddell.

The SAIF Corporation requests review of Administrative Law Judge (ALJ) Lipton's order that set aside its denial insofar as it pertained to claimant's injury claim for a left carpal tunnel syndrome (CTS) condition. On review, the issue is compensability.

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

The ALJ found that claimant's left CTS condition had an onset traceable to a discrete, identifiable period of time due to specific work activity. Based on the record as a whole, the ALJ concluded that claimant sustained a compensable work injury.

On review, SAIF contends that claimant's condition should be analyzed as an occupational disease. Based on the following reasoning, we disagree with SAIF's contention.

If analyzed as an injury claim, claimant would bear the burden to establish that the work incident was a material contributing cause of her disability or need for treatment. ORS 656.005(7)(a); ORS 656.266(1); *Albany Gen. Hosp. v. Gasperino*, 113 Or App 411, 415 (1992); *Tricia A. Somers*, 55 Van Natta 462, 463 (2003). If analyzed as an occupational disease claim, claimant would bear the

burden to establish that employment conditions were the major contributing cause of the claimed condition. ORS 656.266(1); ORS 656.802(2)(a); *Kepford v. Weyerhaeuser Co.*, 77 Or App 363, *rev den*, 300 Or 722 (1986).

When determining whether a condition is appropriately analyzed as an injury or an occupational disease, we must examine whether the condition itself, and not its symptoms, occurred suddenly or gradually. *See Luton v. Willamette Valley Rehab. Ctr.*, 272 Or App 487, 153 (2015); *Smirnoff v. SAIF*, 188 Or

App 438, 443 (2003). To be considered an injury, the condition must arise from an identifiable event or have an onset traceable to a discrete period. *Active Transp. Co. v. Wylie*, 159 Or App 12, 15 (1999).

Claimant testified that she began working for the employer on July 14, 2014. (Tr. 7). During the first week, her day began with the initial few hours devoted to the “in vitro fertilization (IVF) lab,” and she spent the remainder of her day feeding calves. (Tr. 10). During her second week, she performed similar duties, until she was no longer needed in the IVF lab. (*Id.*) Approximately half-way through her second week, she began feeding calves full time. (*Id.*) In her third week of employment, she began “calf doctoring,” which required forcefully gripping and holding the calves’ mouths open with her left hand in a bent position for nearly 5 to 6 hours per day, and performed feeding the rest of the day. (Tr. 11-15). She testified that, in the fourth week, she began experiencing hand symptoms (second week of calf doctoring), and by August 11, 2014, she had “bad pains” in her left wrist and numbness in her thumb, pointer finger, and middle finger. (Tr. 15-16). Her symptoms progressed and she continued her work duties until August 21, 2014. (Tr. 19).

Claimant initially sought treatment on August 21, 2014. (Ex. 2). Ms. Mitchell, nurse practitioner, noted that she had been having symptoms for the past two weeks, and that she recently began feeding and providing medications to calves. (Ex. 2). Ms. Mitchell diagnosed left CTS. (*Id.*)

In August 2014, Dr. Carpenter, orthopedist and claimant’s attending physician, reported that claimant was using her left hand to give calves medication and developed pain and sensitivity. (Ex. 4).

In October 2014, Dr. Radecki, physical medicine and rehabilitation specialist, performed an examination at SAIF’s request. (Ex. 11). He noted that claimant developed pain and numbness after two days of calf doctoring. (Ex. 11-2). He concluded that claimant’s CTS was due to her left wrist use in a hyperflexed position with forceful grasping for a few days.¹ (Ex. 11-10).

¹ We acknowledge that Dr. Radecki subsequently changed his opinion, stating that it was a “big stretch” to correlate claimant’s CTS to a job task she worked for less than a week. (Ex. 17-1). However, Dr. Radecki did not provide a reasonable explanation for his change of opinion, and the change was not based on any new information. *See Moe v. Ceiling Systems, Inc.*, 44 Or App 429, 433 (1980) (rejecting unexplained or conclusory medical opinions); *Francisco R. Mejia*, 61 Van Natta 1265, 1268, *recons.*, 61 Van Natta 2005 (2009) (no reasonable explanation for changed opinion where a physician did not explain the change, and the record did not establish that the physician received new information that otherwise might explain the changed opinions). Consequently, we consider his opinion to be unpersuasive.

Dr. Carpenter also opined that the major cause of claimant's left CTS condition was her use of the left wrist in a hyperflexed position with forceful grasping for a few days. (Ex. 17A-2). He subsequently testified that CTS was a constellation of symptoms, including numbness, tingling, pain, and/or weakness. (Ex. 20-5). We find that Dr. Carpenter's opinion was based on a sufficiently complete and accurate history, consistent with claimant's testimony. *See Jackson County v. Wehren*, 186 Or App 555, 561 (2003) (a history is complete if it includes sufficient information on which to base the physician's opinion and does not exclude information that would make the opinion less credible); *Lori J. Jones*, 66 Van Natta 1400, 1405-06 (2014) (same). Consequently, his opinion is persuasive.

SAIF contends that, because claimant's symptoms arose in mid-August 2014 and then worsened until she eventually sought treatment in late August 2014, her condition arose "gradually" and, therefore, should be analyzed as a disease rather than an injury.

However, claimant's testimony and the persuasive medical evidence offered by Dr. Carpenter, identified that claimant's CTS was consistent with a repetitive use injury. The fact that claimant's complaints concerning her CTS condition arose within approximately one week after she began her new assignment of calf doctoring (which required repetitive wrist activities), indicates that she suffered an injury within a discrete period, rather than the gradual on/set of the condition. *See LP Co. v. Disdero Structural*, 118 Or App 36 (1993) (injury need not be instantaneous; thoracolumbar sprain caused by three days of work analyzed as injury); *Valtinson v. SAIF*, 56 Or App 184, 188 (1982) (injury need not be instantaneous, but may occur during a discrete period); *Donald Drake Co. v. Lundmark*, 63 Or App 261 (1983), *rev den*, 296 Or 350 (1984) (injury occurred suddenly, although the symptoms grew progressively worse over subsequent six weeks of employment); *Stephanie J. Rose*, 67 Van Natta 544, 545 (2015) (injury occurred when the claimant's condition arose during a specific work activity during a discrete time period); *Debra A. Deluca*, 64 Van Natta 1112 (2012) (injury occurred within discrete week-long period of heavy lifting).

Based on the above reasoning, we find that claimant's left CTS condition is properly analyzed as an injury.² Consequently, we affirm.

² SAIF does not challenge the compensability of the claim if an "injury" standard is applied.

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 \$3,500, 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 of going 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). The procedure for recovering this award, if any, is prescribed in OAR 438-015-0019(3).

ORDER

The ALJ's order dated January 11, 2016 is affirmed. For services on review, claimant's attorney is awarded an assessed fee of \$3,500, 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 July 25, 2016