

In the Matter of the Compensation of
JAIR D. HERNANDEZ-GONZALEZ, Claimant

WCB Case No. 15-02585

ORDER ON REVIEW

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Reviewing Panel: Members Johnson and Lanning.

Claimant requests review of Administrative Law Judge (ALJ) Ogawa's order that upheld the self-insured employer's denial of his new/omitted medical condition claim for a right hip labral tear. On review, the issue is compensability.¹

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

On February 18, 2014, claimant was working for the employer, building platforms using iron tubing. He was using a forklift to set the tip of two pieces of iron onto rollers. He got off the forklift to push the pieces, but his right leg slid back and forth on the icy ground, and he developed back pain and a burning sensation in his right leg. As a result of this incident, claimant sustained a compensable low back injury, which the employer ultimately accepted for a lumbar strain. (Ex. 13).

Subsequently, the employer denied claimant's new/omitted medical condition claim for a right hip labral tear. (Exs. 52, 58). In upholding the employer's denial, the ALJ determined that the opinion of Dr. Skrzynski, examining orthopedist, was most persuasive. Based on that opinion, the ALJ was not persuaded that claimant's work injury was a material contributing cause of the need for treatment or disability for the right hip labral tear.

On review, claimant disputes the ALJ's analysis of Dr. Skrzynski's opinion and contends that the opinions of Dr. Rookstool, his treating chiropractor, and Dr. Nelson, his treating physician, persuasively support the compensability of his right hip labral tear. For the following reasons, we disagree and affirm the ALJ's decision.

¹ On review, the employer contends that the right hip labral tear condition must be analyzed as an "occupational disease." However, at hearing, the parties agreed that no occupational disease claim was made or denied for the right hip labral tear. (Tr. 2-3). Furthermore, the medical record addresses whether claimant's labral tear was due to the February 2014 work injury, not his overall work exposure. Therefore, an injury theory applies.

To prevail on the new/omitted medical condition claim for a right hip labral tear, claimant must establish that the February 2014 work injury was a material contributing cause of his disability or need for treatment for that condition.² ORS 656.005(7)(a); ORS 656.266(1); *Betty J. King*, 58 Van Natta 977 (2006). There is no contention that a preexisting condition combined with an otherwise compensable labral tear injury to cause or prolong claimant's disability or need for treatment, which would implicate the "major contributing cause" standard. *See* ORS 656.005(7)(a)(B); ORS 656.266(2)(a). Accordingly, the determinative inquiry is whether claimant carried his burden of proof under the "material contributing cause" standard.

Because of the disagreement between medical experts regarding the cause of claimant's hip condition, this claim presents a complex medical question that must be resolved by expert medical opinion. *Barnett v. SAIF*, 122 Or App 279, 282 (1992). In evaluating the medical evidence, we rely on those opinions that are well reasoned and based on complete and accurate information. *Somers v. SAIF*, 77 Or App 259, 263 (1986).

Dr. Skrzynski reviewed the medical record and examined claimant on April 30, 2014. She noted physical examination findings that could indicate labrum pathology. (Ex. 12-3). She diagnosed lumbar strain, mild symptoms of a possible lumbar radiculitis on the right, and right groin strain, possible labral pathology. (Ex. 12-4). Given the mechanism of injury, she stated that it was unlikely that a labral injury occurred with the work incident. (*Id.*)

Claimant notes that Dr. Skrzynski also stated that "the work exposure [was] responsible for his current symptom complex." (*Id.*) However, Dr. Skrzynski's statement about claimant's "current symptom complex" responded to a question about the major cause of the "current condition," which she had described as lumbar strain, possible lumbar radiculitis, and groin strain (possible labral pathology not related to the work event). (*Id.*) In other words, Dr. Skrzynski ascribed claimant's *back* complaints to the work event. Reading Dr. Skrzynski's April 2014 report as a whole, we do not find that it supports compensability of any labral pathology.

² The parties agree, and the record establishes, that the claimed right hip labral tear exists. *Maureen Y. Graves*, 57 Van Natta 2380, 2381 (2005) (proof of the existence of the condition is a fact necessary to establish the compensability of a new/omitted medical condition).

On August 13, 2014, Dr. Skrzynski reviewed additional medical records and examined claimant. (Ex. 33). She noted that claimant continued to have provocative physical exam findings for potential labral pathology of the right hip. She also noted markedly diminished range of motion in both hips. She suspected that claimant had underlying congenital abnormality or degenerative arthritis bilaterally that predisposed him to labral pathology. (Ex. 33-5). She opined that the mechanism of injury of slipping on the ice without falling would be highly unlikely to cause a labral tear and that any pathology of the right hip was highly unlikely to be related to the February 2014 work incident. (*Id.*) Finally, she explained that the “normal workup” to look for significant labral pathology would include an arthrogram. (*Id.*)

Dr. Nelson concurred with Dr. Skrzynski’s August 2014 report. (Ex. 37).

On September 8, 2014, claimant underwent an arthrogram of the right hip. (Ex. 40). On April 21, 2015, Dr. Skrzynski reviewed additional medical records, including the arthrogram, and examined claimant. (Ex. 57). She opined that the arthrogram showed that claimant had “femoral acetabular impingement [FAI] syndrome as evidenced by an increased alpha angle (at least 65 degrees) and a bump at the head/neck junction of the femur, indicative of cam type FAI.” (Ex. 57-4, -5). She noted that this was a congenital and preexisting condition that predisposed the hip to labral tearing. (*Id.*) She also concluded that claimant’s right hip labral tear resulted from his bony morphology, and was not due to the work injury. (*Id.*)

On August 20, 2015, Dr. Skrzynski opined that claimant’s right hip labral tear developed over time as the result of a “disease process”:

“[Claimant] has a cam-type femoroacetabular impingement. In cam impingement the femoral head is not round and cannot rotate smoothly inside the acetabulum. A bump forms on the neck of the femur that grinds the cartilage inside the acetabulum. That bone overgrowth causes the ball and socket to hit against each other, rather than to move smoothly. Over time, this can result in the tearing of the labrum. This disease process is the cause of [claimant’s] right hip labral tear.” (Ex. 60-1).

Dr. Skrzynski opined that the distinction between presentation of symptoms and development of pathology was important when considering this specific condition. (Ex. 60-2). Given these findings and the mechanism of injury, she concluded that the February 2014 work incident was not a material cause of claimant's right hip labral tear or the associated disability and need for treatment. (*Id.*)

Claimant contends that Dr. Skrzynski's opinion only supports the conclusion that his hip structure rendered him more "susceptible" to the injury. However, as summarized above, although Dr. Skrzynski initially suspected that claimant had an underlying congenital abnormality that predisposed him to labral pathology, after considering the arthrogram findings, she concluded that he actually had such an abnormality, which was the cause of his right hip labral tear. Moreover, medical opinions are evaluated in context and based on the record as a whole to determine sufficiency. *See SAIF v. Strubel*, 161 Or App 516, 521-22 (1999); *Christopher Head*, 61 Van Natta 1448, 1451 (2009).

Considering Dr. Skrzynski's well-reasoned opinion as a whole and in context with her explanation of the arthrogram findings, we find that it persuasively establishes that the February 2014 work incident was not a material contributing cause of claimant's disability or need for treatment for the right hip labral tear. *Id.*

Claimant contends that the ALJ erred in discounting the treating physicians' opinions for not explaining how the mechanism of injury caused the labral tear, yet did not find fault with Dr. Skrzynski's opinion for the same reason. As discussed above, the causation issue presents a complex medical question. Therefore, regardless of whether Dr. Skrzynski's opinion is deemed persuasive, claimant must have a persuasive medical opinion establishing causation. *See Lorraine W. Dahl*, 52 Van Natta 1576 (2000) (if medical opinions supporting compensability are insufficient to meet the claimant's burden of proof, the claim is not compensable, regardless of the persuasiveness of countervailing opinions). Here, for the reasons set forth below, we do not find the opinions of Drs. Rookstool and Nelson sufficient to meet claimant's burden of proof.

Dr. Rookstool stated that the work injury was at least a material contributing cause of claimant's right hip labral tear. (Ex. 61). However, he offered no reasoning in support of that statement. Therefore, we find Dr. Rookstool's conclusory opinion unpersuasive. *See Moe v. Ceiling Sys., Inc.*, 44 Or App 429, 433 (1980) (rejecting unexplained or conclusory opinion); *Alan D. Rebo*, 66 Van Natta 1672, 1673 (2014) (same).

In addition, Dr. Nelson initially concurred with Dr. Skrzynski's August 2014 report, which suspected that claimant had underlying congenital abnormality or degenerative arthritis that predisposed him to labral pathology. (Ex. 33-5). That report also indicated that that the mechanism of injury would be highly unlikely to cause a labral tear and any pathology of the right hip was highly unlikely to be related to the February 2014 work incident. (Exs. 33, 37).

Following the September 2014 arthrogram that confirmed a right hip labral tear, Dr. Nelson acknowledged that he had agreed with Dr. Skrzynski's report and wanted her to further weigh in on the causation of the labral tear. (Exs. 42, 43A, 45A). He noted that the association with the work injury was unclear, although it was temporally related and the mechanism was consistent. (Exs. 43A-3, 45A-3). He stated that temporally claimant did not have prior symptoms, and given the arthrogram findings and claimant's age, it was highly likely that the labral injury occurred during the work exposure. (Exs. 48, 49, 51, 53, 55). Finally, Dr. Nelson stated that the work injury was at least a material contributing cause of claimant's right hip labral tear. (Ex. 59-2).

We do not find Dr. Nelson's opinion persuasive. First, Dr. Nelson did not explain his change of opinion when, after concurring with Dr. Skrzynski's causation opinion, he subsequently disagreed with it. *Kenneth L. Edwards*, 58 Van Natta 487, 488 (2006) (unexplained change of opinion renders physician's opinion unpersuasive); *see also Howard L. Allen*, 60 Van Natta 1423, 1424-25 (2008) (internally inconsistent medical opinion, without explanation for the inconsistencies, was unpersuasive).

In addition, although referring to the "MRI [arthrogram] findings and claimant's age," Dr. Nelson neither explained how those factors supported his opinion that the labral injury occurred during the work exposure, nor addressed Dr. Skrzynski's contrary opinion regarding the arthrogram findings. *Moe*, 44 Or App at 433 (rejecting unexplained or conclusory opinion); *Rebo*, 66 Van Natta at 1673 (same); *Janet Benedict*, 59 Van Natta 2406, 2409 (2007), *aff'd without opinion*, 227 Or App 289 (2009) (medical opinion unpersuasive when it did not address contrary opinions); *Pamela J. Pratt*, 65 Van Natta 2551, 2554 (2014) (rejecting medical opinion that lacked adequate explanation where contrary opinions were well-reasoned). Under such circumstances, we conclude that Dr. Skrzynski's opinion is more persuasive than those of Drs. Rookstool and Nelson.

Accordingly, we conclude that the persuasive medical evidence does not establish that the February 2014 work injury was a material contributing cause of claimant's disability or need for treatment of his claimed right hip labral tear. Therefore, we affirm.

ORDER

The ALJ's order dated December 18, 2015 is affirmed.

Entered at Salem, Oregon on July 25, 2016