
In the Matter of the Compensation of
PHILLIP PADFIELD, Claimant
WCB Case No. 15-03940
ORDER ON REVIEW
Welch Bruun & Green, Claimant Attorneys
Gress & Clark LLC, Defense Attorneys

Reviewing Panel: Members Curey and Lanning.

The self-insured employer requests review of Administrative Law Judge (ALJ) Brown's order that set aside its denials of a new/omitted medical condition claim for a right C6-7 disc protrusion and cervical radiculopathy. On review, the issue is compensability.

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

On December 18, 2013, claimant sustained a work-related injury while pulling an electric pallet jack. The employer accepted a right shoulder sprain/strain, supraspinatus tear, and brachial plexus dysfunction. (Exs. 21, 27, 40). Over the following year, claimant had physical therapy and consulted several different providers, but his right shoulder pain and right upper limb numbness did not improve. (Ex. 33-1).

On January 22, 2015, claimant began treating with Dr. Arnsdorf, a rehabilitation medicine specialist. Dr. Arnsdorf suspected that a cervical radiculopathy was contributing to claimant's persistent symptoms. (Ex. 37-3). A March 2015 cervical MRI showed a C6-7 protrusion with moderate right foraminal stenosis. (Ex. 41). Reasoning that claimant had no symptoms before the injury and the near-immediate onset of pain after the injury, without any other contributing activities, Dr. Arnsdorf concluded that the right C6-7 disc bulge and subsequent cervical radiculopathy were due to the work injury. (Ex. 45-1).

On July 9, 2015, claimant initiated a new/omitted medical condition claim for a disc protrusion and right cervical radiculopathy. (Ex. 44). On July 28, 2015, the employer denied the new/omitted medical condition claim. (Ex. 46-1). Claimant requested a hearing.

On August 25, 2015, claimant asked the employer to accept a right C6-7 disc bulge and right cervical radiculopathy. (Ex. 48-1). On October 6, 2015, Dr. Toal, an orthopedic surgeon, performed an examination at the employer's request.

Dr. Toal opined that claimant did not have a cervical radiculopathy and that the C6-7 disc was a degenerative condition. (Ex. 50-10, -12). He concluded that the work event was not a material contributing cause of the need for treatment. (Ex. 50-12). Dr. Arnsdorf disagreed. He maintained that the work event was the major contributing cause of the C6-7 disc bulge, cervical radiculopathy, and need for treatment. (Ex. 53-7, -8).

On October 26, 2015, the employer denied the new/omitted medical condition claim for right C6-7 disc bulge and right cervical radiculopathy, asserting that there was insufficient evidence that the conditions were related to the work injury. (Ex. 51). Claimant requested a hearing.

Finding the opinion of Dr. Arnsdorf more persuasive than that of Dr. Toal, the ALJ set aside the employer's denials. On review, the employer contends that claimant did not prove the existence of cervical radiculopathy as a "condition" or that the claimed conditions are compensable.

To prevail on a new/omitted medical condition claim, claimant must establish that the work injury is a material contributing cause of his disability/need for treatment for the claimed condition. ORS 656.005(7)(a); ORS 656.266(1); *Betty J. King*, 58 Van Natta 977 (2006). In doing so, he must prove the existence of the claimed medical condition. ORS 656.266(1); *De Los Santos v. Si Pac Enters.*, 278 Or App 254, 257 (2016); *Maureen Y. Graves*, 57 Van Natta 2380, 2381 (2005). A "condition" is "the physical status of the body as a whole * * * or of one of its parts." *Young v. Hermiston Good Samaritan*, 223 Or App 99, 105 (2008). Whether a claim is for a medical "condition" is a question of fact to be decided on the medical evidence in individual cases. *Armenta v. PCC Structural, Inc.*, 253 Or App 682, 692 n 7 (2012); *Young*, 223 Or App at 107.

Here, Dr. Arnsdorf diagnosed a right cervical radiculopathy as causing claimant's right shoulder pain and upper extremity numbness/weakness. (Exs. 45-1, 47-1, 49-1, 53-7, -8). He supported claimant's request for the acceptance of right cervical radiculopathy as "an accepted diagnosis on his industrial claim"; (*i.e.*, as a new or omitted medical condition). (Exs. 44, 45-1). He referred to the cervical MRI and his clinical observations (of cervical reproducible tenderness to palpation, reduced cervical range of motion, and reproducible weakness/numbness in the right upper extremity, especially in the thumb, index, and middle finger), as objective evidence of cervical radiculopathy. (Ex. 53-5, -6).

Based on these records and opinions, we conclude that the claimed “cervical radiculopathy” is a “condition.” Although Dr. Toal opined that claimant does not have a cervical radiculopathy (based on claimant’s normal reflexes, strength, sensation, and electrodiagnostic findings), his opinion does not support the employer’s contention that the claimed radiculopathy is a symptom, not a “condition.” (Ex. 50-10, -11).

Regarding the “existence” of the claimed cervical radiculopathy, Dr. Arnsdorf disagreed with Dr. Toal’s opinion that there was no objective evidence of the diagnosis. (Ex. 53-7). Specifically, Dr. Arnsdorf identified the March 2015 cervical MRI (showing the C6-7 disc bulge and neural foraminal narrowing) and his personal observations (having “consistently demonstrated ongoing, and reproducible” grip strength weakness in claimant’s right hand) as objective evidence of a cervical radiculopathy. (*Id.*) Dr. Toal’s contrary opinion (that claimant’s complaints of right upper extremity numbness and weakness were “subjective and inconsistent”) was based on his review of claimant’s medical records. (Ex. 50-10). We are persuaded that Dr. Arnsdorf (having seen claimant six times over a period of seven months) had a better opportunity to observe and evaluate the existence of claimant’s cervical radiculopathy. *See Weiland v. SAIF*, 64 Or App 810 (1983) (in some situations, a treating physician’s opinion is entitled to greater weight because of a better opportunity to evaluate a claimant’s condition over an extended period of time).

We disagree with the employer’s contention that Dr. Arnsdorf’s opinion regarding the existence of a cervical radiculopathy changed without explanation. While Dr. Arnsdorf initially stated that he did “not see anything specifically on [the] cervical MRI that would suggest that [claimant] definitely has a cervical radiculopathy causing his symptoms,” we view his later opinions regarding claimant’s diagnosis as representing a reasonable evolution of opinion based on his treatment and subsequent examinations.¹ (Exs. 42-1, 43-1, 45-1, 47-1, 49-1); *see James A. Powell*, 66 Van Natta 209, 213 (2014) (physician’s opinions

¹ After the MRI, Dr. Arnsdorf diagnosed “right shoulder strain” and injected claimant’s right subacromial bursa for both diagnostic and therapeutic purposes. (Ex. 42-1). When the injection did not afford claimant any relief, Dr. Arnsdorf reasoned that, while claimant’s pain symptoms did not “completely fit the MRI, * * * this could well explain his numbness into the right upper limb.” (Ex. 43-1). Two months later, when claimant returned with ongoing right shoulder pain, particularly in the right scapular area, Dr. Arnsdorf suspected that the right shoulder strain diagnosis was not “entirely correct,” and that claimant’s right shoulder pain was “actually referred pain from his cervical spine.” (Ex. 45-1). He completed an 827 form requesting acceptance of right cervical radiculopathy. (*Id.*)

regarding the claimant's diagnosis represented a reasonable evolution of opinion based on treatment rather than an unexplained change of opinion). Therefore, based on Dr. Arnsdorf's opinion, we conclude that claimant has established the existence of the claimed cervical radiculopathy condition.

We turn to causation.² Dr. Arnsdorf concluded that the work incident combined with preexisting cervical degeneration and disc osteophyte and was the major contributing cause of the C6-7 disc bulge, cervical radiculopathy, and need for treatment. (Ex. 53-7, -8). In doing so, he considered the mechanism of injury, the objective evidence of the C6-7 disc bulge and cervical radiculopathy, the lack of prior neck symptoms, and the temporal relationship between the injury and claimant's symptoms. (*Id.*) He explained that when the electronic pallet jack stopped and pulled claimant's right shoulder and upper extremity backwards, added torque and stress were placed on the base of claimant's neck, at the C6-7 level, which caused the disc bulge and cervical radiculopathy. (Ex. 53-6, -7). He noted that on the day after the incident, claimant had neck pain with side bending to the right and right hand numbness and tingling, which was consistent with a cervical disc injury. (Ex. 53-7). He acknowledged that the cervical MRI shows a preexisting disc osteophyte complex at the C6-7 level, but he noted that the MRI also shows a disc bulge at that level, as a separate condition, which was caused by the work incident. (Ex. 53-8). Finally, in reaching his conclusion, he considered the lack of any prior neck complaints or treatments to be an important factor. (*Id.*)

We find Dr. Arnsdorf's opinion to be based on sufficiently complete information, well explained, and persuasive. *Somers v. SAIF*, 11 Or App 259, 263 (1986) (persuasive opinions are well reasoned and based on accurate and complete information). Furthermore, his opinion is supported by that of Dr. Kounine, an orthopedist that claimant consulted in January 2014, who observed that "as [claimant] described his arm being jerked back behind his body, there was a lot of traction put on the shoulder and neck region. This could have caused a traction injury to the nerves." (Ex. 17). Although subsequent electrodiagnostic studies did not show "significant changes,"³ Dr. Kounine maintained that claimant likely had a "traction-type injury which had inflamed the nerve." (Ex. 23).

² The parties do not dispute, and the record establishes, that the C6-7 disc bulge exists. The cervical MRI showed a C6-7 protrusion and uncinated spurring. (Ex. 41). Dr. Arnsdorf agreed with Dr. Toal's opinion that the cervical MRI shows a disc osteophyte complex at the C6-7 level, but Dr. Arnsdorf also observed a separate disc bulge at that level. (Exs. 50-12, 53-8).

³ On March 5, 2014, Dr. Hills reported that there was no electrodiagnostic evidence of a compression or entrapment neuropathy, polyneuropathy, plexopathy, or radiculopathy. (Ex. 22).

In contrast, Dr. Toal opined that the work event was not a material contributing cause of the need for treatment of the C6-7 disc condition. (Ex. 50-12). In doing so, he reasoned that there were no initial complaints of neck pain, which was not consistent with a disc injury. Yet, the day after the work incident, Dr. Steffey, an occupational health practitioner, observed that claimant had neck pain with side bending to the right. (Ex. 4-1). Dr. Toal's summary of Dr. Steffey's medical record did not refer to this observation. (Ex. 50-2). Accordingly, Dr. Toal's opinion was based on inaccurate or incomplete information. *See Miller v. Granite Constr. Co.*, 28 Or App 473, 476 (1977) (opinion based on inaccurate history found unpersuasive).

Dr. Toal also stated, without explanation, that "acute disc herniation is not caused by traction on the upper extremity." (Ex. 50-10). His conclusory statement does not diminish the persuasiveness of Dr. Arnsdorf's opinion, as supported by that of Dr. Kounine. *See Moe v. Ceiling Sys., Inc.*, 44 Or App 429, 433 (1980) (rejecting unexplained or conclusory opinion).

Accordingly, based on the aforementioned reasoning, as well as that expressed in the ALJ's order, we conclude that Dr. Arnsdorf's persuasive opinion establishes that the compensable injury was a material contributing cause of claimant's need for treatment of the claimed new/omitted medical conditions of cervical radiculopathy and C6-7 disc bulge. Therefore, we affirm.⁴

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 \$5,000, payable by the employer. In reaching this conclusion, we have particularly considered the time devoted to the case (as represented by claimant's respondent's brief and his attorney's uncontested fee submission), the complexity of the issues, 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, in finally prevailing over the denial, to be paid by the employer. *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 described in OAR 438-015-0019(3).

⁴ The employer did not assert a "combined condition" defense.

ORDER

The ALJ's order dated December 18, 2015 is affirmed. For services on review, claimant's attorney is awarded an assessed fee of \$5,000, 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 22, 2016