
In the Matter of the Compensation of
MANUEL E. CROCKETT, Claimant
WCB Case No. 15-01440
ORDER ON REVIEW
Dodge and Associates, Claimant Attorneys
City of Portland-City Attys Office, Defense Attorneys

Reviewing Panel: Members Weddell and Curey.

Claimant requests review of Administrative Law Judge (ALJ) Pardington's order that upheld the self-insured employer's denial of his occupational disease claim for bilateral carpal tunnel syndrome (CTS). On review, the issue is compensability. We reverse.

FINDINGS OF FACT

We adopt the ALJ's "Findings of Fact."

CONCLUSIONS OF LAW AND OPINION

Finding the opinion of Dr. Broock, an orthopedic surgeon who examined claimant at the employer's request, more persuasive than that of Dr. Puziss, a consulting orthopedist, the ALJ concluded that claimant had not established that employment conditions were the major contributing cause of his bilateral CTS condition. Accordingly, the ALJ upheld the denial.

On review, claimant contends that Dr. Puziss's opinion attributing major causation of the CTS condition to claimant's work activities is the most persuasive evidence regarding the cause of the condition. As explained below, we agree with claimant's contention.

Claimant must prove that his employment conditions were the major contributing cause of his occupational disease. ORS 656.266(1); ORS 656.802(2)(a). The determination of the major contributing cause requires evaluation of the relative contribution of the different causes and a decision as to which cause contributed more than all other causes combined. *Dietz v. Ramuda*, 130 Or App 397, 401 (1994); *Linda E. Patton*, 60 Van Natta 579, 581 (2008).

Considering the disagreement among medical experts regarding the relative contribution of employment activities to the CTS condition, the causation issue presents a complex medical question that must be resolved by expert medical

opinion. *Uris v. Comp. Dep't*, 247 Or 420 (1967); *Barnett v. SAIF*, 122 Or App 279, 282 (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).

Comparing claimant's work activities to other causes (including obesity and diabetes), Dr. Puziss concluded that employment conditions were the major contributing cause of claimant's CTS. (Ex. 18-6). He noted that heavy grasping and use of vibratory tools are "great risk factors for carpal tunnel syndrome." (*Id.*) He opined that claimant developed tenosynovitis in his palms as a result of his work using jackhammers and driving dump trucks, and then developed CTS as a result of further heavy grasping involved in cranking on a trailer jack. (*Id.*) As explained below, we find his opinion persuasive.

Dr. Puziss had a complete and accurate understanding of claimant's work history. He understood that claimant had worked for the employer for 20 years, and had used jackhammers from 1999 through 2003. (Ex. 18-1). Beginning in 2003, claimant drove dump trucks for three to four hours per day. (*Id.*) The dump trucks had "massive," "difficult to manage" steering wheels, and claimant experienced some intermittent pain in the palms of his hands with this job. (*Id.*) When he began using a jack to raise trailers to connect them to trucks in 2014, the task required "huge forces." (*Id.*) This task occurred three or four times per week. (*Id.*)

Dr. Puziss also discussed the temporal relationship between claimant's work activities and upper extremity symptoms. Claimant told Dr. Puziss that he had numbness and tingling in his hands when he used the jack hammer, but those symptoms disappeared when he started his driving duties. (*Id.*) Claimant explained that the numbness returned again when he started using the trailer jack, and he experienced increasing numbness, tingling, and pain at night until his pain became "unbearable" in December 2014. (*Id.*)

Dr. Puziss noted that both heavy grasping and the use of vibrational tools, such as jackhammers, were great risk factors for CTS. (Ex. 18-6). He explained that claimant's truck driving involved both heavy grasping and vibration, given the nature of the truck's steering wheel. (*Id.*) He also reasoned that claimant's use of both hands for cranking was consistent with the bilateral nature of the CTS condition. (Ex. 18-6). Dr. Puziss specifically disagreed with Dr. Broock's statements that jack hammering is a low risk for CTS, because the opposite is actually the case. (*Id.*) He also disagreed with Dr. Broock's statement

that claimant's wrenching was done with only one hand. (*Id.*) In fact, as noted, claimant used both hands for wrenching and cranking, which correlated with numbness symptoms in both hands simultaneously. (*Id.*) Dr. Puziss also considered the temporal relationship between the beginning of claimant's cranking tasks and the onset of symptoms (*i.e.*, within the first month) to be "a very important historical piece of data which cannot be ignored." (*Id.*)

Dr. Puziss acknowledged that claimant was both obese and diabetic, which he considered to be risk factors for CTS. (Ex. 18-6). He reasoned that obesity is generally a less significant factor, but that, particularly considering the preexisting diabetes, these factors made claimant more susceptible to CTS. (Ex. 18-6).

Dr. Puziss also explained why he did not attribute claimant's CTS, in major part, to obesity and diabetes. He noted that the improvement of claimant's CTS after carpal tunnel release surgery was inconsistent with causation from diabetic peripheral neuropathy. (Ex. 18-7). Further, considering claimant's earlier symptoms and exposure to occupational risk factors, he reasoned that claimant's lack of CTS symptoms until his exposure to strenuous cranking tasks (in addition to his driving duties) weighed against the attribution of causation to obesity and diabetes. (*Id.*) Accordingly, Dr. Puziss concluded that work activities were the major cause of claimant's CTS. (Ex. 18-6).

We disagree with the employer's contention that Dr. Puziss's opinion was inconsistent regarding the nature of claimant's symptoms from 2003 to 2014 and the contribution of employment conditions to CTS during that time. Dr. Puziss specifically distinguished between numbness symptoms, which claimant experienced before 2003, but which disappeared when he began driving dump trucks, from the hand pain associated with such driving. (Ex. 18-1, -6). Dr. Puziss explained his conclusion that employment conditions caused tenosynovitis before claimant began using the trailer jack, but that claimant "likely would not have developed frank carpal tunnel syndrome" without the addition of the cranking involved in using the trailer jack. (Ex. 18-1, -6). In other words, Dr. Puziss specifically accounted for claimant's earlier symptoms and work activities.

We also disagree with the employer's contention that Dr. Puziss's opinion was based on an inaccurate history regarding the temporal relationship between claimant's work activities and the onset of his numbness symptoms. Specifically, the employer asserts that a December 2014 chart note stating that claimant complained of "numbness x1 year," and Dr. Broock's report that claimant's

numbness began “[a]pproximately one year ago,” establish that the onset of symptoms preceded the beginning of claimant’s use of the jack in May 2014. (Exs. 1-1, 13-2; Tr. 15).

Yet, claimant’s testimony specified that his most recent numbness arose after using the trailer jack. (Tr. 14-17). Further, neither the December 2014 chart note nor Dr. Broock’s report indicated that the numbness preceded such duties. To the contrary, Dr. Broock’s report indicated that claimant began hitching and unhitching a trailer behind his truck “[o]ver the past year,” which would coincide with the reported onset of numbness. (Ex. 13-2). Under such circumstances, we conclude that Dr. Puziss’s opinion was based on an accurate history.

We find Dr. Puziss’s opinion well reasoned and based on complete information. Moreover, we find Dr. Puziss’s opinion more persuasive than the contrary opinion of Dr. Broock, who opined that claimant’s CTS was caused by non-occupational risk factors (morbid obesity and diabetes). (Ex. 13-10).

As discussed above, Dr. Puziss persuasively addressed Dr. Broock’s reasoning regarding the potential causal relationships between CTS and risk factors such as obesity, diabetes, grasping, and exposure to vibrating tools such as jackhammers. Further, Dr. Broock’s opinion that work activities were not potentially causative of CTS was based on the belief that claimant had not used a jackhammer for almost 20 years and that he used only his right hand for “intermittent” wrenching. (Ex. 13-10). Considering claimant’s unrebutted testimony that he continued to use a jackhammer until 2003 and that he used both hands while using the trailer jack, which provoked his numbness, we conclude the history upon which Dr. Puziss’s opinion was based is more accurate than the history used by Dr. Broock.¹ (Tr. 13, 17).

Under such circumstances, we give more weight to Dr. Puziss’s opinion and conclude that employment conditions were the major contributing cause of claimant’s CTS. Accordingly, we conclude that claimant’s occupational disease claim is compensable and reverse the ALJ’s order.

¹ Claimant also testified that he continued to use vibrating pneumatic tools after 2003, although he “wouldn’t use them that long” and such work did not provoke numbness. (Tr. 14). This history supports Dr. Puziss’s understanding that claimant’s hands continued to be exposed to vibrations between 2003, when a reduction in occupational gripping and vibration correlated with relief from numbness, and 2014, when an increase in occupational gripping correlated with the onset of numbness.

Claimant's attorney is entitled to an assessed fee for services at hearing and on review. ORS 656.386(1). 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 at hearing and on review is \$10,000, payable by the employer. In reaching this conclusion, we have particularly considered the time devoted to the case (as represented by the record and claimant's appellate briefs), the complexity of the issue, the value of the interest involved, and the risk that counsel may go uncompensated.²

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 the employer. See ORS 656.386(2); OAR 438-015-0019; *Nina Schmidt*, 60 Van Natta 169 (2008); *Barbara Lee*, 60 Van Natta 1, *recons*, 60 Van Natta 139 (2008). The procedure for recovering this award, if any, is prescribed in OAR 438-015-0019(3).

ORDER

The ALJ's order dated January 8, 2016 is reversed. The employer's denial is set aside and the claim is remanded to the employer for processing in accordance with law. For services at hearing and on review, claimant's attorney is awarded an assessed fee of \$10,000, payable by the employer. 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 the employer.

Entered at Salem, Oregon on July 27, 2016

² Claimant's attorney did not suggest a specific assessed fee or present any information or reasoning to assist us in evaluating the factors set forth in OAR 438-015-0010(4).