

In the Matter of the Compensation of
LEE M. FRAKES, Claimant

WCB Case No. 15-02076

ORDER ON REVIEW

Bennett Hartman Morris & Kaplan, Claimant Attorneys
Sather Byerly & Holloway, Defense Attorneys

Reviewing Panel: Members Weddell and Johnson.

Claimant requests review of Administrative Law Judge (ALJ) Poland's order that upheld the self-insured employer's denial of his occupational disease claim for a mental disorder. On review, the issue is compensability. We affirm.

FINDINGS OF FACT

We adopt the ALJ's "Findings of Fact" and provide the following summary.

In January 2015, Dr. Buchanan diagnosed "adjustment reaction with anxiety" and noted claimant's symptoms of headache, insomnia and chest tightness after a conflict at work. (Ex. 3). Dr. Buchanan restricted claimant from working his next shift. (*Id.*)

On January 26, 2015, Dr. Rodgers continued claimant's work restrictions, noting that his "anxiety continues." (Ex. 4).

In February 2015, claimant was evaluated by Dr. Hook. (Ex. 6). Dr. Hook diagnosed "adjustment reaction with mixed emotional features" and noted that claimant was having problems sleeping, getting work issues out of his mind, and difficulty finding pleasure in routine activities. (*Id.*)

In March 2015, Dr. Glass performed a psychiatric evaluation and a review of the medical record at the employer's request. (Ex. 13). Dr. Glass concluded that the most appropriate diagnosis was a "v-code" for an "occupational problem," which represented a "problem in living" that did not rise to the level of a psychiatric disorder. (Ex. 13-12). He explained that the distinction between the "v-code" diagnosis and an adjustment disorder was that a "v-code" was appropriate where a person responded to stress normally, and did not develop significant emotional or behavioral symptoms. (*Id.*)

On March 17, 2015, claimant was evaluated by Dr. Besing, a psychologist. (Ex. 14). Claimant reported that he was unsure of the purpose of the evaluation. (*Id.*) Dr. Besing noted minimal anxiety based on testing, and did not recommend further psychological treatment. (Ex. 14-2).

On March 24, 2015, the employer denied claimant's claim for a mental disorder. (Ex. 17). Claimant requested a hearing.

CONCLUSIONS OF LAW AND OPINION

The ALJ concluded that the stressful circumstances described by claimant constituted reasonable disciplinary, corrective, or job performance evaluation actions that were excluded from consideration in the compensability analysis. *See* ORS 656.802(3)(b). Because the medical experts on which claimant relied based their opinions, in part, on such excluded causes, the ALJ reasoned that claimant could not satisfy the requisite causation standard.

Disagreeing with the ALJ's characterization of the employer's actions, claimant contends that the factors relied on by Drs. Buchanan and Hook should not be excluded, and that he has established that the work events were the major contributing cause of his claimed mental disorder. As discussed below, we conclude that claimant has not met his requisite burden of proof.

Claimant must establish that there is a diagnosis of a mental or emotional disorder generally recognized in the medical or psychological community, and that the employment conditions producing the mental disorder exist in a real and objective sense. ORS 656.266(1); ORS 656.802(3)(a). Claimant must also prove, by clear and convincing evidence, that the mental disorder arose out of and in the course of employment. ORS 656.802(3)(d). To be "clear and convincing," the truth of the facts asserted must be highly probable. *Riley Hill Contractor Inc. v. Tandy Corp.*, 303 Or 390, 402 (1987); *David M. Sinclair*, 67 Van Natta 63, 64 (2015).

Employment conditions must be the major contributing cause of the disorder. ORS 656.802(2)(a). ORS 656.802(3)(b) requires that the employment conditions producing the mental disorder be conditions other than: conditions generally inherent in every working situation; reasonable disciplinary, corrective, or job performance evaluation actions by the employer; or cessation of employment or employment decisions attendant upon ordinary business or financial cycles. The phrase "generally inherent in every working situation" means

those conditions that are usually present in all jobs and not merely in the specific occupation involved. *Whitlock v. Klamath County Sch. Dist.*, 158 Or App 464 (1999); *Heather D. Whitaker*, 65 Van Natta 1793, 1794 (2013). In the context of a mental disorder claim, both those factors excluded by ORS 656.802(3)(b) and nonwork-related factors must be weighed against nonexcluded work-related factors. *Liberty Northwest Ins. Co. v. Shotthafer*, 169 Or App 556, 565-66 (2000). Only if the nonexcluded work-related causes outweigh all other causes combined is the claim compensable. *Id.*

Considering the conflicting medical opinions, the causation issue presents a complex medical question that must be resolved on the basis of expert medical evidence. *Uris v. Compensation Dept.*, 247 Or 420, 426 (1967); *Barnett v. SAIF*, 122 Or App 281, 283 (1993). When medical experts disagree, we place more emphasis on opinions that are well reasoned and based on the most complete relevant information. *Jackson County v. Wehren*, 186 Or App 555, 559 (2003).

Claimant relies on the medical opinions of Drs. Buchanan and Hook to establish the compensability of his mental disorder claim for an adjustment disorder. Based on the following reasoning, we are not persuaded by Dr. Buchanan and Hook's diagnosis of an adjustment disorder.

The day after claimant had a conflict with a supervisor, he presented for evaluation by Dr. Buchanan. (Ex. 3). He reported difficulty concentrating, headache, insomnia, and chest tightness. (*Id.*) Dr. Buchanan diagnosed an adjustment reaction with anxiety. (*Id.*)

Twelve days later, claimant was evaluated by Dr. Hook. (Ex. 6). Claimant reported anxiety, difficulty concentrating, and an inability to sleep. (*Id.*) Dr. Hook diagnosed an adjustment reaction with mixed emotional features and referred claimant to a behavioral psychologist for instruction in stress management. (Ex. 6-4).

In March 2015, claimant was evaluated by Dr. Besing, a psychologist. (Ex. 14). Dr. Besing reported that claimant was unsure of the purpose of the evaluation, and Dr. Besing concluded that treatment was not indicated at that time. (*Id.*)

On March 10, 2015, claimant was evaluated by Dr. Glass at the employer's request. (Ex. 13). Dr. Glass explained that an adjustment disorder is appropriate when an individual develops significant emotional or behavioral symptoms in

response to an identifiable psychosocial stressor. (Ex. 13-12). Dr. Glass disagreed with Dr. Hook's adjustment disorder diagnosis, instead diagnosing a "v-code" for an occupational problem. (*Id.*) Dr. Glass explained that a "v-code" is not a psychological disorder, but rather represents a normal stress response to a "problem in living," whereas an adjustment disorder is a psychological disorder involving an abnormal response to stress. (*Id.*) He considered claimant to have an "occupational problem" and not a psychiatric disorder. (Ex. 13-13). Later, Dr. Besing concurred with Dr. Glass's assessment. (Ex. 20).

Dr. Hook deferred to Dr. Glass and Dr. Besing's diagnoses at their later evaluations, at which time claimant's symptoms had reduced. (Ex. 24-9, -24). However, he considered claimant to have developed an adjustment disorder at the time of his first evaluation in February 2015. (*Id.*)

Claimant contends that Dr. Hook's opinion should be given deference because he examined claimant at an earlier date when he was more symptomatic. However, we are not persuaded that Dr. Hook accurately diagnosed an adjustment disorder.

Based on Dr. Glass's record review, we do not agree with claimant's contention that Dr. Glass only relied on claimant's symptoms that he had at the time of his June 2015 evaluation. Instead, the report establishes that Dr. Glass considered claimant's symptoms as they were described to Dr. Hook in his evaluation in February 2015. (Ex. 13-6). However, Dr. Glass did not consider the presence of the symptoms which Dr. Hook relied on to substantiate the adjustment disorder diagnosis to support such a diagnosis, and instead concluded that they were normal responses to stressful circumstances. Thus, Dr. Glass's opinion was based on complete information including the symptoms recorded by Dr. Hook. *See Somers v. SAIF*, 77 Or App 259, 263 (1986).

Further, Dr. Hook did not directly respond to Dr. Glass's opinion that none of claimant's reported symptoms were significant enough to constitute an adjustment disorder. Because Dr. Hook did not address the substance of Dr. Glass's opinion, we discount the persuasiveness of Dr. Hook's opinion.¹ *See*

¹ Additional portions of Dr. Hook's deposition undermine the persuasiveness of his opinion. For example, Dr. Hook stated he never considers a "v-code" diagnosis as a primary diagnosis because he would not be reimbursed for the examination. (Ex. 24-23). He explained that a person with a "v-code" as the primary diagnosis should not be seeking medical treatment. (*Id.*) Under such circumstances, we conclude that Dr. Hook did not persuasively address the possibility that the "v-code" diagnosis was more appropriate.

Janet Benedict, 59 Van Natta 2406, 2409 (2007), *aff'd without opinion*, 227 Or App 289 (2009) (medical opinion less persuasive when it did not address contrary opinions) In contrast, we are persuaded by Dr. Glass's and Dr. Besing's explanation that claimant's condition was more consistent with a "v-code" diagnosis.²

Because the establishment of a diagnosis of a mental disorder that is generally recognized by the medical community is a necessary element of claimant's burden of proof, it is unnecessary for us to further consider the additional requirements of ORS 656.802. *Clarence C. Fetters*, 59 Van Natta 835, 836 (2007); *Julie A. Gentry*, 67 Van Natta 1791, 1793 n1 (2015) (unnecessary to determine whether work conditions were generally inherent in every working situation where the claimant otherwise did not satisfy their burden of proof to establish a compensable mental disorder). Consequently, we conclude that claimant has not sustained his burden of proof. Accordingly, we affirm.

ORDER

The ALJ's order dated December 7, 2015 is affirmed.

Entered at Salem, Oregon on June 23, 2016

² Because Drs. Buchanan and Rodgers also did not respond to the opinions of Drs. Glass and Besing, we are not persuaded by their diagnoses of an adjustment reaction and anxiety condition. *See Benedict*, 59 Van Natta at 2409 (medical opinion less persuasive when it did not address contrary opinions).